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MAMARA ESTATES LTD -v- JOHN SELA & OTHERS

High Court of Solomon Islands

(Palmer J.)

Civil Case No. 108 of 1993

Hearing: 14 May 1993

Judgment: 12 August 1993

Ms Corrin for Plaintiff

J. Sela in person - First Defendant

C. Tagaraniana for Second and Third Defendants

Mrs M. Samuels for Fourth Defendant

PALMER J: The plaintiff is the owner and occupier of Mamara Plantation the boundaries of which are delineated in the fixed term estate registers parcel numbers 191-057-1, 191-057-2 and 191-057-17. The registered owner of these fixed-term estates is Guadalcanal Estate Developments Limited. However, it is not disputed that the plaintiff in this action has the right to pursue this action against the defendants on behalf of the registered owner.

The claim alleges the following:

- (i) *That from or before November 1992, the Second, Third and Fourth Defendants have been wrongfully entering onto the Plaintiff's land.*
- (ii) *From or before November 1992 the 2nd, 3rd and 4th Defendants have:*
 - (a) *wrongfully claimed to be owners and occupiers of the Land;*
 - (b) *instructed and or allowed chainsaw operators to enter onto the Land and fell and extract timber therefore; and*
 - (c) *received money from the said chainsaw operators for the timber felled and/or extracted from the land, and*
 - (d) *made gardens in the plaintiff's land.*
- (iii) *From or before January, 1993 the First Defendant has been wrongfully entering onto the Plaintiff's land.*

- (iv) *From or before January 1993 the 1st Defendant has:*
- (a) *wrongfully felled and extracted timber from the land, and*
 - (b) *wrongfully taken possession of the plaintiff's key to the gate giving access to the land, and*
 - (c) *dismantled the fence beside the gate giving access to the land on two occasions.*
- (v) *The plaintiff accordingly seeks damages the particulars of which are specifically set out in the statements of claim and a restraining order against the Defendants.*

The boundary of parcel 191-057-1 or Lot 7 was resurveyed in January 1993 by a Surveyor from the Surveyor General's Office at the request of the plaintiff. In that survey, a full report of which has been made and a copy submitted as exhibit 1, the surveyor, Mr Frederick Rilalu sought to identify 6 survey pegs. These have been conveniently marked in a plan annexed to that report. These survey pegs were identified on that plan as points: MAR, M1, M2, M3, M4 and M5. Mr. Rilalu stated in evidence that all survey pegs with the exception of peg M2 were located. The boundary was physically walked by Mr. Rilalu and two workers of the Plaintiff. I accept his evidence as stated.

One of the workers who accompanied the surveyor was the Field Manager, Mr. Kemuel Satu. He confirmed that logging had taken place within the plaintiffs Land (parcel No. 191-057-1). In his affidavit filed on the 22/4/93, exhibit marked 'KS4' he had placed an 'X' on the spot where the logging took place. I accept his evidence.

I will now deal with the questions of fact in relation to the logging which took place in this parcel of land.

In Kemuel Satu's affidavit filed on the 22nd of April 1993 he stated at para.2 and 3 that the second Defendant told him at Vura Village on the 18th of November 1992 that he instructed a gang of chainsaw operators to enter the plaintiff's land and cut and fell trees for timber. Under cross-examination from Mr Taga (Counsel for the Second Defendant) Mr. Satu pointed out that he and Francis (the boundary man) had seen certain people cutting trees in the plaintiffs land and so asked them as to who gave them the authority to do so. As a result of what he was told on the 18th of November

1992 he went to see Rubino Tabaa at Vura village, He spoke with Rubino Tabaa who confirmed to him that he instructed the chainsaw gang to enter the land.

In his evidence, Rubino Tabaa denied allowing any chainsaw operator into the plaintiffs land. He did not however deny that he did speak with Mr. K. Satu on the 18th November 1992.

I am satisfied having heard and observed this defendant giving evidence that Mr. Satu was speaking the truth and that there had indeed been an admission as to permitting a chainsaw gang to enter the said land.

