

SC2177

PAPUA NEW GUINEA
[IN THE SUPREME COURT OF JUSTICE]

SCA NO. 110 OF 2019

WOODBANK PACIFIC LIMITED
First Appellant

JEFFREY LING
Second Appellant

-V-

**ADOLF PAROPET, LEO BARIS, LUCAS IRUM, JACK KOKON, TITUS
SEKARI, EDDIE WAKET, BENNY DAMUGU, JOHN KALUK and
COLLIN MUAM in their capacity as registered directors of Papir Holdings
Limited**
First Respondents

PAPIR HOLDINGS LIMITED
Second Respondent

HARRIET KOKIVA. Acting Registrar of Companies
Third Respondent

**MARTIN DARO FRANK MOTEKOPU, ROBERT SUKU, ALBERT
WAKET, MARCELLUS WARAWI, KENNEDY KOWER, PIUS SEKARI,
RAYMOND SUMAPER, STEVEN NAROP and ANTON WAKOWAK as
purported directors of Papir Holdings Limited**
Fourth Respondents

YOUNG WADAU
Fifth Respondent

SCA NO. 111 OF 2019

WOODBANK PACIFIC LIMITED
First Appellant

-V-

ADOLF PAROPET, LUCAS IRUM, JACK KOKON

First Respondents

INNOVEST LIMITED

Second Respondent

TINOUSABUIN, Managing Director, PNG Forest Authority

Third Respondent

PIA K DOMETA

Fourth Respondent

ALBERT WAKET, Chairman of Papir Holdings Limited

Fifth Respondent

SCA NO. 138 OF 2019

ALBERT WAKET in his capacity as Chairman of Papir Holdings Limited

Appellant

-V-

ADOLF PAROPET, LUCAS IRUM, JACK KOKON

First Respondents

INNOVEST LIMITED

Second Respondent

TINOUSABUIN, Managing Director, PNG Forest Authority

Third Respondent

PIA K DOMETA

Fourth Respondent

ALBERT WAKET, Chairman of Papir Holdings Limited

Fifth Respondent

Waigani: Makail J, Kariko J & Anis J

2021: 28th September & 17th November

JUDGMENTS– Duty to give reasons for decision – Reasons must be

sufficient – Failure to provide sufficient reasons – Effect of – Breach of natural justice

COMPANY LAW – Management of company – Authority to enter into contracts

Facts:

These appeals are from two related proceedings that were heard together in the National Court concerning the timber project described as Kumil Consolidated TRP 12-22 in the Bogia District of Madang Province. A resource owners (landowners) company Papir Holdings Limited was incorporated with the assistance of developer Woodbank Pacific Limited. The board of directors subsequently approved Woodbank Pacific Limited as developer for the timber project and the parties entered into a Logging and Marketing Agreement (LMA). Only seven of the ten directors attended the meeting and signed the LMA. The directors who did not attend had formed a faction that aligned themselves with another developer, Innovest Limited. A purported shareholders meeting was then held which terminated and replaced six of the directors. Under the newly constituted board, the LMA with Woodbank Pacific Limited was declared void by the District Court, following which a new LMA was entered into with Innovest Limited. Yet another shareholders meeting was held which again changed membership of the board, re-instating the six directors who were earlier removed. The trial in the National Court centered on the questions of who the lawfully appointed directors of the company are and which LMA is valid and lawful. The trial Judge held in favour of the directors appointed on incorporation of the company but decided the LMA with Woodbank Pacific Limited is void while the LMA with Innovest Limited is valid and lawful. The appellants challenge the decision regarding the LMAs alleging (a) breach of natural justice, (b) inconsistency in the findings, and (c) fraud was wrongly considered when it was not properly pleaded and proven.

Held:

1. There was a breach of natural justice by the trial Judge failing to give adequate and sufficient reasons in his decision to enable the case to be laid properly and sufficiently before this Court.
2. Appeals are allowed.
3. Pursuant to Section 16(c) of *the Supreme Court Act*, the appealed decisions are set aside and in lieu, the LMA with Woodbank Pacific Limited is declared valid and lawful, and the LMA with Innovest Limited is declared void and of no effect.

