

PAPUA NEW GUINEA
[IN THE NATIONAL COURT OF JUSTICE]
OS (JR) NO. 52 OF 2026 (IECMS)

BETWEEN:

CHRISTIAN MARAVIS on behalf of himself and other concerned customary landowners of **WANIGELA (SEMORER) VILLAGE, TUFU LLG, IJIVITARI DISTRICT, ORO PROVINCE** whose names appear in schedule "A" to the originating summons

-Plaintiffs-

AND:

JUDE TUKULIYA as Chairman of Environment Council and Acting Managing Director of the **CONSERVATION AND ENVIRONMENT PROTECTION AUTHORITY**

– First Defendant-

AND:

ENVIRONMENT COUNCIL

– Second Defendant-

AND:

CONSERVATION AND ENVIRONMENT PROTECTION AUTHORITY

– Third Defendant -

AND:

THE INDEPENDENT STATE OF PAPUA NEW GUINEA

-Fourth Defendant —

AND:

NORTHERN FOREST PRODUCES LIMITED

– Fifth Defendant -

Waigani: Dowa J

2026: 21st May & 14 August

JUDICIAL REVIEW – substantive review application-under the Environment Act 2000- Plaintiffs' application to review the decision of the Environment Council who uplifted Director's suspension decision without authority and without following procedure under the Environment and Its Regulations— Whether the Plaintiffs are entitled to judicial review of the decision of the Defendants–

Held: Although Defendants committed errors of both substantive and procedural law an order in Certiorari was refused as it would be detrimental to good administration of the office of Conservation and Environment Protection Authority-Judicial review was refused.

Cases cited:

1. *Kekedo v Burns Philip (PNG) Ltd* [1988-1989] PNGLR 122
2. *Dwayne Job & Ors v Dr Kaul Gena & Ors* (2020) N8737
3. *Amenda Kiap v Gena* (2023) N10117
4. *Mao Zeming v The State* (2006) N2998
5. *Tau Kamahuta v Sode* (2006) N3067
6. *Willie Sinesine on behalf of the Landowners of the Vanimu TRP Area v Ikoirere* (2005) N2903
7. *Ombudsman Commission v Yama* (2004) SC747.

Counsel:

V Amoko lawyer for the Plaintiffs
Z Rekeken for the 1 st, 2nd, 3rd & 4th Defendants
T Tape for the fifth Defendant

DECISION

14th August 2026

1. **Dowa J:** The Plaintiffs apply for judicial review of a decision made by the second Defendant, the Environment Council, in uplifting the suspension of the fifth Defendants Environment Permit EP-L2 (543).

THE FACTS

2. The Plaintiffs are from Wanigela village, Tuffi LLG, Oro Province. They are customary owners of the forest resources, water, and river system where the Fifth Defendant is currently conducting forest clearing activities under Forest Clearing Authority FCA 05-06 for the Wanigela Agro-Forestry Projects. The Plaintiffs are concerned citizens and affected customary landowners of the land over which the Environment Permit styled as EP-L2 (543) was issued to the Fifth Defendant.

3. The Environment Permit was issued on 18 February 2017 for a 10-year tenure, commencing on 20 March 2017 and ending on 18 March 2027. Since its commencement, the Fifth Defendant's operations have caused ongoing destructions and pollution to the river systems and water sources that the Plaintiffs rely on for daily survival.
4. The Plaintiffs raised their concerns in a letter dated 24th May 2021 to the Minister for Conservation and Environment Protection and Climate change, and to their Governor, Hon. Garry Juffa, MP, requesting action to address the environmental damage caused by the forest clearing activities.
5. On 30 June 2021, a Notice of Suspension of an Environmental Permit under Section 72 (2) (b) and (c) of the Environment Act 2000 was issued to the Fifth Defendants by the First Defendant. The suspension was based on two grounds:
 - a) Misleading and false information submitted during the permit application stage.
 - b) Environmental destruction and pollution complaints raised by the Plaintiffs.
6. On 19 July 2021, the Fifth Defendant applied by letter to the Environment Council to review the suspension decision. It was addressed to the Chairman of the Environment Council. The Plaintiffs contend that this informal application was irregular.
7. On 12th August 2021, the Second Defendant convened a Special Environment Council Meeting ECD01/2021 and on deliberated on the review application. In that special meeting ECD01/2021, the Second Defendant requested the Fifth Defendant to provide further information and documents to assist in determining the review.
8. On 24 August 2021, the Fifth Defendant submitted the further information and documents requested by the Second Defendant. On 1 December 2021, the Second Defendant convened a Council meeting and maintained the suspension of the Fifth Defendant's Environment Permit EP-L2 (543), again citing insufficient information and non-compliance with the permit conditions.
9. Around November 2021 the second Defendant's term of Office expired. A new Council was not appointed until 9th November 2023.

