

PAPUA NEW GUINEA
[IN THE NATIONAL COURT OF JUSTICE]

WS. NO. 176 of 2013

BETWEEN

**PETER APOI, THOMAS KUMUSI & JOSEPH KELANGE – FOR THEMSELVES
AND ON BEHALF OF THE CUSTOMARY OWNERS OF BLOCKS 3, 4 AND 5 OF
THE VANIMO TIMBER PROJECT AREA whose names appear in the SCHEDULE
ATTACHED TO THIS WRIT.**

Plaintiffs

AND

KANAWI POURU – MANAGING DIRECTOR NATIONAL FOREST AUTHORITY

First Defendant

AND:

PATRICK PRUAITCH – MINISTER FOR FOREST

Second Defendant

AND:

NATIONAL FOREST BOARD

Third Defendant

AND:

THE INDEPENDENT STATE OF PAPUA NEW GUINEA

Fourth Defendant

Waigani: Kandakasi, J.

2014: 22nd October

2015: 12th June

***LEGISLATION - Territory of Papua and New Guinea Forestry Ordinance 1936-1951,
Forestry Act Chapter 216 and the Forestry Act 1991 – Forestry a control industry –
Ownership in traditional landowners – Object and purpose of legislation – Avoid depletion
of forest reserves and harvesting only in accordance with the Act - State acquires right to
access, harvest only through Timber Rights Purchase Agreements (TRPAs) or Forest
Marketing Agreements (FMA) – TRPAs or FMAs condition present to Timber Permits,
Licenses of Authorities – No provision for extension of TRPAs - Timber Permits to
confirm with term of TRPAs or FMA –Timber Permits and licenses in Timber Permits or
licenses outside TRPAs or FMAs, and extension of term of TRPA not in accordance with
object and purpose of legislation and therefore illegal, null and void and of no effect –
Landowners entitled to damages - Sections 73 (3) (d), 136 and 137 of the Forest Act 1991,
s. 4 of Forestry Regulations 1998, s. 8(1), (4) and s.10 (1)(c) of the Forest Act Chapter***

216 and Public Finances (Management) Act 1995 ss.59 and 61.

MEDIATION – Court considered mediation appropriate process to resolve the dispute – Determinative legal issue presented which require only a judicial consideration and determination presented – Mediation stayed to enable determination of determinative legal issues – Determinative issue determined in favor of plaintiff have a claim in damages – Court ordered mediation to proceed – Rules 4 and 5 ADR Rules.

Cases Cited:

Papua New Guinea Cases

Vanimo Forest Products Ltd v. PNG Forest Authority & Ors (OS No. 549/07 (JR) delivered on 15th October 2007.

PNG Power Ltd v. Ian Augerea (2013) SC1245.

Fly River Provincial Government v. Pioneer Health Services Ltd (2003) SC705.

Steamships Trading Co Ltd v. Garamut Enterprises Ltd (2000) N1959.

Manus Provincial Government vs. Kasou [1990] PNGLR 395.

Overseas Cases Cited:

BP Refinery (Westernport) Pty Limited v. Shire of Hastings [1978] 52 ALJR 20

Padfield v. Minister of Agriculture, Fisheries and Food [1968] AC 997.

Darvell v. Auckland Legal Services [1993] NZLR 111.

R. v. Sec for State ex p. Fire Brigades Union [1995] 2ALLER 244

Earl of Aylesford v. Morris [1872-73] 8 AR Ch. 484.

Associated Provincial Pictures Houses Limited v. Wednesbury Co. [1948] 1KB 223.

Beaman v. A. R. T. S. Limited [1948] 1ALLER 465.

Legislation and other material cited:

Forestry Private Dealings Act

Territory of Papua and New Guinea Forestry Ordinance 1936-195

Forestry Act Chapter 216

Forestry Act 1991

Lewison, Interpretation of Contracts, at paragraph 5.03.

