

PAPUA NEW GUINEA

[national court of justice]

**CONCORD PACIFIC LIMITED; AND
PAISO COMPANY LIMITED**

v

**THOMAS NEN – MANAGING DIRECTOR, PAPUA NEW GUINEA FOREST
AUTHORITY; AND
THE INDEPENDENT STATE OF PAPUA NEW GUINEA**

**waigani: sheehan j
31 July 2000**

contempt of court — Charge of contempt — Ruling.

Facts

The National Court issued interim orders on 26 November 1999, restraining the defendants from closing the operations of the plaintiff companies. The plaintiff companies were involved in logging operations. Notwithstanding these orders, the first defendant wrote to the plaintiffs to cease operations under the Timber Authority. He claims that he had no intention of breaching the Court orders but acted under the belief that the injunction orders would not extend beyond the term of the Timber Authority itself.

Held

1. It is a civil contempt of court to refuse or to neglect to do an act required by a judgement or order, or to disobey a judgment or order requiring a person to abstain from doing a specified act stipulated in the order of the Court. Every person against whom an order is made has an obligation to ensure it is obeyed unless and until the order is discharged: *Chuck v Cremer* (1846) 47 ER 820 applied. *Yap v Tan & Ors* [1989] PNGLR 227 followed.

Papua New Guinea case cited

Yap v Tan & Ors [1987] PNGLR 227.

Other cases cited

Chuck v Cremer (1846) 47 ER 820.
Hadkinson v Hadkinson [1952] All ER 567.
Stancomb v Trowbridge U.D.C. [1910] 2 Ch 190.

Counsel

F Damem, for the plaintiff.
B Ninai, for the defendants.

31 July 2000

Sheehan j. The first defendant Mr Thomas Nen, the Managing Director of the Papua New Guinea Forest Authority, is charged with acting in contempt of a Court order.

The essential facts are that this Court on 26 November 1999, issued interim orders restraining the defendants from closing the operations of the plaintiff companies and or restricting of logging and loading prescribed under a Timbers Authority issued under the *Forestry Act*, 1991. The specific terms of that order are:

- "1. The defendants named herein, their agents or servants or such other persons are restrained from doing anything or taking actions or making any omissions which would have the effect of preventing the first and second plaintiff from undertaking any road construction work on Aiambak-Kiunge road Project pursuant to Timber Authority No. 024
2. That the first and second plaintiffs be allowed to operate under the Timber Authority No. 024 in the project area in question pending the final determination of the substantive action to be instituted by the plaintiffs."

Following that order the plaintiff formally applied for and were granted leave to apply for judicial review of the first defendants direction that all operations under the Timber Authority No. 024 should cease. That leave was granted on 14 December 1999, when a further order was made extending the interim injunctions until the review was heard and decided. The wording of that order was:

"The Orders in nature of injunction granted on 29 November 1999, are extended until the completion of this Review".

A sealed copy of the second order was served on the defendant the following day, 15 December.

Notwithstanding these orders, by notice dated the 20 April 2000, the first defendant gave formal notice that the plaintiffs cease operations under the Timber Authority. The actual notice given by the first defendant and on which the charge of contempt is based, reads as follows:

"National Forest Services
The Chairman
Paiso Limited
C/- Concord Pacific Limited
P O Box 1243
BOROKO

ATTENTION: David Kaya

Dear Sir

RE: EXPIRED TIMBER AUTHORITY (TA 1-2/94) KIUNGA/AIAMBAK
ROADLINE PROJECT.

The Timber Authority No. (TA 1-2/94) held by you in respect to Kiunga/Aiambak Roadline Project expired on the 18th April, 2000.

You are advised to immediately cease all felling and loading operation upon receipt of this letter.

Logs that were felled before the expiry date should be snigged, hauled and disposed of accordingly.

For your adherence.

Your sincerely

THOMAS NEN
MANAGING DIRECTOR

cc: Area Manager – Southern Region
cc: Chairman – WPFMC
cc: Chairman – Chairman of the Committee responsible for Forestry Matters in Western Provincial Administration."

