

PAPUA NEW GUINEA
[IN THE NATIONAL COURT OF JUSTICE]

WS 1121 OF 2010

BETWEEN:

TZEN PACIFIC LIMITED
Plaintiff

AND:

INNOVEST LIMITED
Respondent

Waigani: Hartshorn J.
2014: April 4th,
: August 1st

APPLICATION FOR CONTEMPT - whether applicant still has a personal stake or special interest in the proceeding entitling it to bring an application for contempt.

Cases cited:

Papua New Guinea Cases

Gire Gire Estates Ltd v. Bavara Ltd (2009) SC1043

Overseas Cases

R. v. Secretary of State for the Environment, ex parte Rose Theatre Trust Co [1990] 1 QB 504

R. v. International Stock Exchange of the United Kingdom and the Republic of Ireland Ltd, ex parte Else (1982) Ltd [1993] QB 534

United Telecasters Sydney Ltd v. Hardy (1991) 23 NSWLR 321

Counsel:

Mr. F. Griffin, for the Plaintiff

Mr. I. R. Shepherd and Ms D. Edo, for the Contemnors apart from

Mr. G. Kaore, who appeared in person

1st August 2014

1. **HARTSHORN J:** The plaintiff, Tzen Pacific, seeks orders that Messrs Kanawi Pouru, Seri Mitige, Yii Hii Luk, Walter Lunga, George Kaore and the defendant Innovest Ltd, be punished for contempt of the court orders made in this proceeding on 19th November 2010. The application is made by amended notice of motion pursuant to Order 14 Rule 42 *National Court Rules*. The hearing of the application occurred in the presence of Messrs Pouru, Mitige, Luk, Lunga and their counsel who also appeared for Innovest Ltd. Mr. Kaore appeared in person. All of the contemnors pleaded not guilty, Innovest doing so by its counsel. Statements of charge were also filed against the contemnors pursuant to Order 14 Rule 43 *National Court Rules*.

Order of 19 November 2010

2. The orders of this court dated 19th November 2010 are:

- "1. Default Judgement is entered against the Defendant with all damages to be assessed.**
- 2. Interest at the rate of 8% per annum from the date of entry of default judgement is to be paid by the Defendant to the plaintiff on the amount of damages to be assessed until payment of those damages.**
- 3. The Defendant, its employees, agents servants or whosoever (sic) otherwise are permanently restrained from interfering or dealing with Aria Vanu Timber Company Limited (including Aria Vanu Timber Company Limited's servants, agents and employees).**
- 4. The costs of the Plaintiff of and incidental to this proceeding are to be paid by the Defendant to the Plaintiff.**
- 5. Time is abridged to the time of settlement with the Registrar, which shall take place forthwith."**

3. It is alleged by Tzen Pacific that the contemnor has breached paragraph 3 of the order.

4. Counsel for the contemnors apart from Mr. Kaore who appeared in person, raised an issue that requires determination at this juncture, as if it is decided in the contemnors favour, it will determine the application for contempt.

5. It is submitted that Tzen Pacific no longer has a personal stake or special interest in this proceeding in which the contempt application is made and in maintaining the injunctive orders, which it alleges have been breached. Consequently, submit the contemnors, they must be discharged and the amended notice of motion dismissed.

6. Tzen Pacific submits that as it is a party to this proceeding, it is entitled to bring the application for contempt. Further, it still has an interest in the proceeding as it has orders

of the court in its favour which it wishes to enforce.

7. The contemnors rely upon the decision of the New South Wales Supreme Court in *United Telecasters Sydney Ltd v Hardy* (1991) 23 NSWLR 321. At p328, Samuels AP with whom the other two judges agreed, said:

"Indeed, any person has the right to bring proceedings for contempt in relation to proceedings in a court of the State, at least where he or she has a personal stake or special interest in them: Director of Public Prosecutions v Australian Broadcasting Corporation (at 595); European Asian Bank AG v Wentworth (1986) 5 NSWLR 445 at 460; Varley v Attorney-General (NSW) (1987) 8 NSWLR 30 at 36-37 and X v Amalgamated Television Services Pty Ltd (No 2) (1987) 9 NSWLR 575 at 581. Clearly Hardy had a special interest in the outcome of his own trial in the District Court, and would therefore have been entitled to bring contempt proceedings unless his right was somehow postponed to that of the DPP."

