

IN THE HIGH COURT OF SOLOMON ISLANDS
Civil Jurisdiction

Civil Claim No. 353 of 2019

BETWEEN:	Rachel Theo and Others	-	Claimant
AND:	Freda Tuki	-	First Defendant
AND:	Pacific Logging Company	-	Second Defendant
AND:	SMC Tradinig Limited	-	Third Defendant
AND:	Attorney General (On behalf of the Director of Environment)	-	Applicant
AND:	Attorney General (On behalf of the Controller of Customs)	-	Applicant

Date of Hearing: 29th August 2022

Date of Ruling: 9th September 2022

Teddy P for the Claimant/Respondent

Banuve S for the Applicants

RULING ON APPLICATION FOR JOINDER

KOUHOTA J:

The proceedings in this matter commences as an urgent application to restrain the Defendants logging operation and export of Xanthostermon/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 2nd July 2019. The Claimant's ownership of Raerade Customary Land and the illegal harvest of the Tubi Logs were not in dispute.

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. The Court also order that the interim orders will remain on foot until the claim is finally determined or until further orders of the Court.

Despite the interim restraining orders, the Defendants continue to disregard the interim orders and secretly shipped the Tubi Logs from Raerade Customary Land in Isabel Province to Noro in the Western Province.

On 13th September 2021, the Claimant filed an application seeking inter-alia orders to allow Claimant sell and export the logs which were illegal harvested by the Defendants from their Raerade land? The main orders Claimant sought are;

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 and Director of Environment, 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;

Counsel for the Claimants also raised two questions for the Court to determine;

- A. Whether this court should allow or aid the Defendants 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 Logs?
- 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.

Question number 1 was answered 'no' and question 2 was answered 'yes'. Reasons for the answers were stated by the Court in its ruling on 30th May 2022. The Court also grant the orders sought by the Claimant.

This application is an application by the Attorney General on behalf of the Controller of Customs and the Minister and Director of Environment seeking to be joined as parties to the proceeding. In support of the application, the Attorney General relied on the Sworn Statement of Mr Wesley Jeremy Siamanu filed on 12th July 2022. In his Sworn Statement Mr Siamanu states the following:

1. that the tubi logs were subject to seizure a noticed issued by the Customs department pursuant to section 222 of the Customs and Excise Act, Cap 85. He also depose that,
2. he understands no approval has been obtained from the Director of Environment to harvest or sale of the tubi logs pursuant to part III of the Wildlife Protection and Management Act 1998.
3. despite the critical role played by the Controller of Customs in seizing the subject consignment of tubi logs held in Noro pursuant to the Customs and Excise Act, Cap 85, the claimant did not include him as a party to this proceeding,
4. it is clear to him that the absence of the Controller of customs as a party in the proceeding hampers the court from gaining a proper understanding of the circumstances surrounding the

seizer under the customs and Excise Act leading it to granting orders for sale and export of the tubi logs held in storage in Noro on 30th May 2022 despite such orders contravening the right vested on the Controller of the Customs pursuant to section 221 and 222 of the Customs and Excise Act, cap 85,

5. he was advice and do understand that the order for sale and export issued by the court on 30th May 2022 do not account for the powers of seizer by the Controller under section 222 of the Customs and Excise Act, Cap 85 and the fact that no approval has been sought and obtained for harvest and export of tubi logs by the Claimants/respondents pursuant to the Wildlife Protection and Management Act, 1998, Act.

The Claimants opposed the application and submit the Applicant have no case to answer in the proceeding and that the Applicants are not parties hence there is no cause of action against them. He concluded by submitting that the application may be made if there are issues relevant to the dispute between the parties which require the Court to make a decision fairly and effectively.

Before I proceed to consider the Rules relating to applications for joinder, I will first consider the reasons why the Applicants wish to join as parties to this proceeding. The reasons are in the application and as deposed to in the Sworn Statement of Mr Siamanu relied on as a basis for this application. Mr Siamanu says that the Court Orders did not account for the power of seizer by the Controller of Customs and that no approval has been sought and obtained for the harvest and export of Tubi Logs by the Claimant.

