



IN THE HIGH COURT OF NDIAN DIVISION

HOLDEN AT MUNDEMBA

BEFORE HIS LORDSHIP JUSTICE MUKETE TAHLE ITOE ..PRESIDENT

WITH SIMON EKUMENE MBANDA AS REGISTRAR-IN-ATTENDANCE

THIS WEDNESDAY THE 31<sup>ST</sup> DAY OF AUGUST 2011

05

SUIT No.: HCN/003<sup>OS</sup>/2011/1M/2011

BETWEEN:

STRUGGLE TO ECONOMISE  
FUTURE ENVIRONMENT  
(SEFE)

10



.....

PLAINTIFF

AND

1. SG SUSTAINABLE OILS  
CAMEROON LTD  
2. DR. TIMTI ISIDORE



.....

DEFENDANTS

15 PARTIES: Parties all present

APPEARANCES:

Mr. Malle for the Plaintiffs /Applicants present

Mr. Etah Ako for defendant present

COURT NOTE: Court Session declared open

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“REPUBLIC OF CAMEROON”

“IN THE NAME OF THE PEOPLE OF CAMEROON”

“R U L I N G”

On the 8<sup>th</sup> of August 2011, the Plaintiffs/Applicants through Counsel filed a motion on notice pursuant to Order 34 of the Supreme Court Civil Procedure Rules 1948 praying this Court for the following orders.

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1. That the defendants, their servants and agents be restrained from carrying out further activities within the jurisdiction of this Court in furtherance of their

*establishment of an oil palm plantation until the substantive matter now pending before the Court is disposed of.*

05 And for any other order(s) that this Court may deem necessary to make in the circumstances.

The application is supported by a 06 paragraph affidavit deposed to by Barrister Malle Adolf on behalf of and with the authority of the Applicants/Plaintiffs with no annexures. Mr. Malle Adopts and relies on all the paragraphs of the affidavit with special emphasis on paragraph 02-05.

10 The Defendants / Respondents were duly served twice with the motion papers on the 08<sup>th</sup> and 9<sup>th</sup> of August 2011 respectively via one Daniel Agoons. They failed to attend Court, let alone to file a Counter-affidavit within the statutory period allowed by law.

15 After two adjournments, on the 16<sup>th</sup> of August 2011, this Honourable Court ordered the Applicant / Plaintiffs to move the Court.

Mr. Njukeng George, State Counsel of the Courts in Ndiabou made oral submissions for the interest of the law.

20 Mr. Njukeng raised issues about the capacity of the Plaintiff/Applicants to sue. Further that the interest pointed out in paragraphs 4 and 5 of the affidavit are not those that may be defended by the Plaintiff / Applicants before this Honourable Court because the forest in question is national land. That all the paragraphs talk about public law issues and particularly the role of the administration in the management of forests of which the Applicants / Plaintiffs lack the requisite locus standi to pursue.

25 Mr. Njukeng cited Article 1 of the 1974 Land Tenure Ordinance (on rules governing land tenure and impressed on the Court to hold that the Plaintiffs/Applicants ought to push the administrative authorities to cause the Defendants/Respondents to comply with environmental requirements of land acquisition and not legal action in Court.

30 Mr. Njukeng concludes that the activities carried out by the Defendants / Respondents Company are done on national land subject to the administrative control of the State.

Therefore the village communities can only make complaints for destruction or disturbance of quiet enjoyment. In the alternative, they should complain to the

05 *administrative officers for the land expropriation procedures to be properly and regularly followed since the allegations of irregularity in the acquisition procedure have well been highlighted by the Applicants / Plaintiffs in the motion paper.*

On his part, Mr. Malle of Counsel for the Plaintiffs / Applicants urged the Court to grant the reliefs sought by the Applicants / Plaintiffs.

10 *That the Respondents / Defendants were duly served twice with the motion papers. They failed to file a Counter Affidavit within the statutory period as required by law. It means they are not opposed to the grant of the reliefs sought by the Applicants / Plaintiffs.*

15 *In addition, as deposed to in paragraph 02 of the affidavit, this application is predicated upon a substantive suit No. HCN/003<sup>OS</sup>/2011 pending before the Court for hearing and determination wherein the parties are Plaintiffs and Defendants respectively.*

20 *Mr. Malle as well gave an insight into the Originating Summons (OS), stating that the Applicants seek this Honourable Court's interpretation of certain of our enactments mentioned therein and to answer questions on a given set of circumstances since the interpretation of law is the proper jurisdiction of the High Court.*

25 *On the issue of the Plaintiff's / Applicant's locus standi to sue the Respondents / Defendants raised by Mr. Njukeng for the interest of the law, Mr. Malle cited the 1996 Constitution of Cameroon on the duty of every citizen to protect the environment. That citizen in question, adds, Mr. Malle may either be a natural person or a legal entity.*

30 *Hence, Article 8(2) of Law N° 96/12 of the 05<sup>th</sup> of August 1996 relating to Environmental Management associations such as the Applicants / Plaintiffs are expressly authorised to play the role of Plaintiffs where it concerns any breach of environmental protection. And specifically, the Plaintiffs / Applicants are an association recognised under Cameroon law active in the domain of environmental protection.*

35 *Another issue raised by Mr. Malle of Counsel for the Applicants / Plaintiffs is that the action brought by the Applicants / Plaintiffs before this Court is for the common good of the people of the affected areas who happen to be Cameroonians.*

He cites Article 17(2) of Ordinance 74/1 of the 6/7/1974 on land tenure Rules which states that Customary Communities or members thereof have the right to continuous use of their land and may even apply for land certificates.

And that they can not be deprived of that land without due process (of law).

05 This land rights by the natives, Mr. Malle avers is strengthened by the UN 2007 Declaration on the Rights of Indigenous Peoples, to which Cameroon is a signatory.

Mr. Malle further impresses on the Court to hold that the present application before the Court is for an interlocutory order. The purpose is to maintain the status  
10 quo ante between the parties pending the determination of the real issues in dispute.

At this stage, all that the Court needs to justify is whether or not the Applicants / Plaintiffs have some rights that they seek to protect.

Finally, as to the jurisdiction of this Court to entertain actions on environmental issues, Mr. Malle cited many decided cases, to wit;

15 FEDEV and Another Vs. Bamenda City Council HCB/19/2008, unreported; MINFOF Vs. Tamesumejong Henry and Sotranelk CFI/BA/245<sup>CM</sup>/02-03, unreported etc.

And concludes that being a High Court, a Court of Records, any interested party wishing to raise a Preliminary Objection must do so in writing to the other party  
20 referring to the Preliminary Objection raised by the Legal Department in this matter considered by Mr. Malle to be an ambush. He urged the Court to grant the reliefs sought by the Plaintiffs / Applicants.

I have carefully perused the motion paper and the 06 paragraph affidavit attached thereto. I also listened with keen interest to the oral and legal arguments by  
25 Barrister Malle as well as the submissions of Mr. Njukeng George, State Counsel, for the interest of the law.

I as well carried out extensive internet research and read widely on issues related to land use, environmental management and the opening of giant plantations in tropical forests in the light of the application before the Court.

30 I make the following observations: