

IN THE HIGH COURT OF SOLOMON ISLANDS

CIVIL JURISDICTION

Civil Case Number 583 of 2015

BETWEEN: LESLY GUA, PAUL ANIA, BONI RAYMOND Claimants
MISITANA & HARRY KWAIKALIA
(Representing Arafu Tribe)

AND: JOHN BAE, BRIAN MANI, CHARLES LAURI, 1st Defendants
Fr OBED GWAO & GABRIEL AUGERE
(Representing Gwalebu Tribe)

AND: JOSEPH LIMEI, WILSON FAFALE, BRIAN NGOLI 2nd Defendants
& GABRIEL AUGERE
(Proprietors of Bakoilangi Sawmilling and Logging Company)

AND: SAMLIMSUN (SI) LIMITED 3rd Defendant

AND: COMMISSIONER OF FORESTS RESOURCES 4th Defendant

Date of Hearing: 5th July 2022.

Date of Ruling: 2nd September 2022.

Mr. R. Firigeni for Claimants/Applicants.

Mr. L. Kwana for 1st and 2nd Defendants/Respondents.

Mr. C. Fakari'i for 3rd Defendants/Respondents.

KENIAPISIA; PJ:


RULING ON APPLICATION FOR SUMMARY JUDGMENT

1. With leave of the Court, claimants filed amended claim on 1/11/2021. The amended claim seeks relief for the release or payment of royalty monies to claimants. Claimants alleged they are entitled to receive royalty from the land on which logging operations of the 2nd and 3rd defendants took place. First defendants granted timber rights to the 2nd defendants (licensee). Second defendants contracted the 3rd defendant (contractor) to fell trees from the disputed land under a Form 4 timber rights agreement.
2. Claimants alleged they are entitled to the royalty money, because they own the land on which trees were felled and exported. Claimants refer to that land as “**Aigwanoe Binaiano Customary Land (“ABCL”)**”. Claimants also extend the said ABCL to include a portion called **Oteneia (“O”)**. Claimants rely on Land Court decisions made in their favour, from 2015 – 2019.
3. First defendants deny that claimants are the owners of the land under dispute. First defendants called the land under dispute “**Bina Gwelabu Customary Land (“BGCL”)**”, inclusive of **O**. The BGCL/O according to 1st defendants is where the logging operation took place. First defendants alleged they own the BGCL/O. And they say the ownership dispute is still alive and pending resolution before the Chiefs, in year 2022.

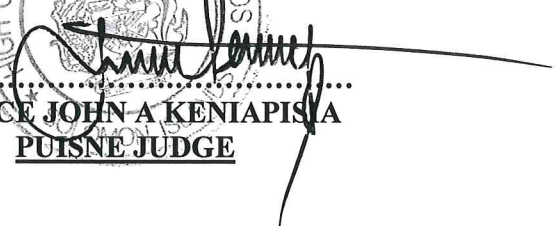
4. First defendants deny that claimants are the true descendants of Arufiubasi Tribe (“AT”). First defendants assert they are the true descendants of AT. And that they (AT) are the true owners in custom of the disputed land.
5. The above is a nutshell outline of the dispute, as I can deduce, from the pleadings and sworn statements. I gathered the following as some of the emerging issues: -
 - (i) Whether claimants or 1st defendants are the true descendants of AT?
 - (ii) Whether AT (claimants or 1st defendants) are the owners in custom of ABCL/O or BGCL/O?
 - (iii) Whether AT (claimants or 1st defendants) are the true owners in custom, hence, entitled to receive the royalty monies payments?
 - (iv) Whether or not the land in dispute is called ABCL/O or BGCL/O and which of these two parties (claimants or 1st defendants) own that land, for purpose of royalty entitlements?
6. Claimants applied for summary judgment on their amended claim. But that amended claim has given rise to the issues, I discussed above. The issues, I discussed above means, there is a real dispute between claimants and 1st defendants about the *ownership* of the disputed land and hence about who is entitled to receive the *royalty money*. This is not a healthy environment for the Court to enter summary judgment (terminate matter early when there is a real dispute about a material fact (*ownership* and *royalty entitlement*) between parties – Rule 9.66).
7. Following are some of the main arguments Counsel advanced at submissions: -
 - (i) Claimants say in **2015**, before the East Fataleka House of Chiefs (“EFHC”) they have a favourable decision over the disputed land. Claimants assert 1st defendants admitted to claimants’ ownership before the EFHC, by signing the *Form I – Accepted Settlement*. The said *Form I* is disclosed in evidence. I examined the *Form I* and the space for 1st defendants to sign is blank. First defendants deny signing the *Form I* and deny admitting to claimants’ ownership. Whilst I can see the *Form I – Accepted Settlement*, I cannot see the decision upon which the *Form I - Accepted Settlement* was derived. So, I am not sure, whether or not there was a decision/settlement, by the EFHC, that 1st defendants have subsequently accepted, by completing the said *Form I – Accepted Settlement*. The purported decision of EFHC was dated **18/11/2015** (the *Form I – Accepted Settlement*).
 - (ii) First defendants said they were not present before the EFHC. So lodged an appeal to the Malaita Local Court (“MLC”). On the **30/8/2016**, MLC awarded equal rights ownership to claimants and 1st defendants.
 - (iii) Claimants appealed to Malaita Customary Lands Appeal Court (“MCLAC”). Materials showed that it was an appeal by both parties against equal rights decision, by MLC. The MCLAC overturned the MLC decision on the ground of defective referral to MLC. The MCLAC referred the dispute back to the Chiefs. One of the orders by MCLAC says: *“The case is remitted back to the Chiefs, either for a fresh hearing, or for a proper referral to be made by the losing party in the Chiefs determination of 18/11/2015”*. It must be noted that the decision of the MCLAC was made on a preliminary issue only (defective referral to MLC) and not on the merit of the dispute. The MCLAC decision was dated **9/11/2018**.
 - (iv) Pursuant to the MCLAC order, the Fataleka House of Chiefs convened on **20/2/2019**. According to claimants, both parties agreed to endorse the *Form II - Unaccepted*

