

CHALRES TOIANA AND JACK SUNAINAO-v-JOSEPH AIRAU, TOM LOLEMAE JUNIOR, MERCY RIPIATU AND PAUL NANAU, AND MARAHAOA FOREST DEVELOPMENT CORPORATION LIMITED, AND JOY ITAIA (Trading as Oceania Trading Company), and PAN PACIFIC PARTS LIMITED AND ATTORNEY-GENERAL (Representing the Commissioner of Forest Resources and the Comptroller of Customs and Excise)

HIGH COURT OF SOLOMON ISLANDS
(Mwanosalua, J.)

Civil Case No.104 of 2005

Hearing: 9th August 2005
Judgment: 31st August 2005

C. Ashley for the Plaintiff
J. Apaniai for the 1st and 2nd Defendants
A. Nori for the 3rd Defendant
A. Radclyffe for the 4th Defendant
N. Moshinsky and F. Walenesia for the 5th Defendant

RULING

Mwanosalua, J: By Amended Notice of Motion filed on 29th July 2005, the 3rd Defendant seeks the following Orders:

1. **The Plaintiffs' action be struck out on the grounds that –**
 - (a) **they have no locus standi;**
 - (b) **since the determination of entitlement to damage will depend on proof of Landownership, the court has no jurisdiction to adjudicate on Customary Land issues; and**
 - (c) **no reasonable cause of motion is disclosed or that the action is frivolous and vexatious.**
2. **In the alternative, an order that the action be stayed or dismissed or that judgment be entered for the 3rd Defendant; and**
3. **Costs to be paid by the Plaintiffs.**

Mr. Nori of Counsel for the 3rd Defendant, contended that the action in this case be struck out because the Plaintiffs lacked locus standi to commence the action in the High Court. He submits, among other things, that the Plaintiffs have not adduced

any evidence to show that they have legal interest or sufficient interest over Ara'arauna and Ahua Customary Lands (Customary Lands) to bring the action against the Defendants. Counsels for the 1st and 2nd Defendants and the 4th Defendant are in support of Mr. Nori's submissions to strike out the action.

Counsel for the Plaintiffs, Mr. Ashley, objected to the application for stay or to strike the action. He submits that as the 3rd Defendant is only a Contractor, it is an abuse of the Court process for the 3rd Defendant to raise any issues regarding the Plaintiffs' locus standi and whether the Plaintiffs are entitled to damages. However, he gave no reasons to support his submission.

The Plaintiffs represent their tribes which purport to own the Customary Lands in ward 25 of Malaita Province. They filed a writ of summons against the Defendants on 24th February 2005. A Statement of Claim was also filed on the same day. They sue the Defendants for entering, trespassing and carrying out illegal logging on their Customary Lands. They seek these remedies: an order to declare the logging operation on their Lands illegal, an order for the defendants to account for all proceeds of logs extracted from their lands, damages for trespass, conversion of logs and environmental harm done to their lands and costs. All the Defendants filed Memorandum of Appearance to the action except the 3rd Defendant who filed a Conditional Memorandum of Appearance. All the Defendants have filed a Defence except the 3rd Defendant who has not done so in anticipation of this application to strike out the action.

The 3rd Defendant made its application for the Court to strike out the action under Order 27, rule 4 of the High Court (Civil Procedure) Rules 1964. Rule 4 states –

"The Court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in any such case or in the case of the action or defence being shown by the pleadings to be frivolous and vexatious, the court may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just."

The Plaintiffs say that they represent their tribes in the action. They say that their tribes own Customary Lands. However, they did not mention the names of their tribes which own the Customary Lands. There is no evidence to show that their tribes own these Customary Lands. They initiated the action because they could not stop the logging operation being conducted by the 1st to the 4th Defendants on their Lands.

The Plaintiffs seek a number of remedies in their action. It is clear they do so only on the assertion that their tribes have ownership rights over the Customary Lands. They are yet to establish such rights. Until they have done so, they would only be asserting such rights. They have to establish such rights through the procedure under the Local Courts (Amendment) Act 1985(the Act). This is because the High Court lacks

jurisdiction to deal with issues regarding the ownership of Customary Land. The Court can only deal with the remedies after their tribes have obtained a final decree of ownership over the Customary Lands in one of the Customary Land forums established under the Act.

The Plaintiffs have yet to establish their locus standi to enable them to come before the Court and to seek the remedies which they are seeking. In the absence of that locus standi the court will exercise its discretion to strike out the action. The action is dismissed accordingly. I make no order as to costs.

THE COURT