

**IN THE SOLOMON ISLANDS COURT OF APPEAL**

<b>NATURE OF JURISDICTION:</b>	Appeal from Judgment of The High Court of Solomon Islands (Faukona J )
<b>COURT FILE NUMBER:</b>	Civil Appeal Case No. 32 of 2019 (On Appeal from High Court Civil Case No. 439 of 2013)
<b>DATE OF HEARING:</b>	26 July 2022
<b>DATE OF JUDGMENT:</b>	12 August 2022
<b>THE COURT:</b>	Goldsbrough P Palmer CJ Hansen JA
<b>PARTIES:</b>	HARRY PHILIP  -V-  FRANCIS MALO & OTHERS
<b>ADVOCATES:</b>	
APPELLANT:	Laurere, N
RESPONDENT:	Hapa, C
<b>KEY WORDS:</b>	Doctrine of res judicata, issue estoppel
<b>EXTEMPORE/RESERVED:</b>	RESERVED
<b>ALLOWED/DISMISSED</b>	Dismissed
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## JUDGMENT OF THE COURT

1. This is an appeal against the orders of the Court dated 31<sup>st</sup> July 2019 in which the judge refused to grant the orders sought in the Claim for *inter alia* that the Memorandum of Agreement (“MOA”) entered into between the Claimant and the First and Second Defendants on the 4<sup>th</sup> November 2011 is valid and binding on the parties, and for damages for loss of business earnings, wharf damages in the sum of \$68,000.00, general damages for (a) \$35,000 charter payment, (b) \$14,000 for repair work on the boat before the sale agreement, (c) \$74,040 debts to Ports Authority, (d) \$200,000 part payment towards the purchase price, and (e) \$2,509,504.90, plus costs on indemnity basis and 5% interest on the judgement sum.
2. In a rather long winded Notice of Appeal filed on 23 September 2019, the Appellant argues *inter alia* that the judge erred in his findings about the MOA, the allegation of fraud raised against the finding of the Court in HC/CC 469 of 2011 and the consequential orders to dismiss their claim for damages and awarding the Respondent damages instead in their counterclaim.
3. The details of the Appeal are set out more fully in the said Notice of Appeal from pages 2-5 paragraphs (1) – (14). The orders sought were:
  1. A declaration that the appeal is allowed and judgment dated 31<sup>st</sup> July 2019 is set aside.
  2. Judgement in favour of the appellant in the terms of the reliefs prayed for in the Amended Claim filed on the 28<sup>th</sup> November 2014 in the Court below is substituted.
  3. In the alternative, for the following orders:-
    - a) That the appeal is allowed and Judgment of the High Court dated 31<sup>st</sup> July 2019 is set aside.
    - b) The issues be retried by a different judge.
  4. Any other order the Court thinks just.
  5. Costs.
4. It is important to point out from the outset that in order for the Appellant to be successful it is necessary that he establishes that the judge erred in law or fact and that this Court should interfere therewith.

### **Brief background facts of the case.**

5. The Claim of the Appellant in the court below is primarily based on the validity of the MOA entered into on the 4<sup>th</sup> of November 2011.
6. It is relevant to note that in an earlier claim filed in HC/CC 465 of 2011 between the same parties, it was there determined *inter alia*, that the MOA was invalid as it was not duly stamped.
7. As a consequence, the Appellant had the MOA stamped on 25 September 2013 and then re-filed this claim in the High Court on 8<sup>th</sup> November 2013 re-agitating similar issues and

seeking orders for redress as outlined above on the assumption that the issue on the validity of the MOA had not been finally determined by CC 465 of 2011.

**Discussion and Decision.**

8. The gist of this claim in the High Court was that the issue of validity of the MOA had not been determined by the court in Civil Case 465 of 2011 and so by having it stamped with the correct stamp duty, the invalidity earlier found by the Court in 465/2011 was overcome and that the court thereby was entitled to proceed with the claim for redress and damages.
9. It is regrettable that this case has been allowed to be continued and unnecessary costs incurred as a result because parties were not vigilant enough to read and understand the effects of the decision of the court in CC 465 of 2011.
10. In paragraph 1 of his judgement<sup>1</sup>, the judge set out clearly what legal issues or questions were before him for his consideration as follows:

“1. This is an application by the Claimants Francis Molaisuva, Francis Sawane (Jr.) Dominic Walebalia, John Waletofea and Gerena Sawane (“the Applicants”), filed on 2 November 2012 for the following orders:

**(1) whether the Claimants having registered under the name Waletofea Shipping Service are deemed to be equal partners;**

**(2) whether the sale of the MV Francis Gerena will require the authority of all the Applicants;**

(3) whether the Memorandum of Agreement dated 4 November 2011 signed by the Second Defendant and one of the Applicants namely Dominic Walebalia for the sale of MV Francis Gerena

(a) constituted a valid sale of the ship and any other orders or further orders as the court thinks fit.” (Emphasis added).

11. In particular, the questions sought to be considered in paragraphs (1) and (2), require the court to make determinations on the question of the validity of the same MOA. They were phrased in such a way that if the answers to the questions were in the affirmative, the issue of validity of the MOA would thereby have been finally determined.
12. The determinations made by the Court in paragraphs 10-12 are relevant for purposes of this appeal for they demonstrate clearly that those issues were actually determined by the court.

*“10. With regard to the first question, subject to any agreement, all members of a partnership are entitled to share equally in the capital and profits of the business. And they must contribute equally towards losses whether of Capital or otherwise, sustained by the partnership (see section 24 of the Partnership Act 1890 of UK).*

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<sup>1</sup> Francis Molaisuva and Others v. The MV Francis Gerena, The Ship and Harry Philip HCCC 465 of 2011 (31 May 2013) per Mwanasalua J.)

11. In relation to the second question, the sale of the MV Gerena Sawane as a partnership asset was instigated by the Second Respondent who was not a member of the partnership. But in general, a sale of the only most vital asset of the business ought to have been made through the authority of the Claimants. However, it is noted though, that seem to be no agreement between the members that would cover, amongst other things, the manner in which the assets of this business are to be disposed of.

12. In relation to the validity and the effect of the sale of the MV Gerena Sawane to the First Defendant, this court determines as follows:

(1) the sale was done under MOA by a non-member of the partnership and without authority of the members of the partnership.

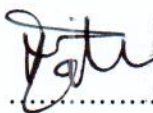
(2) on the validity of the sale, the provisions of section 9 of the Stamp Duties Act (cap. 126) are relevant. The terms of this section are mandatory.”

13. The effect of this decision of the judge in CC 465 of 2011 is to render the said issues on the validity of the MOA *res judicata*. The Court not only found that the MOA was defective for want of stamp duty, but that the sale was done under the MOA by a **non-member of the partnership and without authority of the members of the partnership**.

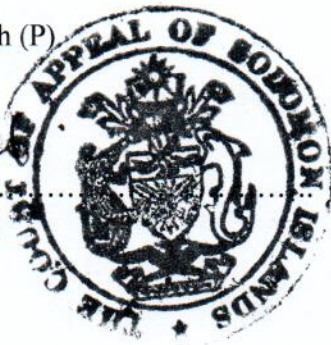
14. That decision of the High Court has not been appealed and therefore is binding on the parties and raises the principle of issue estoppel. As we noted at paragraph 6 of this judgment, the earlier case was between the same parties.

15. This appeal therefore can shortly be disposed of as follows. The appeal is dismissed with costs of and incidental to the appeal to be paid by the Appellant to the Respondents to be assessed if not agreed.

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Goldsbrough (P)



Palmer (CJ)



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Hansen (JA)