

IN THE HIGH COURT OF SOLOMON ISLANDS

Civil Jurisdiction

Civil Claim No. 498 of 2018

BETWEEN: GASO LAND DEVELOPMENT CO-OPERATIVE LTD 1st Claimant
AND: NGU BROTHERS (SI) CO.LTD 2nd Claimant

**AND: SHADRACH SUDA RIUPITA, BATAU SUDA, EDWARD AMIKI,
BAUTOME ROCKSON, KINGSLEY SAMSON, HAROLD AMIKI** 1st Defendant

AND: KOLOBANGARA FOREST PRODUCTS LTD 2nd Defendant
AND: ATTORNEY GENERAL 3rd defendant
(Representing the Commissioner of Lands)
AND: PEROSHMA LAND PURCHASE CO-OPERATIVE SOCIETY 4th Defendant

Date of Hearing: 21st June 2018

Date of Ruling: 18th November 2022

Kwaiga L: For Claimants /Respondents

Harper C: For the 1st & 4th Defendants

Radclyffe A: For 2nd defendant

Banuve S : For 3rd Defendant -Attorney General (rep Commissioner of Lands)

Judgment

KOUHOTA J

Background

The First Claimant is a co-operative society registered under section 7 of the Co-operative Society Act Cap 164. It consists mainly of members of the Gaso Clan of Leanabako Tribe of Kolobangara Island, Western Province. The Claimant avers that it holds a valid and current Felling Licence No. A 101836 and a valid and current grant of profit over parcel numbers 098-007-11 and 098-007-12.

PN 098-007-11 and PN 098-00712 are perpetual estates held by the Third Defendant. The Third Defendant granted profit over the two parcels of land to the First Claimant. Based on the profit, the First Claimant invited the Second Defendant to carry out logging operation on PN 098-007-11 and PN 098-007-12. The operation was opposed by the First and Second Defendants hence this dispute.

The dispute led to the Claimants filing a category (A) claim on 14th December 2018 seeking the following relief,

1. A permanent restraining order against the First Defendants, their agents, associates, employees or persons acting under their instructions from interfering with the logging operation conducted by the Second claimant within the First Claimant's concession under felling licence No. A101836
2. A permanent restraining order against the First Defendants and Second Defendants, their agents, associates, employees or persons acting under their instructions from harassing, intimidating or molesting the First and Second Claimants agents, servants, associates, employees or persons acting under their instructions during the duration of the Second Claimant's logging operations conducted under Felling Licence No. A 101836.
3. A permanent restraining order against the First and Second Defendants, their agents, associates, employees or persons acting under their instructions from possessing or detaining machines and equipment's owned by the Second Claimant's logging operations conducted under Felling Licence No. A 101836.
4. A declaratory order that the subdivision of Parcel Numbers 098-007-11 and 098-007-12 creating lots 240,241,243,244,245,245,250,256 and LR 395/1 by the Third Defendant is void ab-initio.
5. An order for damages against the First and Second defendant jointly and severally
6. Cost on indemnity basis and,
7. Any other orders the court deems fit by the court.

No agreed facts and issues were filed by the parties but the counsel for the Claimants submit the issues for trial are;

- 1: Whether or not PN 098-007-11 and PN 098-007-12 were subdivided?
- 2: Whether or not the claimants suffered loss and damages by the actions of the 1st and 2nd Defendants?
- 3: Whether or not the 1st and 4th Defendants have an equitable interest over PN 098-007-11 and PN 098-007-12?
- 4: whether or not the Grant of Profit issued to the 1st Claimant by the 3rd Defendant was done by mistake?

- 5: Whether or not the Claimants trespassed on PN 098-007-11 and PN 098-007-12?
- 6: Whether or not the Claimants are liable for damages on PN 098-007-11 and PN 098-007-12?
- 7: Whether or not the Claimants trespassed on PN 098-007-0036?
- 8: Whether or not the Claimants converted to their use and benefit trees alleged to have been felled in PN 098-007-0036? Counsels for the Defendants took no issues on the issues put forward by counsel for the Claimants, the Court therefore proceeded to determine the issues.

Counsel Kwaiga for the First Claimant submits that its grant of profit was obtained after it applied to the Third Defendant. The Third Defendant granted profit to the First Claimant over PN 098-007-11 and PN 098-007-12. The First Claimant avers that it paid for the required application and registration fees to the Solomon Islands government after the Third Defendant approved its application for grant of profit and as such it should be seen as a bona fide applicant and holder of the grants of profits over PN 098-007-12 and section 229(1) of the LTA may not be applicable.

Counsel for First Claimants submit that this issue should be found in favour for the claimants as the First Claimant held a grant of profit over PN 098-007-11 and PN 098-007-12 and felling licence No. A101836 when it undertook its operations within PN 098-007-11 and PN 098-007-12.