The first defendant Mr Nen has defended the charge and by affidavit deposed that he had no intention of breaching any Court Order but acted under the belief that the injunction orders would not extend beyond the term of the Timber Authority itself. That is, when the Timber Authority-on his interpretation-expired on 18 April 2000, then the injunctive orders must have also lapsed. That contention has been submitted again by counsel on his behalf in these proceedings.

For the plaintiff Mr Damem has maintained that notwithstanding first defendants declared belief as to the validity of the Forest Authority, the orders made speak for themselves.

They are in the clearest of terms.

It was submitted that there could be no dispute that Mr Nen was fully aware of the Court Order of 26 November 1999, extended on 14 December 1999. They specifically state that the injunctions are to remain in force until the substantive judicial proceedings are completed. The evidence plainly shows that the first defendant, Mr Nen, had taken it upon himself to interpret those orders in the light of his own view of the validity of the Timber Authority when he well knew that the validity or otherwise of the Timber Authority was an issue in the substantive proceedings pending in Court. It was submitted that in so acting and failing to go back to the Court to seek clarification or discharge of the orders he has placed himself in contempt of the Court orders.

It is clear law in PNG: *Yap v Tan & Ors* [1987] PNGLR 227; *Hadkinson v Hadkinson* [1952] All ER 567 and *Chuck v Cremer* (1846) 47 ER 820; *Stancomb v Trowbridge* U.D.C. [1910] 2 Ch 190) that it is a civil contempt of court to refuse to or neglect to do an act required by a judgement or order or to disobey a judgement or the order requiring a person to abstain from doing a specified act stipulated in order of the Court. Further it is the obligation of every person against whom an order is made that it be obeyed unless and until the order is discharged. The law remains as was stated in the *Cremer case* cited above:

"A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it. It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid — whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed."

There is no doubt but that Mr Nen was fully aware of the orders. But believing that the orders were not effective after the expiry of the Timber Authority he waited until the date that he considered that the authority had expired and then issued the directive that the plaintiffs should cease operations. He did not seek to have the orders discharged. Notwithstanding his intention to act within the law, it is plain that he did act in breach of a Court Order. Any breach of Court Order even without the direct intention to disobey that order, renders a person liable to the process and penalties for contempt.

Those penalties when the contemnor is a person include both imprisonment or a fine or both. And it can be seen as a measure of the seriousness in which an offence of contempt is regarded by the Court that there are no limits placed on the extent of a fine or the term of imprisonment. Contempt being an offence against the dignity and prerogatives of the Court, such penalties, whether severe or even not imposed at all, remain in the discretion of the Court.

In the present case Mr Nen is plainly in contempt. Its not enough for him to say that there was no intention to breach a Court Order or that he acted in the belief that he was entitled to do so. The proper course for him to have taken - particularly when he has such resources and access to advice on law to call on was to obey the order but if aggrieved by it, to seek its discharge. It was wrong to act as he did do, disobeying the order and then by way of defence to the charge of contempt, challenge the validity of the Court orders.

But accepting as I do that there was no deliberate breach of the Court Order but rather an ill advised, unintentional breach of the injunction, rather than to now proceed to submissions on penalty, I think its sufficient for this Court to express the view that the Defendant has committed a breach and impose on him the costs of the motion for contempt, trusting as I do in his honest future intention to perform all necessary obligations under the order until it is discharged upon the hearing of the judicial review.

With regard to costs, these too remain in the discretion of the Court and in this case where the process has been brought about entirely by the actions of the first defendant it is appropriate that orders for costs be on a solicitor/client basis.

Accordingly, the ruling of the Court is that Thomas Nen the first defendant is found guilty of contempt in breaching the court orders of 26 November 1999 and 14 December 1999 and that costs of these proceedings in respect of the motion for contempt shall be in favour of the plaintiffs on a solicitor/client basis.

Lawyer for the plaintiffs: *Damem Lawyers*.

Lawyer for the defendants: *Patterson Lawyers*.