

**IN THE HIGH COURT OF SOLOMON ISLANDS**

**CIVIL JURISDICTION**

**Civil Case Number 189 of 2017**

**BETWEEN: HHD DEVELOPMENT LIMITED**

**- Claimant**

AND:	PATTERSON NATEI	-1 <sup>st</sup> Defendant
AND:	HENRY SAU	-2 <sup>nd</sup> Defendant
AND:	JOE MARTIN SEMI	-3 <sup>rd</sup> Defendant
AND:	JACK OTOFOTO	-4 <sup>th</sup> Defendant
AND:	DICK VAU	-5 <sup>th</sup> Defendant
AND:	WILSON TOLONGEA	-6 <sup>th</sup> Defendant
AND:	MATHEW NATEI	-7 <sup>th</sup> Defendant
AND:	HENDRY TELEU	-8 <sup>th</sup> Defendant
AND:	JIMMY RAMO	-9 <sup>th</sup> Defendant
AND:	STEVE MELIVE	-10 <sup>th</sup> Defendant
AND:	STEVE LAORE	-11 <sup>th</sup> Defendant
AND:	MARTIN MOALI	-12 <sup>th</sup> Defendant
AND:	MARY PONIGA	-13 <sup>th</sup> Defendant
AND:	FLORENCE PANIGA	-14 <sup>th</sup> Defendant
AND:	SIMON MOLI	-15 <sup>th</sup> Defendant
AND:	STEVEN OAMOLA	-16 <sup>th</sup> Defendant
AND:	MATHIAS UTUPIA	-17 <sup>th</sup> Defendant

**Date of Hearing: 15<sup>th</sup> August 2022 and 16<sup>th</sup> September 2022 (Supplementary submissions).**

**Date of Ruling: 23<sup>rd</sup> September 2022.**

*Counsel; Mr. Rano for the Claimant/Applicant.*

*Counsel; Mr. Upwe for Defendants/Respondents 1, 5, 6, 7, 8, 9, 10, 11, 13, 14 and 17.*

**KENIAPISIA; PJ:**

**RULING ON FURTHER AMENDED APPLICATION FOR SUMMARY  
JUDGMENT AND DETERMINATION OF PRELIMINARY ISSUES OF  
LAW**

*Introduction.*

1. Court ruled earlier refusing default judgment. Court detected two main issues for trial. This ruling should be read in conjunction with the earlier ruling delivered on 4/09/2020. The two (2) main issues are: (i) *prescription* and (ii) *overriding interests*. Court detected the 2 issues from the draft defence and counter claim. Court said that prescription (by adverse possession) and overriding interests are “rights” that could possibly be exceptions under Section 110, of the Lands and Titles Act (Cap 133) as amended in 2014 – (“the LTA”) - See paragraph 20 below for full citation. Court said that such rights are likely to defeat claimant’s indefeasible title (See paragraphs 4 and 5 of Court’s ruling delivered on 4/9/2020).
2. The represented defendants, filed defence and counter claim on 17/09/2020. Claimant filed requests for further better particulars on 6/09/2020 (should logically be 6/10/2020). The represented defendants filed answers on 19/02/2021. By further amended combined application filed 4/11/2021, claimant applied for summary judgment and determination of preliminary issues of law in respect of the defence and counter claim. The impact of the said application is to terminate this proceeding early under Rule 9.57 and or Rule 12.11. Counsel Rano emphasised that the overriding objective of the Rule is for the Court to deal with cases justly, with minimum delay and expense (Rule 1.3).

