

**IN THE HIGH COURT OF SOLOMON ISLANDS**

**CIVIL JURISDICTION**

**Civil Case Number 276 of 2022**

<b>BETWEEN: LEDILY BOSELALU</b>	<b>1<sup>st</sup> Applicant</b>
<b>AND: SEVONA DEVELOPMENT COMPANY LTD</b>	<b>2<sup>nd</sup> Applicant</b>
<b>AND: GREEN TREE (S.I) COMPANY LTD</b>	<b>3<sup>rd</sup> Applicant</b>
<b>AND: ZIRUNAGONAGO LAND OWNING GROUP LTD</b>	<b>1<sup>st</sup> Respondent</b>
<b>AND: SUPREME RESOURCES LTD</b>	<b>2<sup>nd</sup> Respondent</b>
<b>AND: ATTORNEY GENERAL</b> (Representing Commissioner of Forest)	<b>3<sup>rd</sup> Respondent</b>

**Date of Hearing: 18<sup>th</sup> August 2022.**

**Date of Ruling: 2<sup>nd</sup> September 2022.**

*Mr. W. Jonga for Claimants/Applicants.*

*Mr. D. Marahare for 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents.*

**KENIAPISIA; PJ:**

**RULING ON INTER-PARTES HEARING AND CROSS – APPLICATION  
FOR INJUNCTION**

1. First, Second and Third Claimants (“claimants”) filed a Category A Claim on **19/07/2022**. Prior to that claimants also filed an urgent application for injunction with certificate of urgency on **14/7/2022**. Court granted ex-parte injunction orders perfected on **19/7/2022**. Today is the return inter-parties hearing. The issue at this hearing is whether or not to set aside the ex-parte orders or to vary or maintain the said orders. In addition, Counsel Marahare for the 1<sup>st</sup> and 2<sup>nd</sup> defendants, also brought a cross application for injunction orders and consolidation.
2. Claimants operate logging on Choiseul Province, under felling license A101902. Claimants’ concession land is called Sevona (“S”). Sevona concession land has two portions of customary lands in it namely – Tasolomo and Lepokasi. First and Second defendants (“defendants”) also operate logging on Choiseul Province, under felling license A101766. Defendants’ concession land is called Zironagonago (“Z”). Sevona and Z concession lands share a common boundary. This is where this dispute came about. Claimants alleged defendants encroached into and did logging in one of their concession lands (Tasolomo) at the common border. Likewise, defendants also allege in defence that claimants encroached into and did logging in their concession at the common border inside Z.

3. The injunction order stopped defendants not to operate inside S concession land (inside Tasolomo and Lepokasi customary lands). Defendants filed their defence and deny trespass into Tasolomo or Lepokasi customary lands. Relying on a Chiefs finding of non-trespass, defendants assert that they confined their operation inside of Z. Defendants alleged in their defence that claimants trespassed and operated logging inside Z at the common border.

***Issue for Trial***

4. So indeed, whether or not there was trespass is an issue for trial. No matter how strong one feels his allegation is, in terms of evidence, this is not a time to pass final verdict on the issue of trespass. It remains an issue for trial – first test for injunction.

***Damages an adequate remedy***

5. Second test for injunction, is whether damages will be an adequate remedy? This test is not up for consideration here, because claimants and defendants are all into logging. They are not about protecting the forest and the environment from the destruction caused by logging. The important consideration now is to stop logging pending the resolution of the overlap/boundary/trespass issue (maintain status quo). Whoever wins later will do logging in the contested boundary/overlap. The logs can be exported by anyone to avoid deterioration of value of the logs. To do so will not affect the benefit sharing formula between the main parties concerned (landowners' royalty, licensee and contractor). But the exporter will not touch the export proceeds, pending resolution of this overlap/boundary dispute. In that regard, I will order defendants to export the logs, because logs have been hauled and now stored at their log pond. But defendants must not touch the proceeds. Proceeds to be halted in a joint solicitors' trust account.

***Balance of convenience***

6. Next test is balance of convenience. Whether balance of convenience lies in favour of granting the injunction, in that it will do more good than harm. In view of my foregoing remarks, the balance of convenience favours that both sides (claimants and defendants) are halted not to operate close to the overlap/disputed area/portion at the common border. But they can stay deep clear inside their respective concession lands.
7. Whilst I grant these injunction orders (below) parties are encouraged to resolve the issue of trespass or overlap at the common boundary. If parties do not resolve these issues then this Court will not conduct a trial either. The issues here are not matters for this Court to resolve. The Court is only here to give an aiding rôle, whilst parties themselves bring the issues to the appropriate forum for resolution (Chiefs or Commissioner of Forests). Court's aiding role is aimed at maintaining the status quo only.

***Consolidation***

8. Mr. Marahare also submitted that this case should consolidate with *Civil Case No 392/2021*, pursuant to Rule 3.10 (a), (b) and (c). Civil Case No 392/2021 is in my docket. That is not a

bad argument at all, because the two cases concern the same two above mentioned concessions and licenses, between the same parties, about the same issues of trespass and overlap, at the common border, although Mr. Jonga seems to be saying the other case is about Lepokasi Customary Land only inside S concession. The two cases are the same as submitted on by Mr. Marahare and should be justly consolidated for convenience purposes. Decision in one case will certainly affect the other because both cases have their common origin in the two above mentioned neighbouring licenses. Other issue Mr Marahare raised in oral submission is on non-full disclosure of information by claimants because they did not mention *Civil Case 392/2021*. I am satisfied by Counsel Jonga's explanations that, *Civil Case 392/2021* concentrates on *Lepokasi* and this case concentrates on *Tasolomo* (two portions of lands inside claimants' same concession/licensed area). Now that we know about these facts, it justly calls for consolidation at the right timing, to assist the Court deal with the two related cases together.

9. Court will make the following variation orders replacing the current ex-parte orders:
  - 9.1. **Claimants and Defendants are both stopped not to operate logging in the disputed area.**
  - 9.2. **Parties can stay clear inside their respective concession areas (S and Z) outside of the overlap/disputed portion.**
  - 9.3. **Defendants to export the disputed logs, to be clearly identified by both parties. And proceeds to be halted, except those normal dues going to the Government.**
  - 9.4. **Defendants to disclose by sworn statement logs harvested from the disputed portion, their volume, species and value within 14 days of this order.**
  - 9.5. **Parties to resolve the overlap/boundary issues in the appropriate forum (Chiefs or Commissioner of Forests).**
  - 9.6. **This case and Civil Case No. 392 of 2021 are hereby consolidated.**
  - 9.7. **Parties will meet their own costs.**

  
**THE COURT**  
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**JUSTICE JOHN A. KENIAPISIA**  
**PUISNE JUDGE**