Counsel:

A. Baniyamai, for the Plaintiffs.

I. Shephard, for the Defendants.

12th June, 2015

1. KANDAKASI J: Introduction: This case concerns a controlled industry, namely forestry and in particular the harvesting and marketing of logs. The basic statutory documents that permit or allow for logging are Timber Rights Purchase Agreements (TPRAs) and Timber Permits (TPs). The former is an agreement between the State and the customary landowners on whose land the forest resources are, while TP is a license issued by the State to a private entity to commercially harvest and sell forest products, namely timber in exchange for levies and royalties paid to the landowners. An issue has arisen here to the effect that, the State through the Minister for Forest issued a TP to the Vanimo Forest

Products Limited (VFPL) over and above the currency of a TRPA the State had secured from the landowners now represented by the plaintiffs.

2. By consent of the parties, I had earlier ordered the matter to go to mediation for the parties to find a resolution through their own negotiations facilitated by an accredited mediator. I came to that decision after considering the provisions of rr. 4 and 5 of the *ADR Rules*. However, before the mediation could take place, the parties identified two related issues they wanted the Court to consider and determine as they are purely legal and are determinative of the proceeding and strictly speaking they require only a judicial consideration and determination. I considered the issues and was of the view that the parties were correct. Then with their consent I proceeded to a hearing of the issues both orally and written submissions of the parties through their respective learned counsel. The relevant facts are not in issue.

Issues for determination

3. The questions or issues for the Court to determine are:

(1) Can a TRPA entered into under the repealed *Forestry Private Dealings Act, Territory of Papua And New Guinea Forestry Ordinance 1936-1951*, which subsequently expired be extended under the new Act, *Forestry Act 1991, (as Amended)*? and

(2) If the answer to the first question is in the negative, is any extension granted under new Act after the expiration of the first agreement illegal, null and void and of no effect?

Relevant facts and background

4. The facts giving rise to these issues and this proceeding is simple. Logging of PNG's rain forests have been the subject of corruption and was the subject of the Barnett Inquiry which concluded with a report consisting of two volumes in early July 1989. That inquiry resulted in a repealing of the then governing legislation, *Forestry Private Dealings Act, Territory of Papua New Guinea Forestry Ordinance 1936-1951* and being replaced by the current legislation *Forestry Act 1991 (as Amended)*.

5. In this case, two separate TRPAs covering the Vanimo Timber Project Area were issued under the old Act. One covered only Block 6, whilst a TRPA issued on 26 March, 1968, applied to Blocks 1, 2, 3, 4 and 5. Section 137 of the new Act saved the TRPAs that were issued under the old Act. The TRPA covering Block 6 lapsed on 9th February 2007, whilst the one covering Blocks 1 to 5 lapsed on 26th March 2008. Despite the two separate TRPAs, only one *Timber Permit 10-8* was issued by the defendants for the whole of the Vanimo timber project area on 31st October 1991. There is neither any explanation nor is there evidence as to why the Timber Permit could not be issued earlier. The first to the third defendants' learned counsel submits that "perhaps, it can be assumed that logging activities had been undertaken in this area prior to that date by either the same or different contractors, ie between 1968 and 1991".

6. The TP had a term of twenty (20) years which lapsed on 31st October, 2011, an additional three (3) more years after the expiration of the TRPA on 26th March 2008, for Blocks 1 to 5. Logging continued on Blocks 3, 4 and 5, following an extension of the TRPA for Blocks 1 to 5, on 21st April 2008, until expiration of the Timber Permit 10-8, on 26th March, 2011. The Minister for Forest (second defendant) took the view and advised that any Timber Permit

issued pursuant to the TRPA would lapse upon the expiry of the TRPA. Following that advice, logging in Blocks 1, 2 and 6 ceased.

Claims and Arguments

7. Peter Apoi and his people claim that, a TP is dependent on a TRPA. Based on that, they argue that, no TP can have life beyond that of a TRPA both being creators of statute, namely the *Forestry Ordinance of 1936*, and later the *Forestry Act* Chapter 216, (the old Act). They argue that there being no provision for the extension of TRPAs, extension or grant of the TP beyond the original life of the TRPAs are illegal, null and void and of no effect.

