

GARIMANE MICHA AND JOHN MARA REPRESENTING THE NEKAMA TRIBE (FIRST PLAINTIFFS) AND EARTHMOVERS (SOLOMONS) LTD (SECOND PLAINTIFFS) –V- SAMUEL THAO, EDWIN TINO, MOSES GHUAU AND COLIN JOEL T/A AOLA TIMBERS EXPORT AGENCY (FIRST DEFENDANT), GABRIEL PARA, JAMES KOMBO, PAT THUGATA, HENRY LUI AND SIKUA MIKAELE REPRESENTING THEMSELVES (SECOND DEFENDANT), AND THE ATTORNEY-GENERAL REPRESENTING THE COMMISSIONER OF FORESTS (THIRD DEFENDANT).

High Court of Solomon Islands
(Palmer CJ)

Date of Hearing: 23 May, 25 May, 6 June 2005

Date of Judgement: 17 November 2005

G. Suri for 1st and 2nd Plaintiffs

P. Watts for the first Defendant

D. Hou for the second Defendant

F. Waleanisia for the third Defendant

Palmer CJ.: Garimane Micha and John Mara (“**the first Plaintiffs**”) claim they are the rightful chief and head of the Nekama tribe and the rightful persons having authority to grant timber rights over **Sobolonga land** situated in Paripao Ward of Guadalcanal Province. They claim that in the 1980’s they had granted timber rights to Foxwood and Pacific Timbers Company Limited (“**Pacific Timbers**”) to log in their lands. In 1997, Pacific Timbers returned to complete their logging operation on Sobolonga land.

The first Defendants however allege that the first and second Plaintiffs (“**the Plaintiffs**”) did not have valid timber licence to remove the logs in Sobolonga land. They say they were the ones who had a valid timber licence. They relied on a timber rights agreement dated 6 March 1996, entered into purportedly with the landowners of Sobolonga land, the second Defendants. Following signing of that timber rights agreement they obtained an extension to the Felling Licence TIM 2/45 on 18 September 1996 which enabled them to carry out logging activities in Sobolonga land. They filed Writ of Summons and Statement of Claim on 2 October 1998 for inter alia damages for conversion of logs to the value of USD132, 412.50 in Civil Case 184-98. On 2 July 2001, the Registrar of High Court issued order by consent of the parties that “...*unless the Defendant, within 14 days provide particulars of Defence and Counter-Claim as sought by the Plaintiffs (Samuel Thao, Edwin Tino, Moses Ghaua and Colin Joel t/a Aola Timbers Export Agency) in their request filed on 25th June 1999, the Defence and Counter-Claim be struck out and Judgement entered for the Plaintiffs as sought in their Statement of Claim....*”. On 27 July 2001 the Registrar of High Court ordered that the Defendant’s Defence and Counter-Claim be struck out and judgement to be entered for the Plaintiffs as sought in their Statement of Claim filed 2 October 1998. This order was challenged in the High Court and Court of Appeal but dismissed by both courts.

The first Plaintiffs in this case, who claim to be the rightful representatives (Chiefs) of Sobolonga land have been joined by the Earthmovers (Solomons) Limited (“**Earthmovers**”) and together challenged the validity of the timber rights agreement and

extension granted to the Felling Licence relied on by the first Defendants on grounds of fraud and false misrepresentation.

Allegations of fraud

The thrust of the allegations of fraud and misrepresentation raised by the Plaintiffs revolve around the validity of the alleged timber rights hearing conducted at Geza village on 6th March 1996. The Plaintiffs allege no valid notices were issued for such a meeting; that no meeting proper actually occurred and that documents purportedly executed to say that a meeting was convened and determinations made were false and fraudulent. The timber rights agreement subsequently executed purportedly on 6 March 1996 was therefore invalid rendering the extension of the Felling Licence to cover Sobolonga land to also be invalid. They say all these were done fraudulently by the first Defendants, who knew what they were doing was improper but did so to obtain the right to log in the said land and thereby enabled them to obtain judgment in this court against Earthmovers. They now want this court to intervene and have the matter sorted out once and for all.