Cases Cited:

Coconut Products Ltd v Markham Farming Company Ltd (2018) SC1717
Mission Asiki v Manasupe Zurenoc & Ors (2005) SC797
Sir Arnold Amet v Peter Charles Yama & Electoral Commission (2010) SC1064
South Pacific Post Ltd v Tame (2020) SC2042

Legislation:

Companies Act 1997
Supreme Court Act, Ch.37

Counsel:

Mr R Bradshaw, for the First Appellant
Mr J Wohuinangu, for the Second Appellant
Mr R Mannrai, for the First Respondent
Mr A Mana, for the Second Respondent

17th November, 2021

1. BY THE COURT: The three appeals arise from decisions in two related proceedings heard together in the National Court:

- *OS No. 780 of 2018: Woodbank Pacific Limited & Jeffrey Ling v Adolf Paropet, Leo Baris, Lucas Irum, Jack Kokon, Titus Sekari, Eddie Waket, Benny Damugu, John Kaluk and Collin Muam in their capacity as registered directors of Papir Holdings Limited & Others*
- *OS No. 15 of 2019: Albert Waket as Chairman of Papir Holdings Limited Papir Holdings Limited & Woodbank Pacific Limited v Adolf Paropet, Leo Baris, Lucas Irum, Jack Kokon, Titus Sekari, Eddie Waket, Benny Damugu, John Kaluk and Collin Muam in their capacity as registered directors of Papir Holdings Limited & Others*

2. To appreciate the appealed cases and the appeals, it is appropriate to set out the relevant background facts which are largely not in controversy.

BACKGROUND

3. The court proceedings concern customary land designated for timber project and described as Kumil Consolidated TRP 12-22 in the Bogia District of Madang Province (“Kumil TRP”).

4. On 24th October 2017, the landowners (resource owners) of Kumil TRP entered into an agreement with Woodbank Pacific Limited (“Woodbank”) whereby the parties agreed that in return for Woodbank’s assistance to the resource owners to acquire a Timber Permit for the Kumil TRP, the resource owners would enter into a Logging and Marketing Agreement (“LMA”) with Woodbank if a Timber Permit was granted (“the Assistance Agreement”).

5. On 17th November 2017, a landowner company, Papir Holdings Limited (“Papir Holdings”) was incorporated.

6. The company was incorporated with ten (10) directors – Leo Baris, Albert Waket, Raymond Sumaper, Martin Daro, Pius Sekari, Robert Suku, Anton Wakowak, Adolph Paropet, Lucas Irum and Albert Purarum. Five of them were signatories to the Preliminary Agreement - Adolph Paropet, Albert Waket, Robert Suku, Anton Wakowak and Lucas Irum.

7. Soon after the incorporation, a faction of the directors led by Adolph Paropet (“the Paropet Faction”) emerged which basically wanted to engage a developer other than Woodbank to operate on Kumil TRP. The faction included Adolph Paropet and Lucas Irum who were signatories to the Assistance Agreement.

8. Over the next month, the Paropet Faction sought to have a timber permit extension granted to the company Papir Development Corporation Limited (“Papir Development”) the landowner company which was previously granted a permit in respect of the Kumil TRP that expired in 2005. The effort to obtain the extension was sought with the assistance of another timber project developer Innovest Limited (“Innovest”).

9. Notwithstanding the pursuit of the Paropet Faction, Papir Holdings was granted Timber Permit No. TP 12-22 for Kumil TRP (“TP 12-22”) on 5th December 2017.

10. On 10th December 2017, a directors meeting of Papir Holdings was held. The Paropet Faction directors did not attend, and this was noted in the meeting

minutes. The directors who were present were Albert Waket, Raymond Sumaper, Martin Daro, Pius Sekari, Robert Suku, Anton Wakowak and Albert Purarum (“the Waket Faction”). The meeting resolved that Papir Holdings enter into a LMA with Woodbank, consistent with the Assistance Agreement.

11. The LMA was consequently executed the next day on 11th December 2017, and Woodbank was endorsed as the contractor/developer to undertake logging and marketing activities pursuant to TP 12-22 (“the Woodbank LMA”).

12. The Woodbank LMA was duly executed under seal by the same seven directors of Papir Holdings who attended the directors meeting the previous day.

