

**PAPUA NEW GUINEA**  
**[IN THE NATIONAL COURT OF JUSTICE]**

OS JR No. 983 OF 2011

BETWEEN:

**LEO MANIWA for himself and on behalf of Kowiru village**  
*First Plaintiff*

AND:

**OTHERS AS PER ATTACHED SCHEDULE**  
*Second Plaintiff*

AND:

**ARON MALJIWI in his capacity as Director of Limawo Holdings Ltd & Director of  
Sepik Oil Palm Plantation Ltd.**  
*First Defendant*

AND:

**HUI TECK LAU in his capacity as Director of Wewak Agriculture Development Ltd  
& Director of Sepik Oil Palm Plantation Ltd.**  
*Second Defendant*

AND:

**LIMAWO HOLDINGS LTD**  
*Third Defendant*

AND:

**WEWAK AGRICULTURE DEVELOPMENT LIMITED**  
*Fourth Defendant*

AND:

**SEPIK OIL PALM PLANTATION LIMITED**  
*Fifth Defendant*

AND:

**HONOURABLE PUKA TEMU - in his capacity as Minister of Lands & Physical  
Planning**  
*Sixth Defendant*

AND:

**PEPI KIMAS in his capacity as Secretary, Department of  
Lands & Physical Planning**  
*Seventh Defendant*

AND:

**THE INDEPENDENT STATE OF PAPUA NEW GUINEA**  
*Eighth Defendant*

Waigani: Gavara-Nanu J.  
2013: 20 Nov & 11 December  
2014: 4 July

***PRACTICE & PROCEDURE - Land Law - Special Agricultural & Business Lease - Land Act, 1996; ss. 10, 11 and 102 – Land Groups Incorporation Act 1974, ss. 5 (2) (c), (6) and 33 (1) - Constitution; ss. 5 and 53 - Meaning of meaningful consultation with landowners discussed.***

#### **Cases cited**

*Doriga Mahuru & Ors v. Hon. Lucas Dekenai & Ors* (2013) N5305  
*Musa Valley Management Company Limited & Musa Century Limited v. Pepi Kimas & Ors* (2010) N3827

#### **Counsel**

*H. Walley*, for the First & Second Plaintiffs  
*T. Boboro*, for the First to Fifth Defendants

#### **4th July, 2014**

1. **GAVARA-NANU J.:** The plaintiffs seek review of the decision of the Minister for Lands and Physical Planning, Hon. Puka Temu, made on 2 September, 2008, to grant a Special Agricultural and Business Lease (SABL) over their customary land described as Portion 144 C, East Sepik Province, to Sepik Oil Palm Plantation Limited, the fifth defendant, which is the developer.

2. The plaintiffs seek an order in the nature of certiorari to quash the decision and to restore the land to them. This is the principal relief sought. The other relief are consequential which are sought by way of declarations. These relief relate to environmental damage, validity of agreements for the developer to clear forests, to harvest logs and to plant oil palm on the land.

4. The plaintiffs submitted that their land was acquired by the State which converted it into SABL without their consent. They submitted that a purported consent for their land to be converted to SABL was given fraudulently by a small and selected group of people who had vested interests. They further argued that even if the consent was given by the people who may have had authority to give consent, the landowners were not consulted, as such the consent was fraudulently given and was in breach of mandatory statutory requirements under the *Land Act 1996*, *Land Groups Incorporation Act 1974*, *Forest Act 1991* and the *Constitution*.

5. The plaintiffs argued that the SABL was granted specifically in breach of ss. 10, 11 and 102 of the *Land Act*, ss. 7 (1) and 8 of the *Environment Act, 2000*, s. 90B of the *Forest Act*, ss. 5 (2) (c), 6 and 33 (1) and (2) of the *Land Groups Incorporation Act 1974* and s. 53 of the *Constitution*.

6. The plaintiffs submitted that there was no awareness conducted by the defendants nor was there any meaningful consultation with the landowners before their land was acquired by the State for the SABL.

7. The defendants submitted that the SABL was properly and lawfully issued to the fifth defendant, they argued that the consent of the landowners was obtained before the SABL was issued. They said all the relevant requirements for the grant of SABL were complied with. In support of these arguments the defendants also adduced the Minutes of a public meeting held at Turumu Primary School, East Sepik Province on 25 July, 2008. That meeting was attended by individuals and representatives of 56 Incorporated Land Groups (ILGS). The affidavit of Michael Sino, the Acting Deputy Provincial Administrator for East Sepik sworn on 5 November, 2012, deposes that the meeting was conducted to

gauge the views of the landowners about the Oil Palm project in their land and the SABL. Michael Sino chaired that meeting. He deposes that the meeting was widely publicized and even people from outside of the SABL area attended. He says the plaintiffs did not raise any objections to the SABL being granted and the oil palm project.