8. At paragraph 1 (f), of their submission, the first to the third defendants concede that there is no provisions in any of the old legislation allowing for renewal or extension of TRPAs. They go on to submit however that, there is sufficient legal foundation in the law of contract generally to reasonably infer that it was an implied term of the relevant TRPA here that it would be renewed by agreement of the parties. Accordingly, the State and the customary landowners legally renewed the TRPA, which necessarily forms the foundation for the relevant Timber Permits. In support of this argument, reliance is placed on s. 4 of *Forestry Regulations* 1998, Lewison, *Interpretation of Contracts*, at paragraph 5.03, *BP Refinery (Westernport) Pty Limited v. Shire of Hastings* and an unreported decision of Injia DCJ (as he then was) in the matter of *Vanimo Forest Products Ltd v. PNG Forest Authority & Ors.*

First Issue: Can an Expired TRPA be Renewed

9. I turn to a consideration of the first of the two issues first. Section 8(1) of the old Act provided for the State to acquire from customary owners of forest resource the rights of felling, cutting, removing and disposing of timber. There is no contest that, according to section 8(4) of the old Act, an acquisition under s.8 is void and of no effect unless there is a TRPA with the State and the customary owners which amongst others specifies (a) the terms upon which the rights are to be exercised; and (b) the way in which the sale price for the rights are to be paid. Section 10(1)(c) of the old Act, vested in the Minister powers to grant permits and licenses to take and contract for the sale of forest products in a Timber Rights Purchase Area. The new Act in 1991 following the Barnett Enquiry introduced a new regime with a view to ensuring there was no corruption in the industry.

10. Section 136 of the new *Act* repealed the old one. At the same time however, s. 137 saved all of the then existing TRPAs, licenses, permits and or authorities validity issued under the old Act. This provision reads:

"137. Saving of existing permits, etc.

(1) Subject to Subsection (2), all—

(a) registrations granted under the Forest Industries Council Act (Chapter 215) (repealed); and

(b) permits, timber rights purchase agreements, licences and other authorities granted under the Forestry Act (Chapter 216) (repealed); and,

(c) . . . [Repealed]

valid and in force immediately before the coming into operation of this Act, shall continue, on that coming into operation, to have full force and effect for the term for which they were granted or entered into or until they sooner expire or are revoked according to law.

(1A) Subject to Subsection (2), all agreements entered into under the Forestry (Private Dealings) Act (Chapter 217) (repealed) valid and in force immediately before the coming into operation of this Act are, on that coming into operation deemed to be timber permits granted under this Act (and the purchasers under the agreements shall be deemed to be the holders of the timber permits) and shall have full force and effect as such timber permits for the term for which the agreements were entered into or until they sooner expire or are revoked according to law.

(1B) Where the term of a timber rights purchase agreement granted under the Forestry Act (Chapter 216) (repealed) is longer than the term of a timber permit granted in respect of the timber rights purchase agreement, the timber permit may be extended or renewed under this section subject to—

(a) the social acceptability of the timber permit in the project area by the customary owners in writing; and

(b) the satisfactory performance of the holder of the timber permit in carrying out the operations including compliance with the Act, the terms and conditions of the timber permit and the Papua New Guinea Logging Code of Practice; and

(c) the amount of forest resources available in the project area to commercially support the operations for not less than two years; and

(d) the rate of the annual allowable harvest which shall not be increased at the time of the application for extension; and

(e) the currency of or payment of a performance bond as prescribed; and

(f) where applicable, amendments to the terms and condition of the timber permit to include a time table for the delivery of infrastructure and other community based benefits and any forest management and other silvicultural treatments specified in the permit.

(1C) The holder of a timber permit under Subsection (1)(b) may apply to the Board for an extension or renewal of the term of the timber permit in the prescribed form, be accompanied by the prescribed fee, and be lodged with the Managing Director.

(1D) The Board shall obtain a report from the Provincial Forest Management Committee on the requirements in Subsection (1B) and where satisfactory, shall recommend to the Minister to extend or renew the term of the timber permit and the Minister may grant such extension or renewal subject to the term of the timber rights purchase agreement.

