

N8898

PAPUA NEW GUINEA
[IN THE NATIONAL COURT OF JUSTICE]

OS (COMM) NO. 745 OF 2019 (NO. 2)

BETWEEN:

**WASU API, BONNY BOIE, JAMES LATO SANGI, BRUCE SASSO,
PETER SUMO and ELIAS WOEI** in their capacities as Principal landowners
of Sosi TP No. 15-09, Vanimo, Sandaun Province
First Plaintiffs

AND:

**JUSTIN WIYAI, DAMIEN WANOU, JEROME HUS, IGNAS ILAU,
BENARD SUWAI, JAMES YOWO, DENIS OPO, STEVEN OGI,
SAMUEL PIRU and SIMON BIPI,** in their capacities as landowners
Second Plaintiffs

AND:

KILAND RESOURCES LIMITED for and on behalf of the landowners of
Sosi TP No. 15-09, Vanimo, West Sepik Province whose names listed in the
schedule annexed to this writ
Third Plaintiff

AND:

GREEN TIMBER (PNG) LIMITED
First Defendant

AND:

PAPUA NEW GUINEA FOREST AUTHORITY
Second Defendant

Waigani: Anis J

2021: 11th & 30th June

***NOTICE OF MOTION – 2 motions – one seeking to dismiss the proceeding
and the other seeking leave to remove and add parties to the proceeding, to
amend the pleadings and to seek interim injunctive relief – consideration –
exercise of discretion***

Cases Cited:

Wasu Api and Ors v. Green Timber (PNG) Limited and 1 Or (2020) N8228
Gigira Development Corporation Limited v. Talu (2021) N8852
GR Logging Limited v. David Dotaona and Ors (2018) SC1690
Tulom Abai and 765 others v The State (1995) N1402
Mark Ekepa & ors v. William Gaupe & ors (2004) N2694
Simon Mali v. The State (2002) SC690
Tigam Malewo v. Keith Faulkner (2009) SC960
Eliakim Laki and 167 Others v Maurice Alaluku and Others (2002) N2001
Telikom PNG Limited v. Independent Consumer and Competition Commission (2008) SC 906
Dengnege Resources Development Limited v. Vanimo Jaya Limited (2018) N7108
Dengnege Resources Development Limited v. Vanimo Jaya Limited (2019) N7950
Frederick Martins Punagi v. Sinai Brown (2004) N2661
Mision Asiki v. Manasupe Zurenuoc (2005) SC797
Davidwestern Advertising Group Limited v. Hiri 151 Developments Ltd (2019) N8112
Derwent Ltd v. Anton Pakena (2017) N7050

Counsel:

T Tape, for the Plaintiffs
L Tangua, for the First Defendant
No appearance by the Second Defendant

RULING

30th June, 2021

1. **ANIS J:** I heard 2 applications made by the plaintiffs and the first defendant on 11 June 2021. I reserved my ruling thereafter to a date to be advised.
2. Parties have been notified so I will rule on it now.

BACKGROUND

3. For the background of this matter, I have summarised that at paragraphs 3 and 4 in my earlier decision in this matter, which was made on 9 March 2020, that is, *Wasu Api and Ors v. Green Timber (PNG) Limited and 1 Or* (2020) N8228 (**my earlier decision**). I restate them therein:

3. The third plaintiff is a landowner company established by landowners. The landowners, which include the 1st and 2nd plaintiffs, claim that they come from Sossi which is situated in Bewani Wutung in Onei Local Level Government. The local level government they say falls under Vanimo Green District in Sandaun, West Sepik Province. They claim that in April of 2019, the first defendant brought onto their customary land logging machineries. They claim that they were surprised by the actions of the defendants, and they claim that that was when they started to inquire. They said they eventually discovered that a timber permit was or may have been issued over their land. They acknowledge that their land had been the subject of a Timber Rights Purchase (TRP) licence, namely, TRP No. 151-10-09 in the past. But they claim that the said TRP expired in 2007. They claim that as far as they are aware, no further extension or timber licence has been issued after that, that is, over the land because they claim that they are the landowners therein and that they did not give their lawful consent or authority for a timber permit or a licence to be issued over their land; they argue that if such had been given then they would have known about it.

4. Therefore, they question the timber permit of the defendants on their land, which is why they have filed this proceeding.

