

OMEX LIMITED AND NAMA DEVELOPMENT COMPANY -v- ATTORNEY-GENERAL

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

Civil Case No. 253 of 2003

Date of Hearing: 8<sup>th</sup> October 2003

Date of Ruling: 8<sup>th</sup> October 2003

*J. Sullivan for the Plaintiff.*

*A. Radclyffe for 2<sup>nd</sup> Plaintiff.*

*G. Deve for the Attorney-General.*

RULING

Kabui, J. This is an application by the Plaintiff by Summons filed this morning seeking the following orders-

1. Time for the hearing of this summons be abridged;
2. Upon the plaintiff by its counsel giving the usual undertaking as to damages, the defendant, his officers, servants and agents be restrained until judgment or further order from interfering in any way whatsoever, whether directly or indirectly, with the outward clearance by the Comptroller of Customs of the M.V. Sky Sun, presently at Noro;
3. Consequential orders-
  - (a) requiring the defendant to forthwith withdraw his undated letter to the Comptroller of Customs (delivered on or about 7 October 2003) purporting to instruct the Comptroller of Customs to hold the said vessel and to sieze the logs shipped on board the said vessel;
  - (b) requiring the Comptroller of Customs to disregard the said letter and, subject to the said vessel otherwise complying with the relevant customs laws, to grant the said vessel outward clearance.
4. The costs of and incidental to this application be costs in the cause.
5. Such further or other orders as to the Court (sic) seem fit.

At the hearing of the application, Mr. Radclyffe, the Solicitor and Counsel for Nama Development Company in Civil Case No. 015 of 2002 appeared for this same Company, the Licence holder, though not named in the summons as a party. The Plaintiff is the contractor engaged by Nama Development Company and which supports the Plaintiff in this application. There was no objection from the Attorney-General for this Company being represented by Mr. Radclyffe. Nama Development Company is really the 2<sup>nd</sup> Plaintiff in this application. I have therefore amended the summons to reflect this under Order 17, rule 11 of the High Court (Civil Procedure) Rules, 1964. Counsel for the Defendant, Mr. Deve, did not make any submission than to say that the service of the documents was done at short notice. I agreed but pointed out that the

summons was an urgent one and took the likes of an ex parte application. Paragraph 7 of Mr. Seng's affidavit filed on 8<sup>th</sup> October 2003 clearly confirms that fact and reiterated by Counsel for the 1<sup>st</sup> Plaintiff, Mr. Sullivan.

### **The Facts.**

Licence numbered A10108 was issued on 24<sup>th</sup> December 2001 to the Nama Development Company by the Commissioner of Forests Resources, Mr. Bauro (the Commissioner). On 26<sup>th</sup> December 2001, the Plaintiffs signed a Logging and Marketing Agreement between themselves for the felling and sale of round logs from the land areas covered by the said Licence. On 27<sup>th</sup> June 2003, the Commissioner requested the General Manager of the 1st Plaintiff to pay the sum of \$50,000.00 to facilitate Forestry Bills. On 18<sup>th</sup> August 2003, the Commissioner wrote to the Managing Director of the 2<sup>nd</sup> Plaintiff informing him that its licence was to be cancelled and asked him to show cause as to why its licence should not be cancelled. On 27<sup>th</sup> August 2003, the Commissioner, in response to a letter written to him on 21<sup>st</sup> August 2003 by the 2<sup>nd</sup> Plaintiff's Solicitor, wrote to the Managing Director of the 2<sup>nd</sup> Plaintiff saying that its licence was being cancelled with immediate effect. Mr Katahanas of Sol-Law in response to the Commissioner letter on 18<sup>th</sup> August 2003, a copy of which was given to him by a representative of the 1<sup>st</sup> Plaintiff, wrote to the Commissioner on 26<sup>th</sup> August 2003 and challenged the correctness of the action being taken by him. Mr. Radclyffe, the Solicitor for the 2<sup>nd</sup> Plaintiff also wrote to the Commissioner on 28<sup>th</sup> August 2003 expressing his client's concern over the same matter. On 29<sup>th</sup> August 2003, Mr. Veno representing the 2<sup>nd</sup> Plaintiff, appealed to the Minister of Natural Resources for the revocation of the cancellation made by the Commissioner. On 2<sup>nd</sup> September 2003, Mr Katahanas of Sol-Law again wrote to the Commissioner saying that their client did reserve its rights on the matter and advised the Commissioner to seek competent legal advice. By letter dated 4<sup>th</sup> September 2003, the Minister of Natural Resources informed the 2<sup>nd</sup> Plaintiff that its appeal had been successful and reinstated Licence Number A10108. By letter dated 15<sup>th</sup> September 2003, the Commissioner threatened the 2<sup>nd</sup> Plaintiff and to sieze its machines and equipment if it did not stop its operation. Mr. Katahanas of Sol-Law again wrote to the Commissioner on 19<sup>th</sup> September 2003 advising him to seek legal advice immediately before he rushed into doing what he had been doing so far. On 12<sup>th</sup> September 2003, the Commissioner had signed a certificate approving the market price and recommended that the CBSI issue the specific authority to export the 1400m3 of round logs on board the M.V. Sky Sun subject to the establishment of a trust account pending any challenge in court against the cancellation of the 2<sup>nd</sup> Plaintiff's licence. By an undated letter delivered on 7<sup>th</sup> October 2003 to the Comptroller of Customs and Excise, the Commissioner instructed the Comptroller of Customs and Excise to hold back the shipment of logs on board the Sky Sun until a trust account was established to his satisfaction.

