AMBROSE MOTUI IPUTU AND OTHERS, ISABEL DEVELOPMENT AUTHORITY AND ROSEWOOD (SI) LIMITED -*V*- MAXIMUS INTERNATIONAL LIMITED AND REUBENSON HAVI AND MARTIN MATAI TRADING AS POGU ENTERPRISES COMPANY

High Court of Solomon Islands
(Palmer ACJ)

Civil Case No. 289 of 2001

Hearing: **26th June 2002**
Judgment: **27th June 2002**

J. Apaniai for the Plaintiffs
C. Hapa for the 1st Defendant
P. Tegavota for the 2nd Defendant

Palmer ACJ: The Plaintiffs filed Writ of Summons and Statement of Claim on 31st October 2001. The First Plaintiffs are the registered owners of the perpetual estate in Parcel Number 090-002-2 (hereinafter referred to as "LR 690"). It is also known in custom as Banisokeo land.

In a Memorandum of Understanding executed on 23rd July 1996 with the second Plaintiffs, the first Plaintiffs granted timber rights to the second Plaintiffs to carry out logging operations in LR 690. The second Plaintiffs in turn contracted with the third Plaintiff under a technology and management agreement (dated 24th July 1996) to fell and extract timber from LR 690.

The first Defendants on the other hand had been contracted by the second Defendants under a similar technology and management agreement of 12th February 2001 to extract logs from the adjoining land hereinafter referred to as LR 691.

The Plaintiffs claim that the first Defendants had trespassed into LR 690 causing damage and removing marketable logs from their land. At paragraph 11 of their Statement of Claim they allege the first intrusion occurred on or about 5th June 2001. After complaining to the Commissioner of Forests this was stopped. The trespass however was repeated on or about 15th October 2001.

In the Plaintiff's Summons filed on 17th June 2002 requesting leave to amend the Statement of Claim, the period of alleged trespass was amended as commencing from May 2001 to April 2002.

The Plaintiffs inter alia seek a permanent injunction restraining the Defendants from entering LR 690 and removing any timber therein and damages for trespass and conversion.

On 31st October 2001, the same date the Writ and Statement of Claim were filed, the Plaintiffs applied by ex parte summons inter alia for restraining orders against the Defendants and an account to be provided of the trees that had been felled, providing details of species, quantity and price of all logs extracted and exported from LR 690 or felled and yet to be exported, and for the proceeds of all logs felled and removed from LR 690 to be restrained.

On 5th November 2001 the ex parte application was heard and interim orders issued the same day. Those orders included the prohibition of any logs from being removed or exported from the said land.

On 21st January 2002 the interim orders came before the Court for consideration whether they should continue or not. The matter was adjourned and the interim orders continued. On 5th February 2002 orders were obtained from the court to restrain the Defendants from interfering with any survey work sought to be performed by the Plaintiffs. On 21st February 2002, the interim orders were extended.

On 4th April 2002, the interim orders issued on 5th November 2001 were varied. This included the vacation of order 3 which prohibited the removal and export of logs. In place thereof, paragraph 3 of the Orders of 4th April 2002 permitted the removal and export of logs from LR 690 but on condition that the proceeds of such logs thereof to be subject to restraining orders and paid into a joint trust account in the names of Solicitors for the parties. Paragraph 4 of that same Order required an account to be filed in court within 21 days of all logs felled and removed from the said land. Paragraph 5 required the payment of 70 % of the proceeds of all logs exported to date of that Order to be paid into the same trust account whilst paragraph 6 restrained 70% of the proceeds of future exports of logs from LR 690.

Those orders are fairly clear and straightforward. It appears they have not been complied with and hence has given rise to separate proceedings in this action for contempt of court orders against the Defendants. The reasons and explanations for failure to comply and any other related matters will be considered at the appropriate time.

On 10th June 2002 the Plaintiffs filed another ex parte summons for orders to restrain the proceeds of 1000 cubic meters of logs due to be exported from Hadapagi Logpond on or about 11th June 2002. This was granted on the same date. An inter partes hearing was then heard on 13th June 2002 and the orders further varied to include the sum of $2,160,005.32, or 70% of the proceeds if less. The matter was then adjourned for a full interlocutory hearing within 7 days. That was heard on 25th and 26th June 2002.

The first and second Defendants have each also filed separate summons on 13th June and 21st June respectively seeking various orders. The first Defendant seeks orders to have the orders of the 10th June 2002 discharged or varied, whilst the second Defendant seeks orders to have paragraphs 5 and 6 of the orders of 4th April 2002 discharged or varied and orders of 10th April (June) 2002 and 13th June 2002 discharged. Those Summons were also considered by the court on 25th and 26th June 2002.

The applications of the Defendant can be summed up as follows. They object strongly to the interim orders issued by the court in restraining the proceeds of the logs exported in the M.V. Seyang Ace on 11th June 2002 on the grounds that all those logs were not taken from LR 690. They have filed affidavits (see affidavit of Marvin Baekisapa filed 19th June 2002 and affidavits of Martin Matai filed 21st June 2002 and 24th June 2002) in an attempt to show to the court that all those logs were not removed from LR 690 and could not have been removed from LR 690 as operations in LR 690 were stopped as far back as November 2001. Whilst the 2nd Defendants concede trespass may have occurred prior to November 2001, they deny ever entering the said disputed area thereafter. They concede entering the land area described as Sosola Land for three weeks between September and October 2001. The first Defendants deny ever entering the said area submitting that the machines used by the second Defendants were made pursuant to a lease agreement entered into between them. They deny therefore the claims of trespass and conversion.