The crucial witnesses in support of the Plaintiff's claim of fraud were the second Defendants themselves, (Henry Lui, Pat Thugutia and James Kombo), the President, Joeni Vakalea ("Vakalea") of Bolomona Area Council, who was alleged to have signed the Form II confirming determination of the said Council in favour of the second Defendants as the persons lawfully entitled to grant timber rights, and Eric Gheti one of the chiefs of Paripao Ward. Their evidence is crucial to this case. It can be summarised as follows:

- (i) **That no valid timber rights hearing could have been held and was held at Geza village in respect of Sobolonga land.** The crucial evidence came from the President of the Bolomona Area Council who confirmed in court that no although a hearing was conducted at Geza by the Council, it did not make any determinations regarding timber rights over Sobolonga land. He told the court no landowners from Sobolonga were present at that meeting and also confirmed to the court that no proper notices had been issued about any such timber rights hearing. The minutes (see page 301 of the Bundle of Court Documents) confirmed this. The records simply stated that the meeting at Geza was a general meeting in respect of intentions of Aola Timber Export Agency to secure timber rights in Paripao Ward. There was nothing in the records about any determination in respect of Sobolonga land. Henry Lui, Pat Thuguthia and James Kombo's evidence were all consistent with such conclusion. They told the court they were not present at that meeting and therefore could not have been heard or been identified as the persons lawfully entitled to grant timber rights. They also told the court they were not aware of any notices having been sent out or put out in accordance with the requirements of the Forest Resources and Timber Utilisation Act. The minutes (see page 301) did not contain any records of any determinations having been made in favour of the second Defendants. Eric Gheti, who was present at the meeting also confirmed that no determination was made in respect of Sobolonga land.

Edwin Tino, one of the second Defendants in his evidence on oath sought to tell the court that the timber rights meeting was actually convened at Nubu

village on 2nd April 1996 and not at Geza village. In a request for further and better particulars however dated 20 October 1998 in Civil Case 184-98, his answers inter alia included stating that the timber rights hearing was convened on 6 March 1996. When asked to explain the discrepancy he could only come up with the excuse that the answers given were not provided by him. Actually it is a serious allegation to make against his lawyer for doing something which he did not do. I do not think he was serious about that explanation however and do not believe him one bit. I do not think his lawyer would do anything without getting clarification/confirmation from him. Civil Case 184-98 was his case from the start and he is obliged to ensure that what his lawyer says and does was consistent with his instructions. He must take full responsibility for what happened in that case because as a result of what he had told his lawyer he was able to obtain final orders against Earthmovers.

Another witness Mr. Job Kilua was called to support Mr. Tino's claims that a timber rights hearing was actually convened at Nubu on 2 April 1996 over Sobolonga land. Under skilful cross examination from Mr. Suri however, he conceded that no determination for timber rights was ever done at Nubu, though he thought he could cushion this defect by saying that the landowners were asked to call in at their office and identify themselves after that meeting. That would have made no difference in any event as not only was it contrary to the spirit of the Forest and Resources Timber Utilisation Act in terms of transparency, accountability and certainty but it simply confirms that no meeting and no determination over timber rights in respect of Sobolonga land was ever conducted at either of those villages.

Learned Counsel Mr. Suri, in any event called another witness by leave of the Court, Mr. Gordon Leua who was present at that meeting at Nubu village, to rebut any suggestions that a timber rights hearing was conducted at Nubu meeting.

