

ERIC TAVEA and GORDON LEUA (Representing themselves and Members of Vigoha Tribe)-v-STEPHEN THOGO and DUDDLEY BOE (Representing themselves and Members of Viri Tribe) and SAMUEL THAO, EDWIN TINO, MOSES GHUA and COLIN JOEL (Trading as Aola Timber Export Agency) and SINO CAPITAL (S.I) LIMITED and ATTORNEY-GENERAL (Representing the Commissioner of Forests)

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

Civil Case No: 237 of 2006

Hearing: 1 November 2006

Ruling: 1 December 2006

A. Nori for the Plaintiffs

P. Lavery for the Defendants

RULING

Mwanosalua, J: The Plaintiffs in this case are Eric Tavea and Gordon Leua. They commenced this suit against the Defendants on 20 June 2006. They did so on behalf of themselves and Members of the Vigoha tribe.

Stephen Thogo and Duddley Boe are the First Defendants. They say that they are also members of the Vigoha Tribe and are not members of the Viri tribe.

Samuel Thao, Edwin Tino, Moses Ghaua and Colin Joel are the Second Defendants. They trade as the Aola Timber Export Agency. Aola Timber Export Agency holds Licence No: TIM2/45.

Sino Capital(S.I) Limited is the Third Defendant. It is the logging contractor which carries out logging on behalf of the Second Defendants on lands covered by Licence No: TIM2/45. These Lands are called Ao'o, Ata, Tavatogha and Tenakagho.

The Fourth Defendant is the Attorney-General. He represents the Commissioner of Forests who issued Licence No: TIM2/45 on 24 July 2005.

The Plaintiffs filed their writ of summons and statement of claim on 20 June 2006 against the Defendants. They seek declaration, damages for trespass, permanent injunction, refund of timber royalties, an account of royalty monies, costs, and interest against the First Defendants.

The Plaintiffs seek declarations, general and exemplary damages for trespass and conversion of trees, permanent injunction, costs and interest against the Second Defendants.

The Plaintiffs seek declaration, general and exemplary damages for trespass and conversion of trees, permanent injunction, costs and interest against the Third Defendant.

The Plaintiffs seek general and exemplary damages for negligence, damages for unjust enrichment by way of export duty receipts, in the alternative, an order for the refund of export duty on logs felled and sold from Vanathia Land, costs and interest against the Fourth Defendant.

The Plaintiff also filed an ex parte summons seeking interlocutory relief against the First, Second and Third Defendants at the same time they filed their writ of summons and statement of claim on 20 June 2006.

That ex parte summons was heard on 20 June 2006 and the Court granted the interim orders sought. Those ex parte orders were perfected, signed and sealed on 21 June 2006.

The ex parte orders were in these terms:

- "1. That there be abridgment of time for hearing of this application;**
- 2. That the First Defendants, their agents, wantoks, associates or triable members be restrained from demanding, collecting or receiving any payment due as royalty for timber felled and sold from Vanathia Customary Land on Guadalcanal Province until trial or on further orders;**
- 3. That the Second and Third Defendants, their servants and agents be restrained from making any payments in the form of royalty to the First Defendants, their wantoks, agents and triable members from proceeds of timber felled and sold from Vanathia Customary Land on Guadalcanal Province as described herein;**
- 4. That the Second and Third Defendants, within 14 days, to produce an account of all royalty payments made to the First Defendants in respect of timber felled and sold from Vanathia Customary Land;**
- 5. That the Second and Third Defendants, their servants and agents be restrained from entering, felling and removing any logs in Vanathia Customary Land until trial or on further orders;**

6. That the Second and Third Defendants within 14 days to account to the court all marketable trees felled from Vanathia Customary Land since the commencement of their operations therein to this day and to provide details of:
 - [a] species, quantity and prices of logs extracted from Vanathia Customary Land;
 - [b] the quantity of logs already sold and exported;
 - [c] the quantity of logs yet to be sold and exported.
7. That all moneys due and payable as royalties for timber felled and sold from Vanathia Customary Land be deposited in an interest bearing Trust Account in the joint names of the Solicitors of the parties until trial or further orders;
8. That the Plaintiffs, through their Solicitors, to apply for a re-listing of the case for inter partes hearing within 14 days; and
9. Costs to be reserved."

This interlocutory proceeding is to hear submissions from the Plaintiffs and the Defendants on the ex parte orders granted to the Plaintiffs above and to decide whether such orders should be continued or be discharged. The Plaintiffs say that such orders be continued until trial of the Plaintiffs' claim. The Defendants say otherwise.

There are serious triable issues in this case. The first concerns the validity of the Licence No. TIM 2/45 issued to the Second Defendants by the Fourth Defendant on 24 July 2005. This licence covers Ao'o, Ata, Tavatogha and Tenakagho Customary Lands in Paripao, Ward 17 in Guadalcanal Province. The Plaintiffs claim that there was no timer rights hearing to identify the customary owners of these lands and dispute the assertion by the Defendants that there was such a public hearing by the Bolomona Area Council at Gheghede village on 20 October 1994.

The Second issue regards damages for trespass and the conversion of trees against the First, Second and the Third Defendants in relation to Vanathia Customary Land. The Plaintiffs assert that Ata, Tavatogha and Tenakagho Customary Land are part of the Vanathia Land.

The Third issue regards the use of a forged document by the Second and the Third Defendants to obtain Timber Licence No. TIM 2/45 from the Fourth Defendant. This claim is made by the Plaintiffs on the basis of the use of two different Forms 2 by the Second and Third Defendants to support that there was a public hearing on 20

October 1994 to identify the owners of Ao'o, Ata, Tavatogha owners and Tenakagho Customary Lands.

The Fourth issue regards the dispute between Stephen Thogo as against the Plaintiffs over Customary rights in Vanathia Land. Stephen Thogo says that he possesses standing in custom to deal with the customary rights over that Land.

This Court has jurisdiction to hear and determine the effect of using a forged Form 2 to obtain Licence No: TIM 2/45; the validity of Licence No: TIM 2/45; the validity of the issue of two different logging licences over one single customary land; damages for trespass to land and conversion of trees where the Customary ownership of land had been proved in one the Customary Land forums. These forums are the Chiefs, the Local Court and the Customary Land Appeal Court.

But this Court does not have jurisdiction to determine the claim by the Plaintiffs that Ata, Tavatogha and Tenakagho are part of Vanathia land as referred to above. Further, this court also does not have power to determine the boundary and customary rights over Vanathia Land as between Stephen Thogo and the Plaintiffs. These matters can only be heard and decided by the Chiefs. This Court could well allow the ex parte orders to continue in order to maintain a status quo between the parties had there been evidence that a dispute had been reported to the Chiefs about those matters and the decision on them is pending before that forum. That was not the situation in this case. There is therefore no basis to maintain the ex parte orders and are discharged. I order accordingly.

THE ORDERS OF THE COURT:

1. The ex parte order perfected, signed and sealed on 21 June 2006 are discharges on the basis that:
 - (a) this court lacks jurisdiction to deal with issues concerning land ownership, land rights and boundaries regarding Customary Lands, which are matters for determination by the Chiefs, Local Court and the Customary Land Appeal Court;
 - (b) the issues about the legality of the Second Defendants' timber licence, the use of forged documents to obtain such licence, damages for trespass and conversion of trees are matters to be determined at full trial;
 - (c) Costs are reserved.

Francis Mwanasalua
Puisne Judge