***Terminating proceeding(s) early under Rule 9.57 and Rule 12.11.***

3. Claimant may apply for summary judgment under Rule 9.57, where the defendant has filed response or defence, but the claimant believes that the defence does not have any real prospect of defending the claim. Claimant believes that defendants do not have any real prospect of defending the claim because the 2 issues are purely issues of law. Being purely issues of law, claimant believes it can also utilize Rule 12.11 read with Rule 9.57 to bring this claim to an early termination. Court will enter summary judgment if there are no contentious issues between the parties to reach trial. And there must be clear evidence (Rule 9.59 (a)) to support claimant’s belief that defendants do not have a real prospect of defending the claim.
4. Rule 12.11 provides that the Court may hear legal arguments on preliminary issues of fact or law between the parties, if it appears likely that, if the issues are resolved, the proceeding or part of the proceeding, will be resolved without a trial, or the costs of the proceeding or the issues in dispute are likely to be substantially reduced.
5. Rule 12.11 is a useful mechanism for early resolution of dispute without going through the huge cost burden of full trial. But the question of law or fact for determination must be carefully framed and recorded. If it is a question of law, it must be determined along with relevant facts (AG and Others –v- Jui Hui Chan (2017) SBCA 5; SICOA- CAC 36 of 2016 (5<sup>th</sup> May 2017)).

***Preliminary Issues of Law for determination under Rule 12.11 framed and recorded with Court's involvement in the Further Amended Application.***

6. The 2 preliminary issues of law are summarised from the combined further amended application consistent with the 2 main issues isolated from Court's earlier ruling of 4/09/2020, as follows:-
  - (i) *Whether defendants are entitled to prescription (by adverse possession), under Section 224 read with Section 225 of the Lands and Titles Act (Cap 133) as amended in 2014 ("the LTA")?*
  - (ii) *Whether defendants are entitled to overriding interests (actual occupation), under Section 114 (g) of the LTA?*

***Essential facts, supported by clear evidence, to be determined along with the 2 preliminary issues of law posed for Rule 12.11 hearing.***

7. The represented defendants have been living and occupying parts of the disputed land, PN 192-004-379 ("PN 379"), since 2003/2004. From 2003/2004 to 2017, a company called PacSeq was the owner of the Fixed Term Estate ("FTE") in PN 379. PacSeq had since sold the FTE to the claimant ("HHD") in 2017. So HHD filed this claim in 2017 (original claim) to evict defendants from PN 379 and to take ownership and enjoyment of its land (FTE interest).
8. From 2003/2004 to 2016, PacSeq as the previous owner, had attempted thrice, to evict defendants from PN 379. The clear evidence shows that PacSeq had filed three (3) cases to evict defendants during the tenure of its ownership from 2003/2004 – 2016/2017. **First** in the Magistrate Court, *Civil Case No. 26 of 2006* filed on **10<sup>th</sup> April 2006**. **Second** attempt was made in **2006** in the High Court, *Civil Case No. 198 of 2006* filed on **16<sup>th</sup> May 2006**. The *Civil Case No. 198 of 2006* reached enforcement in **2007**. **Third**, in **2016** PacSeq also filed eviction proceeding against defendants but discontinued because PacSeq sold this disputed land to claimant in 2017. The represented defendants admitted to the **2016** case that it has been discontinued against them (See paragraph 9 of defence and counter claim).
9. HHD filed this case in **2017** – *Civil Case No. 189 of 2017*. This claim was filed aimed at removing defendants from PN 379. The original claim was filed **8/05/2017**. Amended claim was filed **17/05/2017**. And fresh claim or further amended claim was filed on **17/04/2019**, by order of the Court.



*Law on Prescription rights (by adverse possession).*

**Section 224 of the LTA – Prescription rights**

224 (1) The ownership of an estate or a registered lease may be acquired, subject to Part VII, against the person registered as the owner of the estate or the lease as the case may be by peaceable, overt and uninterrupted adverse possession of the land comprised in the estate or lease for a period of twelve years:

Provided that –

- (a) the interest acquired in the land by virtue of this section shall be the interest of the owner against whom the adverse possession occurs; and
- (b) no person shall so acquire the ownership of any estate or lease in any land vested in or owned by the Commissioner or a local authority.
- (2) Any person claiming to have acquired an estate or lease by virtue of the provisions of subsection (1) may, after having advertised or given notice in such manner as the High Court may direct, apply to the High Court for an order that he be registered as the owner thereof. (My underlining).