13. The National Forest Board advised Woodbank by letter dated 15th December 2017 that its application for a licence to operate within the Kumil TRP was found to be in order, and on 21st December 2017 Woodbank was granted Timber Licence No. PNGAFL-877/17.

14. After the signing of the Woodbank LMA, changes were later made to the directorships of Papir Holdings:

- (1) 20th December 2017 – at a purported meeting of landowners and shareholders, six directors of the Waket Faction who were aligned with Woodbank, namely Albert Waket, Martin Daro, Pius Sekari, Robert Suku, Anton Wakowak and Albert Purarum, were terminated and replaced by others.
- (2) 22nd December 2017 – Four directors, including Adolf Paropet and Luke Irum submitted letters of withdrawal (resignation) as directors but these were retracted later the same day.

15. By March 2018, the records at the Companies Office showed Papir Holdings had eleven (11) directors, of whom four were original directors - Leo Baris, Raymond Sumaper, Adolph Paropet and Lucas Irum.

16. On 1st March 2018, a directors meeting was held in which the Board resolved to have the Woodbank LMA declared invalid and the company to then seek to enter into a LMA with Innovest.

17. Adolf Paropet filed proceedings in the District Court which, among other things, sought to have the Woodbank LMA declared null and void. The court ordered in his favour on 25th May 2018. This order was subsequently and eventually set aside on 20th September 2018 and the proceedings dismissed on

19th December 2018 for want of jurisdiction.

18. Based on the District Court decision of 25th May 2018, the National Forest Board cancelled Woodbank's Timber Licence No. PNGAFL-877/17.

19. On 27th May 2018, a LMA was signed between Papir Holdings and Innovest which was apparently signed on behalf of Papir Holdings by Adolf Paropet as Chairman and witnessed by Jack Kokon as Director/Secretary.

20. This turn of events naturally displeased the Waket Faction who disputed the legality of the registered directors.

21. A shareholders meeting of Papir Holdings was called and held on 24th August 2018 whereby the initial directors who were aligned with the Paropet Faction (Adolph Paropet, Leo Baris, and Lucas Irum) were terminated and the remaining initial directors removed on 20th December 2017 were re-appointed.

22. The changes in the directorships were registered on 31st August 2018.

NATIONAL COURT PROCEEDINGS

23. On 23rd October 2018, OS No. 780 of 2018 was filed which sought amongst others:

- (1) a declaration that the changes to directors of Papir Holdings on 24th August 2018 are void and of no effect;
- (2) a declaration that the Woodbank LMA is void and of no effect; and
- (3) a declaration that the Innovest LMA is valid and lawful.

24. On 16th January 2019, OS No. 15 of 2019 was filed which sought amongst others:

- (1) a declaration that the changes to the directorships of Papir Holdings on 20th December 2017 are unlawful and invalid;
- (2) a declaration that the changes to the directorships of Papir Holdings on 31st August 2018 are lawful and valid; and
- (3) a declaration that the Woodbank LMA is lawful and valid.

APPEALED DECISION

25. The parties in the National Court may be conveniently categorized into four groups – the Paropet Faction and Innovest as the plaintiffs, and the Waket Faction and Woodbank as the defendants.

26. A total of forty-two (42) affidavits were tendered into evidence without objection and without requiring the deponents for cross-examination.

27. The trial Judge delivered his oral judgment soon after the completion of final submissions. His Honour approached his judgement by referring to each relief sought and stating whether the relief was granted or refused and the reasons for that.

28. In OS No. 780 of 2018, the trial Judge determined first that the proper directors of Papir Holdings were the directors registered on the incorporation of the company on 17th November 2017. His Honour held that all the changes in the directorships since that date are invalid and of no effect. This finding was applied in his Honour's decision in OS No.15 of 2019.

29. In respect of the Woodbank LMA, the trial Judge stated (AB:1258-1259):

Paragraph 4 of the OS 780 of 18 seeks the declaration that the purported Logging and Marketing Agreement dated 11th December 2017 between Papir Holdings Limited and Woodbank Pacific Limited over the Kumul TRP in Madang Province is void and of no effect. I will grant that declaration..... However, I have formed the view that the declaration should be made that the LMA dated 11th December 2017 is void and of no effect taking into account all of the evidence that is before the court, taking into account the persons who actually signed that agreement for Papir Holdings Limited.....