4. My earlier decision was made after I had heard inter-pates argument in relation to an application that had been filed by the plaintiff for interim injunctions. I initially granted interim ex parte injunctive orders in favour of the plaintiffs. However, after hearing the full arguments from the parties, I set aside the interim injunctions and dismissed the plaintiffs' application for that. I must say and it is not disputed by the parties that the 2 applications herein stem directly from or based upon my earlier decision.

APPLICATIONS

5. Both applications were filed on 28 October 2020. As for the plaintiffs, the main relief they seek are, (i), to remove some of their members who are named as second plaintiffs herein, namely, Damien Wanou, Bernard Suwai, James Yowo, Denis Opo, Samuel Pir, Simon Bipi (**the 6 persons**) and the third plaintiffs from the proceeding, (ii), to join Alliance Lumber (PNG) Limited as a defendant to the proceeding, (iii), to amend the originating summons, and (iv), to obtain interim injunctive orders against Alliance Lumber (PNG) Limited from conducting logging operations on the area where TP No. 151-10-09 is

situated.

6. As for the first defendant, it seeks orders for the proceeding to be dismissed in its entirety for being (i), incompetent, (ii), frivolous and vexatious, and (iii), an abuse of the court process. The second defendant did not appear to make submissions either for or against the 2 applications.

ISSUES

7. Various issues were raised amongst the 2 applications. I will deal with the fundamental argument that was raised by the first defendant. It alleges that regardless of the relief that are sought by the plaintiff in its notice of motion, the proceeding would still stand as incompetent, frivolous and an abuse of process. Its arguments are, (i), want of identification of the traditional clan and its land area and want of consent obtained by all the plaintiffs to instruct their lawyers and also to commence the proceeding, (ii), wrong mode of proceeding, and (iii), want of s. 5 notice to the State.

LANDOWNERS OF AREA WHERE THE TP IS SITUATED

8. The key document or evidence to assist me address the issue of the land where the TP is located and the landowners who claims to own the said land, are the Deed of Appointment and a copy of the Timber Permit. The Deed of Appointment is dated 7 October 2019 (**the Deed**). It is marked as annexure B to the affidavit of Mr Woei filed on 22 October 2019. A copy of the Timber Permit is attached as annexure C to the other affidavit of Mr Woei filed on 2 October 2020. In regard to the Deed, I note that reference is made the alleged principal landowners who signed therein as *customary landowners of land known as Sosi in Vanimo District, West Sepik Province*. And in regard to the Timber Permit, under the heading Project Area name, the words *Musu Suberlin Sosi TRP* is inserted.

9. To me and at this juncture, these evidence provide the pleading or prima facie evidence that sets the basis for the allegations that the plaintiffs are raising in their originating summons. So, there is, in my view, some clarity that explains the plaintiffs' interests as purported landowners of the area or location where the Timber Permit is situated.

CONSENT TO ACT & FILE PROCEEDING

10. I move on and now address the next argument by the first defendant, and in so doing, I ask myself this. Is the Deed sufficient for the purposes of engaging Kandawalyn Lawyers as the lawyers for the landowners or the plaintiff in this matter?

11. The Supreme Court in the case of *Simon Mali v. The State* (2002) SC690 sets out the requirements in a class action, that is, in terms of the plaintiff's consent to act for them as well as the law firm or the representative(s) who will be acting for them in the intended proceeding. The Supreme Court stated, and I quote:

We accept the State's submission that in all actions or proceedings of a representative nature, all the intended plaintiffs must be named and duly identified in the originating process, be it Writ of Summons, Originating Summons or Statement of Claim endorsed on a writ. In this respect, pursuant to the Rules (supra), each and every intending plaintiff must give specific instructions (evidenced in writing) to their lawyers to act for them. There are good reasons for this, one being where costs of the litigation are concerned, if awarded against the plaintiffs. Some of the problems or consequences in a representative action are anticipated in the various sub-rules under O. 5, r. 13 NCR (Representation: Current interests).