**Section 225 of the LTA - Adverse Possession rights**

225 (1) For purposes of section 224 –

- (a) possession of land shall be adverse possession when it is possessed by a person, not being the owner, without the permission of the person lawfully entitled to possession and accordingly possession by a person of land comprised in a lease without the permission of the owner of the lease shall be adverse possession against that owner but not against the owner of an estate or lease from whom the owner of the lease derives title;
- (b) where land is subject to a lease the receipt of the rents and profits of the land by any person who is not the lessor for the time being or a person authorised by him shall be deemed to be adverse possession against the lessor; and
- (c) possession of a claimant shall not qualify as adverse possession unless it is possession of the claimant in person or is deemed to have been such possession by the following provisions of this section.
- (2) where it is shown a person has been in possession of land, or in receipt of the rents or profits thereof at a certain date and is still in possession or receipt thereof, it shall be presumed that he has, from that date, been in continuous possession of the land or in continuous receipt of the rents or profits until the contrary is shown.
- (3) Possession of land or receipt of the rents or profits thereof by any person through whom a claimant derives his title shall be deemed to have possession or receipt of the rents or profits by the claimant.
- (4) adverse possession by a succession of persons not claiming through one another shall not be deemed to be uninterrupted adverse possession within the meaning of section 224.

(5) where from the relationship of the parties or from other special cause it appears that the person in possession of land is or was in possession on behalf of another, his possession shall be deemed to be or to have been the possession of that other.

(6) if a person whose possession of land is subject to conditions imposed by or on behalf of the owner of an estate therein or lease thereof continues in such possession after the expiry of the term during which such conditions subsist without fulfilling or complying with such conditions and without any exercise by the owner of his right to the land, such subsequent possession shall be deemed to be peaceable, overt and uninterrupted adverse possession for the purposes of section 224.

(7) for the purposes of subsection (6) –

(a) a tenancy at will shall be deemed to have determined at the expiration of a period of one year from the commencement thereof unless it has been previously determined;

(b) a tenancy from year to year or other period shall be deemed to have been determined at the expiration of the first year or another period:

Provided that where any rent has been subsequently paid in respect of the tenancy, it shall be deemed to have determined at the expiration of the period for which the rent has been paid.

(8) possession shall be interrupted –

(a) by physical entry upon the land by any person claiming it in opposition to the person in possession with the intention of causing interruption if the possessor thereby loses possession:

(b) by the institution of legal proceedings by the owner of the estate or lease to assert his right thereto; or

(c) by any acknowledgement made by the person in possession of the land to any person claiming to be the owner of an estate therein or lease thereof that such claim is admitted.

(9) No person possessing land in a fiduciary capacity on behalf of another shall acquire by prescription any title to the land as against such other” (My underlining).

10. *Section 224 and Section 225* are interrelated in terms of understanding the right to *prescription* by *adverse possession* under different facts scenarios. Court will interpret the provisions of *Section 224 and Section 225* and apply them to the facts scenario at hand. The quotations above are lengthy and technical for a lay person to understand. Court will try to capture the essence of the provisions and apply them in a simple manner to resolve the two preliminary issues of law posed for determination above.

***Issue of Law No. 1 - Prescription Rights (by adverse possession) – Section 224 read with Section 225 (1) (a) read with Section (8) (a) – (c)?***

11. For the defendants to acquire unregistered or equitable prescription rights (by adverse possession) in the FTE of PN 379 and to defeat PacSeq and or HHD registered FTE, at the material times, defendants must have enjoyed peaceful, overt and uninterrupted adverse possession of the FTE of PN 379 for 12 straight years. In that 12 straight years, PacSeq and