10. On 18 February 2022, the Second Defendant issued Council Decision No. EDCO2/2022, uplifting the suspension of Environment Permit EP-L2(543). The Environment Council was satisfied with the information provided by the fifth Defendant that it met the conditions of the Environment Permit and rectified the noncompliance issues raised by the Plaintiffs.

11. On 21 February 2022, the Second Defendant wrote to the Fifth Defendant enclosing Council Decision No. ECD02/2022 and advised that the suspension of Environment Permit EP-L2 (543) has been uplifted.

12. The Plaintiffs allege the Defendants did not follow due process and procedures under the *Environment Act* 2000 in dealing with their complaints and deliberated on the fifth Defendant's review application without authority.

Plaintiffs' Review Application

13. By Notice of Motion, the Plaintiffs apply for judicial review, seeking the following orders:

1. Pursuant to the leave of this Court granted on 11th August 2024 and ORDR 16 Rule 51) of the National Court Rules, this Honourable Court review the decision of the Second Defendant made on the 18th day of February 2022, registered as decision No. ECD02/2022, referred to as Items No. 5.2 and headed, Response by NFRL to EC Decision ECD04/2021 to uplift the suspension of the environment Permit EP-L2 (543) for Wanigela Integrated Agro-Industry Project.

2. A DECLARATION pursuant to Order 16 Rule 1(2) and/or Order 16 Rule 5 (1) of the National Court Rules and Section 155 (4) of the Constitution be made that the Decision of the Second Defendant made on the 18th day of February, 2022, registered as Decision No. ECD02/2022, referred to as Item No.5.2 and headed, by NFRL to EC Decision ECD04/2021 to uplift the suspension of the Environment Permit EP-L2 (543) for the Wanigela Integrated Agro-Industry Project was made contrary to the section 17 and section 68 (4) of the Environment Act 2000 (as amended) and is unlawful, null and void; and

3. *A DECLARATION pursuant to order 16 Rule 1 (2) and/or Order 16 Rule 5(1) of the National Court Rules and Section 155 (4) of the Constitution be made that the decision of the Second Defendant made on the 18th day of February 2022, registered as Decision No. ECD02/2022, referred to as Item No. 5.2 and headed, Response by NFRL to EC Decision ECD04/2021 to uplift the suspension of the Environment Permit EP-L2 (543) for Wanigela Integrated Agro-Industry was made without a legally appointed Environmental Council and/or environment Council Members and it is ultra vires, unreasonable, null and void and of no effect; and*
4. *An Order in the nature of the CERTIORARI pursuant to Order 16 Rule I (1) and/or Order 16 Rule 5(1) of the National Court Rules and Section 155 (4) of the Cons, itidi on be made to bring into this Honourable Court and quash the decision of the Second Defendant made on the 18th day of February 2022, registered as Decision No. ECD02/2022, referred to as Item No. 5.2 and headed, Response L2 (543) for the Wanigela Integrated Agro-Industry Project; .*

14. The Plaintiffs rely on materials in the Review Book.

- a) Statement under Order 16 Rule 3(2) (a) of the National Court Rules
- b) Court Orders granting leave to Judicial Review of 11 August 2024
- c) Notice of Motion filed 28th August 2024.
- d) Affidavit verifying statement of Christian Maravis filed 5th July 2024
- e) Affidavit in Support of Christian Maravis filed 5th July 2024
- f) Affidavit in Support of John Bethrome Wafor filed 5th July 2024
- g) Affidavit in Support of Paul Gambud filed 5th July 2024
- h) Affidavit in Support of John Jnr Ule 5th July 2024
- i) Affidavit in Support of Adelbert Gangai filed 7th August 2024
- j) Affidavit in Support of Christian Maravis filed 28th August 2024
- k) Affidavit in Support of Christian Maravis filed 18th September 2024
- l) Affidavits of John Jnr Ules filed 4th October 2024