12. The Supreme Court in the subsequent case of *Tigam Malewo v. Keith Faulkner* (2009) SC960 endorsed the above findings together with what was held in *Eliakim Laki and 167 Others v Maurice Alaluku and Others* (2002) N2001. In the *Laki's* case, Justice Sevua held and I quote:

Firstly, there are 168 plaintiffs in this action. The writ is said to be filed by the first plaintiff, Eliakim Laki, on his own behalf and also on behalf of the 167 others who are named in the amended schedule to the writ. If this is a class action, there is no authority for Eliakim Laki to file proceedings as a class representative of the 167 others. The Court notes that, despite raising this issue on 16th August, and despite Mr Parkop's assurance that he would file that authority, the plaintiffs have failed to file an authority that Eliakim Laki represents them in this action. It stands to reason therefore that he should not represent the others without a proper authority.

13. The present case is not a class action. It is rather commenced by purported landowners of the area where the Timber Permit is situated. The Deed consist of proof of a meeting that was held by these landowners. And they have, amongst others, authorised Kandawalyn lawyers to act for them in the matter. They have all signed except for plaintiff James Sangi and the 6 persons who form part of the second plaintiffs. As for the 6 persons, the plaintiff seeks to remove them in their present notice of motion. As for the plaintiff James Sangi, he did not countersign on the Deed. However, because this is not a class action but rather, action commenced by landowners who are all named as parties, the requirements that are stipulated in *Simon Mali* and the related cases above, in my view, do not apply. The plaintiffs do not expressly plead

themselves in the headings as suing for or on behalf of their clan or clans. They are rather suing in their capacities as landowners or purported landowners of the area. What is stopping them from doing that, I ask myself? Had they pleaded themselves in the proceeding as acting for or on behalf of their clan, then they would be bound by the requirements to obtain the permission of all the clan members, obtain their signatures, and obtain authorisations from them to act for their clan's behalf and also the consent of the clan members for the law firm Kandawalyn Lawyers to act for them. That is not how they have come before the Court as are expressly stated in the names of the parties to the proceeding.

14. The plaintiffs are suing as landowners or part of the landowners of the clan that owns land in the area that is covered by the Timber Permit, and they want to know whether the defendants have obtained the permission from their clan or whether they have obtain the necessary approvals before the Timber Permit had been issued. In my view, any customary landowner who is part of a clan or a tribe and who is a citizen may ask such questions of activities whether commercial or otherwise that is or may be occurring upon his or her land or habitant. Why should he or she first obtain the consent of his or her entire clan to ask the question? If he or she decides to include the name of the clan and sue for or on behalf of the clan or some other group of the clan, then obviously he or she must first of all obtain their consent before he or she puts down his or her name as their representative in an originating process. And the reason is obvious, that one cannot act or claim to act for another person or group in a Court proceeding without their consent or authority.

15. As such, I find nothing wrong with the plaintiffs in the manner in which they have named themselves except of course for the 6 persons which I will later deal with if I am minded to and ultimately dismiss the first defendant's notice of motion.

WRONG OR IMPROPER MODE

16. The 1st defendant argues that the correct mode for this type of matter is to a commence judicial review proceeding pursuant to Order 16 of the *National Court Rules*. The plaintiff denies that, and I heard submissions on the matter both orally and through the written submissions of the parties.

17. I note that the issue had been raised by the first defendant in its earlier application, which was briefly reflected in my earlier decision. It was however not heard on its merit therein, and as such, the first defendant is at liberty to raise that now. See cases: *Gigira Development Corporation Limited v. Talu* (2021) N8852, *GR Logging Limited v. David Dotaona and Ors* (2018) SC1690,

Tulom Abai and 765 others v The State (1995) N1402, and *Mark Ekepa & ors v. William Gaupe & ors* (2004) N2694.

18. Counsel for the first defendant has correctly referred to the case on point which is *Telikom PNG Limited v. Independent Consumer and Competition Commission* (2008) SC 906. The Court held, amongst others, and I quote:

(2) A party wishing to challenge the decision of a governmental body or public authority must use Order 16 of the National Court Rules if orders in the nature of prerogative writs are sought. If only an injunction or declaration is sought, the plaintiff has a choice: Order 4 or Order 16 can be used.

19. The first defendant acknowledges that said decision, however, submits that the declaratory effect of relief 4 and 5 in the originating summons would, if granted, nullify the Timber Permit. As such, it submits that the 2 relief are similar to and are in the nature of the prerogative writ, that is, an order for *certiorari* which shall only be sought in a judicial review proceeding which therefore, it submits, makes the present mode of proceeding wrong and amounts to abuse of court process.

