

RIMBUNAN HIJAU BEHAVIOUR “A SHAM, FRAUD AND UNCONSCIONABLE”

03 Mar 2020 | 10 min read

The Supreme Court has delivered another damning indictment on the behaviour of one of Papua New Guinea’s largest private companies, Rimbunan Hijau Limited (RH).

Over the last 30 years this Malaysian owned company has built a multi-sector empire with interests in retail, property, transport, media, and hospitality.

Recent court decisions though have exposed how this empire has its foundations in illegal logging, the exploitation of customary landowners, fraudulent business dealings and manipulation of the law.

In the latest Supreme Court verdict, RH’s conduct in dealing with customary landowners from Ormand Lako in the early 1990s have been declared ‘a sham, fraud and unconscionable’.

Rimbunan Hijau’s whole logging operation, according to the courts, was built on a lie: it used a front company to negotiate a logging and marketing agreement without revealing that company was just a shell operated and controlled by RH.

That shell company failed to obtain the informed consent of landowners and it proceeded to make multiple breaches of its logging and marketing agreement. When the landowners protested, the company shut up shop and promptly sued them; a move that spectacularly backfired when the landowners counter-claimed for breach of contract. The shell company promptly disappeared into the night, but the canny landowners then persuaded the courts to add Rimbunan Hijau as a second defendant.

As a result, Rimbunan Hijau has now been ordered to pay the landowners K3.17 million in compensation plus interest.

In today’s Court Report PNGi explore this case in detail. The judgement exposes a dangerous tactic used by PNG’s logging industry, where front companies and undisclosed parent and subsidiary relationships are employed to hide controlling entities, avoid liabilities and evade taxation.

According to a recent in-depth investigation by the Sarawak Report, Rimbunan Hijau alone has as many as 156 linked companies registered in PNG.



Photo Left: Stanley Hotel & Suites & Photo Right: Vision City Mega Mall in Port Moresby, Papua New Guinea – Both owned by the RH Group

Vision City Mega Mall houses the following businesses, which are also RH owned:

RH Hypermarket – As well as in Vision City, RH also have hypermarkets in Gordons, Hohola and in Lae (Associated company: RH Trading Limited)
RH Pharmacy – As well as in Vision City, RH also have a pharmacy at RH Hypermarket located at Gordons, Hohola (Associated company: RH Pharmaceutical Limited)
Platinum Medical Center – Medical centre (Associated company: Platinum Medical Limited)
Wantok Rewards – Points scheme for customers. (Associated company: Wantok Rewards Limited)
Star Office Works – Stationaries, computer products and IT services (Associated company: Star Plus Limited)
Travel Planners – Travel agent (Associated company: Travel Planners (PNG) Limited)
Dynasty Restaurant – Chinese Seafood Restaurant. (Associated company: Grand Palace Limited)
Food Junction – Food court. (Associated company: Retail Food Junction Limited)
Baker’s Choice – Bakery. As well as in Vision City, Baker’s Choice is also located at the RH Hypermarket at Gordons, Hohola. (Associated company: Baker’s Choice Limited)
Paradise Cinema – (Associated company: Vision City Investment Limited)
Movieworld – (Associated company: Movieworld Limited)
Champion Sports Bar & Grill – Sports Bar and restaurant with live band. (Associated company: Champions Investments Limited)
Mobil – Operation of Mobil petrol stations at Vision City and 8 Miles, Port Moresby (Associated company: RH Trading Limited)



Photo Left: Tropicair, a charter operator in Papua New Guinea & Photo Right: Golden Shipping, RH’s shipping subsidiary in PNG

Some of the household names among the 156 PNG registered companies identified as linked to Rimbunan Hijau.

[Subscribe to receive email notifications when new posts are added](#)

LOGGING IN ORMAND LAKO

In 1992 TL Timber Development, a landowner company, entered into a logging and marketing agreement (LMA) with Pinpar Developer Pty Ltd.

The landowner company already held a permit for the Ormand Lako Timber Area in the Kupiano District of Central Province.

Pinpar was engaged as the logging contractor to harvest the trees and sell the logs.

A dispute subsequently arose between the logging company and the landowners over a sawmill.

Under the LMA, Pinpar was obliged to finance and build a sawmill that would be wholly owned by the landowner company, TL Timber. Pinpar was also required to ensure a steady supply of logs to the sawmill. Meanwhile, the cost of the sawmill was to be repaid to Pinpar by TL within three years.

Ironically as it turned out it was Pinpar who in 1996 started the legal proceedings. Pinpar claimed that it had built the sawmill at a cost of K751,280, TL Timber had failed to repay the costs, and the landowners subsequently barred Pinpar from its forests.

The landowners counter-attacked. They filed a defence and cross-claim against Pinpar, demanding K8 million in lost project benefits for the balance of the LMA as a result of Pinpar abandoning its logging operations. The landowners also accused Pinpar of trying to 'legitimise' its withdrawal from the area by obtaining an ex-parte Court order in a separate legal proceedings seeking to recover company machinery and equipment.