15. The Defendants rely on their respective Affidavits filed in response.

Grounds for Review

16. The grounds for judicial review set out in the statement of facts are:

- a) Errors of procedural law

b) Ultra virus

Issues

17. The issues for consideration are:

- a) Whether the Plaintiffs have established grounds for review
- b) Whether the Plaintiffs are entitled to the reliefs sought

Law

18. The relevant law for judicial review is Order 16 of *National Court Rules*. Order 16 Rule 1 of the *National Court Rules* caters for cases appropriate for application for judicial review and provides in this manner:

- (1) *An application for an order in the nature of **mandamus**, prohibition, **certiorari** or **quo warranto** shall be made by way of an application for judicial review in accordance with this Order.*
- (2) *An application for a declaration or an injunction may be made by way of an application for judicial review, and on such an application the court may grant the declaration or injunction claimed if it considers that, having regard to:*
 - (a) *the nature of the matters in respect to which relief may be granted by way of an order of mandamus, prohibition or certiorari; and*
 - (b) *the nature of the persons and bodies against whom relief may be granted by way of such an order; and*
 - (c) *all the circumstances of the case,*

it would be just and convenient for the declaration or injunction to be granted on an application for judicial review "

19. The law on judicial review is settled. In *Kekedo v Burns Philip (PNG) Ltd* [1988-1989] PNGLR 122, the Supreme Court stated that:

"The circumstances under which judicial review may be available are where the decision-making authority exceeds its powers, commits an error of law, commits a breach of natural justice, reaches a decision which no reasonable tribunal could have reached or abuses its powers".

20. The Supreme Court in that case further stated that:

"The purpose of judicial review is not to examine the reasoning of the subordinate authority with the view to substituting its own opinion. Judicial review is concerned not with the decision but with the decision-making process."

Ground One: Errors of Law

21. Errors of Law identified in the application are Section 68 (5) of the *Environment Act 2000* and *Environment (Council's Procedure) Regulations 2002*.
22. Counsel for the Plaintiffs submits that the fifth Defendant's application for review of the suspension decision by letter dated 19th July 2021 was irregular and did not comply with section 68(5) of the *Environment Act 2000* and Rule 10(1) of the *Environment (CP) Regulations 2002*.
23. Counsel for the State Defendants conceded that the proper Form for the review application was not used but contends that Section 68 (3) of the Act allows the second Defendant the discretion in determining its own procedures.
24. Section 68 of the *Environment Act* is relevant, and it reads as follows:

68. REVIEW OF DIRECTOR'S DECISIONS.

(1) A person who is dissatisfied with a decision of the Director under this Act in relation to an application made by that person or in relation to an activity carried on by that person may apply for a review of the decision by the Council.

(2) An application for review of a decision must be lodged with the Director within 21 days after the day on which the decision was notified to the person or to the public and the operation of the decision of the Director may be suspended on receipt of the application until the review is determined.

(3) In determining an application for review under Subsection (1) —

(a) the Council shall determine its own procedures;
and

(b) the Director shall absent himself from consideration of the review;
and

*(c) another member of the Council shall act as the temporary
Chairman*

during the absence of the Director and for the purposes of determining the review.

(4) Where a person who was a party to a review before the Council is dissatisfied with a decision of the Council in relation to the review, he may appeal to the National Court on a question of law within 28 days of the Council's decision.

(5) The Regulations shall prescribe —

at the option of the applicant, a review shall be made and
(b) the information to accompany the application; and
the requirements or service or notification of the review application; and
(d) other matters related to the review."

25. Regulation 10 of the *Environment (Council's Procedure) Regulations 2002* provides that an application for the review of a decision of the Director under Section 68 of the Act shall be in Form 1 of the Schedule.

26. Form 1 is set out below for easy reference:

INDEPENDENT STATE OF PAPUA NEW GUINEA.

Act.	Sec.	68(5)
Reg. Sec. 10(1) Form 1.		
Environment Act 2000		
APPLICATION FOR REVIEW OF DIRECTOR'S DECISION.		
TO: Environment Council.		
I, [name and address of application], hereby apply for a review of the decision by the Director made on [specify date].		
The decision for which a review is sought relates to environment permit.....(insert permit or reference number if applicable) which relates to (Description of project).		
The Particulars of the decision for which the application for review is sought are as follows —		
[specify details of the decision to be reviewed]		
The grounds of the application for review are as follows —		
[specify details of the reasons the applicant fees review is required]		

Signed:
Date:
THIS APPLICATION MUST BE LODGED WITH THE DIRECTOR OF ENVIRONMENT AS REQUIRED UNDER SECTION 68 OF THE ACT. If insufficient space supply additional information on separate A4 paper attach to this Form.