20. Relief 4 and 5 read, *A declaration that in the absence of TRP agreement or any other such agreement between the landowners, the Plaintiffs and the Second Defendant, TP No. 151-10-09 is void and of no effect.....,and, A further declaration that any purported extension or grant of TP No. 151-10-09 by the Second Defendant to the First Defendant or any other company is void and of no effect.*

21. To my mind, the said relief are express. Secondly, they may be granted as declarations in the manner as sought in the originating summons. I find nothing wrong or sinister by the pleaded relief that may suggest that the plaintiffs actually had intended to seek an order in the nature of a *certiorari* or in the nature of a prerogative writ. It is, in my view, in the nature of proceeding commenced under Order 4 Division 4 of the *National Court Rules*. The plaintiffs also have the right to choose which mode of proceeding and relief they prefer or would suit them. It is not something which the Court or the other party should dictate upon of the plaintiffs. The Court's role in instances such as this, in my view, is to consider whether the necessary pre-requisites that are required for an intended mode of proceeding are met. It is also not the Court's role or the role of a defendant to decide what relief a plaintiff should claim or to craft out a mode and relief and try say that that is where the plaintiff should go to or seek. Again, if the relief that is sought is allowable under the law or the rules of the Court, or in this case, Order 4 Division 4, the Court should permit

that and let the plaintiffs establish them (i.e., the relief) at a trial proper.

22. In *Dengnege Resources Development Limited v. Vanimo Jaya Limited* (2018) N7108, I stated at paragraphs 21 and 22:

21. But it is perhaps useful to say this. The plaintiff appears to have a clear primary right. It has filed proceeding under originating summons to assert and obtain orders including declaratory orders, to enforce and protect that right.

22. The first defendant tends to argue on a wrong premise or assumption that because its timber permits were also issued over the same area as the plaintiff's FCA licence, the plaintiff should seek judicial review against the decision of the second defendant for its actions. But the obvious question is this. Why would the plaintiff commence judicial review proceeding to challenge the second defendant's decision in awarding the two (2) timber permits to the first defendant when the plaintiff has no interest whatsoever on those timber permits or on whether or not the second defendant had followed due process when it granted the timber permits to the first defendant?

23. Later, and in granting the relief sought in the substantive proceeding in *Dengnege Resources Development Limited v. Vanimo Jaya Limited* (2019) N7950, I stated at paragraph 15:

*15. Did the second plaintiff file a wrong mode of proceeding? Should the correct proceeding have been by way of judicial review? My answer to that is this. This proceeding is commenced using the correct mode or originating process, that is, an originating summons. The second plaintiff, who represents a faction of the landowners of Lassul in the Gazelle District of East New Britain, is seeking declaratory relief because it alleges that its interest in the customary land of its ILG members, which is registered under it, has been infringed. It claims that there had been blatant breaches of law under the Forestry Act. It says that if the relevant law has been broken by the first and second defendants in granting the 2 timber permits, then the 2 timber permits should be declared null and void in order to protect its primary right or interest in the matter. See case: *Amos Ere v. National Housing Corporation* (2016) N6515. The second plaintiff, in my view, is not seeking to review the decision of the second defendant.*

24. I would adopt these and also add the following. If a party states his or her primary rights and then alleges a significant breach of the law that infringes on the said right or rights, it is sufficient to file an originating summons under Order 4 Division 4 to make the assertion and to prove that. The same plaintiff

may not necessary be on the same playing field if he or she decides to file a judicial review. For example, the party may not have known about a public decision and the time for applying may run out. Or the party may not have sufficient interest on the actual decision that was made. But in an originating summons, the party is required to assert his primary right and then prove why a law has been breached and consequently seek relief to assert it rights. It is erroneous, in my view, to think or assume that only a judicial review proceeding may permit the Court to grant relief such as cancellation of title to a property or cancellation of a timber permit or cancellation of an instrument or act that had originally resulted by an administrative act or conduct of a public body or office. There are numerous cases where titles and other instruments that had been decided by a public body had to be cancelled or declared null and void from proceedings that are commenced under Order 4 Division 4 of the *National Court Rules*.