It is obvious Mr Siamanu did not really get the facts of this case right. The facts were, the Tubi Trees /Logs which were the subject of this proceeding were growing wild on the Claimant's Customary Land of Raerade in Isabel Province. The trees were illegally harvest by the First Defendant Hon. Freda Tuki (MP) and her Co-Defendants. They then secretly shipped the Logs to Noro under the cover of darkness. After this, that is when I think the Controller of Customs comes in and exercised his power to seize the Logs. He however, cannot blame the Claimant for the illegal harvest of the Logs. The seizer of the Logs is not an issue before the Court nor is it a relevant issue to the Claimant's case. The Court however, was aware of the illegal harvest of the Tubi Logs and the seizer hence the order for the Controller of Customs and Director of Environment and Commissioner of Forest to facilitate the sale of the Tubi Logs. The Court anticipate that the officers in facilitating the sale will ensure the relevant provisions of the Acts are complied with including issuing permits to the Claimant. It must be noted that the Court did not exclusively order the Claimants to sell the Tubi Logs but for the Applicants to facilitated or make it possible for Claimants to sell their Tubi Logs which were illegally harvested from their Customary Land. The harvest of the logs was illegal but the Claimants were not privy to the illegal harvest.

In this respect, for the Applicants to asked the Court to be joined as a parties with what seem to be an intention to unreasonably refuse to facilitate the sale of logs and let them rod is absurd and shows an

ulterior motive on part of the Applicants. The intention can be inferred from the orders sought by the Applicants in this application. No one is denying that the harvest of logs was in breach of Statutory Law but that is a matter for the Director of Environment to take appropriate action on against the Defendants. However, the breach of the Law by the Defendants cannot be used by the Applicants to deny the Claimants who are innocent and not privy to the illegal harvest of the Tubi Logs. To do so is tantamount to assisting the culprits

I now turn to the Rules relating to applications for joinder. Application for Joinder are provided for under rule 3.5 and 3.6 of the SI Court Civil Procedure Rules 2007. (SICCPR 2007)

Rule 3.5 states *“the court may order that a person becomes a party to the proceeding if the person’s presence as a party is necessary to enable the court to make a decision fairly and effectively in the proceeding...”*

Rule. 3.6 goes on to state, *“a person affected by a proceeding may apply to the court for an order that the person be made a party to the proceeding”*.

This means in order for the Applicants to be added as a parties, first the Applicants must show how if they are added as parties will enable the Court make a decision fairly and effectively in this proceeding. Secondly the Applicants must show how they are affected by the proceeding and in the present case if I may add show why they apply to be added as Defendants rather than as Claimants. The Applicants were unable to show any of these.

On the materials before the Court it can only be inferred that if the Applicants are affected, it would only be with regard to the breach of the Wildlife Protection and Management Act. This is especially true for the Director of Environment who is mandated to enforce the Act. The Claimant’s civil claim of ownership of the Tubi Logs, for damages, for the unlawful harvesting and removing the Tubi Trees from the Customary Land does not seek any liability against the Applicants. The issue of ownership has already been determined. The breach of the law is a matter that the Minister and Director of Environment should have pursued as statutory offences against the Defendants.

The Minister and Director of Environment have not taken any steps to prosecute the Defendants hence I am incline to accept the submission of Mr Teddy that the Applicants may have some ulterior motive in pursuing this application. The Applicants have the opportunity to take early action when the issue of illegal harvest of Tubi Logs first surfaced in 2019. They have fail their statutory duty and now wants to be joint as parties at the 11th hour presumably for monetary purposes only and with the intention to deny the Claimants the benefit of their logs. Having failed their duty to prosecute the Defendants I do not think it is fair for the Applicants to use section 32 of the Wildlife Protection Management Act to deny the Claimants the benefit of their property and indirectly aid the culprits. Whatever money is due

to to the Crown, such as tax or duty are statutory requirements which must be paid to the Crown whether they are a party or not to this proceeding.

The Solicitor General also submit that the Applicants were not party to the proceeding so no order should be made against them. He also submit that the orders were contrary to the Crown Proceeding Act (CPA) as no order for specific performance can be made against the Crown. I doubt the correctness of that submission, because in practice there have been numerous orders made against the Crown as a non-party. A case in point is the issuing orders to the Police to enforce breach of injunctive orders although Police was not a party to the proceedings. In any event since the Crown is not a party to this proceeding section 18 of the CPA may not apply. The orders in the present case were direction orders to facilitate the selling of the Tubi Logs to ensure compliance with the provisions of the the Wildlife Protection and Management Act, 1998. They are not orders for liabilities against the Crown. For the reasons stated herein, the application for joinder is dismissed.

The Solicitor General also seek and alternative order that proceeds from the sale and export of the 1,322 cubic meters of logs ordered by the High Court on 30th May 2022 be held in Trust pending final determination of Civil Case No.353 of 2019. The Court is informed by Counsel for the Claimant, that has been done hence it is not necessary to grant the alternative order sought. Cost against the Applicants to be taxed if not agreed.

THE COURT



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Hon. Justice Emmanuel Keuhota
Puisne Judge SNE