(1E) A timber permit under Subsection (1A) may be extended or renewed under this section by the Minister upon recommendation of the Board where the Board

considers that the remaining forest resource in the project area is not sufficient to meet the requirements of Section 78.

(1F) All timber permits saved under Subsections (1) and (1A) and extended or renewed under Section 78 are deemed to be extended or renewed under this Section.

(2) Where the Board is of the opinion that any term or condition of any—

(a) registration as a forest product operator granted under the Forest Industries Council Act (Chapter 215) (Repealed); or

(b) permit, licence timber rights purchase agreement or other authority granted under the Forestry Act (Chapter 216) (repealed); or

(c) agreement entered into under the Forestry (Private Dealings) Act (Chapter 217) (repealed),

is at variance with the provisions of this Act to an extent which makes it unacceptable, it shall by written notice—

(d) advise the registered forest product operator, holder of the permit, licence or other authority or parties to the agreement or timber rights purchase agreement, as the case may be, of the term or condition that is unacceptable; and

(e) specify the variation in the term or condition required to ensure compliance with this Act; and

(f) intimate that variation shall apply in respect of the registration, permit, licence, other authority or agreement or timber rights purchase agreement, as the case may be, with effect from a date specified in the notice, unless it receives notification from the registered forest product operator, holder of the permit, licence or other authority or parties to the agreement or timber rights purchase agreement, as the case may be, that such variation is unacceptable, in which case the registration, permit, licence, other authority or agreement or timber rights purchase agreement, as the case may be, shall cease to have effect from the date specified.

(3) In order to achieve the intention of this Act that registrations, permits, licences, agreements, timber purchase agreements and other authorities saved by this section are able to be adapted to conform to the provisions of this Act, the Board may grant in respect of any registration, permit, licence, agreement, timber purchase agreement or other authority a grace period during which—

(a) the provisions of this Act shall not apply; and

(b) the provisions of the repealed Act under which the registration, permit, licence or other authority was granted or the agreement or timber purchase agreement was entered into shall apply."

(Underlining supplied)

11. Subject to a few areas of what appears to be careless drafting (which I will point out), the words employed by the legislature in this provision are in the main clear. That being the case, there is no need for any art of interpretation to be adopted and applied except only to allow the natural and ordinary meaning of the words employed by Parliament to have their proper effect. Allowing myself to be so guided, it is clear to me that s. 136 (1) saves all existing TRPAs, timber permits and licenses and other authorities. The rest of the provisions provide for specific circumstances. Subsection (1B) deals specifically with TRPAs currencies that are "longer than the term of a timber permit granted in respect of the timber rights purchase agreement.." The "timber permit" issued based on such an Agreement "may be extended or renewed" subject to the conditions set out in that subsection being met. A holder of such a permit may under s. (1C) apply for an extension. The reference to subsection (1) (b) in subsection (1C) is an error because subsection (1)(c) is clearly a general provision covering TRPAs and other instruments and is not specific to a TRPA that has life beyond that of timber permit. The provision that specifically deals with that situation is subsection (1B). This view is supported by the provisions of subsection (1D) which makes it clear that the Forestry Board upon receipt of an application for extension under subsection (1B) shall obtain a report from the "Provincial Forest Management Committee on the requirements in Subsection (1B)" before making a decision on the application for extension of a permit. The rest of the provisions of s. 137 for instance subsection (1E) speak of how timber permits as opposed to TRPAs can be renewed.