8. Aron Malijiwi, the first defendant and the Chairman of Limawo Holdings Ltd, which is the landowner company and a joint venture company with Wewak Agriculture Development Ltd, confirms in his affidavit that a public meeting was held at the Turumu Primary School on 25 July, 2012. Joseph Then who is the Executive Director of Sepik Oil Palm Plantation Limited and General Manager of Wewak Agricultural Development Limited also swore an affidavit on 5 November, 2012, in support of the evidence of Aron Malijiwi.

9. Sepik Oil Palm Plantation Ltd has two shareholders, Limawo Holdings Ltd, which holds 2,000 shares and Wewak Agricultural Development Ltd, the fourth defendant, which holds 8,000 shares. The Directors of Sepik Oil Palm Plantation Ltd are Hui Teck Lau also known as Sumitro Lau, the second defendant, Nyi Then also known as Joseph Then and Aron Malijiwi.

10. Wewak Agriculture Development Ltd has one shareholder, viz, Wewak Agricultural Development Ltd, which holds 10,000 shares.

11. The Directors of Wewak Agricultural Development Ltd are Hui Tech Lau or Sumitro Lau, Chiong Ming Ting and Ngi Then or Joseph Then. The Wewak Agricultural Development Ltd is an investment company, it also looks after the finances of the developer, Sepik Oil Palm Plantation Ltd in partnership, with the landowner company Limawo Holdings Ltd.

12. Limawo Holdings Ltd has 47 individual shareholders and 55 ILGs all holding 1,000 shares each.

13. The plaintiffs argued that acquisition of their land in the manner it was acquired by the State to convert it into a SABL for 99 years was also unconstitutional as it breached s. 53 of the *Constitution*. They argued that they have been unfairly deprived of the use, benefit and enjoyment of their land.

14. The plaintiffs submitted that when their land was acquired for SABL, the acquisition breached the requirements under ss. 9, 10, 11, 12 and 102 of the *Land Act* 1996. They argued that the purported consent given by the Directors of Limawo Holdings Ltd was not authorized by the landowners. They argued that most, if not all the landowners were not aware of that consent.

15. The plaintiffs have argued that ss 5 (2) (c), 6 and 33 (1) and (2) of the *Land Groups Incorporation Act* 1974 and ss. 37A of the *Survey Act*, Chapter 95 were also breached by the defendants. In regard to the breaches under the *Land Groups Incorporation Act*, 1974, the plaintiffs claimed that there were no applications for recognition by Land Groups with list of their members by the Registrar of Incorporated Land Groups. As to the breaches of the *Survey Act*, the plaintiffs submitted that there was no survey information collected on the land by the land offices and no surveys were done on the land. In regard to the breaches of the *Land Act*, the plaintiffs argued among other things that the Instrument of lease was not issued on an approved form. The plaintiffs argued that other requirements for land acquisition of customary land under ss. 9, 10 and 11 of the *Land Act*, were either not complied with at all or were not fully complied with by the Minister for Lands before the SABL was issued to the fifth defendant.

16. The defendants have raised issues regarding the authority of the principal plaintiffs to bring this application on behalf of other landowners. After carefully perusing and considering the materials before the Court I am satisfied that the principal plaintiffs have the authority of the landowners to bring this application to Court. There is overwhelming evidence showing that landowners have agreed for the principal plaintiffs to make this

application. The principal plaintiffs have also acted under the authority of duly executed Powers of Attorney which have been signed by the elders of the Kowiru and Kaubaraka villages, which are in the SABL area.

17. In regard to the consent, it was signed on 2 September, 2008, by four people and witnessed by three people. The four people who signed the consent are Aron Malijiwi, the Chairman of Limawo Holdings Ltd, Martin Shukwei, the Vice Chairman of Lamiwo Holdings Ltd, Malcolm Nambon, a Director of Limawo Holdings Ltd and one Paul Bina, Chairman of Mamutika ILG. The three people who witnessed the signing of the consent were Pepi Kimas, Secretary for Lands, Jacob Waffinduo, Manager, Customary Land, Department of Lands and Physical Planning and Ian Jorundio, Manager, Legal Services, Department of Lands and Physical Planning.

