# DALSOL -v- BENJAMIN TANGISI & SATONA ASSOCIATION

**High Court of Solomon Islands**
**(Awich, Commissioner)**
**Civil case No. 351 of 1995**
Hearing: 24 November 1995
Judgment: 28 November 1995

*G. Suri for Applicant*
*C. Ashley for Respondents*

**Awich, Commissioner:** The plaintiff Dalsol Limited filed a writ of summons on 21 November 1995, claiming against Benjamin Tangisi, first respondent and Satona, an association, second respondent, declaration that the plaintiff is entitled to use roads it constructed on Tabaro land and other lands in Satona and Tabelevu customary land area, and an injunction to restrain the first and second respondents, their agents and representatives from blocking the roads and interfering with the employees and operation of the plaintiff in any way. The plaintiff constructed and uses the roads for transporting its logs to the sea. Earlier, on 5 September 1995, Lorensio Tangisi, representing the first respondent and one Liberato Manemalau, took out originating summons seeking declaration that Dalsol, the applicant in this case, is not entitled to refuse to authorise the release to Lorensio Tangisi and Manemalau, the sum of $17,981.34 that Dalsol has paid into a trust account of a Solicitor.

Together with its writ of summons, the applicant filed summons seeking temporary injunction. As a matter of urgency it asked to be heard ex parte on application for interim injunction. After reading the founding affidavit, I came to the conclusion that it was not a proper case in which the applicant could apply ex parte. Service on the respondents was not impracticable in the urgency of the case, they being residents of a place on Guadalcanal that could be reached within a very short time. In any case they had instructed solicitor in town in a case related to this. Service could not be regarded as undesirable for reason of defeating the purpose of the claim. The purpose was to have roadblocks already on the road removed. Service was not unnecessary. If interim injunction was granted on ex parte application, it was most likely that the respondent would immediately, upon being served with the order, apply to anticipate the date for inter parte hearing and the court would be forced to sit in the matter a second time within a couple of days.

I directed that the application be heard as an urgent application, but that it be served on the respondents. The matter could be listed within 1 or 2 days. It was listed on the second day and indeed the respondents attended court to oppose the application as expected.

The applicant and both respondents admit that they entered agreement giving the applicant right to enter lands known as Tabaro and Heje and other customary lands in Satona and Tabelevu areas, and to construct and use roads for logging purposes. They accept the agreement dated 20 May 1991. The applicant also relied on earlier agreement dated 9 September 1988 which it introduced in cross examination of the second respondent. Court accepted it as exhibit No. DE1. Counsel for the first respondent had opposed the

introduction of that agreement. The court decided that there was no basis for the opposition, it was a relevant item of fact, and respondent had opportunity to be heard about it during cross examination. Moreover, in affidavit of Lorensio Tangisi in case CC266/95 he admits at paragraph 2 that it is an earlier agreement between the parties, the applicant and Satona and Tabalevu Land Holding Group to which Benjamin Tangisi was a member. Lorensio Tangisi is son of Benjamin Tangisi and in this case represents the father. Counsel for the first respondent in fact applied in court, at commencement of hearing, that the affidavit be adopted in this application in CC351/95 and court so granted the adoption of the affidavit.

The first respondent says he closed the road because he wanted the company to pay him alone, not together with the other landowners, the sum of $17,981.34, now deposited in solicitor's trust account. He agrees that before the dispute over the money, he had agreed, based on the agreement signed, that the applicant may use the roads. Difficulty has arisen about the payment of the $17,981.34 and so he closed the road. He is prepared to open the roads if that money is paid to him. His claim over and above the other claimants, he contended, has been established by the decision of the Local Court dated 5th June 1995 between Liberato Manemalau and him. They both have accepted that decision. He was found the primary customary land owner of Heje and Tabaro and Manemalau, was found to be secondary land owner. The $17,981.34 should therefore be released to him. Presumably he would give a small part of it to Manemalau. That is his case.

On the other hand, the applicant contends that it acquired the right to build road and operate on Tabaro and Heje land by agreement signed by or on behalf of Benjamin Tangisi, represented by the first respondent, first in 1988 and later in 1991. That agreement gave it the right to use the land for his logging operation and for roads. He has paid royalties as required and is prepared to let the $17,981.34 be paid over if Tangisi and the other landowners can settle among themselves, who are to receive it among the serval landowners. That stand was taken because when Tangisi asked to be paid, Peter Manginia and Valentine Age wrote claiming that they are also entitled (see exhibit STL4). He then paid the money into trust account according to para 37 of agreement of 20 May 1991. Obviously it is guarding against a repeat, of the action taken by Tangisi, by another owner claimant.

Following the principles established in this jurisdiction, stated in great details and clarity in the oft cited case of *JOHN TALASASA v. ATTORNEY GENERAL, SOLOMON TAIYO AND OTHERS*, Civil Case No. 43 of 1995 in which the case of *AMERICAN CYANAMIDCO v. ETHICON* (1975) AC 396 was cited with approval, I have no doubt in stating that there is triable issue here. That issue being whether by the agreements between the parties notably the agreement dated 20 May 1991, the first respondent, in the event of difficulty arising as to ownership of land, is entitled to summarily close the roads on Tabaro land, and whether, in terms of the agreement, the applicant is right in paying the money into a trust account. Paragraph 37 does on the face of it make it probable that the applicant has good prospect of succeeding on that issue of where to pay the money. The Court therefore finds that this is a proper case in which interlocutory injunction may be considered.

8. Penalty clause may be endorsed on the order.

Finally it is advised that both counsels take interest in ascertaining all those landowners who claim part of the money in trust and if there is dispute as to their title, to have that go before the Local court. Further that they take interest in having the appeal against the decision of the Local Court dated 5 June 1995 heard as early as possible.

Dated this 28th day of November 1995 at Honiara.

**(Sam Awich)**
**COMMISSIONER**