IN THE MATTER of an appeal before the Western Customary Appeal Court against the determination of the Choiseul Provincial Executive dated the 9th day of July 2002 as to the persons entitled to grant timber rights over Kovarae (Polo land),

AND

IN THE MATTER of an application by Notice of Motion as to whether the parties can make payments of costs for the sitting of the Customary Land Appeal Court (W) to hear the said appeal.

BETWEEN: SHAKESPEAR GALOBOE, SIMION KEBAKU, MAEKA LEOKANA, JIMMY PITAKAJI AND POSEPOQE.

AND: JACKSON QALO.

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

Civil Case No. 283 of 2002.

Date of Hearing: 24th October 2003
Date of Ruling: 29th October 2003

G. Suri for the Applicant/Respondent
P. Tegavota for the Respondents/Applicants

RULING

Kabui, J. By a Notice of Motion filed on 19th September 2003, the Applicant/Respondent (Jackson Qalo) sought two orders from the Court. The first was an order that the Respondents/Applicants, (Shakespear Galoboe and Others above) or their contractor, agents, servants invitees be restrained from continuing carrying on any logging activity on Kovarae (Polo land) on Choiseul Island until further orders. The second order was that the Respondents/Applicants, or their contractor do remove their logging equipment and machines within 24 hours from Kovarae (Polo land) within 24 hours. Costs are also claimed by the Applicant/Respondent.

Objection to an affidavit filed by Mr. Soma on 24th October 2003.

Counsel for the Applicant/Respondent, Mr. Suri, objected to this affidavit on the ground that it was filed only at 9 O clock before the hearing took place. He said it was a practice discouraged by Justice Brown. I would agree with Justice Brown in this regard. In any case, this affidavit adds nothing to the facts already deposed to in previous affidavits filed in this case. I have simply left the affidavit in the file after accepting it. If, anything, the facts deposed to in this affidavit are best left for

consideration by the Chiefs or the Local Court for they are facts about ownership of customary land.

The Background.

The facts were set out in my judgment delivered on 31st January 2003. The Applicant/Respondent appealed this judgment and the Court of Appeal having heard the appeal has reserved its decision on this appeal. In the meantime, the Applicants/Respondents and their contractor had landed their logging machines and equipment in an area claimed to be part of Kovarae (Polo land). The appeal to the Western Customary Land Appeal Court by the Applicant/Respondent is still pending, awaiting funding for the hearing to take place.

The Issue.

The issue is whether or not the Respondents/Applicants should be restrained from carrying on logging on Kovarae (Polo land) until the Court of Appeal has delivered its decision and until the Western Customary Land Appeal Court has decided the appeal pending before it.

Should the order sought be granted?

The first point is the existing appeal pending before the Western Customary Land Appeal Court. It is not disputed that the delay in disposing of the appeal by the Western Customary Appeal Court is due to lack of funding by the Government. An attempt to seek funding from the parties themselves has been questioned on appeal in the Court of Appeal. Form 2 had been completed but was not dated. This would suggest that Form 2 had been forwarded, though unsigned, to the Choiseul Provincial Government in accordance with section 9 of the Forests and Timber Utilization Act (Cap. 40) Act." the Act." Until the appeal is decided by the Western Provincial Government, the Commissioner of Forests Resources cannot recommend to the Choiseul Provincial Government to approve the timber rights agreement reached between the parties under section 11 of the Act. Only after section 11 has been complied with would sections 12 and 13 of the Act apply and a licence be issued under section 5 of the Act. The timber rights acquisition procedure was still incomplete at the time the appeal was filed. However, there was no appeal in respect of the determination made by the Choiseul Provincial Executive for Repaqa land. The timber rights acquisition procedure having been completed in respect of Repaqa land, the Licence was issued on 17th March 2002. (See Exhibit MM8 attached to Mr. Matai's affidavit filed on 26th September 2003 and Exhibit "DS1" attached to the affidavit filed by Mr. Soma on 8th October 2003.) The Licence Number is A10223. The existence of this licence was obviously the explanation for the landing of the logging machines and equipment in the disputed area of land allegedly owned by Mr. Pitakaji. A Technology and Management Agreement was signed on 17th March 2003 between Reko Enterprises, the licence holder and Mega Enterprises Limited, the

