In the Supreme Court of British Columbia

No. 0843
Smithers Registry

Smithers, B. C.
December 2, 1988

BETWEEN:

DELGAMUUKW, also know as KEN MULDOE, suing on his own behalf and on behalf of all other members of the HOUSE OF DELGAMUUKW, and others,

Plaintiffs;

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and THE ATTORNEY-GENERAL FOR CANADA,

Defendants.

CROSS-EXAMINATION ON AFFIDAVIT
OF
JOHN NAMOX

M.D. ADAMS, Esq.	Appearing for the Plaintiffs
J.M. MACKENZIE, Esq., and MS. T.A. SIGURDSON	Appearing for Her Majesty the Queen in Right of the Province of British Columbia
M.W.W. FREY, Esq.	Appearing for the Attorney-General of Canada

UNITED REPORTING

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SMITHERS, B.C.
December 2, 1988.

JOHN NAMOX, a witness herein called on behalf of the Plaintiffs, having been duly sworn, testifies as follows:

G. HOLLAND: Interpreter previously sworn

MR. MACKENZIE: Mr. Namox, I am representing the provincial government and I have some questions to ask you. I'm here, and Thora Sigurdson is with me for the Province, and Michael Frey is here representing Canada.
MR. ADAMS: And Murray Adams, one of counsel for the plaintiffs.
MR. MACKENZIE: Mr. Mitchell is here as the word speller, and Mr. Holland is here as the interpreter. Mr. Jim is here, Mr. Victor Jim, and I'm sorry, Murray, could you introduce the other people.
MR. ADAMS: Janet Williams, Pat Namox, and Henry Alfred.

CROSS-EXAMINATION BY MR. MACKENZIE:

Q Mr. Namox, did you sign an affidavit on May 16, 1988?
A What paper?
Q I'm showing to you the affidavit which has been marked as Exhibit 672, and could you identify your signature on the last page of that affidavit, page 4?
A Yes. I signed that.
Q And when was the first time that you saw that affidavit?
A It was in May sometime, when translator indicating -- translator was also there at that time.
Q Who was there besides Mr. Holland?
A Marvin.
Q And was anyone else there when you signed the affidavit?
A There was this other person besides one that questioned me at that time, one other person.
Q Do you know who that person was?
A Marvin and a translator were there, were present when I signed this paper.
Q Was anyone else present when you signed the paper?
A No.
Q Did someone translate the affidavit to you before you signed it?
A Yes.

Q Was it Mr. Holland who translated it to you?
A Yes.
Q Do you remember actually signing the paper?
A Yes.
Q Do you remember someone else signing the paper after you signed it?
A I can't remember and I don't know.
Q Do you remember in 1982 going to court about Johnny David's trapline?
A No. I didn't go there at all at that time.
Q Do you remember coming to the courthouse here in Smithers when the judge held a trial about Johnny David's trapline?
A No. I didn't come here at all.
Q Have you ever been in court before?
A No, not at all.
Q Have you ever signed an affidavit before?
A No.
Q Is this the first affidavit you have signed?
A Yes, my first affidavit.

MR. MACKENZIE: I'm showing to you an affidavit dated July 31, 1986 which has been marked as an exhibit in these proceedings. It's been marked as Exhibit 828.

MR. ADAMS: Was the whole thing marked or part of it?

MR. MACKENZIE: The affidavit and certain questions were marked as Exhibit 828, and one of the two maps was marked as 828-A, that is part 2 of 2, the map as 828A.

MR. ADAMS: Are you able to say which questions and which map?

MR. MACKENZIE:

Q Yes. The map is part 2 of 2 -- sorry, I beg your pardon -- yes, that's correct. The map is part 2 of 2 and was marked as 828-A, and questions 58, 59(c) and 63 were marked as Exhibit 828. I'm showing to you that affidavit marked as Exhibit 828. Can you identify your signature on the second page of that affidavit?
A This affidavit, who made up this affidavit at that time?
Q I think your lawyers must have brought the affidavit to you to be signed?
A Yes.
Q So did you sign that affidavit?
A It's -- it looks like my signature all right. I probably did sign that.
Q Is it fair to say that you don't remember signing it?
A I had forgotten about it.

MR. MACKENZIE: Now, referring again to the territorial

affidavit, Exhibit 672, did someone explain to you what was in this affidavit?
THE TRANSLATOR: Can you run that question by me again?
MR. MACKENZIE:
Q Did someone explain to you what was in this affidavit?
A Yes. They questioned me on the territory and I told them what I knew of it.
Q What do you think is in the affidavit?
A It's about Quick area.
Q Your chief's name is what?
A Yes, it is Wah tah Kwets.
Q And what is the name of your house?
A Kwen beegh yex.
Q What is the name of your clan?
A It's Laksilyu.
MR. FREY: Mr. Mackenzie, I need a spelling for Kwen beegh yex.
THE INTERPRETER: K-W-E-N, new word, B-E-E-G-H, new word, Y-E-X.
MR. FREY: Thank you.
MR. MACKENZIE:
Q What other houses are in the Laksilyu clan?
A It's another one is Gene egh ļa yex, which consists of one family.
Q Do you have any other houses in your clan?
A No. I don't know of any other house. I know of the two now.
Q And what are the two houses in your clan that you are speaking of?
A Gen egh ļa yex and Kwen beegh yex.
Q Are there any other houses in your clan?
A There's a third house, but I forget the name to that third house.
Q What are the names of the chiefs that -- the important chiefs in your clan?
A I can't remember who was the head person in the Gene egh ļa yex and I couldn't recall at this time.
Q How old are you today, Mr. Namox?
A Seventy-five.
Q What are the names of other chiefs in the House of Kwen beegh yex?
A Legiboo and Gus ga bagh are the chiefs in the House of Kwen beegh yex.
MR. FREY: Can I get a spelling for that second one, please?
THE TRANSLATOR: G-U-S G-A B-A-G-H.
MR. FREY: B-A-G-H.
THE TRANSLATOR: Yes.
MR. FREY: Thank you.
THE INTERPRETER: He doesn't feel too good and he's been pretty

sick, and he can't sit up too long.

(OFF THE RECORD DISCUSSION)

MR. MACKENZIE: We counsel have had a discussion off the record and I have suggested to Mr. Adams that we adjourn this cross-examination for today in view of Mr. Namox's ill health. We wish to consider whether we will continue with the cross-examination in view of the state of Mr. Namox's health as he explained it to us off the record.

MR. FREY: I'm in agreement and will follow my friend's lead, but I do wish to consider independently that we are -- that I'm in complete agreement that we can't proceed any further today.

MR. MACKENZIE: So I'm not requesting that Mr. Namox be produced Monday morning, but I want to have the opportunity to take instructions and then discuss with plaintiff's counsel whether it's appropriate to continue the cross-examination at all in or out of court.

MR. ADAMS: I should say, I'm not aware, no matter what the state of his health, whether we can produce him Monday morning. I don't know what the schedule is and where various counsel are.

MR. MACKENZIE: I understand that. Well, having said that, I would therefore request that we adjourn this cross-examination.

MR. ADAMS: And I agree with that proposal.

(EXAMINATION ADJOURNED)

I hereby certify the foregoing to be a true and accurate transcript of the proceedings herein transcribed to the best of my skill and ability

Graham D. Parker
Official Reporter
United Reporting Service Ltd.