or HHD must not have interrupted defendants' peaceful and overt adverse possession. And if that was so, defendants must in addition, apply to the High Court, for an order that their unregistered rights be registered substituting PacSeq and or HHD's registered FTE title. So mere assertion of prescription rights (by adverse possession) is not enough. Defendants must apply to the High Court for a declaration that they now meet the 12 straight years of peaceful, overt and uninterrupted adverse possession/occupation. And High Court should declare them owners of the FTE in PN 379, even though, Pacseq and HHD have FTE legal title, at different times. Defendants' occupation just have to be 12 straight years of peaceful, overt and uninterrupted adverse possession. And High Court must grant defendants such entitlement (Court Order). The onus is on the defendants to not only occupy the land peacefully and uninterrupted for 12 years. But to also apply and obtain High Court order endorsing such rights against Pacseq and or HHD. That is why Court ruled earlier that prescription right does not have to be connected to any verbal agreement with PacSeq. Prescription right by adverse possession, just have to be based on 12 straight years of uninterrupted possession, or living on the land, plus a supporting High Court Order. High Court's involvement is important because it gives opportunity for PacSeq and HHD to be heard on the take-over of their FTE registered title.

12. *Laperouse*<sup>1</sup> shows that even a *settler* or a *squatter* who has lived and occupied a portion of registered land, continuously for 12 straight years, without interruption, can be entitled to ownership of the land through prescription rights (by adverse possession). In such instance, the squatter is said to have acquired the land through prescription (by adverse possession) conditional upon Section 225 (8) (a) – (c), discussed herein at paragraphs 11 - 17. But *Laperouse* is not a good case to use as precedent in support of rights asserted under Section 224 because the facts of *Laperouse* did not touch on the requirement for a supporting High Court Order. The trial was conducted one sided. So the trial Judge did not consider the requirement for a High Court Order under Section 224. *Laperouse* case was a good precedent for adverse possession by prescription for 12 years uninterrupted possession under Section 225 (8) (a) – (c).
13. Court is satisfied that the defendants have not occupied PN 379 for 12 straight years uninterrupted adverse possession by year **2016** (counting from **2003/2004**). Court says this because the clear evidence shows that defendants purported peaceful, overt and uninterrupted adverse possession was interrupted in **2006, 2016** and **2017** by the institution of 3 legal proceedings – meaning by the filing of High Court cases - (Section 224 read with Section 225 (8) (b)). In addition, defendants do not have a favourable High Court Order, sanctioning their rights to prescription (by adverse possession). Hence defendants have not earned the rights to prescription by adverse possession under Section 224 (1) and (2) read with Section 225 (1) (a) and 225 (8) (b). Court can make that conclusion now, rather than at trial, because the clear evidence, regarding absence of High Court Order and interruption by the filing of 3 High Court proceedings in **2006, 2016** and **2017** will not change at trial.

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<sup>1</sup> *Laperouse Restaurant Company Ltd –v- AG (2019) SBHC 16; HCSI-CC 82 of 2014 (7<sup>th</sup> January 2019)*.

Accordingly, Court is satisfied that prescription rights (by adverse possession) under Section 224 alleged in the defence and counter claim, does not have any real prospect of defending claimant's claim under Rule 9.64 (a) – (e). On the available clear evidence, doubtful to change at trial, there is no contentious issue(s), about the rights alleged as prescription (by adverse possession), under Section 224. Counsel Upwe made one interesting submission that Court will return to later (paragraphs 24 and 25 below). That submission is defendants are applying for a High Court Order under Section 224 in their defence and counter claim filed on 17/09/2020. So, Court must proceed to trial to determine the asserted rights.

***Prescription rights (by Adverse possession) – Section 225 (1) (a) and Section 225 (8) (a) – (c)?***

14. Defendants will only be entitled to 12 straight years of peaceful, overt and uninterrupted adverse possession against PacSeq and or HHD, if they were not interrupted by PacSeq and or HHD through physical entry, institution of legal proceedings or acknowledgement that PacSeq and or HHD are owners - (Section 225 (1) (a) read with Section 225 (8) (a) - (c)).
15. The facts here supported by clear evidence shows that defendants were in actual occupation of the land (PN 379) since **2003/2004**. To be entitled to prescription (by adverse possession), defendants' possession/occupation of PN 379 must have been for 12 straight years *uninterrupted*. That is to say from **2003/2004** to **2016/2017**, PacSeq and or HHD must not have interrupted defendants peaceful and overt adverse possession of PN 379, through *physical entry*, or *institution of legal proceedings* or *acknowledgement*.
16. The facts here supported by clear evidence shows that PacSeq took defendants to Court in **2006/2007**. So, defendants 12 straight years of peaceful and overt adverse possession of PN 379 was interrupted by the institution of legal proceeding by PacSeq in **2006/2007**. PacSeq again took defendants to Court in the **2016** discontinued High Court case – conceded in defence and counter claim (repeat and reaffirm paragraph 8). For the benefit of doubt, we have to start counting for another 12 straight years' uninterrupted adverse possession from **2006/2007** (period of the first litigation). That will come to **2018/2019**. But as the clear evidence again showed, PacSeq instituted the second discontinued High Court case against defendants in **2016**. And HHD took legal action (*institute legal proceeding*) to evict the defendants in **2017**. Defendants 12 straight years of possession was again interrupted in **2016** and **2017**. And so, defendants are not entitled to prescription (by adverse possession) rights under Section 224 read with Section 225 (1) (a) and Section 225 (8) (b) of the LTA. The result is that the defence raising the issue of prescription right(s) by adverse possession does not have any real prospect of defending claimant's claim guaranteed by indefeasible title, the hallmark of our *Torrens* system under Section 110 of the LTA.



17. Counsel Upwe conceded at oral submission that for the rest of the defendants, the above discussed disentitlement to prescription rights (by adverse possession) under Section 224 and Section 225 would apply because the rest of the defendants were parties to the **2006**, **2016** and **2017** litigation cases instigated by PacSeq and HHD. But for defendants 1, 5 and 6 they were not parties to the **2006** litigation. They were parties only in the **2016** and **2017** cases. So the **2006** case by PacSeq would not apply to them, except the **2016** and **2017** cases. What this means is that defendants 1, 5 and 6, their peaceful, overt, uninterrupted adverse occupation was not interrupted under Section 225 (8) (b) by year **2006**, when PacSeq instigated the first litigation. Court will return to this argument later, in respect of defendants 1, 5 and 6 (See paragraph 22 below). For the rest of the defendants, however, Court can conclude now, rather than at trial, that they are not entitled to prescription (by adverse possession) under Section 225 (8) (b) because of the interruptions through litigations made in **2006**, **2016** and **2017**. The clear evidences upon which Court made this conclusion will not change at trial. The clear evidences are the filing of 3 High Court cases in year **2006**, **2016** and **2017**. Court is satisfied that for the rest of the defendants their claimed rights to prescription (by adverse possession) were adversely affected or interrupted by the filing of 3 High Court cases by Pacseq in **2006**, **2016** and HHD in **2017**. Therefore the defence and counter claim raising prescription rights (by adverse possession) does not have any real prospect of defending claimant's claim. There are no contentious issues, to reach trial, on prescription rights (by adverse possession).

***Issue of Law No. 2 - Overriding Interests under Section 114 (g) of the LTA – Actual Occupation Rights?***

18. Defendants also raised in defence that they have overriding interests to PN 379 under Section 114 (g) of the LTA – meaning they have *actual occupation rights* to PN 379. What this section is saying is that, even though defendants may not hold the legal title (FTE interest in PN 379), they can acquire unregistered *overriding interest* rights through *actual occupation* of PN 379. Court will only consider defendants actual occupation – for being on the land, continuously for 12 years as trespassers, without any reliance on legitimate expectation, based on verbal agreement. This is the same approach Court took in considering prescription rights (by adverse possession) pursuant to Section 224 read with Section 225 above.
19. Defendants faced a major single hurdle in their assertion for rights under Section 114 (g) – *actual occupation rights*. As the *ratio decidendi* in *Paza*<sup>2</sup> says - defendants cannot claim actual occupation rights because, they have not occupied PN 379 with lawful authority from the FTE owners (either PacSeq or HHD). Court already ruled earlier that defendants cannot claim permission pursuant to any verbal agreement with PacSeq (See paragraph 6 read with Order 10.3 of ruling delivered on 4/09/2020). Defendants did not plead that PacSeq and or