12. Learned counsel for the first to the third defendants does not specifically address the question of whether the new Act makes any provision for renewal of TRPAs. He only concedes to the old Acts not making any provisions for renewal of TPRAs. His submission effectively is that, TPRAs being agreements, it can reasonably be inferred that the parties can have them renewed. That submission would be correct if we were dealing with an ordinary contract. The decision in *Vanimo Forest Products Ltd v. PNG Forest Authority & Ors* concerned an application for judicial review by VFPL who is the holder of the TP, the subject of this proceeding. Its holder, the VFPL claimed that the defendants had unlawfully suspended its permits and brought judicial review proceedings against them. In dismissing that application the learned presiding Judge expressed the view that:

"When a TRPA or a FMA expires, it is the PNGFA's duty to ensure that its agreement with the resource owners is renewed so that the rights conferred by the TP [timber permit] or the TL [timber license] is not frustrated or defeated by lack of a valid TRPA or FMA"

13. There was with respect, no detailed consideration of what led to the legislative reform in the forest industry. There was also no mention, consideration appreciation that, this was a regulated industry and more so the provisions of ss. 136 and 137 as well as s. 73 (d) of the new *Forestry Act* which stipulates in clear terms that a timber permit must:

"specify the term, which term shall be no more than the term of any Forest Management Agreement relating to the project area."

14. Learned counsel for the first to the third defendants' submission and the judgment in the *VFP* case with respect, failed to note that we are here dealing with a contract that is governed and or regulated by legislation, for good reason. The forestry industry is in an industry that has been and continues to be the subject of corruption and abuse. This led to the Barnett Enquiry, which then caused whole scale repeal and replacement of the old

legislative regime in a bid to eradicate, if not, minimize the chances of corruption. What this then means is that, all dealings in the forestry industry must strictly be in accordance with what is provided for in the legislation. Any step taken outside what is provided for in the legislation would be clearly illegal and therefore null and void and of no effect. Venturing out could even be the way of corrupt elements who wish not to go by what is specifically provided for, especially in a more controlled industry. Parliament, after the Barnett Enquiry took pains to come up with the new legislation. In the process, it gave consideration to all aspects of the forest industry including the circumstances in which permits or licenses or any agreement could be renewed and made appropriate provisions where it considered was needed. Renewal of TRPAs entered into under the old Acts was not an area Parliament considered should be the subject of any renewal. For if it was, Parliament could have made provisions for it and point out when and how that could be done as it did for the renewal of permits. Indeed Parliament made sure that, all timber permits must conform to or correspond to the term or the period or life of a Forest Management Agreement (FMAs) under the new legislation. Hence, it is not a case of Parliament forgetting or failing to make provision. But in my respectful view is a case of deciding not to make provision for of TRPAs or FMAs. This is a good and necessary protection against total destruction and or an obliteration of forest reserves and their diversity, more so at a time when all of the worlds' forest reserves are almost depleted.

15. Having regard to all of the above, I have no difficulty in arriving at the conclusion that TRPAs under the old Act and FMAs under the new Act are not open for renewal but timber permits are, provided the term of the permits do not exceed that of the TRPAs or the FMAs. Accordingly, I reject the first to the third defendants' submissions to the contrary. This answer necessarily raises the question of what is the status of the extension of the TRPAs and TPs granted based on such extension of those granted beyond the life of the TRPAs. This is the subject of the second question, which I turn to now.

Issue Two: Effect of extension of TRPAs and the timber permits issue thereunder or beyond the life of the TRPAs

16. It is a well accepted principle of law that where an act or behavior is regulated by law, all such actions or conduct must meet the requirements of the law in order for them to be legal, effective and binding. There are numerous authorities in our jurisdiction emphasizing this point. One of the leading decisions of the Supreme that is on point is the decision in *Fly River Provincial Government v. Pioneer Health Services Ltd.* The case concerned contracting with the State or a public authority which is governed by the *Public Finances (Management) Act 1995*, in particular the mandatory provisions of ss.59 and 61. In so far as it is relevant for our purpose, the Court held:

- (1) *Where a contract is entered into in breach of the said provisions of the Act, the contract is illegal and therefore null, void and unenforceable;*
- (2) *The requirements of the Act are to enable transparency in all public contracts and to safeguard against corruption and enable securing of fair contracts with public institutions and or bodies for the best services at a competitive or best price;*
- (3) *A person dealing with the State or any of its arms or instrumentalities or a public institution to which the Act applies, is bound to comply with the requirements of the Act and every person dealing with such institutions or bodies is deemed to be aware of these requirements;*