Settlement, in light of the EFHC decision made on **15/11/2015** (refer to paragraph 7 (1) above). There was no fresh hearing. Claimants maintained that 1st defendants admitted to their ownership by completing the *Form II - Unaccepted Settlement* in **2019**. The **2019 Form II - Unacceptable Settlement** is sitting on the **2015 Form I - Accepted Settlement Form** – a fact 1st defendants denied.

- (v) Following the **9/11/2018** MCLAC orders, the 1st defendants disputed the **2019** Fataleka House of Chiefs hearing, saying, it was not a proper hearing in that the Fataleka House of Chiefs merely adopted the EFHC decision of **15/11/2015**, through the purported adoption of the *Form II - Unacceptable Settlement* (repeat paragraph 7 (iv) above).
 - (vi) Pursuant to the MCLAC order, the 1st defendants have referred the dispute to Fataleka House of Chiefs, scheduled for hearing on **25/5/2022**.
8. Claimants have filed the amended claim on **1/11/2021**. Claimants alleged that the dispute has been finally and conclusively settled by Fataleka Council of Chiefs sitting on **20/2/2019** – where by the *Form II - Unaccepted Settlement* was adopted. Claimants took the position that this was one of the options ordered in the MCLAC decision of **9/11/2018**. First defendants however opted for a fresh Chiefs hearing (the other option) MCLAC ordered on **9/11/2018**.
 9. Court found great difficulty in understanding Counsel Firigeni’s submission. I do not read in any of the Land Court decisions, a final determination of the disputed land herein. The MCLAC decision of **9/11/2018** did not give a final decision on ownership between the parties. As hinted above, it was a decision made on a preliminary issue only.
 10. Court tend to place more reliance on Counsel Kwana’s contention that the MCLAC remitted the matter back to the Chiefs either for fresh hearing by the Chiefs or for a proper referral to be made to MLC regarding the Chief’s decision of **18/11/2015**. But I have not read any Chiefs decision dated **18/11/2015**, except the *Form I - Accepted Settlement*, half completed, because 1st defendants did not sign (repeat paragraph 7 (i)).
 11. **In the final analysis, I have read 3 major Land Court decisions - (i) 18/11/2015 – by EFHC (*Form I - Accepted Settlement*), (ii) 30/8/2016 – by MLC (*equal ownership award*) and (iii) 9/11/2018 – by MCLAC (*remittal back to Chiefs or MLC subject to proper referral*). I am satisfied this dispute is still very much alive before the Chiefs for fresh hearing and or before MLC (subject to proper referral). Accordingly, I refuse summary judgment. I award cost against claimants on indemnity basis, for bringing an application that was against the clear evidence - what Counsel Kwana referred to as erroneous and misleading application. I will assess costs.**



THE COURT



JUSTICE JOHN A KENIAPISIA

PUISNE JUDGE