27. The Fifth Defendant did not use Form 1 when applying for review of the suspension decision. Instead, it applied by letter dated 19 July 2021. Although the State Defendants contend that the Second Defendant had discretion to determine its own procedures, that discretion must be read subject to section 68(5) of the *Environment Act 2000* and the applicable Regulations. Those provisions prescribe the form and information required for a review application and make the use of Form 1 mandatory.
28. In the matter *Willie Sinesine on behalf of the Landowners of the Vanimo TRP Area v Ikoirere* (2005) N2903, Kandakasi J, as he then was, said if a statute provides the procedure in mandatory terms, the statutory decision-making body must comply:

"By convention, the procedure for meetings of statutory committees or bodies is an internal matter which is left to the Committee to decide. But when a statute goes to great length to prescribe meeting procedures in detail and in mandatory terms, there is a purpose. The Parliament considers that subject matter to be important and that any decision arrived at in a meeting must be done through a process in which all key stakeholders' views are represented and carefully considered and a proper and acceptable decision is made which will cater for the best interest of all stakeholders. If a statutory provision prescribes the procedure in mandatory terms, the action taken must be in strict compliance with the mandatory requirements. Except as expressly authorized by the Act, it is not a matter of discretion for the statutory body to elect to waive, dispense with or ignore them. Any decision made in breach of the mandatory statutory requirements is therefore an error of law or ultra vires and made in excess of jurisdiction and therefore invalid. Both parties do not contest these principles."

(Underlining mine)

29. In the present case the fifth Defendant did not comply with the requirements of section 68(5) of the Act and section 10 of the *Environment (Council's Procedure) Regulations 2002*.
30. I find this ground for review is established.

Ground b. Ultra virus

31. The Plaintiffs' second ground for review is this. The decision of the second Defendant was made ultra virus its powers under sections 19 and 68 of the *Environment Act 2000* and section 11 of the *Environment (Council's Procedure) Regulations 2002*.
32. The second Defendant, Environment Council, is established under section 17 of the *Environment Act 2000*, consisting of no less than 10 members appointed for a term of three years. The Director of the Conservation and Environment Authority, an ex-officio member of the Council, is the Chairman.
33. One of the functions of the Environment Council is to review the decisions of the Director in accordance with section 68 of the Act and section 11 of the Regulations. Where the Council sits to review the decision of the Director, the later will not sit in the meetings and a temporary Chairman shall be appointed amongst the Council members present.
33. In the present case, it is undisputed that the Council members term expired in November 2021.
34. In the present case, it is not undisputed that the term of the Council members expired in November 2021 and the next Council members were not appointed until November 2023. There was therefore no legally constituted Environment Council on 18 February 2022, when the review application was considered; and the meeting at which the suspension of the Fifth Defendant's Environment Permit was uplifted was chaired by a temporary Chairman, Professor Simon Saulei.
35. The current Chairman of the Environment Council, Jude Tukuliya, deposed in his Affidavit that under section 16 of the *Environment Act*, the Director was within his administrative powers to uplift the suspension as directed by the Temporary Chairman.
36. Contrary to Mr Tukuliya's assertion, the documentary evidence shows that the decision to uplift the suspension was made by the Environment

Council, chaired at the time by the temporary Chairman, Professor Simon Saulei. The notice of that decision was communicated to the Fifth Defendant by the then Managing Director, Gunther Joku. In my view, an application for review of the Director's decision to suspend an Environment Permit fall within the jurisdiction of the Environment Council under sections 17(1)(e) and 68 of the *Environment Act 2000*. It does not remain within the Director's administrative functions. Section 11(3) of the *Environment (Council's Procedure) Regulations* expressly prohibit the Director from taking part in the review applications.

