

**N10196**

PAPUA NEW GUINEA  
[IN THE NATIONAL COURT OF JUSTICE]

**OS NO. 885 OF 2019**

**BETWEEN:**  
**MOILE RESOURCE OWNERS LIMITED**  
*- First Plaintiff-*

**AND:**  
**EMO HOLDINGS LIMITED**  
*-Second Plaintiff-*

**AND:**  
**VANIMO JAYA LIMITED**  
*-First Defendant-*

**AND:**  
**AITAPE WEST PALM OIL LIMITED**  
*-Second Defendant-*

**AND:**  
**ECO-PALM OIL LIMITED**  
*-Third Defendant-*

**AND:**  
**PNG NATIONAL FOREST AUTHORITY**  
*-Fourth Defendant-*

Waigani: Tamade AJ

2022: 21<sup>st</sup> September

2023: 17<sup>th</sup> February

***LAND – dispute over Special Agricultural and Business Lease – non-compliance with previous court orders – non-disclosure of court order from previous proceeding – contempt of court – Constitution Section 155(4) and National Court Rules Order 12 Rule 1 discretion exercised***

**Counsel:**

*Mr Anthony Donigi, for the Plaintiffs*

*Mr Livingston Baida, for the First, Second and Third Defendants*

*Mr Emmanuel Isaac, for the Fourth Defendant*

**17<sup>th</sup> February, 2023**

1. **TAMADE, AJ:** The matter before the Court involves parties who were previously engaged in various litigation concerning a Special Agricultural Business lease in Aitape, West Sepik Province.

2. The Affidavit of one Julian Pewa of the Plaintiff, the only affidavit filed in these proceedings does not include the relevant Court Orders from the previous proceedings however I am assisted by Mr Isaac who acts for the Fourth Defendant, the PNG Forest Authority, who has with leave of Court handed up a copy of a Court Order granted on 5 October 2015 in proceedings OS 411 of 2013.

3. It appears that OS 411 of 2013 concerned the Plaintiff and the Defendants except the Fourth Defendant and other representatives of various villages on the subject land and the Secretary for the Department of Lands & Physical Planning and the State. In those proceedings, the final orders of the Court are as follows:

- i) That the Defendant Vanimoy Jaya Limited through (Aitape West Oil Palm Limited) conditionally surrender the SABL Title over Portion 248C Volume 13 Folio 177 to the Registrar of Titles.*
- ii) That the Registrar of Titles through the customary Land Registration Division Registers Portion 248C Volume 13 Folio 177 in the nominated ILG names of the One Tribe and the Uni Tribe respectively.*
- iii) That the current Developer's interest be recognized and their business investments be protected by both the One Tribe ILG's and the Uni Tribe ILG's in the endeavour to develop Portion 248C Volume 13 Folio 177.*
- iv) That the perpetual rights and interest of the customary land owners*

*be recognized and protected by the current Developer by giving them the maximum benefit in their participation in developing their held titles and leases over Portion 248C Volume 13 Folio 177...*

4. The above are the substantive orders in proceedings OS 411 of 2013.
5. The Plaintiffs in these proceedings say that they are the ILG's that make up the Plaintiff, Moile Resource Owners Limited whose umbrella entity is Moile Incorporated Land Group.
6. Pursuant to Orders of the Court in OS 411 of 2013, Moile Incorporated Land Group was granted ownership of the land under a new description as Portion 277C, Tadgi, Aitape, West Sepik, Volume 1 Folio 48 on 23 November 2017. The subject property was leased under section 340 of the *Land Registration Act* to Moile Resource Owners Limited to develop the land commencing 19 February 2018 for a period of 99 years.
7. The subject land interest under Moile Resource Owners Limited was then transferred to Emo Holdings Limited to develop the land for the customary landowners.
8. It is the Plaintiffs claim that unknown to them, the First Defendant Vanimo Jaya Limited submitted a FCA (Forest Clearing Application) to the PNG Forest Authority on 3 October 2019 using the extinguished title deed in OS 411 of 2013 (*Portion 248C Volume 13 Folio 177*) for what they named a Aitape-West Agro Forestry Project. This is concerning the same land that the Plaintiff say they have full legal interest on in their Certificate of Title. The Plaintiffs argue that the First Defendant has never surrendered the title deed as ordered in proceedings OS 411 of 2013.
9. The Plaintiffs are therefore claiming in these proceedings for orders that they are the legitimate title holders of Portion 2777C Volume 1 Folio 124, Tadji, Aitape, West Sepik Province and amongst other orders, an order that the Registrar of Titles be ordered by way of an order of mandamus to cancel the SABL title already ordered by the Court to be conditionally surrendered in OS 411 of 2013 and that another customary title should be properly given to the Defendants who are part of the Uni Tribe again, as ordered in OS 411 of 2013.
10. The Court also notes that a related proceeding by Vanimo Jaya Limited against the Plaintiffs in OS 443 of 2019 was dismissed by the Court on 24 August 2022 for failing to disclose a reasonable cause of action and for being speculative.

