

**IN THE HIGH COURT OF SOLOMON ISLANDS  
Civil Jurisdiction**

**Civil Case No. 353 of 2019**

<b>BETWEEN:</b> Rachael Theo and others	-	First Claimant
<b>AND:</b> Freda Tuki	-	First Defendant
<b>AND:</b> Pacific Logging Company	-	Second Defendant
<b>AND:</b> SMC Trading Ltd	-	Third Defendant

**Hearing:** 12<sup>th</sup> May 2022

**Ruling:** 30<sup>th</sup> May 2022

Teddy P for the Claimant  
Ramo L for the Defendants

**RULING ON APPLICATION FOR SALE OF TUBI LOGS.**

**KOUHOTA PJ:**

This is a category A claim, it first came to court as an urgent application to restrain the defendants logging operation and export of xanthostemon/tubi logs from Raerade customary land. After hearing the claimant ex-parte, the court granted the application and issued a number of interim restraining orders against the defendants. Those orders were perfected by the court on 2<sup>nd</sup> July 2019.

An inter-parte hearing later followed and the interim restraining orders were maintained. The court also found that the customary land owners are the owners of the tubi trees and as such they have the right to bring a civil action against any person who illegally harvest the trees and order that the interim orders will remain until the claim is finally determined or until further orders of the court.

Despite the interim restraining orders, the defendant continue to disregard the interim orders and secretly shipped the tubi logs from Raerade customary land to Noro in the Western Province. The logs are still at Noro and are deteriorating due to rain and sun and losing their value.

Now before the court is an application by the claimant asking the court to allow them to export the logs which were illegal harvested by the defendant from their Raerade land? The claimant seek the following orders;

1. An order to sell, export and avoid wastage of the 1,200 cubic meters of tubi logs (xanthostemon) illegally felled on Raerade customary land in Isabel Province by the First, Second and Third respondent which have been shipped to Noro, Western Province.
2. An order that the Minister of Environment, Director and Commissioner of Forest to facilitate and grant the necessary permits to export the tubi to the claimant immediately to avoid wastage of the tubi logs;

3. Penal Notice is attached to the above orders 1 and 2 above and Royal Solomon Islands Police Force is hereby directed to enforce these orders.
4. Cost;
5. Any other orders the court seem fit in the circumstances.

The claimant's ownership of Raerade customary land and the illegal harvest of the tubi logs are not disputed. Those facts are contained in the sworn statement of Rachel Theo filed on 13/09/21 and her further sworn statement filed on 6/5/22 in support of the application.

Further background facts are stated on the second page of counsel for the claimant submission it is not necessary to state them again. They are on the records.

Counsel for the claimant in his submission raised two issues;

- A. Whether this court should allow or aid the defendant and their cohorts who admitted illegal felling of tubi trees in contravention of section 26(b) of section 11(1) (2) (3) as read with section 12(1) of the Wildlife protection and Management Act 1998 (as amendment) and section 4 of the Forest Resources Timber Utilization Act (Cap 40) is entitled to claim benefit from the illegal harvested tubi?
- B. Whether this court should allow and grant the claimants right to sell and export the tubi logs to avoid total wastage of the 1200 cubic meters of tubi logs illegally felled within Raerade customary land in Isabel Province by the defendants and their agents which have been shipped secretly to Noro, Western Province.

Any trees including tubi trees growing on customary land belong to the owners of the customary land. Any person who wish to harvest the tress must be granted the right to do so under the FRTUA. In the present case the defendants have been granted timber rights and had a felling licence to harvest trees on Raerade customary land but the right granted and the licence does not authorised the felling of tubi trees which is a protected species. The harvesting of tubi trees by the respondents is therefore illegal. In that respect if the court allow the respondent to export the tubi logs it would be seen as rewarding them for an illegal Act and allow them benefit from the illegal act. In view of this, the answer to question A must be No.

With regard to question B, since the applicant are the customary land owners of Raerade customary and the trees growing on the land including the tubi trees which were illegally harvested by the respondent they must be allowed to export the tubi logs because the tubi logs are owned by customary land owners.

Having considered the circumstances of this case I grant the orders sought. The Orders sought by the applicant are granted with cost for the claimant to be tax if not agreed.

THE COURT



Hon. Justice Emanuel Keniota

Puisne JUDGE