

PAPUA NEW GUINEA
[IN THE NATIONAL COURT OF JUSTICE]

OS (JR) No. 44 of 2020 [IECMS]

PULIE ANU TIMBER COMPANY LIMITED
Plaintiff

AND:

**FAITH BARTON In her Capacity as Chairperson of the National Forest
Board and for and on Behalf of that Board**
First Defendant

AND

HON. SOLAN MIRISIM, Minister for Forests
Second Defendant

AND:

PAPUA NEW GUINEA FOREST AUTHORITY
Third Defendant

AND:

INDEPENDENT STATE OF PAPUA NEW GUINEA
Fourth Defendant

AND:

G.R.LOGGING LIMITED
Fifth Defendant

AND:

GREEN WOOD PNG LIMITED
Sixth Defendant

Waigani: Miviri J

2020: 02nd September

PRACTICE & PROCEDURE – Judicial Review & appeals – Notice of Motion – Stay National Forest Board Decision – Grant of Timber permit to Fifth defendant – Plaintiff be Allowed to operate as Normal Prior –Leave for Judicial Review – Delay – Possible Hardship Inconvenience other parties – Arguable case – Balance of Convenience – Whether damages adequate remedy – Motion refused – cost follow the event.

Cases Cited

Independent State of Papua New Guinea v Kalaut [2021] PGSC 2; SC2067

Gary McHardy v. Prosec Security [2000] PNGLR 279.

Gobe Hongu v National Executive Council [1999] PGNC 47; N1920

Counsel:

T. Tape, for Applicant/Plaintiff

S. Mitige, for First – Third Defendants

P. Yom, for Fourth Defendant

A. Furigi, for Fifth Defendant

M. Muga, for Sixth Defendant

RULING

10th February, 2021

1. **MIVIRI, J:** This is the ruling of the court on the Plaintiffs notice of motion of the 30th August 2020 filed the 1st September 2020. He seeks pursuant to section 155 (4) of the *Constitution*, and or Order 16 Rule 3 (8) of the *National Court Rules*, the purported decision of the National Forest Board dated the 27th July 2020 to cancel the Timber Permit TP No. 14-04 of the Plaintiff Company and the recommendation to grant it to the fifth defendant, and the decision of the Second Defendant to cancel the plaintiff's Timber Permit and grant it to G.R. Logging Limited on the 29th of July 2020 be stayed and the Plaintiff and its Contractors to proceed with their usual operation until further orders from this Court.

2. Further he seeks pursuant to section 155 (4) of the *Constitution* and or Order 16 Rule 3 (8) (b) of the *National Court Rules*, the first, Second and Third Defendants be restrained from approving any annual working plan or 5 years working plan submitted by the Fifth Defendant or its contractors or agents whatsoever concerning Puli Anu LFA area under Timber Permit No TP 14-04 until further orders from this Court.

3. Further he seeks pursuant to section 155 (4) of the *Constitution* and or Order 16 Rule 3 (8) (b) of the *National Court Rules*, the Fifth Defendant, its Contractor or Agent whatsoever be restraint from disturbing or interfering in any manner on the Plaintiff and its Contractors operations at Pulie Anu Kandrian District, West New Britain Province under Timber Permit TP No. 14-04 until further orders from this Court.

4. And costs in the cause.

5. He relies on the affidavit of Michael Beno sworn 30th August 2020 filed the 01st September 2020. At the outset this evidence does not detail out basis for the plea in the notice of motion for restraint of the fifth defendant on the one part, and allowance of the plaintiff to continue as normal what he was doing previous, to the decision by the first and second defendants. There is no justification to stop the fifth defendant spelt out by this evidence. In any case leave has been obtained of the 09th September 2020 for Judicial Review. And no doubt one of the remedies sought is certiorari. There is allegation of breach of procedure and error of substantive law prima facie yet to be determined. Hence to stop that process by the Stay that he seeks and then to allow him to continue as normal prior to that decision must come accompanied with very strong evidence.

6. That is the evidence must be in similar terms as in *Independent State of Papua New Guinea v Kalaut* [2021] PGSC 2; SC2067 (28 January 2021) where stay was critical to maintain law and order, because without a Commissioner of Police the management of the police force and maintenance of law and order in Papua New Guinea was diminished. Prejudice outweighed as there was no other within the Deputy Commissioner rank to stand in, there being only Assistant Commissioners only, in the event of heeding the orders of the court at first instance. Hence, here comparably the evidence of Michael Beno viewed in aggregate does not advance the cause of the plaintiff. It does not detail how prejudice to plaintiff is greater when it is refused or when it is given.

7. Particularly when observed in the light of the law on restraint and Stay is set out in *Gary McHardy v. Prosec Security* [2000] PNGLR 279. Whether or not leave is required to pursue the matter. Here this is settled as leave has been obtained and granted by this court to judicially review the matter. There is no delay in the filing and moving of the application because the subject mater of this review was made on the 27th and 29th of July 2020. The evidence relied on does not show the dilemma in *Independent State of Papua New Guinea v Kalaut (supra)*. There is really no hardship and inconvenience, or prejudice shown by this evidence.