11. Mr Baida of the First, Second and Third Defendant has not directly addressed the substantive claim but has by way of his submissions in paper and orally attempted to contest the form of the proceedings and the standing of the Plaintiffs in these proceedings. When asked by the Court as to the Court Orders of OS 411 of 2013, Mr Baida has skirted around the issue. I find some concession in the submissions of Mr Baida in the absence of any affidavit at all by his clients that his clients have not surrendered the SABL title over the subject land as ordered by the Court in OS 411 of 2013 and have been in passive or rather complete denial that those orders do exist and have not taken any step at all to act in compliance of those orders.

12. Mr Baida raises an issue that these proceedings are somewhat of an abuse as they seek orders that should be sought in judicial review proceedings for orders seeking mandamus but he does not address the compliance of orders in OS 411 of 2013 which I find calculated and mischievous as the evidence by the Plaintiff clearly shows that after OS 411 of 2013, his clients still have retained and relied on the SABL extinguished in OS 411 of 2013.

13. I accept the submissions by Mr Isaac that none of the orders sought in the declarations by the Plaintiffs are targeted against the PNG Forest Authority and they have been dragged into these proceedings without any reason.

14. The issue I see in this matter is the compliance of the Orders of OS 411 of 2013. I am of the view that the issue is one of contempt of Court against Vanimo Jaya Limited if they are seen to be acting in defiance of the Orders of OS 411 of 2013, an appropriate proceeding should be filed for contempt of Court. Orders sought in the manner in which the Plaintiffs have pleaded in the Originating Summons suggests to me to be a new set of claim when the starting point of their claim is OS 411 of 2013. Be it as it is that the Plaintiffs are already before this Court, in the exercise of the Court's discretion pursuant to Section 155(4) of the Constitution and Order 12 Rule 1 of the National Court Rules, the Court will make orders for the First Defendant to act in compliance with the Orders of the Court in OS 411 of 2013 and failing which the Plaintiffs will be at liberty to file for contempt of Court accordingly.

15. I also find that the declarations seeking mandamus should be properly pursued in a judicial review proceeding as Order 16 of the National Court Rules is a specific route where such a relief can be sought.

16. The Court orders that:

- i. The First Defendant Vanimo Jaya Limited and the Second Defendant Aitape West Oil Palm Limited shall comply with the

Orders of the Court made in OS 411 of 2013 on 5 October 2015 within 30 days from the date of these Orders.

- ii. If there is no compliance of the Orders of the Court, the Plaintiffs are at liberty to file for contempt of Court of the Orders of the Court.
- iii. The First and Second Defendant shall meet the costs of the Plaintiffs on a solicitor client basis of these proceedings on the basis that that they have sat on the compliance of Court Orders of OS 411 of 2013.
- iv. The Plaintiff shall meet the costs of the PNG Forest Authority for unnecessarily dragging them into these proceedings.
- v. Time is abridged to the date of these orders to take effect forthwith.

Orders accordingly.

Ama Wali Lawyers: *Lawyers for the Plaintiff*

Nelson Lawyers: *Lawyers for the First, Second and Third Defendants*

Emmanuel Lawyers: *Lawyers for the Fourth Defendant*