

**HIGH COURT OF SOLOMON ISLANDS**  
Civil Jurisdiction  
**Mwanasalua J**

Civil Case No. 385 of 2006

<b>BETWEEN: RUSSELL ISLANDS PLANTATIONS ESTATES LTD</b>	-	1 <sup>st</sup> Claimant
<b>AND: LEVER SOLOMONS LTD</b>	-	1 <sup>st</sup> Claimant
<b>AND: PACIFIC MANAGEMENT SERVICES (SI) LTD</b>	-	2 <sup>nd</sup> Claimant
<b>AND: INTERNATIONAL COMTRADE &amp; SHIPPING (SI) LTD</b>	-	3 <sup>rd</sup> Claimant
<b>AND: REGINALD KOKILI</b>	-	1 <sup>st</sup> Defendant
<b>DAVID TUHANUKU</b>	-	2 <sup>nd</sup> Defendant
<b>MARK KEMAKEZA</b>	-	3 <sup>rd</sup> Defendant
<b>EDMOND RUKALE</b>	-	4 <sup>th</sup> Defendant
<b>MATHEW SALE</b>	-	5 <sup>th</sup> Defendant
<b>LUVUKAL INVESTMENT COMPANY LTD AND LAVUKAL TRUSTBOARD</b>	-	6 <sup>th</sup> Defendant
<b>NATION-WIDE LTD</b>	-	7 <sup>th</sup> Defendant
<b>CENTRAL PROVINCE DEVELOPMENT AUTHORITY AND CENTRAL ISLANDS PROVINCIAL GOVERNMENT</b>	-	8 <sup>th</sup> Defendant

Date of Hearing: 21 July 2009  
Date of Ruling: 13 August 2009

A Nori for the 1st and 2nd Claimants  
M Bird for 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants  
R Firigeni for the 8<sup>th</sup> Defendant

**RULING**

**Mwanasalua J:**

1 The applicants in this proceeding are Russell Islands Plantation Estates Ltd and Lever Solomons Ltd. They apply for the following Orders:

1) The Interim Consent Orders of the Court made on 14<sup>th</sup> November 2008 and varied on 16<sup>th</sup> February 2009 be further varied as follows:

“3 (1) Until trial or further orders –

(a) The First Claimant, through its Board of Directors, to appoint agents to be stationed on Russell Islands, in particular on Yandina, for the purpose of supervising and managing its plantations, property and assets without hindrance, interference and disturbance from the First to the Seventh Defendants or their servants, associates or agents -

(b) The former workers on Russell Islands be allowed to harvest, produce and sell copra and cocoa for their sustenance subject to the following conditions:-

(i) All sales shall be made to the agents at such price as the said agents shall fix, which shall be reasonable price;

(ii) Copra and cocoa to be transported from Russell Islands only in vessels or in such other modes of transportation approved by the agents and the Claimants;

- (iii) Maintenance of plantations to a standard set by the agents and the Claimants;
  - (iv) They shall cooperate with and assist the agents in ensuring that company property and assets are safeguarded and protected from damage or loss; and
  - (v) Not to invite onto company property persons who are not connected in anyway whatsoever with the company;
- (c) The First and Second Claimants, through their respective Boards of Directors, to be at liberty to deal with their property and assets, including sale of land and other property and assets, to raise funds towards meeting recurrent expenses or costs and for payment of debts;
- (d) Within 14 days from the date of these orders, all parties to the action to enter into negotiations with the view of resolving all the outstanding legal and other issues, including, re-employment of dismissed workers, reconciliation amongst persons or groups of persons aggrieved as the result of the industrial action which commenced on or about 17<sup>th</sup> June 2004 and resumption of full operation by the First and Second Claimants;
- (e) Parties to be at liberty to seek further directions upon giving 14 days notice;

