

**HAROLD HILLI -v- LETIPIKO BALESI AND ANOTHER**

HIGH COURT OF SOLOMON ISLANDS  
**(FRANK O. KABUI, J)**

Civil Case No. 224 of 2001

Date of Hearing: 15<sup>th</sup> April 2002

Date of Ruling: 24<sup>th</sup> April 2002

*Mr D. Hou for the Plaintiff*

*Mr J. Apaniai for the 1<sup>st</sup> -4<sup>th</sup> Defendant*

*Mr G. Deve for the 5<sup>th</sup> Defendant*

*Mr P. Tegavota for the 6<sup>th</sup> Defendant*

**RULING**

**(Kabui, J):** This is an application by the 6<sup>th</sup> Defendant filed on 4<sup>th</sup> March 2002 for an order that the name of Jonah Hiti as a Plaintiff be struck out on the ground that he is not a member of the Nono tribe and therefore has no beneficial interest within Nono and Osea customary land. In the alternative, the 6<sup>th</sup> Defendant seeks an order to stay the Plaintiff's action until Jonah Hiti establishes his membership of the Nono tribe etc.

This application arises from my ruling delivered on 19<sup>th</sup> February 2002 wherein I granted leave for Jonah Hiti to be added as a Plaintiff in the action. The present application is based upon new evidence in affidavit form filed by Alick Ngira who, Counsel for the Plaintiffs, Mr Hou, said at the hearing on 15<sup>th</sup> February 2002 was the blood brother of Jonah Hiti, the 2<sup>nd</sup> Defendant in this case. Alick Ngira now denies this fact in his affidavit. Counsel for the 6<sup>th</sup> Defendant, Mr Tegavota argued that Jonah Hiti for this reason should step down as a Plaintiff. Counsel for the 1<sup>st</sup> - 4<sup>th</sup> Defendants, Mr Apaniai, supported Mr Tegavota. Counsel for the Plaintiff Mr Hou, however argued that the 6<sup>th</sup> Defendant could not unravel the order of the High Court by raising the same issue again in the High Court. He cited a number of English cases in support of his argument. The cases he cited are about the doctrine of finality, which has developed into issue estoppel which according to Lord Denning in **McIlkenny v Chief Constable** [1980] 2 A.E. R. 227 at 238-239, should replace the principle of abuse of the process of the Court. There are of course cases where the High Court may set aside its decision or orders as in the case of fraud, interlocutory orders or default judgments under the rules of Court. Apart from such cases, the orders of the High Court will stand until set aside or reversed on appeal (**See Reef Pacific Trading Ltd & Joan Marie Meiners v Price Waterhouse, Richard Anthony Barber & William Douglas MuChuskey (Civil Case No. 164/1994)**). In this case, my ruling on 19<sup>th</sup> February 2002 speaks for itself. Counsel for the 6<sup>th</sup> Defendant simply relied on Order 17, rule 12 of High Court (Civil Procedure) Rules 1964 (the High Court Rules). I do not think Order 17, rule 12 above can apply here to unravel a Court Order. I think the proper course of action is to appeal my order to add Jonah Hiti as a Plaintiff. The alternative order to stay the Plaintiff's action until Jonah Hiti

establishes his membership of Nono tribe etc cannot also be granted. At pages 185-186, the learned author in Australian Civil Procedure 1981 by Bernard C. Cairns has this to say, ..."**Apart from giving the court power to strike out pleadings and enter judgment, the inherent jurisdiction manifests itself in an intermediate form. If the matter is not such that the ultimate striking our remedy should be applied the court may order a stay of proceedings. This is not equivalent to a discontinuance or judgment for either of the parties in the action, if simply holds the position reached in the action when the stay is imposed. The court will impose a stay to prevent an injustice being done. When the grounds for the stay are no longer relevant, it is lifted, and then the action resumes its normal course**"...

Applied in this case, it would serve no purpose to grant the order to stay the action because there is no ground to stay any proceeding. My order is not being appealed nor is there anything which will cause injustice to the 6<sup>th</sup> Defendant. If the 6<sup>th</sup> Defendant feels that there is injustice in the order I made then there should be an appeal against my order to remove the injustice alleged. The 6<sup>th</sup> Defendant cannot apply to the Court for "**side-orders**" as it were to co-exist with my order but which in effect reverses my order and failing that for an order to stay the Plaintiff's action. I would refuse the application with costs. This application is therefore refused.

**F.O. Kabui**  
**Judge**