The sworn statement of Lawson Pati filed on 14th December 2018 at paragraphs 9 and 10 and copies of the grant of profit in PN 098-007-11 and PN 098-007-12 and felling licence No. A101836 are attached to the same as Annexures –LP-3 and LP -4. Counsel for the Claimant submitted that the First Claimant had lawful authority to enter and operate within PN 098-007-11 and PN 098-007-12 as it had grant of profit over PN 098-007-11 and PN 098-007-12 and felling licence No. A101836 to operate on the lands.

The Claimants submit that the issues raised by the 1st and 4th Defendant is barred by limitations and should not be entertained by the Court.

Section 9(2) of the Limitations Act [Cap. 18] states: -“ *No action shall be brought, nor arbitration shall be commence by any other person to recover any land after the expiration of twelve years from the date on which the cause of action accrued to him or, if it accrued to some person through whom he claims to that person.*”

In the present case the Fourth Defendant is not seeking rectification or claim for recovery of land but raised mistake in the grant of profit to show that the grant of profit to the First Claimant was null and void because of a mistake of law, not a mistake to do with the registration of the fixed term estates PN 098-007 -11 and PN 098-007-12. A claim for rectification or to recover land and a raising mistake as an issue of law are not the same thing, I do not think there is a time limit to raising a mistake of law to show there is an illegality. I will return to this when I consider the 4th Defendant’s counter claim.

The Claimants deny that they have trespassed on PN 098-007-036 and rely on the report annexed to the further sworn statement of Lawson Pati as annexure 2 LP-1 and submit that according to that report, the Claimants had conducted their operations mostly within PN 098-007-11 and PN 098-007-12.

Counsel for the Claimants submit that they have suffered loss as a result of the fabricated police complaint made by the Second Defendants and supported by the First Defendant. The particulars of the losses are deposed to and quantified in the 4th sworn statement of Lawson Pati filed on 4th August 2020 at paragraphs 3, 4, and 5. An invoice of the losses claimed is attached to the sworn statement of Lawson Pati as Annexure -4LP-1. I will consider the claims against each of the Defendants separately.

Claim against the 2nd Defendant

I will start with the claim against the Second Defendant first as they are not involved in the dispute over Parcel Numbers 098-007-11 and 098-007-12. The Claimants claim against the Second Defendant was for damages for its alleged involvement with the First Defendant that resulted in the detention of the Claimants logging equipment by the Ringi Police.

The Claimants initially obtained injunctive orders against the First and Second Defendants on 24th December 2018. The injunctive orders against the Second Defendant were later discharged with the Claimant's consent thus the Claimant's only claim against the Second Defendant after the injunctive orders were discharged was for damages. I believe the claim for damages was based on the allegation that 2nd Defendant was involved in making a report to the police which resulted in claimants' machine being detained by the Police which Claimants avers caused losses to them.

In order for the Claimant to succeed, the Claimant must prove that the Second Defendant made a false report to the police or that that report was not made in good faith. No such evidence was adduced by the Claimants. If the report made by the First and Second Defendants to the police was made in good faith and on reasonable believe that the Claimant had trespass into their property, I do not think any liability will arise against the First and Second Defendant in the circumstances.

For the reasons stated above the claim against the Second Defendant must be dismissed. The Second Defendant had also filed a counter claim against the Claimants. I will return to that later in the judgment.

The claim against the Third Defendant

In respect of the Claimant's claim against the Third Defendant I agree with the submission of the Solicitor General that no cause of action was alleged against the Third Defendant nor was any remedies sought against the Third Defendant. The Claimants' claim against the Third Defendant is therefore vague and must be dismissed.

The claim against the First and Fourth Defendants.

The fourth Defendant was added as a party later in the proceeding as they are members of the Fourth Defendant. The claim against the First and Fourth Defendant will be considered together.

The claim against the First Defendant was for injunctive orders to restrain the First Defendants from interfering with the logging operation of the First and Second Claimants. In view of the relief sought against the First Defendant and Fourth Defendant, to succeed the Claimants must proof ownership, interests or rights over the parcels of land PN 098-007-11 and 098-007-12 on which it was carrying out logging operation and that the First and Fourth Defendants have no right or interest in the two parcels of land. The Claimant's claim was based on a purported grant of profit and Temporary Occupation Licence (TOL) issued to them by the Third Defendant. The interests and rights of the Claimants therefore, depends on the validity

of the grants of profit and the Temporary Occupation Licence. The Claimants in support of their claim relied on the evidence of Mr Lawson Pati as per his various sworn statements and oral evidence given in Court. Mr Pati's evidence however, did not prove that the First Claimant owns parcels number 098-007-11 and PN 098-007-12 or that the profit and TOL granted by the Third Defendant to the First Claimant are valid.