25. I dismiss the first defendant's argument that the plaintiff has commenced this proceeding using a wrong mode of proceeding. I find the mode of proceeding to be in order. The plaintiffs are asserting their customary rights over the land where the Timber Permit is said to be granted over, and they are seeking orders to secure or protect their customary land. The plaintiffs are not concerned nor are they challenging the process for the grant of the Timber Permit. Rather, they are asserting that the grant of the Timber Permit had breached alleged express provisions of the law and as such they seek to declare, amongst others, the Timber Permit null and void. Such declaratory relief may be sought under an originating summons that is filed under Order 4 Division 4 of the *National Court Rules*.

SECTION 5 NOTICE

26. The first defendant's final argument concerns s. 5 of the *Claims By and Against the State Act 1988 (CBASA)*. It argues that no such notice has been given to the State and as such, the proceeding cannot be sustained. The plaintiff denies the claim, and I have heard submissions on this point.

27. At the hearing, I inquired with counsel for the first defendant whether s. 5 only applies to the State and as such, whether the first defendant could still be sued even if I agree with the first defendant on this argument. Counsel, with respect, was unable to assist with a clear response.

28. The relevant provisions for this purpose are ss. 2(1) and 5 of the *CBASA*. They read:

2. Suits against the State.

(1) *A person making a claim against the State in contract or in tort may bring a suit against the State, in respect of the claim, in any court in which such a suit may be brought as between other persons.*

.....

5. Notice of claims against the State.

(1) *No action to enforce any claim against the State lies against the State unless notice in writing of intention to make a claim is given in accordance with this Section by the claimant to—*

.....

29. Injia DCJ, as he then was, in *Frederick Martins Punagi v. Sinai Brown* (2004) N2661, considered ss. 2 and 5, and held that no s. 5 notice was required in an intended judicial review proceeding. His Honour's decision was adopted by the Supreme Court in *Mision Asiki v. Manasupe Zurenuoc* (2005) SC797. The Supreme Court therein held, amongst others, and I quote, *The notice requirements of the Claims By and Against the State Act apply only to actions that are founded on contract or tort or breaches of constitutional rights.*

30. When I apply these to the present case, I find as follows. The plaintiffs herein are not making a claim. Rather, they are seeking declaratory orders to recognise, secure or protect their interests over the land where the Timber Permit is said to cover. They are not seeking damages against the State like for breach of contract or tort or for enforcement of their Constitutional rights. As such, no s. 5 notice is required in this instance.

31. There is a further reason, in my view, to reject the s. 5 argument in this case. In my decision in *Davidwestern Advertising Group Limited v. Hiri 151 Developments Ltd* (2019) N8112, I stated at paragraphs 16 and 17:

16. *The first material fact to note, in my view, is that the State or the Independent State of Papua New Guinea is not named as a party to this proceeding. In my view, section 3 of the Interpretation Act is expressly clear. The 6th defendant is not the Independent State of Papua New Guinea as defined under section 3. It may be a public body or an entity of the State. However, it is not, in my view, the State as defined by the Act of Parliament, namely, by the Interpretation Act. The Supreme Court in *Habolo Building and Maintenance Ltd v. Hela Provincial Government* (2016) SC1549, also expressed its view on point, which I find to be accurate, and I quote in part:*

20. *It has been presumed that the appellant was obliged to give a Section 5 notice before commencing the proceedings. In fact, a Section 5 notice was not necessary as there was no claim against "the State".*

If a person sues a provincial government, as distinct from the State, and does not sue the State, it is not necessary to give a Section 5 notice.

17. *The 6th defendant, the Hiri Local Level Special Purpose Authority is being sued as one out of a total of 6 defendants. And it claims, by this application, that a section 5(1) notice under the CBASA was warranted and should have been issued to the State before the plaintiff filed this proceeding. It claims that a section 5(1) notice was required because it was, and still is, part of the State; that it is a state entity. In my view, and as stated above, the 6th defendant may be a public entity or body of the State, but it is not the Independent State of Papua New Guinea. I note that it can acquire assets and sue or be sued under its own name or style, that is, amongst its other capabilities as stated under the LLG Act and its Constitution. I think this may be better illustrated if we picture the State as a holding or parent company. Its subsidiaries may be related or be wholly owned by it, but they are also regarded as separate entities who may acquire assets and they may sue or be sued under their names or styles. But they are not the parent company so if one wishes to sue the parent company, then it must name the parent company and sue the parent company as a separate legal person. In this case, the 6th defendant may be an independent public entity or body that is related to or which may or may not form part of the State through the provincial or local-level government or pursuant to the provisions of the LLG Act, but it cannot, in my view, be regarded as the State within the meaning of section 3 of the Interpretation Act and section 5 under the CBASA. Only the Independent State of Papua New Guinea is, in my view, defined as the State and therefore only the Independent State of Papua New Guinea shall be notified under section 5(1) of the CBASA if a person intends to commence an action against it. Similarly, a section 5(1) notice under the CBASA is not required if one intends to sue entities that may relate to or be part of but are not the Independent State of Papua New Guinea within the meaning of section 3 of the Interpretation Act.*