The landowners also filed a successful application to have Rimbunan Hijau joined to the court proceedings as the parent and controlling company of Pinpar.

RH appealed against the decision joining it as a party to the proceedings. That appeal was unanimously rejected by the Supreme Court in February 2001.

When the whole case finally came to trial in 2004, Pinpar and RH abruptly dropped all their claims against TL Timber. The trial continued on the basis of the landowners' cross-claim for breach of the LMA.

PIERCING THE CORPORATE VEIL

The National Court judge, Justice Gavara-Nanu, found in favour of the landowner company, TL Timber Developers.

The judge declared that there been constant breaches of the LMA by the logging companies and was scathing in his assessment of Rimbunan Hijau.

Justice Gavara-Nanu found that Pinpar was merely an agent controlled by RH. It had been purposely set up by RH as a front to execute the LMA with the landowners and conduct the logging operations.

According to the judge, RH was the undisclosed parent and controlling company behind Pinpar and ran and managed all its affairs.

There was an element of fraud said the court, in the conduct of Pinpar and RH having the landowners sign the LMA which was formulated by the companies 'with little or no involvement' from the local people.

This was 'unconscionable'.

There was then constant breach of the LMA by Pinpar and RH. When the landowners tried to raise legitimate concerns they were ignored.

The rights of the resource owners, the local people, 'were totally disregarded by Pinpar and RH as "not important"'.

The judge awarded damages to TL Timber in the amount of K3,170,166.20 for breach of the LMA by Pinpar and its parent Rimbunan Hijau.

Justice Gavara-Nanu refused to allow Rimbunan Hijau to hide behind its 'corporate veil' – the legal principle that separates a company from its owners and allows the shareholders to avoid liability for the debts and other obligations of the company.

Where a court finds that the corporate veil is a sham or cover for illegal or improper activities it will pierce the veil and hold the owners liable, in this case RH, for the legal obligations of its subsidiary company.

This though was far from the end of the matter. Rimbunan Hijau appealed against the whole verdict.

SUPREME COURT APPEAL

In its appeal Rimbunan Hijau alleged the trial judge made eighteen errors of fact.

RH argued that the judge had been wrong to find Pinpar entered into the LMA as an agent of RH; was wrong to find there was a sham, fraud and unconscionable conduct; was wrong to find that Pinpar and RH breached the LMA; and was wrong in finding TL Timber suffered the alleged or any damage.

In its judgement delivered on 20 December 2019 the Supreme Court rejected each and every one of RH's grounds of appeal.

The Supreme Court found that the trial judge made no errors of fact in finding that Pinpar was acting as the agent of Rimbunan Hijau in its dealings with the landowners.

To the contrary, there was plenty of evidence supporting such a finding.

Pinpar had no office or staff of its own. RH was running and managing all its affairs. The profits from the logging and saw milling were controlled and kept by RH. RH was the 'head and brain' behind the logging and sawmill operations. It used a subsidiary, Niugini Lumber, to do the logging and another subsidiary, Timbers PNG, paid Pinpar's bank guarantee required under the LMA. RH was 'therefore in effectual and constant control' of Pinpar.

The Supreme Court also noted that RH and Pinpar shared the same registered office and the same Company Secretary. The royalties paid to TL Timbers and the provincial government were paid by RH. All meetings with the landowners were held at RH's offices and attended by RH managers and staff.

Similarly the Supreme Court found no error of fact in the conclusion drawn by the trial judge that Pinpar was a sham or mere facade and that the negotiations were a fraud and unconscionable.

The trial judge had ample evidence, said the Supreme Court, on which to find that the whole timber operation had been set up for the benefit of Rimbunan Hijau and that Pinpar existed in name only.

In such circumstances it was correct that RH could be held liable for the 'repeated, ongoing and constant' breaches of the LMA by Pinpar.

Those breaches included Pinpar failing to obtain insurance cover and a bank guarantee, which were instead provided by RH, engaging Niugini Lumber without the consent of landowners, failing to pay royalties and maintain a Forest Working Plan, failing to submit log returns, failing to build a site office, and operating the sawmill when there was no sawmill agreement in place.

The Forest Working Plan and a sawmill agreement, in particular, were 'conditions precedent to legal logging and sawmill operations'. Their absence rendered the subsequent operations unlawful.

The Supreme Court could also find no error in the trial judges calculation of the damages owed by Rimbunan Hijau to the landowners.

The Supreme Court dismissed the whole appeal, and confirmed the earlier National Court decision. It ordered RH pay the landowners costs of the appeal as well as the K3.17m in damages plus interest.

JUSTICE DELAYED

In an earlier Court Report published in November 2019, PNGi revealed how Rimbunan Hijau abused the court system to deny another group of landowners justice over the illegal occupation of their land. In that case more than 30 years elapsed between the original unlawful trespass by RH and the final Supreme Court decision.