Counsel for the First and Fourth Defendants submit that the Temporary Occupation Licence (TOL) issued over the two parcels of land in 2018 to the First Claimant were not for renewal but are completely new TOL and this fell outside of the powers of the Commissioner of Lands as the power to issue new TOLs was not delegated to the Commissioner of Lands. The evidence of the Commissioner of Lands Mr Allen McNeil was that the profit granted to the First Claimant and TOL awarded by the former Commissioner of Lands were illegal as the Board had not delegated the powers to grant profits and issue new TOL to the Commissioner of Lands. Mr McNeil also confirm that there was no subdivision of PN 098-007-11 and PN 098-007-12. In view of the unchallenged evidence of Mr McNeil, the Claimant's claim against the First and Fourth Defendants cannot be sustained as the grant of profit and the TOL relied on by the Claimant as basis for its claim were null and void.

The Second defendant's counter claims.

The 2nd Defendant's counter claim was for damages in trespass to land and conversion of trees allegedly felled illegally by the Claimants on the Fixed Term Estate of the 2nd Defendant PN 098-007-36. The 2nd Defendant relied on the evidence of Mr Nason Mesa in support of its counterclaim. The Surveyors engaged by the Third Defendant, in their report confirmed that the boundary identified by the surveyor of the Second Defendant was incorrect, he confirmed that the Claimants mostly conduct logging on PN 098-007-11 and PN 098-007-12. The confirmation by the Government surveyor that the boundary line made by the surveyor of the Second Defendant was incorrect raises doubts about the allegation that the Claimants encroached on PN 098-007-36 and whether the logs were actually taken by Claimant from PN 098-007-36. There is no independent assessment report to confirm if logs were actually taken from PN 098-007-36. In view of the doubts I am not satisfied to the required standard that the Second Defendant has proved its counterclaim hence the Second Defendant's counter claim must be dismissed.

The counterclaim by the Fourth defendant.

The Fourth Defendant's counterclaim was that, it has an equitable interest in PN 098-007-11 and PN 098-007-12 as they have been offered FTE for the parcels of land and had paid the required fee to the Commissioner of Lands. The Fourth Defendant relied on the evidence of Mr Herald Amiki as per a number of sworn statements filed in support the fourth Defendants case and seek relief against the First and Second Claimants. The process of registering the FTEs in the name of the Fourth Defendant was never completed and therefore is still an outstanding issue. There is evidence that the Third Defendant made an offer for PN 098-007-11 and 098-007-12 to the Fourth defendant. The Fourth Defendant accepted the offer and had complied with the conditions of the offer by paying the required fees a sum of \$3,158.83. The Fourth Defendant obtained a loan \$3800.00 from DBSI to pay the required fees, a government treasury receipt was issued for the fee paid by the Fourth Defendant. The Commissioner of Land has not transfer the titles to the FTEs to Fourth Defendant and no registration was effected. I however, consider that transfer and registration are steps which the Commissioner of Lands and the Registrar of Titles must take in performing their part of the contract to ensure that the ownership and interests of the Fourth Defendant is secure and free from all encumbrances.

I consider the transfer and registration is equivalent to a seller supplying goods to a buyer after a contract was entered into and the buyer had made payment for the goods. The supply and delivery of the goods may be delayed but that does not invalidate the contract unless time frame for delivery is specified in the contract. I am satisfied the offer by the Commissioner of Lands was accepted by the Fourth Defendant. I therefore reject the Commissioner of Lands statement that due to passages of time, his offer may no longer be valid. I am of the view that, just like any other contract when the offer is accepted the contract is created and become binding on the parties. Thus upon the Fourth Defendant's acceptance of the COL's offer of the fixed term estates, the offer ceased to exist and converted into a binding contract between the COL and the Fourth Defendant. In that respect I find that the Fourth Defendant has acquired equitable interests in PN 098-007-11 and PN 098-007-12. The equitable rights and interest have been in existence since date the contract was created hence to declared or confirm its existence now is not time barred. The Fourth Defendants counter claim relating to the equitable interest therefore succeeds hence the orders sought against the 1st and 2nd Claimants are granted and damages to be assessed.

ORDERS

1. The Claimants claim against all defendants is dismissed.
2. The Second Defendant's counterclaim against the 1st and 2nd Claimant is dismissed
3. The 4th Defendant's counter claim against the 1st and 2nd Claimants succeeds and orders sought are granted, damages to be assessed.

Costs

1. Between the Claimants and the First, Third and Fourth Defendants' cost is against the 1st and 2nd Claimants to be taxed if not agreed.
2. Between the Claimants and the Second Defendant, parties to bear their own cost.

IRA