- (ii) That no valid notice in respect of that hearing was issued. All witnesses who gave evidence including the Joeni Vakalea ("Vakalea") confirmed that no proper notice was issued in respect of any timber rights hearing over Sobolonga land.
- (iii) That no land owners or representatives of landowners of Sobolonga land appeared at that meeting; apart from Sikua Mikaele it seems none of the second Defendants were present at that meeting. Again the evidence in support of this conclusion is overwhelming.
- (iv) No valid determination could have been completed at that meeting and accordingly no valid Form II could have been issued in respect of Sobolonga land. The evidence is crystal clear. Henry Lui, Pat Thuguthia and James Kombo all confirmed that they were not present at the meeting and accordingly no valid determination could have been made in respect of them. They also stated in their affidavits confirmed in court that they signed the timber rights agreement at different times and not on 6th March 1996 as alleged in the document. Vakalea himself admitted in court that the two letters dated 10 April 1996 and 9 June 1996 (see pages 307 and 308 in Bundle

of Court Papers) were fraudulently signed and sent by him to the Magistrate's Court requesting certificates of no appeal in respect of a purported determination of the Bolomona Area Council at Geza village over Sobolonga land. He knew very well that he should not have signed any Form II determination in respect of Sobolonga land and should not have pursued the matter further. His actions were completely unacceptable as the President of Bolomona Area Council. He should not be considered for any similar positions in the future. He has shown that he cannot be trusted with such responsibility.

Fraud

Fraud is established when it is shown that a false misrepresentation has been made (i) knowingly, (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false¹.

Fraudulent misrepresentation

There is no doubt in my mind that the first Defendants knew that no proper notice had been issued and that no proper timber rights hearing had been convened to determine issues of timber rights over Sobolonga land. They knew that the Bolomona Area Council held no timber rights hearing at Geza village on 6 March 1996 over Sobolonga land or on 2 April 1996 at Nubu village and yet they persisted in having a Form II Determination completed by the President, Mr. Vakalea to the effect that valid determinations had been made. Although Vakalea admitted in court acting fraudulently, this was also due to the pressure applied by the first Defendants insisting that he sign the Form II determinations and persisting with the signing of the timber rights agreement when they knew it was improper to do so. Not only was there no proper timber rights hearing and determination at Geza or Nubu, but apart from Sikua Mikaele, **the second Defendants were not even present at those meetings!** From start to finish there was no genuine attempt made to have the proper procedures and requirements of the Forest Resources and Timber Utilisation Act complied with.

Decision

I am satisfied the evidence is overwhelming and the Plaintiffs have discharged the onus of proof on their part, that the first Defendants acted fraudulently in having the timber rights agreement dated 6 March 1996 entered into between themselves and the second Defendants. I am satisfied they have also acted fraudulently in procuring the issue of the timber licence number TIM 2/45 issued on 24 July 1995 and extended purportedly on 18 September 1996 to cover Sobolonga land. Fraud unravels everything and accordingly the said timber rights agreement and timber licence in so far as they apply to Sobolonga land must all be set aside.

The effect of this court's ruling must also affect the final orders² obtained by the first Defendants in the case *Samuel Thao, Edwin Tino, Moses Ghaua and Collin Joel trading as Aola Timbers Export Agency -v- Earthmovers Solomons Limited trading as Pacific*

¹ Derry v. Peek (1889) 14 App. Cas. 337 per Lord Herschell at page 374.

² Judgement in Default of Compliance of Orders of Consent of the Court signed 2 July 2001 and filed 27 July 2001.

*Timbers*³. The orders of the Registrar of High Court and judgement in default obtained must be set aside and any subsequent orders flowing from it.

Orders of the Court:

1. **That the first Defendants acted fraudulently by falsely claiming that they had complied with the provisions of the Forest Resources and Timber Utilisation Act and thereby obtained and executed a valid timber rights agreement on 6 March 1996 and an extension to the Felling Licence TIM 2/45 on 18 September 1996.**
2. **That the purported extension to the Felling Licence TIM 2/45 obtained on 18 September 1996 is *void ab initio*.**
3. **Set aside orders of the Registrar of High Court made on 20 June 2001 and perfected on 2 July 2001.**
4. **Consequentially set aside judgment entered on 27 July 2001 obtained under Civil Case No. 184 of 1998.**
5. **Award damages in favour of the Plaintiffs to be assessed if not agreed for losses suffered from the fraud of the first Defendants.**
6. **Award costs in favour of the Plaintiffs on indemnity basis.**

The Court.

³ Civil Case Number 184-98 18 September 2001