

DONALD BATO, VICTOR PAULSEN, JAMES BARLEY AND BARNEY PAULSEN (*Suingoh* behalf of Lamupeza Tribe) (Plaintiffs)-v-RICHARD BOSO AND HOPEFUL PIOSASA (*Representing Gumi and Gemu Tribes*) (First Defendants) AND JETTY NIVAH AND HEDISON NIVAH (*Trading as Nivah Integrated Development Company*) (Second Defendants AND COMMISSIONER OF FORESTS (*Third Defendant*) AND BULACAN INTEGRATED WOOD INDUSTRIES (*Fourth Defendants*) AND AUSTRALIA NEW ZEALAND BANKING GROUP LTD (*Garnishee*)

**HIGH COURT OF SOLOMON ISLANDS
(Mwanosalua, J.)**

Civil Case No: 619 of 2005

Hearing: 18th May 2006
Ruling: 13th July 2006

*P. Watts for the Plaintiffs
A. Nori for the First, Second and Fourth Defendants*

RULING

Mwanosalua, J: This is an application by the First, Second and Fourth Defendants by summons filed on 4th May 2006 seeking the following orders –

- (a) paragraph 3 of the orders of the Court dated 4th April 2006 be set aside;
- (b) the garnishee order nisi made and dated 2nd April 2006 be struck out;
- (c) the Plaintiff to serve the First, Second and Fourth Defendants with the Writ and Statement of Claim in this action within seven days; and
- (d) Costs to be paid by the Plaintiffs.

Paragraph 3 of the Orders of the court dated 4th April 2006 is in these terms –

“3. That the FOB value of the proceeds from the consignment on board MV INTER UNITY, MV ANYA ANII and MV FU XING be released to the Plaintiffs forthwith along with shipment proceeds from blocks 5 and 6 at MANDEKOLOKO and adjourning KAKARUMU, PARI and PARAVOE Lands Central Parara.”

The First, Second and Fourth Defendants contended that order 3 above be set aside on two grounds: First, the order for the payment of FOB value of the exported logs was pre-mature since the issue regarding landownership is yet to be determined; and second, that the

finding of the court that *"the Plaintiffs have rights to timber royalties from logs extracted and exported by the First and Second defendants from blocks 5 and 6, known as Mandekoloko"* in its ruling dated 7th March 2006, is inconsistent with the powers of the High Court when it comes to jurisdiction to hear customary land issues.

The orders of the court dated 4th April 2006, inclusive of order 3 above, are interim orders obtained by the Plaintiffs by ex parte application. Order 4 of the orders directed that inter parte hearing be held within 14 days of the granting of the orders to deal with the Plaintiffs' ex parte summons. But no such hearing ever took place and that no word concerning that came from the Plaintiffs.

The evidence adduced to the court by the Plaintiffs on 4th April 2006 did not contain any evidence of any land dispute pertaining to Mandekoloko, Kakarumu, Pari and Paravoe Lands. The court would have reminded the Plaintiffs to seek the assistance of the Chiefs first, had there been any evidence of any dispute over landownership. As such, there is no immaturity in the court granting the interim orders.

In its ruling dated 7th March 2006, the court did make a finding that the *"Plaintiffs have rights to timber royalties from logs extracted and exported by the First and the Second Defendants from blocks 5 and 6, known as Mandekoloko"*. This finding was based upon evidence adduced by the Plaintiffs that they have beneficiary interests in the Central Parara Lands, and in particular their own portion, Mandekoloko land identified as blocks 5 and 6 in their map marked "DB2" annexed to the affidavit of Donald Bato filed on 16th December 2005. The court was entitled to make that finding in the absence of any dispute regarding the sharing of timber royalties from logs felled within blocks 5 and 6 with any tribe prior to the date of the ruling, that is to say, 7th March 2006. That finding was not reached as the result of an error by the court.

The Plaintiffs obtained an order entitled *"ORDER TO GARNISHEE"* dated 2nd May 2006. The Garnishee is ANZ Banking Corporation Group Limited. It is clear that there was no leave granted to the Plaintiffs to initiate the present Garnishee proceedings. Further, no summons was filed to issue Garnishee and no Order nisi was made prior to the present Order to Garnishee. In the circumstances the order to Garnishee dated 2nd May 2006 is set aside for non compliance with order 48 of the High Court (Civil Proceeding) Rules 1964. The Defendant's application partially succeeds.

Orders of the Court:

1. Application to set aside paragraph 3 of the orders of the court dated 4th April 2006 refused.
2. Garnishee order nisi dated 2nd May 2006 set aside.
3. Plaintiffs to serve the First, Second and Fourth Defendants with Writ and Statement of Claim within 7 days.

4. Order 4 of the court orders dated 4th April 2006 be complied within 14 days of these orders.
5. Parties to meet their own costs.

**Francis Mwanosalua
Puisne Judge**