contractor engaged to harvest and sell the trees for gain. Logging operation is intended to be done inside Repaqa land. Mr. Matai says in his affidavit that Repaqa land and Kovarae land do share a common boundary but otherwise are separate areas of land. The licence issued in respect of Repaqa land says nothing about the outer boundaries of Repaqa land. Mr. Soma, in his affidavit says that Raburabu land where the logging machines and equipment had landed belongs to Mr. Pitakaji but shares a common boundary with Repaqa land and Kovarae land. The Applicant/Respondent in his affidavit filed on 22nd October 2003, denies this version of facts and says that where the logging machines and equipment had landed is called Sarukesa, owned by Kavalabatu, being part of Kovarae land. The disagreement between the Applicant/Respondent and the Respondents/Applicants is one over boundaries and identifying the correct name of the area of land being disputed. The extent of ownership in each case will no doubt commensurate with the outer boundaries delimiting the extent of ownership. Those are matters for the Chiefs to determine, and if necessary, later by the Local Court. (See my ruling delivered on 11th October 2002 in **Wuitlyn Viulu, Raevyn Revo, Brown Lamu, Isaac Napata and Seth Piruku (representing the Veala tribe of Vangunu) v. Tui Kavusu, Molton Luma, Samson Saga, Peseti Kuiti, Hami Lavi, Gordon Young, Paul Kavusu, Ophiu Vendi, Steven Veno, Isaac Noga and Abraham Kumiti (representing Nama Development Company and Others),**[1] Civil Case No. 015 of 2002). In that case, I said that the issue in dispute being the boundaries of the adjoining land areas which would obviously involve the extent of ownership was a matter beyond the jurisdiction of the High Court and therefore must be referred to the Chiefs in the first place, and then, if necessary, to the Local Court. The fact that there is no evidence to show that the issue of boundaries and the correct name of the area in dispute has been submitted to the Chiefs, or has been before the Chiefs and is now before the Local Court obviously bars any interlocutory injunction in aid of the Chiefs or the Local Court. (See **Gandly Simbe v East Choiseul Area Council, Eagon Resources Dev. Company Ltd., Steven Taki and Peter Madada,**[2] Civil Appeal No. 8 of 1997). The appeal pending before the Western Customary Land Appeal Court should not be about ownership of land but about the identification of persons lawfully entitled to grant timber rights. (See **Aquila Talasasa, Jacob Zinghite and Nathan Maisasa Losa v. Rex Biku, John Kevisi and WCLAC,**[3] Civil Appeal No.2 of 1987cited in **John Sina v. John Mark Matupiko,**[4] Civil Case No. 082 of 2001). The application by the Applicant/Respondent for an injunction must obviously have been based on the thought that trespass had been committed by landing the logging machines and equipment in the disputed area of land known by the Applicant/Respondent as Sarukesa and by Mr. Soma as Raburabu. That clearly is customary land ownership dispute rather than a dispute about timber rights vested in persons who are the persons lawfully entitled to grant the timber rights. The correct forum for resolving ownership disputes are the Chiefs and the Local Court if necessary. I brought out

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[1] *Civil Case No. 015 of 2002*
[2] *Civil Appeal No. 8 of 1997*
[3] *Civil Appeal No.2 of 1987*
[4] *Civil Case No. 082 of 2001*

this point quite clearly on pages 4 and 5 in my ruling in Wuitly Viulu's case cited above. The appeal from the determination by the Choiseul Provincial Executive that is currently pending before the Western Customary Land Appeal Court cannot be used to secure an injunction that is based upon the notion of trespass which assumes ownership under customary law. It has been stated in as far back as in **Allardyce Lumber Company Limited, Bisili, Roni, Sakiri, Hiele, Sasae, Posa, Zogahite, Daga, Pato and Zingihite v. Attorney-General, Commissioner of Forest Resources, the Premier of Western Province and Paia,**[5] Civil Case No.93 of 1989 that ownership of customary land and ownership of timber rights are not the same thing. I will not grant the orders sought in this application. The decision of the Court of Appeal yet to be delivered is I think irrelevant to the question of granting an interlocutory injunction in this case. Availability of funds from whatever source is not a reason for seeking an injunction. This application is therefore dismissed. The delay in availing funds to meet the cost of the hearing of the appeal pending before the Western Customary Land Appeal Court is due to the matter going before the Court of Appeal at the instance of the Applicant/Respondent. The parties will meet their own costs. The orders of this Court therefore are-

1. **This application is dismissed.**
2. **The parties will meet their costs.**

F.O. Kabui
Judge

[5] *Civil Case No. 93 of 1989*