It was not signed to my satisfaction by the persons who were clearly acting with the authority of the company to sign such a critical document on behalf of the company at that time in December 2017.....I have formed the view that irrespective of that formation of opinion by the Managing Director, there are good reasons for regarding that LMA now as a result of these proceedings as void and of no effect.

(Our emphasis)

30. Regarding the Innovest LMA, his Honour remarked (AB:1259):

Paragraph 6 seeks a declaration that the Logging and Marketing Agreement dated 27th May 18 between Papir Holdings Limited and Innovest Limited over the Kumul TRP in Madang Province is valid and

lawful. I will grant that declaration as I am satisfied that the LMA was executed on behalf of Papir Holdings Limited by persons who on the relevant date had full legal authority to execute that agreement on behalf of the company..... it is also clear that the Forest Authority's position favours that of the LMA between Innovest and Papir Holdings Limited and it would serve the interests of all the people concerned, in particular the landowners.....in the interest of justice that that declaration be granted.
(Our emphasis)

31. In addressing the relief pleaded in OS No. 15 of 2019 concerning the Woodbank LMA, the trial Judge said (AB:1262):

I have formed the view that the Logging and Marketing Agreement just mentioned should be declared void and invalid by view of my ruling in OS 780 of 18.

.....

Paragraph 12 seeks a declaration that the original LMA between Papir Holdings Limited and Woodbank Pacific Limited be declared valid and lawful and binding. I decline to grant that declaration for the reasons given in the other proceedings.

32. His Honour ultimately declared that the Woodbank LMA was void and of no effect, and the Innovest LMA was valid and lawful.

THE APPEALS

33. Briefly described, the appeals are:

- SCA No. 110 of 2019 - filed by Woodbank against the decision in OS No. 780 of 2018.
- SCA No. 111 of 2019 – filed by Woodbank against the decision in OS No. 15 of 2019.
- SCA No. 138 of 2019 – filed by Albert Waket as Chairman of Papir Holdings against the decisions in both OS No. 780 of 2018 and OS No. 15 of 2019.

34. The appeals do not challenge the trial Judges determination regarding the proper directors of Papir Holdings but dispute the decision that the Innovest LMA is lawful and valid, and the Woodbank LMA is not (“the appealed decision”).

35. On the hearing of the appeals, the following parties appeared:

- Woodbank
- Albert Waket
- Adolf Paropet, Lucas Irum and Jack Kokon
- Innovest

36. For purposes of this judgement, we refer them as:

- Woodbank – first appellant
- Albert Waket – second appellant
- Adolf Paropet, Lucas Irum and Jack Kokon – first respondent
- Innovest – second respondent

37. We adopt the appellants' suggestion that the grounds of appeal in all appeals can be placed into 3 broad grounds – That the trial Judge erred in fact and in law:

- (1) by not allowing sufficient time for the appellants' counsel to make final submissions, and by not providing adequate reasons in relation to the appealed decision, which amount to a breach of natural justice;
- (2) in deciding that the Woodbank LMA was invalid, as this is inconsistent with the decision that the proper directors of Papir Holdings were the directors on the incorporation of the company; and
- (3) by finding fraud as a basis to invalidate the Woodbank LMA when fraud was neither properly pleaded nor proven.

BREACH OF NATURAL JUSTICE

38. The appellants first contended that the appealed Judge erred in fact and law by not giving their counsel equal or sufficient time when presenting their final addresses compared to the time allowed to opposing counsel.

39. Eventually, the point was not seriously pursued. The appellants attempted to make their case by highlighting from the transcript, the actual time apportioned to each counsel. We are unable to discern from the transcript the unfairness suggested by the appellants that would amount to a denial of natural justice. We therefore reject this argument.