32. I would adopt these reasons herein. The second defendant, Papua New Guinea Forest Authority, may be a state entity or body. However, it is not the State or the Independent State of Papua New Guinea, as regarded by s. 5 of the CBASA and s. 3 of the *Interpretation Act Chapter No. 2*. Section 5 expressly requires a notice of intention to make a claim against the State, to be given to the State. The section does not expressly state that such a notice may also be given to any other entity like state entities or its subsidiaries. In this case, the plaintiffs are also suing a state body or entity, namely, the Papua New Guinea Forest Authority which may be or is part of the State even though it is a separate legal person. But I will emphasise that the plaintiffs herein are not suing the State or the Independent State of Papua New Guinea which is also a separate

legal person where s. 5 of the *CBASA* shall apply to. I think the key determining factor to avoid confusion is this. If the State is named as a defendant together with its other entities or bodies, a s. 5 notice shall be required because the State is also a party to the said proceeding. But if the state entities or bodies are named as defendants without the State also being named as a party, then a s. 5 notice is not warranted in my view.

33. In summary and for these reasons, I dismiss the notice of motion by the 1st defendant which seeks to dismiss the proceeding.

PLAINTIFF'S NOTICE OF MOTION

34. I now address the plaintiffs' notice of motion. The first defendant does not take serious issues with relief 1, 2 and 3. That said, I note that counsel for the first defendant did raise concerns that the amendment appears substantive and as such, it submits that the plaintiffs should discontinue the proceeding and refile a fresh proceeding. This was in support of remarks that were made by the Court at the hearing.

35. The Court's power is discretionary, and as such, I will allow the amendments. I take particular note of the fact that there was no serious contest to the first 2 relief and of the fact that relief 3 is necessary to give effect to the first 2 relief. Any additional amendments, in my view, will be allowed for clarity purposes. I also note that the plaintiffs should be at liberty, as it has been the practice, to amend their pleadings where necessary before the trial of the matter. See case: *Derwent Ltd v. Anton Pakena* (2017) N7050. The changes are also necessary in my view for the benefit of the parties and the Court in terms of making a final determination of the matter.

36. I now come to the request for interim injunction by the plaintiff.

37. I have considered the arguments from both counsel. Upon a preliminary check on the principles, I firstly note that the plaintiffs have filed an undertaking in Court. It was filed together with their notice of motion on 2 October 2020. I note that it has all the signatures of all the plaintiffs therein. Counsel for the first defendant argues that not all the plaintiffs had given the undertaking. This is not true, and I reject the argument. In fact, the 6 names in the Undertaking as to Damages that had no signatures were those plaintiffs who are now will have their names removed from the proceeding.

38. The plaintiffs herein had applied ex parte for interim injunctions which were granted by this Court on 1 November 2019. However, upon inter partes hearing of whether to extend the interim injunction, I refused to extend the orders in my earlier decision of 9 March 2020. The reasons for that are

contained in the said decision. I was not satisfied that the plaintiffs had the consent of all their members that were listed as first and second plaintiffs before coming to Court. Evidence adduced showed that some of the plaintiffs were against or did not give their consents to commence the proceeding. The next thing I noted was errors in the description of the Timber Permit. The description of the Plaintiffs' Timber Permit was different to the description given by the defendants. And finally, I also noted that the Undertaking as to Damages filed was insufficient. The said undertaking was given by Mr Woei, as a director of the third plaintiff on behalf of the first and second plaintiffs. I noted that none of the first and second plaintiffs had given their undertakings. For these reasons, I refused to extend the interim injunctions that I had granted on 11 November 2019.

