

N11332

**PAPUA NEW GUINEA
[NATIONAL COURT OF JUSTICE]**

OS (JR) NO. 403 OF 2004

BETWEEN:
JAMES HARIVA LOHORO
First Plaintiff

AND:
ERE KILAVI INCORPORATED LAND GROUP
WITHIN THE VAILALA TRP AREA
Second Plaintiff

AND:
KORE EVERE
Third Plaintiff

AND:
LAULA MEHAU INCORPORATED LAND GROUP
within THE VAILALA TRP AREA
Fourth Plaintiff

AND:
KILALA KARIKARA
Fifth Plaintiff

AND:
AVOILA CLAN INCORPORATED LAND GROUP
WITHIN VAILALA TRP AREA
Sixth Plaintiff

AND:
JOE MERE
Seventh Plaintiff

AND:
KAO HARUIPI NO. 2 INCORPORATED LAND GROUP
WITHIN THE TRP AREA
Eighth Plaintiff

AND:
MORGAN MUKARI
Ninth Plaintiff

AND:
**MIARO CLAN INCORPORATED LAND GROUP
WITHIN THE VAILALA TRP AREA**
Tenth Plaintiff

AND:
EVAN EVAROPO
Eleventh Plaintiff

AND:
**LULU CLAN INCORPORATED LAND GROUP
WITHIN THE VAILALA TRP AREA**
Twelfth Plaintiff

AND:
IVAN KEO URUMA
Thirteenth Plaintiff

AND:
**MIHIRE OUKA INCORPORATED LAND GROUP
WITHIN THE VAILALA TRP AREA**
Fourteenth Plaintiff

AND:
MORGAN SARE
Fifteenth Plaintiff

AND:
**ALUVE INCORPORATED LAND GROUP
WITHIN THE VAILALA TRP AREA**
Sixteenth Plaintiff

AND:
ANDREW MUKARI
Seventeenth Plaintiff

AND:
WEE-4 INCORPORATED LAND GROUP
WITHIN THE VAILALA TRP AREA
Eighteenth Plaintiff

AND:
PAPUA NEW GUINEA FOREST AUTHORITY
First Defendant

AND:
MICHAEL OGIO, MINISTER FOR FORESTRY
Second Defendant

AND:
FRONTIER HOLDINGS LIMITED
Third Defendant

WAIGANI: DINGAKE J
06 JUNE 2025

JUDICIAL REVIEW – plaintiff granted leave for judicial review – decision on grant of leave appealed by respondent – appeal not prosecuted – matter referred to mediation resulting in the decision on granting of leave losing its utility – mediation based on different issue not subject of judicial review proceedings which leave was granted

JUDICIAL REVIEW - issues for determination - whether plaintiffs entitled to premium payments - Whether premium payments made by the Third Defendant to landowner companies up until 2008 were in compliance with the agreements between Third Defendant and those landowner companies - Whether Plaintiffs are to pursue the relief sought in these proceedings - Whether Plaintiffs have standing to maintain the proceedings - Whether the other parties are to be joined in this proceedings - Plaintiffs are not entitled to any premium payments made by Third Defendant to Plaintiff pursuant to timber permit 2- 16 – payments made by Frontier Holdings Ltd (FHL) to Landowner companies up until 2008, were in compliance with agreements between Third Defendant and Landowner Companies – Plaintiffs ill-suited to pursue relief sought in proceedings -plaintiffs have no standing to file this proceedings - certified landowner companies can join in proceedings - Plaintiffs not entitled to relief they seek

Cases cited

Simon Mali v The State [2008] PGNC 219; N3442

Counsel

Mr. Anave Megaraka for the plaintiffs

Mr. Emmanuel Isaac for the first defendants

Mr. Bill Frizzell for the third defendant

JUDGMENT

1. **DINGAKE J: INTRODUCTION:** This matter has a tortuous history. The Plaintiff commenced proceedings on the 28th of July 2004, seeking to review the decisions of the First and Second Defendants.

2. Over twenty (20) years later the matter remains unresolved.

3. The Plaintiff was granted leave on the 6th of April 2005. The Respondents being unhappy with the decision to grant leave appealed to the Supreme Court against the granting of leave. The appeal was not prosecuted for close to eight (8) years. In 2013, the Plaintiff unsuccessfully sought to dismiss the appeal for want of prosecution.

4. The record shows that after the granting of leave a Notice of Motion filed under Order 16 Rule 5(1) of the *National Court Rules* (NCR) was not filed within the time prescribed by the Rules or within reasonable time after the granting of leave.