40. The appellants next submitted that the trial Judge did not provide adequate reasons for the appealed decision.

41. A trial Judge has a duty to provide reasons for his decision, and where no reasons are given, it must be inferred that no good reasons exist for the decision; *Mission Asiki v Manasupe Zurenuoc & Ors* (2005) SC797; *Sir Arnold Amet v Peter Charles Yama & Electoral Commission* (2010) SC1064. The

reasons for decision must be sufficient to assist a party wishing to appeal the decision prepare his grounds of appeal, and for the respondent to defend them, and the parties must be able to identify issues borne out by the grounds: *Coconut Products Ltd v Markham Farming Company Ltd* (2018) SC1717. The decision shall provide adequate and sufficient reasons to enable the case to be laid properly and sufficiently before the appellate court. If the reasons are otherwise insufficient, it is assumed there are no good reasons, and the appeal would be upheld on that ground alone; *South Pacific Post Ltd v Tame* (2020) SC2042.

42. The trial Judge declared the Woodbank LMA null and void after “taking into account all of the evidence” and “the persons who actually signed that agreement for Papir Holdings Limited”. His Honour was not satisfied the agreement was signed “by the persons who were clearly acting with the authority of the company to sign such a critical document on behalf of the company”. His Honour added that “there are good reasons” for the declaration.

43. The trial Judge did not refer to or discuss the evidence he had regard to in reaching his decision. Nor did his Honour explain what the “good reasons” were. It appears though that his Honour’s decision was based primarily on a finding that the Woodbank LMA was not signed by authorized signatories. But his Honour did not explain the legal and factual basis upon which he made this determination. Counsel for the respondents argued that the relevant evidence which would have influenced his Honour is contained in the affidavits of Albert Pararua. That submission is however not reflected in the trial Judge’s decision and this Court cannot assume that to be the case especially when there was evidence that contrasted this witness’ depositions.

44. Next, the trial Judge determined the Innovest LMA valid and lawful because his Honour was “satisfied that the LMA was executed on behalf of Papir Holdings Limited by persons who on the relevant date had full legal authority to execute that agreement on behalf of the company”. Again, his Honour did not explain the legal and factual basis upon which he reached this conclusion.

45. Counsel urged this Court to note that Adolf Paropet as Chairman signed the LMA and it was therefore signed by the proper authorised person, but the trial Judge did not state that. The fact that the agreement was signed by the Chairman does not of itself mean the agreement was lawfully entered into. His Honour had already decided that the board then in office was not lawfully appointed, and there was no evidence that a directors meeting had been held to discuss the LMA and approved its execution, unlike what occurred in respect of the Woodbank LMA. His Honour did not explain how the signatories for Papir Holdings had “full legal authority”.

46. The nett effect is that we are not satisfied that the appealed decision gave adequate and sufficient reasons to enable the case to be laid properly and sufficiently before this Court.

47. In the circumstances, we find the ground of breach of natural justice is established and conclude that his Honour erred in law in declaring that:

- (1) the Woodbank LMA was void and of no effect; and
- (2) the Innovest LMA was valid and lawful.

DISPOSITION OF THE APPEALS

48. Based on our determination in the preceding paragraph, we would uphold the appeals without needing to consider the other grounds of appeal.

49. What orders would then be appropriate for this Court to make?

50. Under Section 16 of *the Supreme Court Act, Ch. 37* the Supreme Court has power to deal with an appeal in several ways, including the power to give judgment that should have been given in the National Court (Section 16(c)). We think that is the proper course to adopt in the present appeals as the question to settle is straight-forward. It concerns the validity of the two LMAs. That is an issue which this Court can resolve. The evidence in the court below only comprised filed affidavits which are before us. We also have the benefit of the submissions in the National Court which were repeated before us. We are satisfied we can properly consider these materials and duly answer the question.

VALIDITY OF THE LMAs

51. The evidence presented in the National Court included affidavits of the following persons whose evidence we consider relevant to the issues raised in this appeal:

- Adolph Paropet (2 affidavits – Exhibits P1 & P16)
- Albert Purarum (2 affidavits – Exhibits P2 & P18)
- Jack Kokon (2 affidavits – Exhibits P3 & P17)
- Leo Baris (2 affidavits – Exhibits P6 & P21)
- Luke Irum (2 affidavits – Exhibits P12 & P27)
- Albert Waket (2 affidavits – Exhibits D1 & D5)
- Pius Sekari (– Exhibit D2)
- David Ling (2 affidavits – Exhibits D8 & D10)
- Jeffery Ling (2 affidavits – Exhibits D9 & D11)
- Emous Toubu (3 affidavits – Exhibits D3, D6 & D7)

