

**GEORGE POU AND OTHERS v. CHARLES SORO AND OTHERS**

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

Civil Case No. 452 of 2004

Date of Hearing: 15<sup>th</sup> October 2004

Date of Judgment: 21<sup>st</sup> October 2004

*G. Suri for the Plaintiffs.*

*T. Kama for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.*

**JUDGMENT**

**Kabui, J.** This is an application by summons filed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants seeking the following orders-

1. The time for the hearing of this Summons be abridged;
2. The action be struck out on the ground that it discloses no reasonable cause of action;
3. Further and/or, in the alternative, the action be struck out on the grounds that the Plaintiffs have no locus standi and the action is frivolous and vexatious;
4. An order that the Plaintiff are vexatious litigants and requires leave of the Court before they can commence any action in the High Court again in future;
5. Such further order or other orders as to the Honourable Court may seem (meet);
6. The Plaintiffs pay the costs for the First and Second Defendants' costs of or incidental to the application.

Counsel for the Plaintiffs attacked the conditional appearance filed by the Defendants as nothing more than a delaying tactic on the part of the Defendants. The fact is that having filed conditional appearance, the Defendants did not apply to set aside the Writ of Summons or its service on them. Counsel for the Plaintiffs was correct to that extent because 14 days had lapsed without that application to set aside being made by the Defendants. This application is being made under Order 27, rule 4 of the High Court (Civil Procedure) Rules, 1964 "the High Court Rules."

**The background.**

Litigation about Pugu land first came to the High Court in Civil Case No. 359 of 1999. The Plaintiff then was George Pou and the Defendants were Charles Soro and Abraham Pisu.

The Boli House of Chiefs had determined that Charles Soro and his line were the owners in custom of Pugu land. The Plaintiff then removed the dispute into the Local Court which is yet to give its decision. By letter dated 30<sup>th</sup> January 2003, duplicated several times, the 1<sup>st</sup> Defendant had been invited by the landowners of big Nggella in the Central Islands Province to acquire timber rights in a number of areas of land for gain. One of the areas of land is Pugu land allegedly owned by the 3<sup>rd</sup> Defendants on behalf of the Hongokama tribe. The other areas of land are Tavanare allegedly owned by Mark Mumuku, Mark Susuna, Mark Susuna (Jr) and Ben Mumuku (Jr) and Arulonga, allegedly owned by Gravis Marana, Robert Gehi, Moses Rikea and Vutu. Arulonga and Tavanare and Pugu land areas do appear in Form 4, being the Timber Rights Agreement signed on 28<sup>th</sup> January 2003. However, somehow Arulonga and Tavanare land areas do not appear in the Licence Number 10308 issued on 3<sup>rd</sup> December 2003. This is why the Plaintiffs lost in Civil Case No. 42 of 2004 for lack of standing to bring his action to the Court for a hearing. After the High Court decision, the Plaintiffs subsequently went before the Boli House of Chiefs in September 2004 and obtained a determination against the 3<sup>rd</sup> Defendants over and the greater Pugu/Tavinaviku and Tavanare land areas. The Plaintiffs' present cause of action is based upon this determination by the Chiefs on 16<sup>th</sup> September 2004. A map (Exhibit "PG1") attached to George Pou's affidavit filed on 1<sup>st</sup> October 2004, used by the Chiefs shows that Pugu land, the subject matter of Civil Case No. 359 of 1999, is only a small portion of land within the greater Pugu/Taninaviku land which also includes Tavanare land.

#### **The Plaintiff's case.**

The case for the Plaintiffs is that the logging operation inside the lesser Pugu land area has encroached into greater Pugu/Taninaviku land and Tavanare land areas over which the 1<sup>st</sup> Defendant has no licence. The licence only covers the lesser Pugu land area and not beyond. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are therefore trespassing on greater Pugu/Taninaviku land and Tavanare land areas. Counsel for the Plaintiffs urged me to disregard the affidavits filed by Charles Bisa in support of this application by the Defendants because the particulars of the ground for striking out the Plaintiffs' action for lack of a cause of action had not been specified in the summons. Counsel argued that this being the case, the Writ and the statement of claim should be the only documents to look at for the existence of a cause of action. Again, Counsel was correct because the ground alleged by the Defendants was simply that the action discloses no cause of action without any particulars at all. I have therefore disregarded the affidavit evidence filed by Charles Bisa for that reason.

#### **The Defendants' case.**

The case for the Defendants is that the Plaintiffs do not own Pugu land nor does he own Taninaviku and Tavanare land areas. Within greater Pugu land are areas of land owned by other persons as well. A map, (Exhibit "CS7"), attached to Charles Bisa's affidavit filed on 13<sup>th</sup> October 2004 shows a totally different picture to Exhibit "PG1" cited above as to the true area of Pugu land as known by him and his tribe.

#### **The Plaintiff's Pleading discloses causes of action.**

The Plaintiffs filed a Writ of Summons and a Statement of Claim on 1<sup>st</sup> October 2004. The content of the statement of claim is quite confusing to me. I do not understand it well on the first reading of it. However, after reading it more than once, I make out the first cause of action to be negligence. But the pleading does not specify what sort of negligence is being alleged against the Defendants, whether it is breach of duty at common law or breach of statutory duty. The claim for damages appear to be the proceeds of the sale of logs after

deducting fob value and export duty payable to the Government. The next cause of action is trespass to land/conversion of trees. The Plaintiffs claim damages done to the land and the environment etc. The other orders being sought are declarations which should be sought by Originating Summons. Multiple causes of action being combined in one statement of claim should be avoided unless absolutely necessary to do so to lessen costs. The Plaintiffs' action cannot be struck out for want of a reasonable cause of action because the determination by the Boli House of Chiefs does exist to back up the Plaintiff's claim. The claim cannot be regarded as a mere assertion of rights over customary land areas under dispute. Unless the determination by the Boli House of Chiefs is invalidated by the Local Court, it continues to stand as the decision binding both parties for the time being. The Plaintiffs do therefore have standing to question the logging operation in greater Pugu land and Tavanare land as well. The determination by the Boli House of Chiefs on 16<sup>th</sup> September 2004 has made all the difference in this case. The Defendants' application is therefore dismissed with costs.

F.O. Kabui  
Puisne Judge