8. As to the nature of the Judgment it is a judicial review matter which is following the process, leave has been obtained and now to examine in the judicial review process the processes that was followed to come up with the decision. Here also it is worthy to see out if there is an arguable case made out by the Plaintiff. The evidence does not detail out the balance to be tilted in his favour for grant. Further it has not been granted that the Judgment there may be indicated with apparent error of law or procedure. This is prima facie. If viewed with the overall

interest of justice in my view the balance of convenience does not tilt that a Stay is appropriate given. Because a process has been followed in law to arrive at the grant of the permit to cancel the plaintiff's Timber Permit and grant it to G.R. Logging Limited on the 29th of July 2020. That challenge has now resulted in the grant of leave for judicial review 1st September 2020. Substantive Notice of motion has been filed and served 21st October 2020.

9. But the evidence of Michael Beno is that he is also a director of G.R. Logging and its Lawyer is Furigi Lawyers. They were appointed by the Directors of the company. Further form 153 Recommendation by the Board to Minister on Proposed cancellation of Timber Permit signed by the First Defendant. It is the National Forest Board who recommended to the second defendant to cancel the Timber permit TP No. 14-04 and to grant it to G.R. Logging Limited. And the form copy of it is annexure "G" to his affidavit.

10. And this witness further obtained form 147 cancellation of Timber Permit by Minister, signed by the Second defendant on the 29th July 2020 and at the same time the Second defendant signed a form 118A Timber Permit extension or Renewal of the Term. That this was the First, Second, and the Third Defendants who effectively cancelled the Timber Permit TP No. 14-04 of the Plaintiff. Which copy is attached as annexure "H" of his affidavit.

11. And further under cover of letter dated 18th August 2020 the First Defendant granted Logging Licence No. PNGFAL-953/20 under form 175 to Green Wood PNG Limited which was the culmination of an application by letter dated 14th November 2020 to the General Manager of the former Company. The copy of the letter of 18th August 2020 and licence dated the same is annexure "I" attached to the affidavit of this witness.

12. And this process has led to a lawful direction to stop our operations by the Third defendant's area Manager, Jerry Kowin, by letter dated 28th August 2020 copy is annexure "J" of the affidavit of this witness. And when enquiries were made at the office of the Third defendant a Logging and Marketing Agreement (*LMA*) annexure "K" to the affidavit was signed on the 14th November 2016 endorsed by the Managing Director of the Third Defendant on the 19th August 2020. And it was signed by directors of G.R. Logging Limited which is a landowner Company but not only for Pulie Anu land area but for landowners of land Anu Alimpit adjacent to Pulie Anu Kandrian West New Britain.

13. The above are clear excerpts prima facie, that a process of law was followed to culminate in the cancellation of the plaintiff's Timber Permit and grant of to G.R. Logging Limited on the 29th of July 2020. It cannot be stopped by a Stay as pleaded by the applicant plaintiff. Because the facts in the light of *Independent State of Papua New Guinea v Kalaut (supra)* which approves and follows *Gary McHardy (supra)* would not warrant in law leaning to the plea of the plaintiff applicant. His facts set out above show that damages would not be sufficient remedy. And reliance on this basis by the evidence set out above; do not make out that ground. The balance is not tilted that stay be granted, in all fairness to the incumbent now on-site no-fault prima facie on his part, either in law or fact apparent, or identifiable. For the defendants, the assertions made by the plaintiff now grant of leave must go through that process undisturbed. The circumstances portrayed do not sway that it be disturbed by a stay.

14. Further, it would appear that a number of disputes have arisen in various proceedings and decisions have been made in those proceedings, which are set out in the affidavit of this witness. Which is glossed to very fine details in the affidavit of Meli Muga sworn 10th November 2020. This is a very alarming fact both professionally and, in the way, matters are addressed instituted in court. And therefore, those decisions must be allowed as they are in whatever form or make, they are in. Their bearing does not warrant that this be added to that cue. It must be allowed to take its own course by its own evidence facts and the law. And here as set out above a stay is not what is in focus by the law reinforced by *Gobe Hongu v National Executive Council* [1999] PGNC 47; N1920 (8 June 1999). The facts are peculiar unto that case, but the principles as here are the same and equally apply as there here. It ought and must proceed with the leave secured and now the pending substantive notice of motion that must be addressed to come out in law what is due it.

15. Because the basis of the grant of a stay are not made out by the law as stated in *Independent State of Papua New Guinea v Kalaut (supra)* which approves and follows *Gary McHardy (supra)* and it must follow the dictate which does not warrant in all the circumstances what is sought by the plaintiff applicant. The aggregate is that his motion for stay is denied in all its terms as pleaded. Cost will follow the cause forthwith.

16. The formal orders of the court are:

- (1) The application of the plaintiff for Stay is refused in its entirety.

(2) The proceeding is dismissed forthwith in its entirety.

(3) Costs will be in the cause.

Orders Accordingly.

Kandawalyn Lawyers: *Lawyer for the Plaintiff/Applicant*

Office of the Solicitor General: *Lawyer for the Fourth Defendants*

Furigi Lawyers: *Lawyer for Fifth Defendant*

Simpson Lawyers: *Lawyer for Sixth Defendants*