IN THE HIGH COURT OF NDIAN JUDICIAL DIVISION

HOLDEN AT MUNDEMBA

BEFORE HER LORDSHIP JUSTICE FORBANG LESLIE FORMINE.. PRESIDENT

WITH HIM MR. SIMON EKUMENE MBANDA AS REGISTRAR-IN-ATTENDANCE

THIS MONDAY THE 27TH DAY OF FEBRUARY 2012

SUIT NO HCN/03/0S/2011

BETWEEN

THE STRUGGLE TO ECONOMISE FUTURE ENVIRONMENT (SEFE) } **.....PLAINTIFFS**

A N D

1) **S.G. SUSTAINABLE OILS CAMEROON LTD**
2) **DR. TIMTI ISIDORE** } **.....DEFENDANTS**

PARTIES: Parties present.

APPEARANCES: Barrister Malle Adolf for the Plaintiffs;

Barrister Ashu Nchung Tanyi Ako holds brief for Barrister Eta Ako for the Defendants.

Magistrate Nji Portals (DSC) for the People of Cameroon.

COURT NOTE: This ruling is delivered in open court.

"REPUBLIC OF CAMEROON"

"IN THE NAME OF THE PEOPLE OF CAMEROON"

"RULING"

This ruling is pursuant to an objection limine litis raised by the Learned Barrister Eta Ako of counsel for the defendants on the following points as borne out on the notice of preliminary objection.

1) That the Plaintiff has no locus standi to sue in connection with the land being exploited by the first defendants;
2) That the honourable court is not competent to adjudicate on any matters touching and concerning untitled or unregistered land;
3) That the action is not proper before the court;
4) That the action has been misdirected.

In canvassing evidence to substantiate the above legal issues counsel started with the second point. He said this court lacks jurisdiction to entertain the substantive matter. He grounded his arguments on section 5 of Ordinance no. 74/01 of 6th July 1974 on land tenure in Cameroon.

Defendant contended that on the strength of the above law, the action is not proper before the court. And that plaintiff lacks locus standi to institute same. To fortify the above views, counsel referred this court to article 5 (3) of law no. 80/22 of 14 July 1980 to repress infringements on landed property and State lands. The above section provides that legal actions for the infringements against the private property of the State shall be brought solely by the administration under conditions to be determine by decree. Counsel prayed this court to draw inspiration from the decision of the High Court of Bangem under the seal of his Lordship Justice Ngem Ngute Paul in HCKM/18M/2011 between: the Struggle to Economise Future Environment (SEFE) Vs. S.G. Sustainable Oils Cameroon Ltd and Dr Timti Isidore delivered on the 17th day of November 2011.

The decision counsel submitted, is akin to the decision in the Supreme Court Case no.166/CC of 07/12/1999 between Assen à Ngon Bernadette C/o Tom Francoise and that of the Littoral Court of Appeal in decision no.033/CC of 2nd March 2009 between Nyemb Ntongwe C/o the Estate of Bitte Albert Noe where both courts held that ordinary law courts have no jurisdiction to adjudicate on issues concerning National Lands. Based on the above counsel urged this court to decline jurisdiction in favour of the Land Consultative Board like Justice Ngute did under similar circumstances in the High Court of Kupe Muanenguba in Bangem.

The Learned State Counsel for the court of First Instance and the High Court of Mundemba Magistrate Njunkeng George on behalf of the State submitted in the interest of the law. He joined the Learned Barrister Eta Ako of Counsel for the Defendants in holding that this court lacks jurisdiction to entertain the substantive action. He based his arguments on section 15 and 16 of law no. 74/01 of 6th July 1974 organizing the land tenure system in Cameroon.

He submitted that the issues raised touch on the attribution and management of concessions which is the prerogative of the State done in accordance with the development policies conceived by the Head of State.

The Learned State Counsel said from the annextures in the substantive action it can be discerned that certain administrative actions and procedures for expropriation have not been complied with. That notwithstanding he prayed this court to dismiss the action as being a stumbling block to development. He submitted lastly that there is a clear distinction between common law and administrative litigations, consequently the courts must stay clear of issues outside its prerogatives.

In reply to both submission the Learned Barrister Malle Adophe of Counsel for the Plaintiffs prayed this court to discountenance the submissions of the Learned Barrister Eta Ako and the State Counsel as being totally misconceived in view of the substantive action. He said the substantive action merely enjoin this court to construe the provisions of law no.96/012 of the 5th of August 1996 relating to environmental management and its decree of application no.2005/0577/PM of 23rd February 2005 laying down modalities for carrying out

environmental impact assessment. He submitted that in the substantive action this court is called upon to declare whether the first defendants are a company legally incorporated in Cameroon in accordance with the OHADA Uniform Act on General Commercial Law and Economic Interest Groups.

