

KONGGUKOLO FOREST RESOURCES DEVELOPMENT COMPANY AND GOLDEN SPRINGS INTERNATIONAL (S.I.) COMPANY LIMITED -v- DENNIS LOKETE AND OTHERS

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

Civil Case No. 159 of 2002

Date of Hearing: 09th July 2002

Date of Ruling: 10th July 2002

Mr P. Tegavota for the 1st and 2nd Plaintiffs

RULING

(Kabui, J.): This is an Amended exparte Summons by the 1st and 2nd Plaintiffs for the following orders-

- 1. That an interim injunction be issued to restrain the first to the sixth defendants either themselves, their servants, agents, persons authorized by the defendants, members of their tribe and any person from villages where the defendants are currently residing, from entering the plaintiff's shipping camp at Orava, its production camp in the bush and any area within Konggukolo customary land that is covered by the plaintiff's logging licence for the purposes of:**
 - (i) removing any of the plaintiff's properties and those of its contractor without due approval,**
 - (ii) threatening any of their employees by any means whatsoever, including causing physical or bodily harm to them,**
 - (iii) preventing any of their employees from carrying out their respective work either for the first plaintiff or the second plaintiff,**
 - (iv) stopping the felling, extraction and the hauling of logs from the plaintiff's logging concession by the second plaintiff,**
 - (v) causing damage to any machineries and logging equipment owned by the second plaintiff,**
 - (vi) preventing or blocking any logging road whatsoever within the first plaintiff's concession,**

- (vii) **stopping or interfering with any of the plaintiff's log shipment and**
- (viii) **carrying out any act whatsoever that will have the effect of stopping preventing or interfering with the plaintiff's logging operation under its concession within Konggukolo customary land either directly or indirectly.**

2. That the defendants, their servants, agents, members of their tribe and persons authorized by the defendant and including any person in whose possession or custody any of the said properties taken from the plaintiff's concession are kept, with effect from the date of an order issued by the court pursuant to this application return the following properties owned by the second plaintiff namely:

- (a) 5 chainsaws/chainsaw power head,**
- (b) 6 chains**
- (c) 4 bars and**
- (d) 5 wrench tools**

3. Such other or further orders as the Court sees fit.

4. Costs.

This application is a result of the ruling I made on 2nd July 2002 dismissing the Plaintiff's similar application. This application is a second attempt to secure the same orders. An Amended Writ of Summons and Statement of Claim had also been filed upon which this Amended exparte Summons is based. The contractor has also been added as the 2nd Plaintiff. The facts are the same as in my ruling on 2nd July 2002 except copies of Police statements of eyewitnesses have been produced. These statements are produced as Exhibits to the affidavit sworn and filed by Mr. Sangatu on 4th July 2002 in support of this application. The eyewitnesses gave their statements to the Police at Seghe in the Western Province. Each of them signed his own statement as proof of the content and accuracy of his statement. On this basis I would accept the affidavit evidence filed by Mr. Sangatu referred to above. The summary of the facts is this. The 1st and 2nd Defendants with others arrived by canoe at the Ovara camp on 17th June 2002 armed with knives and axes. They used threatening and abusive language against the Personnel Officer of the 2nd Plaintiff. They questioned why felling had resumed and demanded that logging be stopped. They then demanded that they be taken to the felling site. At the production camp, they took 5 chainsaws/chainsaw power head, 6 chains, 4 bars, and 5 wrench tools. The conduct of the Defendants has caused work to stop at the camp. No felling has recommenced resulting in no logs being exported. The 2nd Plaintiff has lost money as a result of what the Defendants did. The 1st Plaintiff has likewise lost royalties.

Determination by the Court

In the Statement of Claim, the 1st Plaintiff claims a declaration that it has a valid Timber Rights Agreement and a valid logging licence to log on Konggukolo land. It also claims a declaration that it was entitled to enter into a contract with the 2nd Plaintiff to harvest logs from the areas covered by the logging licence on Konggukolo land. These are the triable issues that arise in this case and I so find. Where then does the balance of convenience lie? The Defendants did not appear and so have not said anything about providing an undertaking to pay damages in the event I grant the injunction being sought and the Defendants lose their case at the end of the day. I do not think they will ever do so. They are just simple villagers who took the law into their own hands for reasons known to themselves only. They have not stated the reasons for their action. This is a factor to be taken against them. As for the 1st and 2nd Plaintiffs, there is much to lose if the injunction is not granted. The logging operation has stopped completely. This is affecting the Plaintiffs adversely in terms of time and money lost to them. Although the Defendants have not said so, they may return to Ovara Camp and repeat their threats and abusive behaviour towards the workers of the 2nd Plaintiff in that camp. The likelihood of this happening cannot be ruled out because the Defendants did not explain why they had come to the Camp and did not say what their grievances were if any. No one has given any assurance that they would not come again. The threat is there and is potential given the attitude of the Defendants. I will grant order 1 (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) sought in the *ex parte* Summons. I will however not grant order 2 (a), (b), (c) and (d). Recovery of possession of property unlawfully removed by someone else is not the function of interim orders such as is being asked for in this case. The 2nd Plaintiff may have to mount a separate action for their recovery. The 1st and 2nd Plaintiffs have therefore succeeded in part only in this application. I grant the Orders as aforesaid.

F. O. Kabui
Judge