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<sup>2</sup> *Paza –v- Sivoro (2018) SBCA 2; SICOA-CAC 16 OF 2017 (11<sup>TH</sup> May 2018).*



HHD gave them lawful permission to be on the land; except through the verbal agreement, already barred in Court's earlier ruling. It follows that the defence and counter claim raising actual occupation rights cannot stand because neither PacSeq nor HHD gave authority for the defendants to reside on PN 379. Defendants' occupation was without authority and therefore unlawful occupation for purpose of Section 114 (g) – Paza. Unlawful occupation cannot give rise to *actual occupation rights* defendants alleged – *Paza*. There is no contentious issue about lawful authority to reach trial. Defendants have actually occupied PN 379 from **2003/2004 – 2016/2017**, but without lawful authority, from PacSeq and HHD. Evidences for this lack of lawful authority, were the filing or institution of 3 High Court eviction cases in **2006, 2016 and 2017**. Hence the defence raising overriding interest does not have any real prospect of defending claimant's claim. Court can enter summary judgment now and not go to trial, because the evidences on the 3 High Court cases will not change at trial (no contentious issue to go to trial on lack of authority to justify *actual occupation rights*).

***Torrens system – indefeasibility of title secured by registration.***

20. This is a claim for ownership of registered land (PN 379). Claimant acquired FTE lease over PN 379 for valuable consideration in **2017**. Under our *Torrens system* mirrored in our LTA, the overriding purpose is to establish certainty of ownership of interests in land by registration. Put another way, the land register is conclusive evidence of ownership. An interest in FTE in the context of this dispute, once registered, then there is certainty of ownership, is protected under the LTA, is indefeasible and can only be defeated under fraud or mistake under Section 229 (1) and (2) of LTA. Section 110 of the LTA, relevantly stated the protection as follows:-

**110. “The rights of an owner of a registered interest, whether acquired on first registration or whether acquired subsequently for valuable consideration or by an order of Court, shall be rights not liable to be defeated except as provided by this Act, and shall be held by the owner, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject –**

- (a) to the leases, charges and other encumbrances and to the conditions and restrictions (if any) affecting the interest, and shown or referred to in the land register or implied by this Act; and
- (b) to such liabilities, rights and interests as affect the same and are declared by Section 114 (which relates to overriding interests) not to require noting in the register:

Provided that nothing in this section shall be taken to relieve an owner from any duty or obligation to which he is subject as a trustee.” (My underlining).

21. Claimant's certainty of ownership is anchored at law as discussed above. And will not change at trial because the relevant essential facts or evidence upon which Court made the above conclusions will not change at trial. So Court can affirm the 2

preliminary issues of law posed in the combined further amended application and terminate this proceeding early under Rule 12.11. And parties do not have to go through the huge cost of litigation that will be very heavy at trial. Additionally, the defence and counter claim alleging prescription rights (by adverse possession) and overriding interests does not have any real prospect of defending claimant's claim or the defence has no arguable defence under Rule 9.64 (a) – (e).