(4) *A failure to ensure compliance with the requirements of the Act operates to the detriment of the party contracting with the State or a public authority to which the Act applies; and*

(5) *Where an illegal contract is part performed and the State has gained in some respect, an action for recovery or restitution is available if not already paid for in equity to avoid unjust enrichment conditional on the innocence of the contracting parties.*

17. I do however accept that not all failure to meet statutory requirements will render the contract, instrument, document or conduct or behavior under consideration illegal, null and void and of no effect. Where the requirement is discretionary and the breach is not seen as one violating the intent or purpose or objects of the statute under consideration, the breach may be excused. Often times, where certain statutory authorities are created to have jurisdiction over certain matters, Parliament will vest in such authorities with certain powers and functions. Hence, where there is an allegation of a breach or abuse of such an authority's power and functions, the task of the Court is to determine if the authority acted within its powers and functions and in so doing, promoted the policy and objects of the Act, which may be found by an examination of the Act. If as a result of such examination, the Court finds the decision of the authority would frustrate the policy of the Act, the Court is entitled to intervene by setting aside any decision or determination not only as illegal but also as unreasonable.

18. The often cited decision of Lord Greene in *Associated Provincial Pictures Houses Limited v. Wednesbury Co.* elaborated on what amounts to an unreasonable act or decision and pointed out that an act or decision would be unreasonable if it is arrived at in bad faith or tainted by fraud or dishonesty. Also any disregard of public policy and a failure to take into account matters which are bound to be considered could also point to unreasonableness. Of course, some of these matters can overlap and may result in a decision being set aside for illegality as much as for unreasonableness. In the case of fraud, it is clearly both illegal and unreasonable and implies a notion of dishonesty though not exclusively, it may include elements of something that is morally wrong as was pointed out in the *Beaman v A. R. T. S. Limited*. In such a situation, the Court in its jurisdiction in equity might find equitable or constructive fraud where there is no "deceit or circumvention". In this regard, an unconscionable abuse of lawful authority or a valid contractual power has the potential of suggesting fraud. What this means in the end is that, where a duty is placed in a statutory authority, the main duty of the authority is to discharge its duties whether mandatory or discretionary only within and in accordance with the objects and purposes of its enabling legislation. Hence, it cannot either evade or act in excess or in abuse of its powers.

19. With the above legal principles in mind, I turn to a consideration of the position in this case. From early colonial times to independence and post independence through the old and new Forestry Acts, it is clear that the forest industry is a regulated industry. A reading of the legislation makes it clear that, the traditional customary owners of the land on which forest resources are located have ownership and consequential rights over them. No logging, particularly at any commercial scale is permitted except only through the process authorized under the legislation. The scheme and hence the objective or purpose of the legislation is clear. Before there can be any logging on a commercial scale, the traditional or customary landowners permission or approval must be first sought and obtained by the State on terms and conditions the landowners are prepared to agree to, which is through the TRPAs under

the old Act and FMAs under the new Act.

20. It is also clear from a reading of the past and present legislation that, one of the important tasks or duty of the National Forest Authority, is to ensure that the requirements of the Act are met. This includes the power and the duty to ensure that the terms and conditions on which a permit or license issued to a logging company or individual are met. It is well known that, in most of the logging operations there is a development component which requires construction of roads, bridges, schools, hospitals and other infrastructure all aimed at bringing about much needed change and development that should last for a long time and well past the logging operations. Unfortunately, whilst sitting in court for almost 15 years now I get constantly reminded that the so called developers have failed to deliver on their obligations and the NFA has simply done nothing about causing the so called developers to deliver on their obligations. It seems there is much more logging and faster depletion of our forests without any meaningful and lasting development and advancement of our people.