- (2) In the alternative, the Consent Orders as varied be discharged.
  - (3) Costs be paid by the First to Seventh Defendants; and
  - (4) Such other orders as the Court deems just in the circumstances of the case.
- 2 The First and Second Claimants seek a further variation of Order 3 of the Consent Order of 14 November 2008 because of hardship faced by law-abiding employees of the First Claimant who could not harvest cocoa and coconut on the Plantations for sale to support themselves and their family members because of the prohibition by that Order, whilst others continue harvest cocoa and coconut for sale to support themselves. As a result of this problem, the First Claimant held a Directors' meeting on 11 December 2008 when it was decided to apply for a further variation to Order 3 to provide for controlled sales of copra, cocoa and other properties in the best interest of the RIPEL and for the benefit of its former workers. However, this decision was objected to by other Counsels in the case. It is obvious that some former employees and their families at Yandina are experiencing extreme hardship at this point in time. Their needs and rights of the Claimants to their properties must be recognized by parties to this case.
- 3 This application is purposely to seek a further variation of Order 3 of 14<sup>th</sup> November 2008, which is in the following terms:

***“3 From the date of these orders, there shall be a total cessation of removal of First and Second Claimants' assets, including land sales and the harvesting, removal, selling and or buying of the First and Second Claimants' properties including but not limited to cocoa, coconut, copra and livestock by any of the Directors, Shareholders, Defendants, Striking workers or any other person or vessel.”***

- 4 Counsel for the First to Seventh Defendants was instructed to oppose this application. However, she says that if this Court over-rules her objection, then paragraph 1(b) may be granted, but not paragraph (c) because there was no supporting evidence and not paragraph (d) because it is not necessary. Counsel for the Eighth defendant says that he does not have any problem with the sale of copra and cocoa from Yandina at this time.
- 5 The Orders of 14 November 2008 is entitled "**Consent Orders**". There is a great difference between a Consent Order in the technical sense and an order which embodies provisions to which neither parties objects<sup>1</sup>. Lord Denning MR explained the differences when he stated ..."**one meaning is this: the words "by consent" may evidence a real contract between the parties, In such a case, the Court will only interfere with such an order on the same grounds as it would do with any other contract. The other meaning is this: The words "by consent" may mean that the parties hereto not objecting". In such a case there is no real contract between the parties. The Order can be altered or varied by the Court in the same circumstances as any other Order that is made by the Court without the consent of the parties. In every case it is necessary to discover which meaning is used. Does the Order evidence a real contract between the parties? Or does it only evidence an order made without obligation?"**<sup>2</sup>.
- 6 This Court sees that the Consent Order of 14 November 2008 was made from drafts presented to Court by Counsel for the Claimants. This suggests that this Order was agreed to by the parties after compromises were reached. There is provision for any of the parties to seek further Orders if the Order is breached by any of them. And that it has a penal notice to it for contempt of Court for its breach. This Court therefore holds that Consent Order as embodying a contract between the parties. That means that the Order can only be varied by consent to the parties to it.

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<sup>1</sup> Chandleness-Chandleness v Nicholson [1942] 2KB231

<sup>2</sup> Siebe Gorman & Co. Ltd v Pneupac Ltd [1982] 1ALLER 377 at P.380

- 7 For purposes of this application, variation will merely be granted as set out in Order 3 (a) and 3(b) as agreed by the parties in this application.

**Orders of the Court:**

3 (1) Until trial or further orders:

- (a) The First Claimant, through its Board of Directors, to appoint agents to be stationed on Russell Islands for the purpose of supervising and managing its plantations, property and assets without hindrance, interference and disturbance from the First to the Eight Defendants or their servants, associates or agents;
- (b) The former workers on Russell Islands be allowed to harvest, produce and sell copra and cocoa for their sustenance subject to the following conditions:-
  - (i) All sales shall be made to the agents at such price as the said agents shall fix, which shall be reasonable price;
  - (ii) Copra and cocoa to be transported from Russell Islands only in vessels or in such other modes of transportation approved by the agents and the Claimants;
  - (iii) Maintenance of plantations to a standard set by the agents and the Claimants;
  - (iv) They shall cooperate with and assist the agents in ensuring that company property and assets are

safeguarded and protected from damage or loss; and

- (v) Not to invite onto company property persons who are not connected in anyway whatsoever with the company;
- (e) Parties to be at liberty to seek further directions upon giving 14 days notice;
- (f) Costs be in the cause.

F. Mwanasalua  
F Mwanasalua J

THE COURT