***Defendants 1, 5 and 6 – Prescriptions rights (by adverse possession) not interrupted by the 2006 High Court case?***

22. Counsel Upwe submitted that defendants 1, 5 and 6 were not named in the High Court eviction case in **2006**. Hence these 3 defendants' adverse possession was not interrupted by the **2006** High Court litigation. So that by **2015** they have earned peaceful, overt and adverse occupation without interruption. This submission was based on answers to request for further and better particulars. I will accept that the **2006** case did not name the 3 said defendants. It means from **15<sup>th</sup> December 2003** to **15<sup>th</sup> December 2015**, their 12 straight years' uninterrupted adverse peaceful possession was not interrupted by PacSeq's first litigation filed in **2006**. They should have filed for a High Court Order against PacSeq under Section 224 in **2015**. They did not. They sat on their rights and now 5 years behind (late), say that their defence and counter claim filed on **17/09/2020** is seeking relief for High Court Order under Section 224. They are prohibited from asserting any such rights against PacSeq. Had they applied in **2015**, they would have met with resistance from PacSeq. Court took this view because a year later in **2016**, PacSeq filed its second litigation case against defendants including the said 3 defendants. Additionally, had they applied in **2015**, they would have no better direct and superior rights against PacSeq, who holds an indefeasible title. For they cannot rely on *verbal agreement*. They cannot rely on *prescription rights (by adverse possession)*. They cannot rely on *overriding interest (actual occupation)*, for the same reasons and conclusions already arrived at in this decision (repeat and reaffirm paragraphs 7 – 21).
23. The said 3 defendants alleged they were occupying PN 379 on or around **December 2003** under some verbal agreements with the original owner PacSeq. They reside on the land due to some legitimate expectation derived from their verbal agreement with PacSeq. And then they invited the other defendants to also come and stay with them. Court's earlier ruling, stopped defendants from pleading anything that touches on the verbal agreement defendants had with PacSeq – See Order 10.3 of ruling dated **4/09/2020**. Defendants placed reliance on the verbal agreement in paragraphs 4 (a) – (j) of defence and counter claim. Essentially in these paragraphs, the 3 defendants alleged that they have placed reliance on a legitimate expectation derived from a verbal agreement they reached with former owner PacSeq. On the basis of the legitimate expectation, the 3 defendants have developed PN 379 for various business undertakings in the agriculture and transport sector and build their permanent



houses. On the basis of the same legitimate expectations, the 3 defendants then invited the other defendants to also come into and occupy PN 379 in **2004**. And all the defendants have placed reliance on the same legitimate expectation for their occupation and utilization of PN 379 for business and dwelling purposes since **2003/2004**. Any defence premised on the verbal agreement with PacSeq does not have any real prospect of defending claimant's claim. For the Court already prohibited defendants from pleading rights derived from the verbal agreement with PacSeq (See Order 10.3 read with paragraph 6 of the earlier ruling dated **4/09/2020**).

***Defendants are applying for High Court Order in respect of their asserted prescriptions rights (by adverse possession) under Section 224 in their defence and counter claim?***

24. Defendants defence and counter claim was filed on **17/09/2020**. Counsel Upwe submitted that in that defence and counter claim, defendants are seeking relief for a supporting High Court Order under Section 224 of the LTA, in respect of their alleged prescription rights (by adverse possession), having lived on PN 379, for 12 straight years of peaceful, overt and uninterrupted adverse possession from year **2003/2004**. Court found against defendants above because their 12 years peaceful, overt and adverse possession was interrupted by the filing of 3 High Court cases in **2006, 2016 and 2017** (repeat and reaffirm paragraphs 10 – 17 above). Court concluded above that Section 224 and Section 225 are interrelated.

***Conclusion; Outstanding Issue and Orders.***

25. Court is satisfied that the applicant had put out a convincing case to terminate this proceeding early through summary judgment and determination of preliminary issues of law under Rule 9.57 and Rule 12.11 respectively. However, there is one more outstanding issue, Court detected, when considering this combined application. That outstanding issue is, *negligence* and *damages* (compensation for harm suffered from negligence). This issue is not subjected to the application at hand. The alleged negligence is pleaded at paragraph 9 (a) – (i) of defence and counter claim. Essentially defendants are saying they suffered harm (financial loss) from claimant's negligent actions, when their properties were damaged as a result of enforcement orders carried out in *Civil Case 85 of 2018* – a case they were not parties to. Court will properly investigate this outstanding issue either at trial or through another interlocutory application. Counsel to prepare quickly. But this should not stop eviction of defendants. Court will therefore grant the reliefs sought in the claim as follows:-

- 25.1. Claimant with immediate effect, shall take possession of PN 379, situated at Lungga, Guadalcanal Province.
- 25.2. Damages for mense profit to be assessed, if desirable.
- 25.3. Cost to be assessed if desirable.
- 25.4. Court to resolve the outstanding issue on negligence.



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**JUSTICE JOHN A KENIAPISIA**  
**PUISNE JUDGE**