

PAPUA NEW GUINEA
[IN THE NATIONAL COURT OF JUSTICE]

OS (JR) NO. 79 OF 2020

BETWEEN:
BEWANI OIL PALM PLANTATIONS LIMITED
Plaintiff

AND:
FAITH BARTON-KNEENE As Chairman of the National Forest Board
First Defendant

AND:
PAPUA NEW GUINEA FOREST AUTHORITY
Second Defendant

Waigani: Miviri J
2020: 09th October, 20th November

PRACTICE & PROCEDURE – Judicial Review & appeals – Originating summons – Leave to apply for Judicial review – Sole Developer of Bewani Project – Application for Forest Clearing Authority – Rejection of – Standing – delay – Arguable case – Internal remedies exhausted – application for leave granted – cost follow event.

Cases Cited:

Asiki v Zurenuoc Provincial Administrator [2005] PGSC 27; SC797

Innovest Ltd v Pruaitch [2014] PGNC 288; N5949

Musa Century Ltd v O'Neil [2013] PGNC 152; N5334

Counsel:

I. R. Shepperd, for Plaintiff

S. Mitige, for Defendants

RULING

20th November, 2020

1. **MIVIRI, J:** This is the ruling on the originating summons of the plaintiff filed the 06th March 2020 pursuant to Order 16 Rule 3 (1) of the *National Court Rules* “the Rules” for leave to be granted to judicially review decisions of the First

Defendant dated on or about 29th January 2019 not to approve or reject the Plaintiff's application for a Forest Clearing Authority lodged 29th January 2019, 20th March 2019 and 08th April 2019.

2. By the Statement Order 16 rule 3 (2) (a) of the Rules the plaintiff is incorporated as a company in Papua New Guinea on the 08th October 2010 and has its registered office at Allotments 32, 11-14 Vanimo Sandaun Province. It is a party to the project agreement for the Bewani Oil Palm Project with respect to 139, 909 hectares of land known as portion 160C, Milinch Oenake (SW) & (SE) Bewani (NW) & (NE) , fourmil Vanimo & Aitape , West Sepik / Sandaun as delineated on registered survey plan catalogued 1/130.

3. It is incumbent that the plaintiff has sufficient interest in the matter a requirement to be fulfilled in a leave application. Detailed out by the affidavit filed 06th March 2020 of Chelsea Lo General Manager Project Relations, Compliance and legal of the Plaintiff Company, sworn of the 04th March 2020, the decision of the 29th January 2019 by the First defendant has affected its performance as far as land clearing and planting is concerned. The various monthly annuals and reports it has submitted to the second defendant since it commenced operations in or about May 2012 which data is verified by the officers of the second defendant in Vanimo. Because approval has been given by the second defendant of 35, 750 hectares of land for planting development out of which 5, 800 have not developed and reapplied in the next annual plans. And minus another 8, 982.37 hectares of which cannot be developed due to land owner problems prohibiting entry of workers and machinery. The total land area available for development is 20, 967.63 hectares. And the total area under the FCA was 17, 558.63 hectares and total area planted of 15, 761 hectares almost 85% approximately accomplishment.

4. Further the plaintiff has achievements in the project agreement entered into with payments of Levies and undertaking various infrastructural developments benefitting the landowner's local level Government and the State. These include payment of royalties, levies, advances paid to Landowners including ILGs Land owner companies and the Bewani Palms Management Limited amounting to K 25, 269. 347.75. Also of paying mobilization fees paid to Landowners amounting to US dallors3, 020,000. Education Levy amounting to K 2, 734, 005.61 as of September 2019 K 2, 169, 990.07 to various education institutions for the children. Royalty from fresh fruit branches to ILGs amounting to K 218, 357.40 including advances to Land owner companies amounting to K24, 261.93 and local level levy amounting to K 1, 347, 484.31. And export levy to the State amounting to K81, 476, 038.14 and royalty withholding tax to the State amounting to K779, 435, 938.

5. And infrastructure development 165km in plantation roads; 511.45 in collection roads; 313.46 in alternative roads; 1,793 units of Bridges (including for Plantation); 156 units of culverts; and 2, 118.89 km of drainage.

6. By this evidence the plaintiff has indeed sufficient interest and standing to bring this matter for leave. Because it has been the sole developer of the Bewani Project since 2012 complying with its obligations set out above. There is alot at stake for the plaintiff given this immense latitude that it has gone to in accordance with its obligations duties under the project agreement. There are no internal processes and procedures to address what it has sought here. It means the matter is properly before the court and this requirement is satisfied to the required balance.

7. Judicial review is concerned with the process rather than what is the substance, *Asiki v Zurenuoc Provincial Administrator* [2005] PGSC 27; SC797 (28 October 2005). That is the law which has been followed and applied by this court in *Innovest Ltd v Pruaitch* [2014] PGNC 288; N5949 (17 March 2014). Applied to the present an application has been made for a Forest Clearing Authority by plaintiff to enable it to continue and reference has been made to section 90A and 90B (8) upon the first defendant to grant and it ought to consider and grant because that is the intent and the call of that section *Musa Century Ltd v O'Neil* [2013] PGNC 152; N5334 (23 August 2013). It was held that the Forest Authority, through the National Forest Board, had erred in law by failing to perform its duty under Section 90B of the Forestry Act to consider the plaintiff's application for a forest clearing authority on its merits, instead abdicating its statutory responsibility by acting under the dictation of the NEC.

8. In this respect and given the facts set out above it has been demonstrated to the required balance that there are arguable basis satisfied as a requirement to grant for leave. Further delay is not at the expense of the applicant but at that of the defendants and therefore will not be against the plaintiff. It is satisfied in view also of the facts which are set out above.

9. The aggregate totality is that all requirements necessary to invoke for Leave have been discharged to the required balance by the plaintiff. Accordingly his application for leave is granted forthwith.

10. The formal orders of the court are;

- (1) The application of the plaintiff is upheld.
- (2) Leave is granted for judicial review.
- (3) The matter will be mentioned at the directions of this court on Monday 07th December 2020 at 9.30am for further directions.
- (4) Costs will follow the event forthwith.

Orders Accordingly.

Ashurst Lawyers: *Lawyer for the Plaintiff/Applicant*

In house Lawyer: *Lawyer for Defendants*