39. The plaintiffs' present notice of motion which I have partly granted, was in reaction or in view of my earlier decision. In partly granting the plaintiffs' notice of motion herein, I find that the plaintiffs have corrected the defects or issues that had been highlighted by this Court. What I now see is that the plaintiffs have pleaded the correct description of the Timber Permit, that is, TP No. 10-09; they have removed the 6 plaintiffs who had given evidence that they did not wish to remain as plaintiffs, and they have filed a valid Undertaking as to Damages. The Undertaking given is by the current plaintiffs who have given that as landowners to their land; they are not giving that for on behalf of their clan. I will emphasize this. There is nothing wrong if a landowner or a person who is part of a land which is owned customarily or communally, that intends to or files proceeding under his or her own accord, to challenge an action of a person who interferes with his or her interest over a land. He or she does not need to seek every landowner's consent before he or she may file Court proceedings to challenge a person under his own name as a landowner. He shall only require the consents or authorities of his or her clan, tribe, or the group if he or she will also be suing for or on their (i.e., clan, tribe, groups etc) behalf in the originating process, for example, that he is suing in his or her capacity as clan leader or as a duly appointed representative of a clan etc. If a plaintiff states that he or she is a principal landowner or landowner of the land in question, like in the present case, there is nothing stopping him or her from pursuing the matter, just like any ordinary citizen who may wish to assert his or her rights as specified in his or her originating process.

40. Upon considering the submissions of the parties, I make these observations. The first defendant did not raise any serious challenge on the merits of the claim. Most or all of its arguments were focussed on its notice of motion and the preliminary or jurisdictional issues raised therein. I have rejected its notice of motion. Its only other submission relates to the Undertaking as to Damages. I have now found that to be in order.

41. When I consider the matter and evidence that have been filed by the plaintiffs, I find that the claim has merit. Serious allegations of breaches of law under the *Forestry Act* 1991 in relation to grant of the TP No. 10-09 remains unanswered. This is a matter which in my view should be properly tried. Damages, in my view, would not be an adequate remedy if I simply ignore the plaintiffs' request to restrain the operations at the site. Irreparable damages would occur if not already, which will be difficult to put a value to, particularly in terms of the destruction that may be caused to the forest area and the environment there. The balance of convenience and also in my view, it would be in the best interest of justice that I grant interim orders now to preserve the status quo pending the final determination of the matter.

SUMMARY

42. In summary, I refuse the first defendant's notice of motion filed on 28 October 2020 and grant the plaintiffs' notice of motion also filed on 28 October 2020.

COST

43. An award of cost in an interlocutory matter or application is discretionary. I will order costs to follow the event against the first defendant.

THE ORDERS OF THE COURT

44. I will make the following orders:

1. The first defendant's notice of motion filed on 28 October 2020 is refused.
2. The plaintiffs' notice of motion filed on 28 October 2020 is grant in the following terms:
 - (i) The following plaintiffs, Damien Wanou, Bernard Suwai, James Yowo, Denis Opo, Samuel Piru, Simon Bipi and the third plaintiff KILAND RESOURCES LIMITED, are removed as parties to the proceeding.
 - (ii) ALLIANCE LUMBER (PNG) LIMITED is joined as the third defendant in this proceeding.

- (iii) The Originating Summons filed on the 22nd day of October 2019 shall be amended as per the draft that is annexed to the Affidavit in Support of Elias Woei sworn on 24th of June 2020.
- (iv) The third defendant ALLIANCE LUMBER (PNG) LIMITED and its contractors or agents whosoever are restrained in the interim from conducting any logging operation anywhere within TP No. 151-10-09, Vanimo Green District, Wes Sepik Province.
3. For clarity, the interim restraining orders obtained by the plaintiffs herein shall take immediate effect and shall be in place until further orders of the Court.
4. The first defendant shall pay the plaintiffs' costs of the 2 applications on a party/party basis to be taxed if not agreed.
5. Time for entry of these orders is abridged to the date of settlement by the Registrar of the National Court which shall take place forthwith.

The Court orders accordingly.

Kandawalyn: *Lawyers for the Plaintiffs*
Tangua: *Lawyers for the First Defendant*
In-house Lawyers: *Lawyer for the Second Defendant*