

IN THE HIGH COURT OF SOLOMON ISLANDS
Civil Jurisdiction

Civil Claim No. 626 of 2019

BETWEEN: **ROLLAND PIKO** Claimant
AND: **ATTORNEY GENERAL** 1st defendant
(Representing the Commissioner of Lands)
AND: **ATTORNEY GENERAL** 2nd Defendant
(Representing the Registrar of Titles)

Hearing: 23rd September 2022

Ruling: 21st October 2022

Mr. Jonga W : For the Claimant

Mr. Ofanakwai N:: 1st and 2nd Defendants

RULING ON APPLICATION TO PAY COST

KOUHOTA J;

Before the resumption of his property the Claimant was the owner of Fixed Term Estate PN 192-004-1128. The FTE was granted to the Claimant by the Defendant in 2012 for a term of 50 years. The Claimant paid \$43,564.56 for premium, the first year rent, registration, stamp duty and valuation. The Claimant backfilled the land with gravel and built a retaining wall and drainage around the land. The total land area is approximately 0.2731 hectares A property valuer engaged by the Claimant in 2016 valued the property at over two million dollars (\$2,000,000.00)

In August 2019 the First Defendant issued a one month notice to resume the land for a public purpose. The Claimant filed a case challenging the resumption of his property. The claim was heard by Higgins J, who found that the resumption was lawful.

After this, the parties' negotiated and compensation for the property was settled out of court. The Defendants paid the Claimant a sum of \$415,205.00 as compensation for the property. The amount was based on a valuation initiated by the Defendants. Counsel for the Defendants says, under the terms of the settlement the Claimant would pay the cost of the proceedings.

Counsel for the Defendants avers that the previous counsel for the Claimant informed him that there is no need to prepare a consent order. Instead she will prepare a deed of release and settlement and

Notice to discontinue to be executed by the parties after payment were settled. Relying on and believing what the former counsel for the Claimant said, the Defendant complied with their part of the verbal agreement and paid the compensation amount due to the Claimant. The Claimant after receiving the compensation payment changed instruction through his new counsel and refuse to pay the Defendant cost initially agreed on.

The Defendants application is for the Court to determine whether or not the Defendant who were the successful party in the High Court proceeding are entitled to cost of proceeding against the Claimant.

Counsel for the Defendants submits that the Defendants were entitled to cost against the Claimant pursuant to Rule 24.2 of the Solomon Islands Court (Civil Procedure) Rules 2007. The Rule states "*Subject to the court's discretion, as a general rule, the cost of a proceeding or part of a proceeding, are payable by the party who is not successful in the proceeding, or part of a proceeding*".

New Counsel for Claimant submits, by looking at the circumstances of this case, it would be unfair to Claimant to pay cost of this proceeding, since the Claimants property was resumed by the First Defendant. He submit this can be characterized as double jeopardy to the property of the Claimant. Counsel also submit that since the Claimant is exercising a right of appeal provided under law he is not liable to pay cost. I do not agree with that submission. The fact that a person is exercising a right provided under law does exempt a person from paying cost of a proceeding he initiated if he loses his case.

I had perused the file and noted there was a draft deed of release and settlement on the file but it was never signed by the parties. I do not think the unsigned deed of release and settlement binds the parties thus no reliance will be placed on the document. While counsel for the Defendants avers that they relied on the verbal statement of counsel for the Claimant in fulfilling their part by paying the Claimant compensation for his resumed property, the Claimant in his sworn statement filed on 21st September 2022, at paragraphs 6,7,8 and 9 states that he instructed his solicitor that he accepted the compensation of \$415, 205.00 but he never agreed to pay cost of the proceedings which is \$16,000.00 Claimant says that is outside of his instruction to his counsel.

Since the Claimant disputed the verbal statement of his former counsel or giving instruction about payment of cost, I think it is appropriate to go back to the rules relating to cost to decide who should pay cost. In so doing it is necessary to consider the circumstances and the nature of the proceeding. Technically the Defendants were the successful party in the substantive proceeding and normally cost will be paid by the unsuccessful party pursuant to Rule 24 (2). However, Rule 24 (1) gives the Court discretion to decide whether, when and how to award cost. In the present case, taking into account the facts of the case and the circumstances of this proceeding I consider the appropriate order the Court will make is for the parties to meet their own cost. Order accordingly.

THE COURT


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EMMANUEL KOUHOTA
PUISNE JUDGE