The court is further called upon to decide whether or not defendants legally entered upon land in Mundemba and Toko Sub Divisions and carried out acts without regards to existing farms and village settlements. The above issues counsel argued fall properly within the jurisdiction of the High Court for determination.

In substantiating the above views counsel referred this court to the 1996 constitution of this country which provides in its preamble that the protection of the environment is the collective responsibility of every citizen. He cited article 65 of the constitution of 1996 which makes the preamble an integral part of the constitution. In that vein he argued that the respondents herein who are Plaintiffs in the substantive action are an organization legally recognized and authorized to work for the protection of the environment. He referred this court to article 8 (2) of law no.96/12 of 5th August 1996 (supra) which gives organizations like the Plaintiffs power to litigate in matters relating to environmental protection. That prerogative under the above law exist and it is immaterial whether the land in question is private property of the state, National Land or whatsoever. Consequently the respondents herein have the necessary locus standi to institute the substantive action, in the interest of the general good, since the protection of the environment is the collective responsibility of all. He cited some decisions of the North West Region, notably the decisions in suit no. CFIBA/245 CM/02-03 between: Ministry of environment and Forstry .V. Tame Soumedjong Henry and Sotramilk Ltd. Delivered by his Worship T.F.Tabufor. And that in suit no.HCB/19/08 between: the Foundation for Environment and development (FEDEV) and 1or.V.Bamenda City Council & 2ors under the seal of Justice Taminang A. Ignatius in which both learned judges held inter alia that ordinary law courts have jurisdiction to adjudicate on matters of the environment.

Counsel consequently prayed this court on the above score to discountenance the first arm of the objection as being idle. In respect to the second arm of the objection counsel submitted that this court is not called upon in the substantive action to make pronouncements on issues relating to title to land. It is merely called upon to construe the provisions of section 17 of Ordinance no.74/01 of 6th July 1974 laying down rules governing land tenure and to declare whether or not it is legal for people to be deprived of their farms and village settlements in total disregard of due process.

Counsel opined that it is the duty of the court to interpreted laws. He submitted that the decision of the Bangem High Court cited by Learned Counsel for the applicants under the seal of Justice Ngute is not binding on this court being a court of coordinate jurisdiction.

In respect to the submissions of the Learned State Counsel, Barrister Malle said he gave no evidence to show that the activities of the defendants were done in pursuance of any development policies of the State. He admitted that the state truly guarantees the use of state resources, but that must be done in accordance with the law. He urged this court to abandon the 3rd and 4th grounds of the objection as nothing was said on them.

He consequently urged this court on the whole to dismiss the preliminary objection entirely and proceed to judgment in the substantive action because the applicants herein, pursuant to article 11 rule 2 of the Supreme Court Civil Procedure Rules Cap 211 can not be heard on the substantive action since they did not enter appearance within the time limit prescribed under the originating summons procedure.

Above is a summary of the submissions of the respective counsel. The arguments canvassed by the respective counsel touch on the legal issues raised for determination in the substantive action. This court therefore for purpose of convenience shall treat the issues as canvassed seriatim by the parties.

The most fundamental issue raised in the objection limine litis is that this court lacks jurisdiction to entertain the substantive action. By jurisdiction here is meant the authority a court has to decide matters that are litigated before it or take cognizance of matters that are presented in a formal way for its decision. Jurisdiction is therefore a threshold issue that can be made at anytime even before judgment by the parties or even by the court suo motu. The issue of jurisdiction is thus crucial and where a court takes upon itself to exercise jurisdiction which it does not possess, its decision shall amount to nothing- See the decision in suit no. CASWR/2/98 between Chief David Ikomi Molinge Vs. Chief Simon Lyonga Musenja and others, cited at page 1, CCLR Part 6.