In his evidence in Chief Rubino Tabaa stated that he did receive three letters in all from the plaintiff. One of them was dated the 19th of November 1992. Mr Satu did confirm in evidence that he hand-delivered a copy of this letter to the 2nd Defendant. The 2nd Defendant pointed out that he took no notice of the letter and the subsequent letters because he believed that the land was customary land. He did not however take any steps as is expected of a normal, reasonable person, to search the Lands Registry or call in at the Surveyor General's Office to check the claim of the plaintiff, or even to call in at the plaintiff's Office and find out the truth about his belief. With due respects it was basically a belief held in defiance to the plaintiff's claim. It is this court's view that he knew what the boundary was. The land was registered way back in 1977. And he had plenty of time to find out if he was uncertain. He never bothered even when he had been personally notified. If he was serious about his claim and is protecting his so-called customary land and interests, he would have taken immediate steps to find out. He never bothered, and yet comes to this court expecting this court to accept his baseless belief.

I am satisfied he wrongfully entered into the plaintiff's land and wrongfully claimed to be the owner and occupier of that land. As to whether he received any money from the chainsaw operators for the timber felled and/or extracted, I am not satisfied that this has been established on the balance of probability. The only evidence is in what Mr Satu stated about the 2nd Defendants admission. But there is no other evidence to show that there ever was any payment.

As to the question of gardens, there is no evidence before me on which that claim can be granted.

I will now consider Raymond Juabis case. The evidence as adduced by the witness John Lipo for the plaintiff stated emphatically that in January 1993 he saw Raymond Juabi with Rubino Tabaa and Kasiano Veomate in the plaintiffs land with a chainsaw gang cutting one tree down. Under cross-examination he remained firm about what he saw.

In his evidence in Chief Raymon Juabi denied seeing the witness John Lipo or ever receiving any payment of money from any chainsaw gang or having anything to do with them. I accept there is little evidence to show that he received any payments.

However, I am satisfied he was seen by John Lipo entering the plaintiffs land when he had no right to do so. I accept John Lipo's evidence as opposed to his denial. John Lipo stated in great detail where he saw this defendant. This was at plot 2, near cocoa, at Voda, near Vura village.

As to the question of a wrongful claim as owner and occupier, this defendant stated in evidence that he did receive about 3 letters from the plaintiff in which it was stated clearly to him that the land in question did not belong to him. However, he did nothing about these letters. I quote what he said:

" I did not make any attempt because according to my belief it was customary land. Therefore did not approach the company."

There was as in Rubino Tabaa's case no basis for that belief. On receiving those letters it was incumbent on him to make inquiries. He never bothered to do so. Again, I find his attitude to be more of defiance than anything else. Under cross examination he stated that the first defendant and I quote:

"...Cut timber in forest, and the forest is customary land."

However, as a supposedly customary land owner he never bothered to find out where the first defendant was cutting trees, how many trees he was cutting, and was never worried about not being paid for those trees.

I am satisfied on the balance of probabilities that this defendant knew that the land was not customary land and so never bothered about the first defendant's activities. A customary land owner would never allow anyone to cut and remove his trees without permission and payment.

On the question of whether he received any payment of money from the trees felled and extracted, I am not satisfied that this has been proven. I am also not satisfied that it has been established that he made gardens in the plaintiff's land.

I now turn to consider Kasiano Veomate's case. His case is fairly clear. He basically admitted allowing the First Defendant to enter the plaintiff's land and log. But it was submitted that at that time he was not aware that that area was within the plaintiff's land. He admitted receiving \$350.00 for 4 trees which he permitted the 1st Defendant

to cut. However, he denied responsibility for any other tree cut down by the 1st Defendant.

I find the defence which the Fourth Defendant sought to put out as lacking in credibility. If he was a landowner and owned the trees that were cut, then obviously he would be concerned to ensure that only those 4 trees were cut and no more. The reason is simply that as a landowner and tree owner he would lose out completely on all those other trees cut. However, he demonstrated little interest.

