

GEORGE POU AND CHRISTIAN SALINI (representing the Pugu Clan of the Gaubata Tribe of Ngella) -v- TROPICAL FORESTRY LIMITED, DALGRO (SI) LTD, CHARLES SORO AND OTHERS (representing the Vunavunagi Clan of the Hongokama Tribe) AND THE ATTORNEY-GENERAL (representing the Commissioner of Forest)

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

Civil Case No. 452 of 2004

Date of Hearing: 19<sup>th</sup> November 2004.

Date of Ruling: 22<sup>nd</sup> November 2004.

*G. Suri for the Plaintiffs.*

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

*F. Waleanisia for the 4<sup>th</sup> Defendant.*

RULING

**Kabui, J.** In my ruling delivered on 21<sup>st</sup> October 2004, I said that the Plaintiffs did have locus standi or standing in ordinary parlance on the basis of the Boli House of Chiefs' determination made on 16<sup>th</sup> September 2004 giving ownership of Pugu/Tananiviku land to Mr. George Pou and his line. Charles Soro, John Sogilo, Warren Gigu, Abraham Pisu, John Sini granted timber rights to the 1<sup>st</sup> Defendant over Pugu land. This Pugu land was the subject matter of the earlier determination by the Boli House of Chiefs made on 13<sup>th</sup> November 1998 and confirmed in Civil Case No. 359 of 1999 by the High Court. This is the lesser Pugu land as demarcated by the Boli House of Chiefs in a map produced by them, following the hearing on 16<sup>th</sup> September 2004. In that map, Tavanare is within the boundaries of lesser Pugu land though not part of it whilst Sarisiripa and Betinialu land areas are outside the boundaries of the lesser Pugu land but within the boundaries of the greater Pugu/Tananiviku land. So the areas of land being the subject of the dispute that went to the Chiefs on 15<sup>th</sup> September 2004 and decided on 16<sup>th</sup> September 2004 are Tavanare, Baba, Pugu/Tananiviku, Betinialu and Sirisiripa. The boundaries of the lesser Pugu land had been demarcated on the map produced by the Boli House of Chiefs. Messrs Noko, Kande, Mumuku, Susuna and Susuna (Jr) had however granted timber rights also in respect of Tavanare land. Messrs Teva, Maka, Tila, Siria and Lego had similarly granted timber rights in respect of Betinialu land. The lesser Pugu, Tavanare and Betinialu lands were included in the Timber Rights Agreement signed on 28<sup>th</sup> November 2003 between the 1<sup>st</sup> Defendant and the landowners of Big Ngella in the Central Islands Province. Licence Number A10308 was issued on 3<sup>rd</sup> December 2003 to the 1<sup>st</sup> Defendant but it does not cover Tavanare land. Was the exclusion of Tavanare land from the Licence a

mistake or a deliberate act? The basis of the dispute in the first place is that the 3<sup>rd</sup> Defendants went beyond the boundaries of lesser Pugu land for the boundaries of that land were not specified in the Timber Rights Agreement nor were they specified in Licence Number A10308. Nor had they been demarcated by the Boli House of Chiefs on 13<sup>th</sup> November 1998. The Plaintiffs had complained to the Boli House of Chiefs that logging works under Licence Number A10308 granted to the 1<sup>st</sup> Defendant had gone beyond the boundaries of lesser Pugu and into land owned by the Plaintiffs. The President of the Boli House of Chiefs, Mr. Kila, in his affidavit filed on 14<sup>th</sup> October 2004 confirms this fact in paragraph 8 of his affidavit. So the concern of the Plaintiffs over the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants encroaching into land claimed by them was a genuine one. The Plaintiffs went to the Boli House of Chiefs and obtained a determination in their favour on 16<sup>th</sup> September 2004. So the Plaintiffs are now the owners in custom of the greater Pugu/Tananiviku which includes Tavanare and Betinialu/Sirisiripa land areas. Although Tavanare is not included in the 1<sup>st</sup> Defendant's licence, the Plaintiffs now own it by virtue of the determination by the Boli House of Chiefs. For the same reason, Betinialu/Sirisiripa is also under the control of the Plaintiffs, these areas of land being within the boundaries of the greater Pugu/Tananiviku land. If, indeed, the Mumukus and the Susunas are the true owners of Tavanare, why did they not intervene during the Boli House of Chiefs' hearing to save their land from the Plaintiffs or since the determination by that House of Chiefs or go to the Local Court? The same can be said about those persons who granted timber rights over Betinialu/Sirisiripa land. For Mr. Kama to argue in this Court that Tavanare and Betinialu/Sirisiripa belong to other people is not enough to return the ownership of these land areas to them. I have read the affidavits filed by Messrs Soro and Bisa on this point but I do not have the jurisdiction to decide customary ownership of customary land. It is for them to ask the Chiefs to consider their ownership of Tavanare and Betinialu/Sirisiripa though within the boundaries of the greater Pugu/Tananiviku land or else transfer the Boli House of Chiefs' determination regarding those two areas of land to the Local Court. The grant of timber rights under the provisions of the Forests and Timber Utilization Act (Cap.40) has now been overtaken by land ownership by reason of the determination by the Boli House of Chiefs referred to above.

#### Evidence of trespass.

Mr. Kama admitted that a road had been constructed through Tavanare land with the permission of the 1<sup>st</sup> Defendant but no felling of trees had taken place. This is an admission of trespass because Tavanare is not included in the licence granted to the 1<sup>st</sup> Defendant. The affidavit filed by Mr. Susu on 14<sup>th</sup> October 2004, does confirm felling of trees taking place inside greater Pugu land, further confirming Mr. Kila's affidavit referred to above. Trespass appears to be continuing even after the determination made by the Boli House of Chiefs on 16<sup>th</sup> September 2004 according to the affidavit of Mr. Pou filed on 11<sup>th</sup> October 2004.

**The triable issues.**

The Plaintiffs have come to Court for interim injunctive orders against the Defendants pending the trial of the issues raised in their Writ of Summons and Amended Statement of Claim filed on 12<sup>th</sup> November 2004. Paragraphs 17 and 18 of the Amended Statement of Claim do clearly raise triable issues in the Plaintiffs' action. The balance of convenience is clearly in favour of the Plaintiffs. The Plaintiffs have made an undertaking for damages but otherwise such an undertaking is not necessary in this case. (See **Kalena Timber Company Limited v. John Labere and Agnes Votai** Civil Appeal No. 12 of 2001).

**Grant of the application.**

Protection of the environment in terms of preventing irreparable damage to the land, fauna, streams and the ecological system is far too important to give up without the permission of the Plaintiffs. The application for interim injunctive orders by the Plaintiffs is granted in the terms sought except 5 and 7 as being no longer necessary to make in this application. Costs be costs in the cause. I order accordingly.

**F.O. Kabui**  
**Puisne Judge**