5. The above may not be of moment because the matter was referred to mediation. Referring the matter to mediation appears to have changed the issues, the subject of the leave application, with the result that the original relief sought appear to have lost any utility. Further, the issues or dispute now appears to be

between the Plaintiffs and the Third Defendant.

6. In terms of the Originating Summons filed on the 28th of July 2004, the Plaintiffs sought to review the decision of the Minister of Forestry, made on the 25th of July 2002, to extend the Timber Permit (TP) 2 – 16 for the Vailala Block 2 and 3 for another ten (10) years which was issued on the 24th of June 1992 and expired on the 24th of June 2002.

7. The mediation proceedings resulted in five (5) legal issues/questions being referred to this Court for determination. This judgment pertains only to those questions.

8. The legal issues are as follows:

- i) Whether the Plaintiffs are entitled to any premium payments made by the Third Defendant to landowner companies pursuant to timber permit 2-16 up till 2008;
- ii) Whether premium payments made by the Third Defendant to landowner companies up until 2008 were in compliance with the agreements between the Third Defendant and those landowner companies;
- iii) Whether the Plaintiffs are to pursue the relief sought in these proceedings?
- iv) Whether the Plaintiffs have standing to maintain the proceedings;
- v) Whether the other parties are to be joined in this proceedings;

9. In answering the questions that fall for determination, I have considered the totality of the evidence filed of record and also given effect to Rule 13 of the *ADR Rules*.

10. I turn to answer the questions referred to in paragraph 8, above.

WHETHER THE PLAINTIFFS ARE ENTITLED TO ANY PREMIUM PAYMENTS MADE BY THE THIRD DEFENDANT TO LANDOWNER COMPANIES PURSUANT TO TIMBER PERMIT 2 – 16 UP UNTIL 2008

11. On the evidence it is clear that TP 2 - 16 was originally granted on or about the 24th of June 1992 for ten (10) years. In terms of Clause 4.4.5 of TP 2 - 16 the Third Defendant was to make premium payments to landowner companies. The Timber Permit (TP) 2 – 16 was amended on the 5th of June 2008, was effective from the 25th of July 2002 to the 24th of July 2037.

12. On the evidence filed of record it is incontrovertible that TP 2 – 16 required the Third Defendant to pay landowner companies or certified landowner companies the premium payments.

13. It is not in dispute that the Plaintiffs herein are not incorporated pursuant to the Companies Act of 1997 or are they certified by the First Defendant (PNGFA) as landowner companies.

14. It is common cause that TP 2 – 16 prohibits premium payments to individuals and incorporated land groups.

15. On the evidence, the answer to the first question is in the negative, namely, the Plaintiffs are not entitled to any premium payments made by the Third Defendant to the Plaintiff pursuant to timber permit 2- 16.

16. On the totality of the evidence before this Court, I am satisfied that TP 2 – 16 imposes no liability on the Third Defendant to pay the Plaintiffs any premium.

WHETHER PREMIUM PAYMENTS MADE BY THE THIRD DEFENDANT LTD TO LANDOWNER COMPANIES UP UNTIL 2008 WERE IN COMPLIANCE WITH THE AGREEMENTS BETWEEN THE THIRD DEFENDANT AND THOSE LANDOWNER COMPANIES

17. The evidence with respect to the question posed above is captured in Affidavit of Andrew Tiong. At paragraph 23 Mr. Tiong states that:

- TP 2-16 was originally granted on or about 24th of June 1992 for ten (10) years (“TP 2-16”) (annexure “B” to the Tiong Affidavit on 8th June 2016);
- Clause 4.4.5 of TP 2-16 shows that FHL is to make premium payments to landowner companies;
- FHL commenced operations in late 1996;
- A Forest Management Agreement was entered by PNGFA and ILGs on 18th December 1995 (annexed “B” to the Affidavit of Francis Hahepa sworn on 20th November 2015 (“FH affidavit”)) which was expressed to be for a period of fifty (50) years;
- On 5th June 2008, the amended TP 2-16 was issued, said to be effective from 25th July 2002, expiring on 24th July 2037 (“the amended TP”) (see annexure “C” to the Tiong Affidavit on 8th June 2016) in which in terms of amended TP no payments were to be paid to certified landowner companies but rather in accordance with schedule 3 to the amended TP.