The litigation over logging in the Ormand Lako Timber Permit Area has also had a long history. The original court case was filed in 1996, but the proceedings dragged on for 23 years with the final Supreme Court decision not handed down until November 2019.

Along the way there were some lengthy delays; not all were directly caused by RH but all have disadvantaged the landowners and ultimately threatened the final delivery of justice.

The first lengthy delay was caused by Rimbunan Hijau appealing against the decision of the court joining the company to the proceedings as the controlling parent company of Pinpar. The joinder decision was made in March 1999 but RH's unsuccessful appeal was not rejected until February 2001.

Another lengthy delay occurred between the National Court trial on 6 October 2004 and the decision of Justice Gavara-Nanu handed down on 9 August 2006.

The first National Court decision dismissing Rimbunan Hijau's claim against the landowners was issued on 9 August 2006.

But, following another lengthy delay, that decision was appealed by Rimbunan Hijau.

Permission for the appeal was granted by the Supreme Court in September 2009, already more than three years after the National Court decision.

But then the delays got even longer.

In September 2016, the National court decision, a three judge bench in the Supreme Court rejected an application by the landowners to have the appeal struck out 'for want of prosecution'. This was despite a delay that was already more than ten-years.

More than two years after that, in December 2018, the Supreme Court heard the appeal.

But the matter did not end there. The Supreme Court 'reserved its decision'.

Seven months later the landowners were still waiting to hear the Supreme Courts judgement when one of the three judges sitting on the appeal, Justice Nablu, unfortunately died.

Even that death does not seem to have spurred on the other judges, Justices Kassman and Berrigan. Having received the consent of the litigants to proceed, it was still another five months before the remaining judges published their decision.

The judges were unequivocal in their rejection of Rimbunan Hijau's appeal. But it was now thirteen years since the original National Court decision in the landowners favour and twenty-three years since the first claim made by Rimbunan Hijau against the landowners.

MULTIPLE PERSONALITIES

Despite all the evidence that has accumulated over the years demonstrating that the Malaysian logging giant has grossly abused its host nation, RH has nonetheless been allowed by successive governments to prosper in PNG.

Recently published research has identified as many as 156 companies that can be linked to Rimbunan Hijau, including such household names as The National newspaper, TropicAir, Vision City, Star Printers, RH Hypermarket and The Stanley Hotel.

For a corporation engaged in many different types of business it can make a lot of sense to manage each as a separate legal entity.

But having many different corporate faces can also present many opportunities for unlawful or improper activities.

As we have seen in the Ormond Lako case, Rimbunan Hijau was able to hide behind a separately registered company, Pinpar in its initial dealings with landowners. It may have suited RH for many different reasons to keep the landowners unaware of who they were really dealing with. Perhaps the landowners were already ill-disposed towards RH, perhaps they would demand better terms from a well-known and established business.

Using Pinpar as a front also allowed Rimbunan Hijau to try and avoid liability when things went wrong. When the landowners started demanding compensation Pinpar simply

disappeared, while RH simply carried on its other business operations and tried to wash its hands of the whole affair. In this case of course they were unsuccessful due to the tenacity of the landowners, but the legal cases dragged on for twenty-three years and involved two visits to the Supreme Court. How many times have RH and other companies been able to successfully hide behind the corporate veil? And how many occasions have aggrieved landowners simply given up on ever obtaining justice owing to a lack of financial resource?

Multiple corporate personalities can also be used for tax evasion.

Tenacious research by the Oakland Institute has exposed how Rimbunan Hijau has evaded paying corporate taxes for many years by declaring constant losses from its logging operations. Such losses, when repeated over decades, don't make any business sense and defies logic. Why would anyone keep doing the same thing and in fact expand their business when they never make a profit?

Image: Tenacious research by the Oakland Institute has revealed evidence of financial misreporting and tax evasion by the logging industry in Papua New Guinea

This is symptomatic of a wider problem in PNG, where companies reduce their tax bill through the dubious means of shifting their profits between subsidiary firms and holding companies. For example, there are notable instances of companies generating their profit in PNG, but publishing a loss (a tactic that goes back to the 1980s). The profit is realised in a holding company offshore, in a tax haven where they pay little or no corporate tax. In other instances, companies are generating a profit through company A, but through an internal billing system, actually realise the profit in company B, which in the last financial year has made a significant loss (e.g. due to constructing a new office block). This again allows tax obligations to be shed.

Concerns over these types of tactics have put the spotlight on companies like RH, especially when their own financial data does not appear to add up.

In 2019, the government announced its intention to hike log export taxes from January in an effort to recoup more revenue from the industry and redress the evasion of corporate taxes. In response, the industry has threatened to close its logging operations.

This echoes the kind of campaign witnessed in Australia when the government introduced a special tax on mining super-profits.

In that case, Australia blinked, and gave up much needed to tax revenue to the billionaire class.

We wait to see which side blinks first here in PNG. If neither do, there will be many who believe landowners and their forests will be the winners.

Subscribe to receive email notifications when new posts are added