The second Defendants have also given an account of what they say were the logs removed from the said area. In the submissions of learned Counsel Tegavota at page 5 paragraph 3(b)(ii), details of the logs removed is provided. The second Defendant concedes to having removed 250 pieces of logs with a total volume of 828.300 cubic meters. This is valued as follows:

- Exported logs: SBD216,601-61
- Sawmill logs: SBD 32,972-88
- Log pond use: SBD 16,486-34
  SBD266,060-83

In contrast the Plaintiffs have adduced evidence (see affidavits of Albert Yee filed 10th June 2002 and 17th June 2002, affidavit of Peter Keniomoia filed 25th June 2002 and affidavit of Chan Chee Min filed 25th June 2002) to the effect that trespass occurred between May 2001 up to April 2002 and that the total volume of logs estimated to have been removed was 3,824.480 cubic meters. They have filed reports of a Surveyor dated 17th May 2002 and reports of a Forestry Officer carried out between 16th and 20th April 2002 to support their claims. The total value of the logs estimated therefore to have been removed stands at $2,160,005.32 or USD325,080.80. This obviously was calculated at the rate of USD85 per cubic meter.

It is obvious there are serious issues to be determined at trial. It is important to bear in mind that this is not the time to agitate in depth questions to be fully canvassed and should rightly be reserved for trial. These include the following questions:

1. Boundary of LR 690? This is registered land and so the question as to the boundary is fixed.

2. Whether trespass has occurred? This is in dispute at this point of time. The first Defendants deny trespass. The second Defendants concede trespass but to a limited extent. There is also dispute as to the dates of trespass. The second Defendants say trespass occurred only in September/October 2001, whilst the Plaintiffs say it occurred from May 2001 to April 2002. These are obviously questions best left for trial.

3. Who committed trespass? There are some suggestions that the alleged areas of trespass may have also been the work of the third Plaintiffs themselves.

4. Area of trespass? There are suggestions that the area is only about 9 hectares as opposed to about 400 hectares.

5. Damage caused? This is obviously going to be a contentious issue as this includes the number of logs alleged to have been removed by the first and second Defendants or the second Defendants only. Again these range from 158.400 cubic meters to 3,824.480 cubic meters.

6. Whether conversion had taken place?

7. And finally the quantum of damages payable.

Some of the above issues have partly been agitated during the interlocutory hearing and hence my attempts to try and restrain Counsels from going into detail into them to avoid repetition. They are best left for trial when all the evidence on them can then be raised.

It is clear to me that the second Defendants to a certain extent have made important concessions which can be made the subject of interlocutory orders pending determination of the substantive issues in this case (see Order 53 Rule 1 of the High Court (Civil Procedure) Rules 1964). In so doing, they have admitted that trespass may have occurred, it may be proved otherwise at trial. To that extent the amount that they have conceded in my respectful view must be brought to court now or secured to the satisfaction of the court. Further, it raises the question as to what amount should be made the subject of restraining orders on the issue of quantum of damages for trespass and or conversion. Again these are matters best left for trial. For current purposes, it is my respectful view that the additional sum of $100,000-00 should be further made the subject of restraining orders pending determination of the issues before this court. The value of the quantum of damages caused for trespass may very well be more than this amount, that will be considered at trial when appropriate evidence, including environmental impact reports and assessments have been filed in court. It may be less, if so the excess may be refunded.

The sum of SBD266,060-83 plus $100,000-00 are to be brought to court within 7 days or adequately secured, failing which the Plaintiffs may take further action is they deem appropriate to have the said amount secured. I am satisfied on the balance of probabilities **at this point of time,** that the orders restraining the proceeds of logs exported on the M.V. Seyang Ace are not from LR 690 and should be discharged. It may turn out to be otherwise during trial but for the time being, it would not be in the interest of justice to have those orders continued. Any claims of losses incurred in respect of those orders can be agitated together at trial when all evidence and materials are before the court. The undertaking for damages given by the Plaintiffs at this point of time are sufficient. There is no evidence to suggest that they may not be able to pay for any damages arising from those orders. Likewise, there is no evidence either to suggest that the Defendants may not be able to meet the cost of damages at the end of the day as well, should the Plaintiffs win their case.

ORDERS OF THE COURT:

1. **Discharge orders of the 10th and 14th of this Court restraining proceeds of the logs shipped in the M.V. Seyang Ace with costs.**

2. **In any event require the Defendants to file with the Court within 14 days a report as to the shipment of those logs (specifying the species, volume and fob price) shipped on the M.V. Seyang Ace on or about 11th to 15th June 2002.**

3. **Order that the sum of SBD266,060-83 plus $100,000-00 be brought to court within 7 days or adequately secured, failing which the Plaintiffs may take further action is they deem appropriate to have the said amount secured.**

THE COURT