

N8639

PAPUA NEW GUINEA
[IN THE NATIONAL COURT OF JUSTICE]

OS NO. 378 OF 2020

BETWEEN:

**CLEMENT OTE for himself and on behalf of Amjah Clan members,
Pepaur Village, Sumkar District, Madang Province whose names appear at
Schedule No. 1 attached to the Originating Summons**
First Plaintiff

AND:

AMJAHA CLAN
Second Plaintiff

AND:

**TONY LAU, in his capacity as the Operations Manager of Woodbank
Pacific Ltd**
First Defendant

AND:

WOODBANK PACIFIC LTD
Second Defendant

AND:

PAPIL HOLDINGS LTD
Third Defendant

Madang: Narokobi J
2020: 19th & 23rd November

***NOTICE OF MOTION — application for interim relief – Order 12 Rule 1
and Order 14 rule 10 (1) and (2), National Court Rules – section 155(4) –
Constitution – whether arguable case demonstrated – whether balance of
convenience favours granting of the interim injunctions – undertaking as to
damages – whether discretion should be exercised***

***NOTICE OF MOTION — application to dismiss the proceeding – Order 12
Rule 40(1) – National Court Rules – abuse of process – lack of standing –***

exercise of discretion

Cases cited:

No cases cited

Counsel:

Mr P Dometa, for the First and Second Plaintiffs

Mrs J Kare, for the First and Second Defendants

Mr J Wohinangu, for the Third Defendant

RULING

23rd November, 2020

1. **NAROKOBI J:** I have two applications before me. The first is a motion returning for inter-partes argument after an injunction was granted ex-parte on 11 November 2020 and the other is for the dismissal of the proceedings.

2. I deal with the application for injunction first as it was filed first. I do so for the reason that if the grounds for the continuation of the injunction has not been met, then it paves the way for me to consider the application to dismiss.

3. The plaintiffs are landowners in a logging area known as Kumil TRP in Bogia, Madang province. Logging is done pursuant to a Logging and Marketing Agreement dated 11 December 2017 between Papir Holdings Ltd and Woodbank Pacific Ltd. The LMA paves the way for an authorization from Papua New Guinea National Forest Authority described as TP 12-22.

4. The plaintiffs in their originating summons claims declarations that the logging was conducted on their land without their approval and consent. Further declarations were sought for damages to be paid for the illegally harvested logs.

5. The main reason upon which the injunction was granted was that there was evidence provided at the relevant time that no consent was given from the

landowners before logging occurred in their area. The evidence of consent is usually given through signing of a document called a set-up form. Mr Clement Ote says that he as the leader of the Amjaha Clan has never signed such a form and therefore the logging in his area is unlawful. There have been about 15 trees felled already. This was the reason the injunction was granted.

6. After reading the affidavit material and hearing the submissions from all parties, I am not satisfied that the plaintiff has articulated with the necessary specificity its claim, that is the particular area that the harvesting of logs is occurring for which their consent was necessary. In circumstances where there are competing claims between various factions of landowners, and where there are different developers contesting each other's rights to harvest the logs in the Kumil TRP, the plaintiff has to be very accurate with its claim. This goes to the issue of whether the plaintiff has disclosed all relevant information to the court when the injunction was issued.

7. It was not immediately clear from the originating summons as to which particular area the plaintiffs assert their rights. That information became clear after the defendant's submissions and evidence. The concerned area is Set-Up 24 a size of 150 hectares within Group 2 of the TRP area, which has a total of 9,292 hectares. I would think that since the plaintiff has the onus of proving its case, it should have brought this information to the attention of the court, so that any orders it makes would be specific to the land the subject of the proceedings. It is now clear that the proceedings relate to a specific area within the Kumil TRP and not the entire area in the TRP.

8. For this reason, I will discharge the injunctions, as I am not satisfied that the plaintiff had provided all necessary information before the court, especially how its claim differs from the other clans within Group 2.

9. I now turn to the issue of whether I should dismiss the proceedings. I have considered the affidavits of a number of deponents including Terence Novir filed 18 November 2020, Basil Kakot filed 18 November 2020, Nathan Novir filed 18 November 2020, and Imelda Novir filed 18 November 2020 who had initially given their consent authorizing Clement Ote, but have now renounced their consent and also dispute him as the leader of their clan. There is also evidence that a number of the persons signing the consent are minors.

Under such circumstances, it is not feasible to allow the proceedings to continue. The plaintiff must have proper authorization before it can come back to court. As it also claims damages, perhaps the proper mode of proceedings is by pleading its cause by way of a statement of claim endorsed on a writ of summons.

10. I therefore consider that this is an appropriate case for me to exercise the courts power to control its proceedings and dismiss this proceedings in its entirety pursuant to Order 12 Rule 40(1)(c) of the *National Court Rules* as an abuse of process.

11. As those persons who initially gave their consent have now changed their mind, I will not make any order for costs. Each party will bear its own costs.

12. I therefore make the following orders:

- a) The interim orders issued on 11 November 2020 is discharged.
- b) The entire proceedings is dismissed.
- c) Each party will bear its own costs.
- d) Time is abridged.
- e) Filed is closed.

GP Lawyers: *Lawyers for the Plaintiffs*

Bradshaw lawyers: *Lawyers for the First and Second Defendants*

Gileng & Co Lawyers: *Lawyers for the Third Defendants*