52. A summary of the evidence of the plaintiffs (now respondents) relating to the two LMAs follows:

Witness	Evidence
<p>Adolf Paropet (Initial director & chairman of Papir Holdings)</p>	<p>Any agreement or MOA signed between Papir Holdings and Woodbank between October and December 2017 were not binding.</p> <p>Woodbank enticed directors Robert Suku, Anton Wakowak, Raymond Sumaper, Pius Sekari and Albert Puraran to sign the Wodbank LMA, which was signed on 26th December 2017 but falsely dated 11th December 2017. There was no meeting or signing of documents on 10th or 11th December 2017.</p> <p>On 20th December 2017, six of the initial directors of Papir Holdings were terminated and replaced, and the change in directorships was registered with the IPA on 4th January 2018.</p>
	<p>A directors meeting was held on 1st March that resolved to terminate the Woodbank LMA as illegal and invalid, and pursue a LMA with Innovest instead.</p> <p>The District Court nullified the Woodbank LMA on 25th May 2018.</p> <p>The Innovest LMA was signed on 27th May 2018.</p>
<p>Leo Baris (Initial director of Papir Holdings)</p>	<p>He preferred Innovest as developer of the Kumil TRP.</p>
<p>Luke Irum (Initial director of Papir Holdings)</p>	<p>He also supported Innovest as developer of the Kumil TRP.</p>

<p>Jack Kokon (Secretary of Papir Holdings)</p>	<p>The Assistance Agreement of 24th October 2017 was not signed by the true resource owners.</p> <p>Adolf Paropet was the Chairman of Papir Holdings, and he did not sign the Woodbank LMA.</p> <p>The Woodbank LMA was signed on 26th December 2017 and backdated to 11th December 2017.</p>
<p>Albert Purarum (Initial director of Papir Holdings, and a signatory to the Woodbank LMA)</p>	<p>The directors of Papir Holdings were induced into signing the Woodbank LMA by being provided money and alcohol by Woodbank.</p> <p>The contents of the LMA were never explained to the directors. They did not understand the agreement they signed.</p> <p>The Woodbank LMA was signed on 26th December 2017 and not 11th December 2017 as shown on the document.</p>

53. A summary of the evidence of the defendants (the appellants now) relevant to the two LMAs follows:

<p>Albert Waket (Initial director & vice-chairman of Papir Holdings)</p>	<p>The resource owners signed the Assistance Agreement on 24th October 2017.</p> <p>Ten directors were appointed on the incorporation of Papir Holdings on 17th November 2017 - Adolf Paropet, Albert Waket, Luke Irum, Robert Suku, Anton Wakowak, Leo Baris, Martin Daro, Albert Puraran, Pius Sekari and Raymond Sumaper.</p> <p>A directors meeting of Papir Holdings was held on 10th December 2017 whereby the proposed LMA with Woodbank was tabled and explained by officers of Woodbank to the directors present at the meeting - Albert Waket, Anton Wakowak, Martin Daro, Robert Suku, Albert Puraran, Raymond Sumaper and Pius Sekari.</p> <p>Adolf Paropet (Chairman) and Jack Kokon (Secretary) did not attend the meeting as they had aligned themselves with another contractor.</p> <p>The meeting resolved that the company sign the LMA with Woodbank, and this was done the next day.</p> <p>The seven directors present at the previous day's meeting acknowledged they understood the agreement before they signed under seal on behalf of Papir Holdings.</p>
<p>Pius Sekari (Initial director of Papir Holdings)</p>	<p>(Similar evidence to that of Albert Waket)</p> <p>The claims of enticement to sign the Woodbank LMA and the backdating of the agreement are not true.</p>