18. The plaintiffs have argued that those who signed this consent did not obtain the views and consent of the landowners, before signing the consent. The plaintiffs have also argued that the meeting held at Turumu Primary School purportedly to gauge the views of the landowners was not a proper consultation with the landowners because most landowners were not made aware of the meeting and did not attend the meeting. There is evidence that many people that attended the meeting were not from the SABL area. This is not disputed. The evidence shows that the meeting started at 1.15pm and ended at 2.05pm. The meeting was attended by some public servants besides Michael Sino. According to the Minutes of the meeting 18 people spoke in support of the Oil Pam Project. The front page of the Minutes indicates that the meeting started at 1.15pm and finished at 2.30pm but the last paragraph of the Minutes indicates that the Chairman closed the meeting at 2.05pm. So the meeting lasted for only 50 minutes.

19. In regard to the alleged breach of s. 33 of the *Land Groups Incorporation Act 1974*, by the defendants where the plaintiffs claim that before the SABL was issued no list of names of landowners was lodged for the recognition of the customary land groups by the Registrar of Incorporated Land Groups, there is a list of names which appears to have been prepared for that purpose but the names have been typed and the people whose names appear on the list have not signed against their names. The list is annexed to Joseph Then's affidavit. I have decided not to give weight to this list for two reasons, first it is not authentic as it has not been signed by the people named in the list, second it is hearsay in that it should have been produced to the Court through the person who prepared the list.

20. On 28 November, 2011, the landowners' lawyers made a written submission to the Minister, the Secretary and the Principal Legal Officer for Departments of Lands and Physical Planning for the SABL to be revoked. The submission was in support of the petition by the landowners to the Minister for Lands to revoke the SABL. The petitioners were from the SABL area and the petition was signed by 70 people.

20. Having considered all the materials before me and the relevant laws governing the grant of SABLs, I have come to a firm view that the SABL granted over the customary land known as Potion 144C East Sepik Province was so granted in breach of the mandatory statutory requirements, viz, ss. 10 (2),(3), and (4) and 102 (2) and (3) of the *Land Act*. There is no evidence that the Minister made reasonable inquiries to satisfy himself that the landowners did not require the land either at all or for a period before issuing the SABL to the fifth defendant. There was also no agreement between the landowners and the Minister for the land to be acquired for SABL.

21. I do not consider the consent purportedly signed by the Directors of the landowner company for the grant of SABL represented the wishes of the majority of the landowners, if not all the landowners. There was no awareness conducted by the representatives of the State, more particularly the officers from the Department of Lands and Physical Planning and the East Sepik Provincial Government with the landowners to sufficiently inform and educate them of the intentions of the Government regarding SABLs and the effect the SABL would have on them and their land.

22. I am also not satisfied that the meeting held at Turumu Primary School on 25 July,

2008, met the requirements of meaningful consultation with the landowners. The first thing to note is that, the meeting lasted for only 50 minutes. That very clearly was insufficient time to gauge the landowners' views on SABL. Furthermore, only 18 people spoke in the meeting. That meeting was the only one held. There is no evidence of similar meetings being held.

23. For the landowners to be sufficiently informed of the new Government policies such as introduction of SABLs which would adversely affect their traditional lifestyle; more in-depth awareness meetings should have been conducted. This could have been achieved by Government officers travelling to the SABL areas and talking to the landowners in their villages. This exercise should have been done over a period of time, say six or twelve months or even more so that the people were made aware of and understood what SABL is about, its benefits, advantages and disadvantages and so on. To me, this is the true Papua New Guinea way of consulting with people in the villages, especially where new projects are introduced in their areas and especially where SABLs would attract other projects, such as the introduction of oil palm plantations in the SABL areas. In introducing projects such as this which would have permanent and long term effect on their land, genuine and meaningful consultation with the landowners must be carried out among the landowners. This is emphasized by the *Constitution* in the Directive Principles under the fifth goal, which provides for promoting and protecting Papua New Guinean ways. Section 5 of the *Constitution* provides:

#### 5. *Papua New Guinean ways*

*We declare our fifth goal to be to achieve development primarily through the use of Papua New Guinean forms of social, political and economic organization.*

*WE ACCORDINGLY CALL FOR -*

*(1) a fundamental re-orientation of our attitudes and the institutions of government, commerce, education and religion towards Papua New Guinean forms of participation, consultation, and consensus, and a continuous renewal of the responsiveness of these institutions to the needs and attitudes of the People; and*