18. I have not found any evidence filed of record especially by the Plaintiffs that disproves the above factual averment. I am compelled to conclude, on the evidence, that the payments made by Frontier Holdings Ltd (FHL) to Landowner companies up until 2008, were in compliance with the agreements between the Third Defendant and the Landowner Companies.

WHETHER THE PLAINTIFFS ARE TO PURSUE THE RELIEF SOUGHT IN THESE PROCEEDINGS

19. In this matter, the Plaintiffs claim to represent the collective interests of 124 incorporated land groups. Paragraphs 2 and 3.1 and 3.2 of Order 16 Statement record that:

“2. *Description of Plaintiff/Applicants:*

JAMES HARIVA LOHORO: ERE KILAVI Incorporated Land Group within the Vailala TRP Area; KORE EVERE; Laula Meahu Incorporated Land Group within the Vailala TRP Area; KILALAL KARIKARA; AVOILA CLAN Incorporated Land Group within the Vailala TRP Area; JOE MERE; KAO HARUIPI NO. 2 Incorporated Land Group within the Vailala TRP Area; MORGAN MUKARI, MIARO CLAN Incorporated Land Group within the Vailala TRP Area; EVAN EVARAPO; LULU CLAN Incorporated Land Group within the Vailala TRP Area; IVAN KEO URUMA; MIHIRE OUKA Incorporated Land Group within the Vailala TRP Area; MORGAN SARE; ALUVE Incorporated Land Group within the Vailala TRP Area; ANDREW MUKARI; WEE-4 Incorporated Land Group within the Vailala TRP Area.

Each of the above Plaintiffs is a leader of clans of landowners in the Vailala TRP Area or is an incorporated land group within the Vailala TRP Area. The decision to extend the Timber Permit to Frontier Holdings is a decision which had and continues to have a significant effect on the day-to-day lives of the clans living within the Vailala TRP Area. Further, they are persons to whom royalties would or should be payable pursuant to the logging and sale of timber from land within the Vailala TRP Area.

3.1 *The Plaintiffs are leaders of clans and are incorporated land groups within the Vailala TRP Area.*

32. *The Plaintiffs represent the collective interests of the 124 Incorporated Land Groups, the clans who are the beneficial owners of the Incorporated Land Groups and all the people living in the Vailala TRP Area (the Resource Owners) within the Vailala Block 2 and 3 areas in the Gulf Province, which area consists of 305,500 hectares of rainforest (the Permit Area)."*

20. However, the Originating Summons does not suggest that this is a representative action – and even if I were to accept that it is a representative action, I have not seen or been referred to any written consent or authority to act signed by the persons named consistent with the authority *Simon Mali v The State* [2008] PGNC 219; N3442.

21. Additionally, on the uncontradicted evidence of Mr. Barry Kiwai sworn on the 26th of April, 2017 (Doc No. 133) it does not seem that some of the Plaintiffs are incorporated in accordance with the Land Groups Incorporation Act or the Land Registration Act. This finding applies, in particular, to the Fourth, Eighth, Tenth, Fourteenth, Sixteenth and eighteenth Plaintiffs in these proceedings.

22. Given all that I have said in paragraphs 20 and 21 above, I hold that the Plaintiffs are ill-suited to pursue the relief sought in the proceedings.

WHETHER THE PLAINTIFFS HAVE STANDING TO MAINTAIN THE PROCEEDINGS

23. And as a consequence of the same considerations captured in paragraphs 20 and 21, I hold that they have no standing to maintain these proceedings.

WHETHER OTHER PARTIES ARE TO BE JOINED IN THESE PROCEEDINGS

24. The law on joinder is that the Court may allow joinder of parties if such joinder is necessary for the effective determination of the matter before Court.

25. In this case, the other entities who would conceivably have a case to be joined, given that the issues now at stake are those that arose in mediation, would in my considered opinion be the certified landowner companies. These companies are referred to in the Affidavit of Mr. Alex Teo (Doc. No. 20).

26. Given the answers I have given for the questions that fell for determination, it seems to me that the Plaintiffs are not entitled to the relief they seek.

27. On the issue of costs, the Plaintiffs and Third Defendant have not asked for costs. The First Defendant prays that it be ordered to bear its own costs as ordered by the Supreme Court in the appeal arising from this appeal.

28. Costs are the discretion of the Court. In this case, it seems proper and fair that each party pay its own costs. I will therefore order that each party pay its own costs.

Lawyers for the plaintiffs: *Ona Lawyers*

Lawyers for the first defendant: *Emmanuel Lawyers*

Lawyers for the third defendant: *Warner Shand Lawyers*