To buttress the above, counsel referred this court to article 5 (3) of law no. 19 of 26th November 1983 which re-enacts portions of Ordinance 74/01 of 6th July 1974. For purposes of clarity this court shall reproduce section 5 (3) of law no.19 of 26th November 1983, which re-enacts portions of law no.74/01 of 6th July 1974 on land tenure in Cameroon. It states inter alia thus:

The jurisdiction of the court and Land Consultative Boards referred to in article 16 here under in the settlement of landed property cases shall be defined as follows;

a) The settlement of the following landed property cases shall fall within the jurisdiction of the Land consultative Boards;

b) Any claims or dispute of right to property on unregistered lands filed in by communities or individuals before the courts;

c) All other landed property cases shall fall within the jurisdiction of the courts excepting cases relating to inter communal boundary disputes....."

The very critical question for this court to answer is whether the issues raised in the substantive action raises issues of ownership or contest over ownership of the land in question. If the above question is answered in the affirmative then this shall decline jurisdiction to entertain the substantive action. But a careful perusal of the issues raised in the substantive action for determination which this court shall like reproduce here are as follows.

The originating summons filed by the Plaintiff sought the courts determination of the following legal questions.

(1) “Whether or not the defendants can legally enter upon land in Mundemba and Toko Sub Divisions, indiscriminately plant survey beacons purporting to demarcate the area of land purportedly ceded to them and fell down timber and bulldoze large areas of land without due authorization and without regards to existing farms and village settlements.

(2) “Whether or not defendants can legally commence their operations of establishing an oil Palm Plantation in Mundemba and Toko Sub Divisions of Ndian Division without having satisfactorily carried out an environmental impact assessment in accordance with the provisions of law no.96/12 of 5th August 1996 relating to environmental management and its decree of application no.2005/0577/PM of 23rd February 2005 laying down modalities for carrying out environmental impact assessment.”

The above questions for determination clearly show that the plaintiffs in the substantive action are neither laying any claims to land nor are they contesting the ownership of same. The contention in the substantive action raises purely questions of illegality or the non respect of laid down rules. It is trite law that issues relating to non-compliance with due process of the law can only be construed by the courts.

It is also trite principle that the non respect of laid down procedures raises issued of Human Rights Violation which can only be litigated or construed by ordinary law courts. Those issues are clearly outside the scope of the Land Consultative Boards.

The temptation albeit erroneously is the tendency to hold that any thing about unregistered land must automatically go to the Land Consultative Boards. That view is erroneous because the right to land in Cameroon is not to be judged only as a function of registration or land certificate. The state are arguably the technical owners of land by virtue of legislation, but the indigenous people who have inhabited these lands for ages, with farms, village settlements and even shrines on these lands enjoy possessory rights which are predicated on ancestral ownership.

Hence for the ordinary courts not to have jurisdiction it must be shown unequivocally that ownership is squarely and patently in issue. That not being the case in the instant case, the courts must come in. As said earlier the prolonged stay by the local indigenes on these lands gives them customary possessory rights which are predicated on ancestral ownership. This right to ancestral ownership makes it mandatory for any body or groups or organization dealing with such land for whatever purpose to take these ancestral rights into consideration. The indigenous people cannot therefore be ignored or disregarded, mindful of their age old possessory rights on the land.

This right to ancestral ownership of land was given judicial recognition by the Supreme Court of Cameroon in the case of Ekobena Fouda Jean inheritors Vs. the State of Cameroon (MINDAF), judgment no. 50/06-07 of 28th February 2007. In that case the petitioner challenged the State for issuing a land certificate to one Kemongne David in disrespect of her ancestral rights. The said land certificate was on that score withdrawn.

It results from the above case that land generally and particularly in the Anglophone Regions of Cameroon is regarded as ancestral property owned by the indigenous people according to their customarily

defined rules. Although these local people through their Chiefs and Fons may not have documents of title, the empirical data on the ground particularly their centuries of possession and control is a powerful and uncontestable evidence of their right to ownership. The substantive action in contention was filed in line with the current legal frame work of post colonial Cameroon. This is so because colonialism was characterized by massive dispossession of the indigenous people of their lands in total disregard of their ancestral rights.

The land ordinance of 1974 as amended and subsequent legislation on land that followed were designed on the basis of the land right model inherited which leaves actual possession based on ancestral claims with the indigenous people. This aboriginal claims over land by the indigenous people have been recognized by International tribunal including the African Court for human and Peoples rights in Banjul regardless of what local legislation may prescribe. In the same vein article 11 (1) of the International Covenant on Economic, Social and Cultural Rights (1966) have been interpreted by some National courts, which interpretation this court adopts, as putting an obligation on State Parties to the United Nations to ensure certain minimum levels of respects to the land rights of vulnerable groups in the country. It is undeniable that land is by law owned and controlled by the State on the basis of legislation. The State thus are technical owners of unregistered land.

