

**IN THE HIGH COURT OF SOLOMON ISLANDS
(Chetwynd J)**

Civil Claim No. 282 of 2010

BETWEEN:

**KOLOMBANGRA ISLAND BIO-DIVERSITY
CONSERVATION TRUST BOARD (INCORPORATED)**
(Represented by Ferguson Vaghi)
Claimant

And:

SUCCESS COMPANY LTD
First Defendant

And:

XIANG LIN (SI) TIMBER LTD
Second Defendant

And:

ATTORNEY GENERAL
(Representing Commissioner of Forest Resources
and Director of Environment and Conservation) Third Defendant

**Mr D Hou and Mr Kiasi for the Claimant
Mr P Tagini for First and Second Defendant**

Date of Hearing: 25th August 2010

Date of Judgment: 27th August 2010

RULING

1. This is an application by the Claimant for an interim injunction. The Attorney General did not appear and apparently has not been served with the necessary papers. Nothing turns on this as the interim orders sought only affect the First and Second Defendants. The amended application was filed on 16th August and asks for orders restraining the First and Second Defendants from entering and logging on land above 400m. The application also asks for interim orders preventing logging on other land until such time as a valid Development Consent is issued or granted under the Environment Act 1998 (the Act).

2. These applications are not about ownership of the land. There are two basic issues. Does the Claimant have locus standi, or in simple terms can the Claimant bring these applications? If the answer is yes then I have to decide whether interim orders should be granted based on the usual considerations that apply to injunctions. Both Mr Tagini and Mr Hou have prepared written submissions on these points and I thank them for doing so.

1. 3. The Claimant is an organisation and its Constitution and Rules are exhibited (as FIV15) to the sworn statement of Mr Vaghi filed on 23rd August 2010. The Objects of the Kolombangra Bio-Diversity Conservation Association (the Association) are set out in Article 2 of that document. I need not recite them. Clearly, as the Association's name implies, they relate amongst other things, to the promotion of conservation and sustainability on the island of Kolombangra.

1. 4. The issue of locus standi is answered by consideration of whether the Claimant has sufficient interest in the subject matter of the proceedings. There have been decisions in this jurisdiction about locus in matters relating to the Act. I do not have to rely on them. The interim orders being sought clearly relate to conservation. The order relating to the Act is clearly so. What else is the Act if it is not about conservation and protecting the environment? As for the order relating to logging above the 400m level, the sworn statement of Mr Vaghi filed on 28th July 2010 refers to conditions in the logging licence (No. 10850) issued by the Commissioner of Forest Resources on 22nd May 2009. Condition 6 refers to the Revised Solomon Islands Code of Logging Practice (the code of practice) dating back to May 2002. That was published by the then Ministry of Forests Environment and Conservation. A copy marked FIV7 is exhibited to Mr Vaghi's sworn statement. The letter dated May 2002 from the Minister of Forests Environment and Conservation and the Commissioner of Forests which is part of the contents of the code of practice states the aim of the code of practice and that can be précised into the core concept managing forest resources whilst protecting the environment. The code of practice refers (at page 3) to Protected and Exclusion areas. It says that areas of land above 400m are protected unless specific approval for logging in those areas is granted by the Commissioner of Forests. There is no evidence to suggest any such approval has been granted by the Commissioner of Forests.

1. 5. The preliminary question then is simply this, does an organisation whose avowed aims include the promotion of conservation have sufficient standing to apply to this court for orders concerning alleged breaches of codes of practice designed to protect the environment and alleged breaches of an act which is designed to do the same thing? Not every organisation with similar aims and objects as those of the Claimant would necessarily have a sufficient interest to be able to establish locus standi. In the present case the Claimant is an organisation which was specifically set up to promote conservation on the island of Kolombangra. I have no hesitation in finding the Claimant has sufficient interest, can establish it has locus standi, to make the application now before the court. The First and Second Defendants' submissions relating to the ownership of land or rather the Claimants' lack of legal interest in the land, are largely irrelevant. A secondary issue is whether the Association has sanctioned this action. None of the evidence I have seen so far suggests that this is not the case. It is not disputed that Mr Vaghi is the Program Coordinator of the Association. I am entitled to take his sworn statements at face value. I am satisfied that Mr Vaghi is acting on behalf of the Association.

1. 6. Turning now to the orders requested, the factors to be considered when a court is dealing with an application for an injunction are set out in the written submissions mentioned earlier. In this jurisdiction we follow the principles set out in the case known simply as the American Cyanamid case.

1. 7. I am not dealing fully with the merits of the case at this stage but I do have to consider whether there are serious issues to be tried. I am satisfied there are in this

case. One issue is whether the First and Second Defendant are logging above the 400m contour without the express approval of the Commissioner of Forests. I accept the evidence of the Claimant that this is very likely the case. I do not accept that proof of this has to come from the Forestry Office in Gizo. The evidence produced by Mr Vaghi is compelling. Modern GPS technology is extremely accurate. GIS software is extremely accurate.

1. 8. As to the issue concerning the lack of Development Consent, this is not disputed or rather there is no evidence or claim that the Director of Environment and Conservation has issued a Development Consent.

1. 9. I am satisfied that monetary damages would not be a suitable remedy to compensate the successful party in these proceedings. From the Claimants point of view, no amount of money would put right any ecological damage. From the First and Second Defendants point of view, I heard that operations had been suspended. An order that they do exactly what they have voluntarily done would not therefore have any financial consequences.

1. 10. The balance of convenience is clearly in the Claimants favour. It would be nigh on impossible to undo what the First and Second Defendants are doing. Any prejudice to the First and Second Defendants, but bearing in mind that they are no longer operating, could dealt with by damages.

1. 11. Bearing in mind the nature of the Claimant the lack of undertaking is not fatal to their application. I do not believe an undertaking is necessary or appropriate.

1. 12. In all the circumstances I am satisfied that the Claimants are entitled to the interim orders set out in the application. I order accordingly.

Chetwynd J