21. Now having considered the legislation in full it is clear to me that the necessary and primary first step is the State securing a TRPA as was known under the old legislation or an FMA under the new legislation. This was and is the primary first step and condition precedent in my view. Once the required consent or approval of the landowners and hence the forest resource owners' is given, there is clearly no provision for any extension of that. This is evidenced by the fact that there is no provision being made in the legislation for any of the TRPAs or the FMAs as already noted. If there was to be any extension provisions could have been made as is normally the case where such provisions would invariably require that all obligations under the expired or expiring TRPA or FMA be first be discharged or fulfilled. In this case, the lack of provision made for any extension in my view is deliberate. This is necessary not only from an economic reason but also from conservation and sustainability of our peoples' way of life and environmental considerations. The current ongoing international concerns, conversations, proposals and steps being taken to preserve what is left of the world's rain forests due to over logging and other human activities that have contributed to a substantial deforestation giving rise to the now much talked about green house effect emphasizes this consideration. Some countries like the Philippines have banned logging altogether appreciating the problems brought upon by logging without much lasting gain and benefit to the owners of the forest resources.

22. The second step then under the legislation is this. Once a TRPA or FMA has been secured, a timber permit would be issued which authorizes the permit holder to harvest logs and market them on conditions. The permit must as would be apparent from the wording in s. 73(d) must amongst others, confirm with the term or life of the TRPA or FMA. This is understandable because the authority for the issue of the permit is the TRPA or the FMA. It would reasonably follow therefore that, in much the same way as a lesser or subsidiary legislation gets struck down or has to give way to its enabling Act or authority on account of any inconsistency between the two, any permit that exceeds the terms of its enabling TRPA or FMA would have to give way to the TRPA or the FMA. Given this possible effect and the object and or purpose of the forest legislations as noted here, any grant of a timber permit beyond the terms of its enabling TRPA or FMA and the requirements or outside what is permitted by legislation would be illegal and a fraud on the intent and purpose of the legislation. Such actions would as in this case, see the landowners falling victim, by reason of which they should be entitled to damages against those who facilitated such actions.

23. Based on the reasons given above I find that, the extensions on the TRPAs and the grant of the timber permits outside the term of the TRPA in this case were outside what is

permitted by the relevant legislation. The decision to extend and or grant the timber permits outside the term of the TRPA were thus illegal and effectively a fraud on the legislative intent and purpose. Consequently, I am of the view that, the extension of the TRPA and timber permits outside the TRPA's term were null and void and of no effect. Consequently all logging under an unauthorized extended TRPA and the permits outside the terms of the TRPA were illegal and amounted to unjust deprivation of the plaintiffs' property. Their remedy lies in damages which is the subject of this proceedings less any amounts already paid in exchange for the illegal extraction of their forest resources. Accordingly, I make the following orders:

- (1) An order in the form of a declaration that the extension of the Timber Rights Purchase Agreement 10-8, on 21st April 2008 of the one dated 26th March 1968 is null and void and of no effect.
- (2) Consequential on the first order, the Timber Permits issued purportedly on the basis of the TRPA beyond its original term and purportedly under the unlawfully extended TRPA are also illegal, null and void and of no effect.
- (3) The defendants are liable in damages to the plaintiffs for the loss of their forest resources and destruction to their way of life from the date when the original TRPA expired namely, 25th March 2008, less payments or benefits already granted.
- (4) The parties are granted leave to review, amend and file amended pleadings that may be necessitated by this judgment and orders, if any.
- (5) The orders staying the Court ordered mediation is now discharged and the parties are required to liaise with the mediators and each other and confirm new dates for the mediation to take place without any unnecessary delay.
- (6) The matter shall return to Court on 18th June 2015 for confirmation of dates for mediation and other orders and directions for the further conduct of this proceeding.
- (7) The Defendants shall pay the Plaintiffs costs, which costs shall be agreed if not taxed.
- (8) Time for entry of these orders is abridged to take place upon the Court signing them.

24. As will be apparent from the foregoing, I refrained from giving any consideration and a decision on Peter Apoi and his peoples' submissions in relation to the K285, 440 that are currently in the National Court Registrar's Trust Account. In respect of that, I direct the parties to have that issue resolved by consent, having regard to what I have said in this judgment which they shall do before the return of the matter. If upon return of the matter, there is no agreement, the Court will hear the parties and make a decision on that.