37. On the undisputed facts and the documentary evidence, I find that the Environment Council was not legally constituted at the time it purported to uplift the suspension. It therefore lacked the statutory authority to make that decision. The decision was made without lawful authority and is, accordingly, unlawful.
38. If the Court were to accept Mr Tukuliya's contention, the former Managing Director would have acted beyond his powers by determining the review application. That conclusion follows because the power to review a suspension decision is vested exclusively in the Environment Council.
39. In the end, I find, for reasons given above, the decision to uplift the suspension of the fifth defendant's Environment Permit was made without lawful authority.

b. Whether the Applicant is entitled to the reliefs sought

40. What orders should the Court make. In the statement and the substantive notice of motion, the Plaintiffs seek the following reliefs:
 - a. review of the second defendant's decision of 1e February 2022 uplifting the suspension decision.
 - b. A declaration that the second defendant's decision of 18th February 2022 is null and void
 - c. An order that the second defendant's decision of 18th February'2022 be quashed.
41. Although the Court has found that the decision to uplift the suspension of the Fifth Defendant's Environment Permit was made without lawful authority, that finding does not automatically entitle the Plaintiffs to all the reliefs sought. The grant of Certiorari remains discretionary, even where a

breach of procedure has been established. The Court must therefore consider whether, in all circumstances, the Second Defendant's decision should be quashed. The relevant authorities include *Mao Zeming v Hinchiffe* (2006) 1V2998; *Tau Mavaru Kamuta v David Sode* (2006) N3067; *Sabako v Commissioner for Police* (2006) N2975; and *Ombudsman Commission v Yama* (2004) SC747.

42. In *Mao Zeming*, Injia DCJ as he then was said at page 12 of his judgment.

"At the same time, the question of whether the tribunals decision ought to be quashed by way of judicial review of certiorari for this fundamental breach of procedure is discretionary. This discretion is exercised with caution and in appropriate cases, taking into account the sum effect of all relevant considerations. In relation to application for judicial review of decisions of leadership tribunals on grounds of breach of prescribed procedure designed to afford natural justice to parties, the decision should not be readily quashed unless the procedural manner in which the entire proceedings were conducted by the tribunal resulted in some real and substantive injustice caused to the Plaintiff in terms of denying natural justice."

43. Order 16 Rule 4(1) of the *National Court Rules* gives the Court the discretion to refuse any relief sought in the application if in the opinion of the Court, the granting of the relief sought would be detrimental to good administration.
44. The facts are clear. The Plaintiffs were concerned about environmental damage and water pollution brought about by logging activities of the fifth Defendant, who had an Environment Permit EP-L2(543). In June 2021 Acting on the Plaintiffs' complaints, the Director suspended the fifth Defendant's Environment Permit. The third Defendant, Conservation and Environment Protection Authority carried out investigations to verify the allegations. The fifth Defendant was asked to provide additional information and rectify the noncompliance issues. In February 2018, the Environment Council, though not legally constituted, uplifted the suspension after being satisfied that the environmental and compliance issues were resolved. The decision was made more than four (4) years. Things have moved on. The Environment Permit was granted on 20th March 2017 for ten (10) years and will expire on 18th March 2027, with just eight (8) months remaining. I am not convinced there is merit for an order for quashing the decision of 18th February 2022 as it would cause unnecessary inconvenience and be detrimental to good administration.

45. Despite the finding that the decision of 18th February 2022 was made by a statutory body not legally constituted and without authority, the application for an order in Certiorari shall be declined.

46. Should the Plaintiff's then be left without remedy. I note the pleadings do not seek damages. That is a matter for the Plaintiffs to take it up in other avenues. In my view the Plaintiffs be compensated by the Defendants by paying their costs of the proceeding.

Costs

47. The Plaintiffs have been successful in the review application even though the primary relief shall not be granted. They are, nevertheless, entitled to the costs of the proceedings to be taxed, if not agreed.

Orders

The Court orders that:

1. The Plaintiffs' application for judicial review is successful in part.
2. The Plaintiff's application for an order in Certiorari is declined.
3. For clarity, the application for an order to remove into this Court for the quashing of the Environment Council's decision of 18th February 2022 is refused.
4. The Defendants shall pay the Plaintiffs' costs of the proceedings to be taxed, if not agreed.
5. Time is abridged.

Centre for Environmental Law and

Community Rights Lawyers .

Lawyer for the Plaintiff

Solicitor General

Lawyer for P', 2nd, 3rd and 4th Defendants

Kandawalyn Lawyers :

Lawyer for the fifth Defendant