IN THE HIGH COURT OF SOLOMON ISLANDS
Civil Jurisdiction

Civil Case No: 587 of 2020

BETWEEN:	**DAVID TAISIA & JONATHAN TAISIA**	**Claimant**
AND:	**HENSON HAHAGA AND OTHERS.**	**First Defendant**

Date of Hearing: 28th July 2022
Date of Ruling: 23rd August 2022

Kwana L: For the Claimants:
Nimepo D: For the Defendants

Kouhota PJ;

RULING ON APPLICATION TO STIKE OUT CLAIM

Back ground facts

The matter first came to court as an application for restraining orders to retrained the First, Second and Third Defendant from entering Tahusi Customary Land in Central Bauro, Makira Province for purpose of conducting logging activities without the consent of the claimants or further orders of the court. The Court granted the orders and the Claimant subsequently filed a category A claim on 25th February 2021.

The application now before the Court is an application by the Second Defendant to strike out the claim pursuant to Rule 9.75 of the SI Courts Civil Procedure Rules 2007. The document relied on by the Second Defendant in support of their application are outlined in Paragraph 1 of the submission of counsel for Second Defendant.

The application now before the courts is an application by the Second Defendant under Rule 9.75 (a) seeking to have the proceeding dismissed or

2. Alternative to order 1 an order pursuant to Rule 17. 55 (c) and (d) setting aside of interim orders perfected by the Court on 5th February 2021.

3. Cost against the Claimant on indemnity basis; and

4. Any other orders the Court deems fit to make.

The 2nd Defendant in support of its application relied on the sworn statement of Alphonso Wasibo Haga filed on 14/4/2021 in which he deposed among others,

that he owned West Tahusi as confirmed by the Bauro Council of Chiefs hearing dated 25-26 May 2007, the Eastern Inner District Local Court and Eastern CLAC case No. B/3/2016 judgment.

The Claimant /Respondent however, in his sworn statement filed 16th June 2022 States that he had appealed the 2007 Central Bauro Chiefs decisions and the 2020 Local decision.

I noticed from the material before the Court that the Local decision of 2020 was appealed by the Claimant and is currently pending before the Eastern Inner Islands Customary Land Appeal Court. The Applicant also says that the Claimant/ Respondent has no locus standi to bring this case. This assertion I believed was based on the decision of the Chiefs and the Local Court decision of 2020.

The Relevant Law.

The provisions of the rules relevant to the application are the Rules 9. 57 to 9.66 of the SI Court Civil Procedure Rule 2007, which states; *the court may struck out a proceeding if*

i. *The proceeding are frivolous or vexatious;*
ii. *reasonable cause of action is disclosed; and*
iii. *The proceeding are an abuse of the process of the court*

The test to apply when determining applications of this nature have been stated by the Court of Appeal in a number of previous cases. In **Noro v Saki [2016] SBCA 18 the CA** held that- As the judge identify on an application to strike out based on a claim that revealed no cause of action, the judge must assumed the claim can be proved. The judge must then asked-assuming the Claimant can prove all the allegations, does the Claimant have a sustainable cause of action.

In **General Steel Industries Inc.-v- Commissioner of Railways (NSW) 112,** Barwick CJ states

" The jurisdiction summarily to terminate an action, ' is to be sparingly employed and is not to be used except in a clear case where the court is satisfied that it has the requisite material and necessary assistance from the parties to reach a definite and certain conclusion'."

In **Tikani –v-Motui [2000] SBHC 10, HC- CC 29 of 2001** his Lordship, Palmer J made reference to **Wenlock v Moloney [1965] 1WLR 12,** 38 where it was said ***"the court should only exercise its discretion to strike out in plain and obvious cases"***

In the present case the Claimants says that there is a pending case over the ownership of Tahusi Customary Land pending before the Eastern Inner Islands Customary Land Appeal Court. This means that ownership of Tahusi Customary Land is yet to be finally determined. In that respect until it is determined that the Claimant does not own or has rights to Tahusi Land, it can't be said that Claimant has no locus to bring this action. As this claim is premised on unlawful entry and unlawful logging activities, the claim raises triable issues between the parties. Those issues need to be tested at a trial proper hence on the material before the Court and authorities cited above the Court is not satisfied that this claim is frivolous or vexatious or that it raises no cause of action or is an abuse of the process of the court. The application is refused and dismissed.

Orders

1. The application to dismiss the proceeding is refused and dismissed.

2. Cost of this application will be against the applicant/Second Defendant to be taxed if not agreed.

Adjourned for mention 5th October 2022, 9.30 am.

THE COURT

JUSTICE EMMANUEL KOUHOTA
PUISNE JUDGE