He stated in his evidence under oath that he allowed the first defendant to cut only 4 trees and he received \$350.00. However, it is clear that the first defendant cut more than 10 trees. That is a lot of trees for a customary landowner to ignore and to keep quiet about without getting any payment. It is clear to me that he knew that that land was not customary land and cared less about what happened to the trees.

As to the question of wrongful entry I am satisfied on the balance of probability that this has been established (see evidence of F. Kwailalamua and J. Lipo which I accept). On the question of making gardens there is no evidence or insufficient evidence before me to be satisfied to the required standard.

As to the first defendant's case, I am satisfied that he did enter and cut trees on the plaintiff's land. In his evidence he explained that he was asked by the landowners at that area to cut trees after paying them some money. I quote:

"Then we went to the forest at the village. The forest is quite thick. We went through forest and they said you can cut trees to change money. So, I told my group to cut trees about 100 metres away from the plantation. After about two to three days the plantation Manager, Kemuel Satu came across and told me that Missers stopped me from cutting timber. But I did not take any notice because I thought landowners owned place and because forest not been cut before. I also thought that if it was area of company, then they would have developed it. I did not see any boundary, so we ignored manager and took timber."

I am satisfied that the First defendant did cut timber in the plaintiff's land. He had clear notice of the claim and objection of the Plaintiff. A reasonable person would have stopped immediately and made enquiries. I find his actions to be defiant rather than reasonable and acceptable, or excusable.

The defendants did mention something about some arrangements made with the former manager of the Plaintiff's company, the late James Wong. However the only documentary evidence produced to this court related to a document dated the 13/7/76

in which a meeting was held with the Committee Leader of Vura Village (Mr Tomas) together with Mr Mata Savu, Sam, Belasu, Paulo and Victor.

The contents read as follows:

- "1. *It is clearly understood that 623 coconuts planted inside the property of Mamara Estates by arrangement with this company's previous manager are the property belonging to the company.*

2. *The undersigned names understand that the land belong to this company and have no claim whatsoever."*

Para. 3 of that document referred to an arrangement for raising of cattle with the villagers at Vura.

The defendants mentioned that there was an arrangement whereby the villagers could make gardens within the company land. That may be so and I do take note of the Managers evidence in relation to this in which Ms Leichti did point out that she did not object to this activity provided that the villagers signed an agreement in which they acknowledged that the land belonged to the company. The villagers never signed any such agreement. The Plaintiff is entitled as of right to ask the villagers to stop any gardening activity.

I am not satisfied that those arrangements with the late James Wong gave the villagers any rights to enter, fell and remove timber from the Plaintiffs land. The proper course of action in such an instance is to seek a profit from the Plaintiff and then have it duly registered under section 167 of the Land and Titles Act. There is no encumbrance in the fixed-term estate registers of the three parcels of land.

I am satisfied the first Defendant has from January 1993 not only wrongfully entered the plaintiff's land but also wrongfully felled and extracted timber from the plaintiffs land.

As to the question of wrongfully taking possession of the plaintiff's key to the gate giving access to the land I am satisfied that this has been established. The Manager, Mr Leichti at no time allowed the first defendant access to the plaintiff's land. The first Defendant basically lied to Kemuel Satu to gain access.

When the lock was subsequently changed, the fence was dismantled. John Sela stated under oath that when the lock on the gate was changed, he used three keys from the Bible to open the gate. He only stopped when the bridge was dismantled.

It is quite odd to make references to the Bible when this defendant knew that he had not been granted any permission to enter the plaintiff's land, and in fact had been told to stop any logging activity on the plaintiffs land.

Yet he did the very opposite and try to justify his actions by using the Bible.

With due respects, the Bible in my understanding does not in any way allow a person to break the law and to be disobedient. Neither does it condone sly excuses for deliberate wrongful actions.