<p>David Ling (Director of Woodbank)</p>	<p>The Assistance Agreement was signed after discussions with resource owners of Kumil TRP. Signatories to the agreement included Adolf Paropet, Albert Waket and Luke Irum.</p> <p>Pursuant to the Assistance Agreement, financial help was provided Woodbank to the resource owners to incorporate Papir Holdings and pursue a Timber Permit.</p> <p>After its incorporation, Papir Holdings was issued Timber Permit No. TP 12-22, the Woodbank LMA was entered into pursuant to the intention of the Assistance Agreement.</p> <p>The Woodbank LMA was signed on 11th December 2017 and not 26th December 2017 as claimed by Albert Pararum. The allegations of inducement and coercion made by Albert Pararum are also denied.</p>
<p>Jeffrey Ling (Manager of Woodbank)</p>	<p>(Similar evidence to that of David Ling)</p> <p>Papir Holdings held a board meeting on 10th December 2017. Chairman Adolf Paropet did not attend, and Albert Waket was nominated to act as Chairman. Seven directors were present. The proposed LMA with Woodbank was tabled and explained to the directors. After discussions, the board resolved unanimously to sign the agreement.</p> <p>The agreement was signed the next day, 11th December 2017.</p>
<p>Emous Toubu (Resources & Environment Manger, Woodbank)</p>	<p>The Woodbank LMA was signed on 11th December 2017.</p>

54. In brief, the appellants submitted that the Woodbank LMA was signed by a majority of the directors who the National Court found to be the lawful members of the board of Papir Holdings, while most of the directors of board at the time of the execution of the Innovest LMA were unlawfully appointed. Therefore, the earlier LMA was lawfully entered into, and the other was not. The respondents argued first that the appealed decisions were based on findings of fact for which leave had not been granted, and also that the trial Judge committed no error in his reasons for decision as his Honour was entitled to make the findings he did.

55. In relation to the respondents' argument on leave, we dismiss it. The

ground involves not only questions of fact but also questions of law.

56. Moving onto the substantive issues, we stress that under Section 109(1) of *the Companies Act* 1997, the business and affairs of a company shall be managed and supervised by the board of directors. The shareholders cannot interfere in the management of the company. Pursuant to Section 111(1) but subject to the constitution, the board may delegate any of its powers to other persons including certain directors.

57. The rules governing how a company may enter into a contract are found in Section 155 of *the Companies Act* which states:

155. Method of contracting.

- (1) *A contract or other enforceable obligation may be entered into by a company as follows—*
- (a) *an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the company in writing signed under the common seal of the company; or*
 - (b) *an obligation which, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the company in writing by a person acting under the company's express or implied authority; or*
 - (c) *an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the company in writing or orally by a person acting under the company's express or implied authority.*

58. Clearly, Section 155(1)(b) is relevant to both the Woodbank LMA and the Innovest LMA.

59. The constitution of a company may provide for the persons authorised to execute a contract on the company's behalf. However, there is no evidence that Papir Holdings had a constitution at the time. There is also no evidence that the directors of the company were not authorised to enter into the LMAs. By the same token, there is no evidence that the Chairman of Papir Holdings was the only authorised person to execute contracts on behalf of the company. Ordinarily, company directors are lawfully entitled to enter into contracts. Prima facie then, both LMAs were lawfully entered into by Papir Holdings.

60. Schedule 4 of *the Companies Act* provides for proceedings of a board

meeting, and the Schedule applies where a company does not have a constitution. Section 5(3) of Schedule 4 states that a board resolution is passed when agreed to unanimously or by majority of the directors present.

61. The significant differences in the facts and circumstances relating to the two LMAs are that:

- (1) The Woodbank LMA was tabled at a board meeting and approved for execution, but the Innovest LMA was not;
- (2) the Woodbank LMA was signed by seven of the ten lawfully appointed directors (as found by the learned trial Judge), while the Innovest LMA was signed by only one of those directors;
- (3) The Woodbank LMA was signed first in time, and it was based on prior commitments made by both the resource owners of Kumil TRP and Woodbank under the Assistance Agreement.

62. In submissions, the respondents argued that the evidence of Albert Pararum, one of the directors who signed the Woodbank LMA, clearly shows that the Woodbank LMA was irregular and tainted with fraud. The witness claimed that:

- (1) the directors who signed the Woodbank LMA did not have the agreement explained to them before signing;
- (2) the directors were induced with money and alcohol by Woodbank to sign; and
- (3) the agreement was signed on 26th December 2021 but pre-dated to 11th December 2021.