### **The case for the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs.**

The urgency of this application was that everything was in order when the Commissioner threw the spanner in the works and stopped the M.V. Sky Sun sailing on time. There are 1400 m3 of round logs on board the Sky Sun being exported by the 1<sup>st</sup> Plaintiff to South Korea. Counsel for the 1<sup>st</sup> Plaintiff, Mr. Sullivan, argued that the action taken by the Commissioner in instructing the Comptroller of Customs and Excise to hold back the departure of the MV Sky Sun had no legal basis in law. He also argued that the consequential action by the Comptroller of Customs and Excise in delaying the departure of the said MV Sky Sun by reason of the instruction by the Commissioner also had no legal basis in law. Counsel for the 2<sup>nd</sup> Plaintiff, Mr. Radclyffe, agreed with Mr. Sullivan and adopted the same arguments. However, the lawfulness of these issues is to be dealt with at a date to be fixed. These are the serious triable issues pending before the Court. The 1<sup>st</sup> Plaintiff has also made an undertaking for damages as a basis for asking for the injunctive

orders being sought. The next matter then is to establish where the balance of convenience would lie in this case. The 1<sup>st</sup> Plaintiff came to know about the refusal by the Comptroller of Customs and Excise to clear the MV Sky Sun shortly after 4pm on 7<sup>th</sup> October 2003 from the 1<sup>st</sup> Plaintiff's shipping agent. This information was later confirmed by its Solicitor Mr. Sullivan of Sol-Law. This action by the Comptroller of Customs and Excise would make the 1<sup>st</sup> Plaintiff potentially liable for demurrage of US\$3,000.00 per day for any delay in the shipment attributed to it as well as potential claims from other parties whose logs were also on board the MV Sky Sun. It is not disputed that the MV Sky Sun is carrying 6,000m<sup>3</sup> of round logs coming from the 1<sup>st</sup> Plaintiff, Success Co. and a third exporter whose identity is unknown. Clearly, the 1<sup>st</sup> Plaintiff will suffer a lot in monetary terms if I refuse this application. The 2<sup>nd</sup> Plaintiff will also be deprived of royalties and other benefits under the Logging and Marketing Agreement signed between the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff. The 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs have therefore made out a good case for injunctive orders. I would grant the application and the orders sought therein. I order accordingly. Counsel for the 1<sup>st</sup> Plaintiff, Mr Sullivan, supported by Counsel for the 2<sup>nd</sup> Plaintiff, Mr. Radclyffe, made much of the evidence that the Commissioner had demanded the sum of \$50,000.00 from the 1<sup>st</sup> Plaintiff and did what he did in retaliation for the non-payment of that sum of money by the 1<sup>st</sup> Plaintiff. I would not wish to say any more on that until after the interparte hearing of the triable issues on a date to be fixed.

F. O. Kabui  
Judge