8. The contemnors submit that notwithstanding that Tzen Pacific is a party to this proceeding, it no longer has a personal stake or special interest in the proceeding as:

- a) the writ of summons and statement of claim were filed on 1st September 2010 and final orders were made on 19th November 2010, in default;
- b) in this proceeding Tzen Pacific claimed that a company, Cakara Alam (PNG) Ltd had entered into a logging and marketing agreement (LMA) with the permit holder, Aria Vanu Block Timber Company Limited (**Aria Vanu**) in 2003;
- c) Cakara Alam (PNG) Ltd assigned its rights and obligations under the LMA to Tzen Niugini Ltd which then assigned its rights and obligations under the LMA to Tzen Pacific;
- d) Tzen Pacific conducted logging operations in the project area;
- e) Tzen Pacific alleged that Innovest Ltd entered into an agreement with Aria Vanu to conduct logging operations in the project area in 2008 and applied for a licence to log in that area in 2010;
- f) Tzen Pacific claimed that its LMA was terminated in May 2010. It disputed the termination and the PNG Forest Authority took steps to terminate Tzen Pacific's licence resulting in loss and damages;
- g) Tzen Pacific's claim is for damages against Innovest and a permanent injunction to restrain it from interfering or dealing with Aria Vanu. It did not seek any orders in relation to its own licence nor did it seek an order for example, for specific performance of the LMA;

h) at about the same time, just before it obtained final orders in this proceeding, Tzen Pacific commenced judicial review proceedings to challenge the cancellation of its licence to operate in the project area. It claimed that such cancellation was in breach of an order in another proceeding between Tzen Pacific and Aria Vanu;

i) in the decision of Cunnings J. in *Tzen Pacific Ltd v. Kanawi Pouru & Ors* (2013) Unreported, OS(JR) 715/10 delivered 25th April 2013 at Waigani, His Honour set out the chronology and noted that on 30th August 2010, the Minister for Forests cancelled Tzen Pacific's licence and on 18th October 2010 he issued a licence to Innovest. This decision, the Originating Summons in the judicial review proceeding and other relevant documents are in evidence before this court.

j) so although Tzen Pacific obtained final judgment for damages to be assessed in this proceeding, it is unable to successfully argue that it is entitled to damages beyond the date that its own licence was cancelled which was the 30th August 2010. Further, for the same reason, it is unable to successfully argue that the injunction should continue to operate beyond that date. To argue that it is entitled to damages and that the injunction should continue to operate after 30th August 2010, would imply that Tzen Pacific's personal stake or special interest in the project remained forever regardless of whether it was licensed to operate in the area.

10. Further, the contemnors submit that at the time this proceeding was issued on 1st September 2010, the Minister had already cancelled Tzen Pacific's licence to operate in the area, a highly relevant fact which was not pleaded in the statement of claim.

11. As I understand it, Tzen Pacific does not dispute that its licence was cancelled as submitted by the contemnors.

12. In considering the contemnors submissions, the passage cited from *United Telecasters (supra)* concerns the standard that a non-party must satisfy in order to bring proceedings for contempt. In this case, the person bringing proceedings for contempt, is a party, and is entitled in the normal course, to do so.

13. In my view however, it is because a party to a proceeding has a special interest or personal stake in the proceeding that he is entitled to bring proceedings for contempt. If a party did not have a special interest or personal stake, it would not have standing or locus standi to bring the substantive proceeding. It follows that once a party no longer has a special interest or stake in the proceeding, it no longer has the right to bring an application for contempt in the proceeding.

14. That the status of a plaintiff's locus standi or standing to bring a proceeding is susceptible to review is recognized in such cases as *Gire Gire Estates Ltd v. Bavara Ltd* (2009) SC1043 at para 13 and the English cases of *R. v. Secretary of State for the Environment, ex parte Rose Theatre Trust Co* [1990] 1 QB 504 at 519-520 and *R. v.*

International Stock Exchange of the United Kingdom and the Republic of Ireland Ltd, ex parte Else (1982) Ltd [1993] QB 534 at 551.

15. While these cases are concerned with judicial review and do not specifically address a scenario in which a plaintiff's locus standi or standing changes during a proceeding, I see no reason why the principles reflected in those cases would not have broader application.

16. I note also that the *National Court Rules* provide for the court to stay the execution of a judgment or make some other order on the ground of matters occurring after the date on which a judgment takes effect: Order 13 Rule 11. In my view, a change in the locus standi or standing of a plaintiff may qualify as being one of those matters.

17. From a consideration of the contemnors submissions and a perusal of the documentation to which reference is made, apart from the orders of this court dated 19th November 2010, Tzen Pacific to my mind, has difficulty in establishing that it is entitled to any relief for the period beginning after its licence was cancelled. From 30th August 2010, Tzen Pacific appears to have ceased to have a special interest or stake in the project area and in this proceeding as its licence to operate in the project area was cancelled.

18. In such circumstances, I am not satisfied that Tzen Pacific has a personal stake or special interest in the proceeding such that it should be entitled to bring an application for contempt.

19. Consequently, the amended notice of motion of the plaintiff filed 14th November 2013 is dismissed and the contemnors are discharged. The plaintiff shall pay the contemnors' costs of and incidental to the amended notice of motion and time is abridged.

Young & Williams Lawyers: *Lawyers for the Plaintiff*

Ashurst Lawyers: *Lawyers for five Contemnors*

George Kaore: *Lawyer appearing in person*