63. We have read the affidavits of witnesses who deposed to matters in respect of the Woodbank LMA, and we find the claims by Albert Pararum to be uncorroborated and not credible. The other witnesses who raise the same allegations are Adolf Paropet and Jack Kokon. However, their evidence on this matter is plainly hearsay as they merely repeat what was relayed to them by Albert Pararum at the purported meeting of landowners and shareholders on 20th December 2017.

64. Interestingly Albert Pararum makes no reference to the board meeting of 10th December 2017, and we consider the suggestion that the signing was on 26th December 2017 incredible as that day is a traditional public holiday, Boxing Day.

65. Importantly, none of the other directors who participated in the signing of

the Woodbank LMA support Albert Pararum's assertions. Two of those directors, Albert Waket and Pius Sekari, filed affidavits in which they state that they were present at the board meeting of 10th December 2017 and were happy for Papir Holdings to partner with Woodbank, and duly signed the LMA on 11th December 2017. They both deny the improprieties alleged by Albert Pararum and repeated by Adolf Paropet and Jack Kokon. Woodbank executives David and Jeffrey Ling also vehemently refute the alleged improprieties, while Emous Toubu confirms the LMA was signed on 11th December 2017.

66. Another notable point is that Adolf Paropet makes no reference to the Assistance Agreement with Woodbank even though he signed it as Chairman of proposed company Papir Holdings Limited.

67. Five signatories to the Assistance Agreement (Adolf Paropet, Albert Waket, Luke Irum, Robert Suku and Anton Wakowak) were subsequently appointed directors of Papir Holdings when it was incorporated.

68. It is clear to us that the execution of the Woodbank LMA was consistent with the intentions of the parties expressed in the Assistance Agreement.

69. Further it is noted that Directors Leo Baris and Luke Irum who were a part of the Paropet Faction did not make any reference to the board meeting of 10th December 2017 or the signing of the Woodbank LMA.

70. We are satisfied on the balance of probabilities that the Woodbank LMA is valid and lawful.

71. At the same time, we find the validity of the Innovest LMA to be otherwise. There is no evidence that the then board of directors authorised the signing of this agreement. The argument pushed by the respondents that the signatories for Papir Holdings had the ostensible authority to execute the Innovest LMA, is one that Innovest may pursue in a claim for damages which is open to it.

72. Accordingly, we would uphold the appeals, quash the orders in respect of the LMAs, and declare instead that the Woodbank LMA is valid and lawful and the Innovest LMA is nullified.

ORDER

1. The appeals are allowed.

2. The declarations by the National Court on 19th July 2019 in proceedings OS No. 780 of 2018 that:
 - (a) The Logging and Marketing Agreement signed on 11th December 2017 between Papir Holdings Limited and Woodbank Pacific Limited is void and of no effect; and
 - (b) The Logging and Marketing Agreement signed on 27th May 2018 between Papir Holdings Limited and Innovest Limited is valid and lawful,
are set aside.
3. In lieu thereof, it be declared that:
 - (a) The Logging and Marketing Agreement signed on 11th December 2017 between Papir Holdings Limited and Woodbank Pacific Limited is valid and lawful.
 - (b) The Logging and Marketing Agreement signed on 27th May 2018 between Papir Holdings Limited and Innovest Limited is void and of no effect.
4. The order of the National Court on 19th July 2019 in proceedings OS No. 15 of 2019 refusing to declare that the Logging and Marketing Agreement signed on 11th December 2017 between Papir Holdings Limited and Woodbank Pacific Limited is valid and lawful, is set aside.
5. In lieu thereof, it be declared that the Logging and Marketing Agreement signed on 11th December 2017 between Papir Holdings Limited and Woodbank Pacific Limited is valid and lawful:
6. The respondents shall pay the appellants' costs of and incidental to these appeals, to be taxed if not agreed.

Bradshaw Lawyers:	<i>Lawyers for the First Appellant</i>
Gileng Lawyers:	<i>Lawyers for the Second Appellant</i>
Mannrai Lawyers:	<i>Lawyer for the First Respondent</i>
Cors Chambers Westgarth:	<i>Lawyer for the Second Respondent</i>