I am satisfied on the balance of probability that this defendant did dismantle the fence beside the gate to gain access to the land.

I now turn to the question of relief sought.

The plaintiff is entitled to the value of logs cut and removed from the land.

In Kasiano Veomate's evidence in chief he stated that the first defendant cut about 16 trees at Ode area. In the first defendant's evidence he stated he cut about 14 trees. In the affidavit of Kemuel Satu filed on the 22nd of April 1993, he counted the number of trees cut as 25.

I am satisfied on the balance of probability that the plaintiff is entitled to recover only the value of the 16 logs cut at Ode village in which the first defendant was involved in. It has not been shown to my satisfaction that the number of trees cut by the first defendant was 25.

In exhibit KS7 annexed to Kemuel Satu's affidavit the volume of 17 logs have been recorded. For purposes of this claim, only the first 16 logs shall be allowed and used for purposes of calculating the amount of damages due.

The first Defendant is therefore to be liable for the total value of the first sixteen (16) logs less \$350.00. The rate to be used is the average market price per cubic metre of log as at January of 1993. Some assistance may be obtained from Central Bank of Solomon Islands.

The fourth Defendant is to be liable for \$350.00 for the 4 logs he admits were cut at his instruction and of which he received that amount.

The first defendant shall also be liable for the following costs:

- (i) Cost of changing the lock
- (ii) cost of repairing fence on two occasions
- (iii) cost of dismantling bridge to prevent Defendants entering onto the land.

The injunction sought restraining all Defendants or their servants or agents from entering onto the land, and from felling or cutting timber thereon or extracting timber therefrom is granted.

There is no specific order sought concerning gardens and so I take it that that is a matter which the plaintiff may wish to deal with separately.

As to the injunction requested restraining the 2nd, 3rd and 4th Defendants from claiming to own the land or denying the plaintiff's title to the Land, it is this court's view that this is unnecessary. It is a fact that these defendants do not own the land within parcels 191-057-17. The proper thing for these defendants to do is to acquaint themselves with the boundaries of the plaintiff's land and stay out or get the appropriate permission from the plaintiff. If they do make false claims then they may be opening themselves to criminal prosecution.

There is also another tree cut within the plaintiff's land at Bonege. The 1st Defendant was warned about this but he also ignored it. There are no measurements given as to its volume. I am satisfied he is also liable for this.

The outstanding matters which I could hear submissions on now or adjourn to allow time and opportunity for an agreed assessment to be made at a later date are:

(1) Damages for wrongful entry and wrongful claims by the second, Third and Fourth Defendants. If agreed then nominal damages of \$200.00 each will be ordered.

(ii) Damages for the tree felled and timber extracted at Bonege by the First Defendant. If agreed then nominal damages of \$100.00 will be ordered.

Costs of the Plaintiff's are to be shared equally by the four defendants.

(A.R. Palmer)
JUDGE

ORDER

This court doth order as follows:

1. The First Defendant shall be liable for the following costs:
 - (a) The value of the first sixteen (16) logs as measured and recorded in the annexure to Kemuel Satu's affidavit filed on the 22nd of April 1993 and marked exhibit "KS7" Less \$350.00
 - (b) Cost of changing the locks
 - (c) Cost of repairing fence on two occasions.
 - (d) Cost of dismantling bridge to prevent Defendants from entering onto the land.
 - (e) nominal damages of \$100.00 for the tree cut and timber extracted at Bonege.
2. The Second and Third Defendants shall be liable for nominal damages for wrongful entry and wrongful claim at \$200.00 each.
3. The Fourth Defendant shall be liable for the following costs:
 - (i) damages of \$350.00 for four trees felled and timber extracted by the First Defendant at his instruction,
 - (ii) nominal damages of wrongful entry and wrongful claim at \$200.00
4. All the Defendants shall pay the costs of the plaintiff in equal shares.
5. All payments to be made within 30 days from date of judgement. All other costs yet to be calculated shall be paid within 30 days of receipt of the subsequent order.

The Court