*(2) particular emphasis in our economic development to be placed on small-scale artisan, service and business activity; and*

*(3) recognition that the cultural, commercial and ethnic diversity of our people is a positive strength, and for the fostering of a respect for, and appreciation of, traditional ways of life and culture, including language, in all their richness and variety, as well as for a willingness to apply these ways dynamically and creatively for the tasks of development; and*

*(4) traditional villages and communities to remain as viable units of Papua New Guinea society, and for active steps to be taken to improve their cultural, social, economic and ethical quality. (my underling)*

24. The meeting at Turumu Primary School was not a meeting in the Papua New Guinean way. Papua New Guinean way of meeting and consultation with landowners as I discussed above and as provided by the *Constitution* was required because the SABL and the related activities or projects were going to interfere with and affect their traditional lifestyle, their customary rights to land, rivers, the sea and forests. The SABL was granted to the fifth defendant for 99 years, that is how long the landowners would be denied from the use and enjoyment of their land. So the generations of landowners would be affected. This is why the defendants needed to go to the villages in SABL areas and talk to the landowners, in their families clans and tribes, in the languages they could understand. If they did understand English, Pidgin or Motu, then use interpreters to interpret things in their own languages. This to me is the Papua New Guinean way of consultation and making awareness to the landowners as envisaged by s. 5 of the *Constitution*. By doing things this way, people and their cultures will be recognized, acknowledged and respected.

25. The meeting at Turumu Primary School fell far short of the type of consultation I am referring to, *viz*; the type of consultation that is envisaged by s. 5 of the *Constitution* and ss. 10 (2), (3) and (4) and 102 (2) of the *Land Act*.
26. Even if the meeting at Turumu Primary School constituted a form of consultation, it was still not enough to gauge the views of the landowners.
27. For the reasons given, I am not satisfied that the majority of the landowners were made aware of SABL and its effect on them and their land. It follows that the purported consent signed by the Directors of the landowner company is null and void and of no legal effect.
28. There is no evidence that the land was surveyed, even if the land was surveyed, such surveys failed to comply with the statutory requirements. There is a report of some sort produced by Joseph Then, but I will give no weight to it because it should have been produced by the person who prepared it; in other words, it is hearsay.
29. I have also decided not to give any weight to the affidavit of Aron Malijiwi sworn on 5 November, 2012, because it relates to another proceeding, OS 910 of 2011, same with his other affidavit which relates to another proceeding OS 192 of 2012.
30. I also reject parts of Joseph Then's affidavit, in which he says proper land investigation and awareness were done; these are hearsay.
31. It is also noted that the matters deposed to by Aron Malijiwi, Joseph Then and Michael Sino in their respective affidavits are disputed by Joe Wafewa, Peter Maliari and Steven Morubi.
32. Even if there was an investigation report on the land, there is no evidence that the landowners or at least the majority of them agreed to SABL.
33. There is also no Instrument of Lease in the approved form which the landowners were supposed to have signed. This Instrument should be produced by the Department of Lands and Physical Planning, through an officer who keeps record of such documents. See *Musa Valley Management Company Limited & Musa Century Limited v. Pepi Kumas & Ors* (2010) N3827.
34. In *Doriga Mahuru & Ors v. Hon. Lucas Dekenai & Ors* (2013) N5305, Cannings J, in his unreported judgment at p. 14, said:
- "I maintain the approach I took in Musa Valley. To lawfully grant a Special Agricultural and Business Lease over customary land, the Minister must comply with all the requirements of Section 10, 11, and 102."*
35. I agree with his Honour. I have already found that provisions of ss. 10, 11 and 102 of the *Land Act*, were not complied with by the Minister when granting SABL to the fifth defendant.
36. I also find and declare that the SABL was issued in breach of s. 53 of the *Constitution*, in that the landowners were unlawfully deprived of their customary land.
37. For the foregoing reasons, I declare that the SABL granted to the fifth defendant on 3 September, 2008, by the Minister for Lands and Physical Planning is null and void. Any other related actions or projects undertaken or done either pursuant to or in relation to the SABL, such as logging agreements and or planting of oil palm in the SABL area are also declared illegal and null and void.
38. Any claim for damages by the plaintiffs arising from the logging agreements or operations and or planting of oil palm in the SABL area and clearing of forests should be

pursued separately.

39. The defendants will pay the plaintiffs costs of and incidental to the proceeding.

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Harricknen Lawyers: *Lawyer for the Plaintiffs*  
Kuman Lawyers: *Lawyer for the Defendants*