But anybody, groups of persons National or International who obtain this land from the State must before occupying same observe and give due regard to the ancestral or aboriginal rights of the indigenous people who inhabit it. Any attempt to disregard these aboriginal rights must be checked by the courts.

The observance of these aboriginal or ancestral right is necessary to avert future and protracted conflicts, since land is noted as the main source of conflicts all over Cameroon. In the light of the above Cameroon has in place a whole compendium of legal and regulatory frame work on the environment. In them are outlined inter-alia elements of Cameroon's environmental legislation in general and those governing the development and operation of projects in particular. Fore most amongst these legal and regulatory frame work is law no.96/12 of 5th August 1996 on the environmental impact assessment read with its decree of application no.2005/0577/PM of 23rd February 2005.

The above laws catalogues all the rules and procedures of carrying out an environment impact assessment, its articles 3, 17 and 19 are mandatory. The conduct of the environmental impact assessment is a pre-condition for carrying out any project of the magnitude of that which is envisaged by the applicants herein, who are defendants in the substantive action.

The main purpose of the environmental impact assessment is to evaluate the impact of the project on the environment, the anticipated consequences of the implementation of the project on the natural and human environment. And most importantly outlined the measures envisaged by the promoter of the project to eliminate, reduce and possibly compensate for the harmful consequences of the project on the environment see Article 19 (2) (supra). Like in the instant case, where there is violation of a major procedural step, the same law permits the affected population or any individual or group acting on their behalf to seize the competent court for a declaratory judgment. This is what the plaintiffs in the substantive action required from this court.

It must be borne in mind that the high courts of the Anglophone Cameroon are fashioned along the lines of her majesty's High Court of Justice in England. Consequently they exercise a two fold jurisdiction. It's adjudicatory jurisdiction derives principally from substantive law notably section 18 of law no.2006/015 of 29th December 2006 on judicial Organization in Cameroon. While its interpretative jurisdiction derive from rules of practice as obtain in her Majesty's High Court of Justice in England and inherited by our Courts.

The High Courts interpretative jurisdiction is invoked by the originating summons procedure for the interpretation of legal questions only. In the exercise of its interpretative jurisdiction the High Courts as fountain of Justice merely interprete questions of law be they administrative or non-administrative. In the exercise of this prerogative therefore the dichotomy between administrative and non administrative actions becomes inapplicable.

That said and on the basis of the foregoing the objections by the Learned Barrister Eta Ako of Counsel for the applicants have nothing to stand on, the consequently collapse. This court holds the above views because jurisprudence exist today in some countries which posit that even actions likely to affect people in future can be brought to Court to avert that future adverse effect on humanity. These are new dimensions in the area of Human rights Law, which only the law courts can adjudicate on them.

Having held as I have done above further hearing of the substantive action may just be an unworthy repetition. Similarly all orders made prior to this one by this court are cancelled. This court shall also not belabour itself on issues not raised by the parties.

Also the issue of the grant of the concession by the State of Cameroon as technical owners of all unregistered land to the applicants herein is perfectly correct. This court lacks jurisdiction to challenge or contest the grant. That is the administrative prerogative of the state. But the environmental impact assessment laid down by law must be mandatory complied with as a precondition for any actions on the land. It is true that the project is huge and a welcome relief to the people of the area and government of Cameroon in its policy drive to make Cameroon an emerging Nation as it will bring jobs, and development to the locality. All that notwithstanding the aboriginal rights of the indigenous people cannot be disregarded.

Based on the foregoing this court reiterate the former order of this court and proceed to rule and order thus :

1) That the applicants herein who are defendants in the substantive action are temporarily prohibited from proceeding with their acts on the lands found in Mundemba and Toko Sub Divisions until the mandatory environmental impact assessment is carried out with a view to evaluate the impact of their acts on the natural and human environment of these areas, establish all measures envisages to avert them;

2) Compensate those directly affected by their farms and village settlements, on the basis of the relevant law which is the Prime Ministerial text on the subject;

3) Compensate those affected by taking of their ancestral prossessory rights.

4) Reach a clear understanding with the indigenous people by way of a memorandum of understanding for the project, to avert any future conflicts;

5) That above orders be complied with. No cost.

" IN WITNESS WHEREOF, the present Ruling is signed by the President and the Registrar-in-Chief of the Court".

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REGISTRAR-IN-CHIEF

HIGH COURT NDIAN

P R E S I D E N T

HIGH COURT NDIAN