

PAPUA NEW GUINEA  
[IN THE SUPREME COURT OF JUSTICE]

**SCM 25 OF 2020**

BETWEEN:  
**AMANAB FOREST PRODUCTS LIMITED**  
*Appellant*

AND:  
**PAUL SAI'I, GUNTHER JOKU, NOAH TAMBI,  
THERESA KAMU, JOSEPHINE GENIA, BOB  
TATE and JACOB AREMAN as members of the  
National Forest Board**  
*First Respondents*

AND:  
**PAPUA NEW GUINEA FOREST AUTHORITY**  
*Second Respondent*

AND:  
**THE INDEPENDENT STATE OF  
PAPUA NEW GUINEA**  
*Third Respondent*

AND:  
**PACIFIC GREEN TIMBER LTD**  
*Fourth Respondent*

AND:  
**MINEP LIMITED**  
*Fifth Respondent*

AND:  
**MIDOWA LIMITED**  
**on its own and on behalf of named 43 Incorporated  
Land Groups of Walsa FCA**  
*Sixth Respondent*

Waigani: Hartshorn J  
2021: 22<sup>nd</sup>, 26<sup>th</sup> April

## ***SUPREME COURT – injunction - Contested application for injunctive relief***

### **Cases Cited**

*Evan Paki v. Don Polye* (2011) SC1095

*Kawari Fortune Resources Ltd v. Apurel* (2015) SC1614

*Behrouz Boochani v. State* (2017) SC1566

### **Counsel:**

*Mrs. J. Kare*, for the Appellant

*Mr. S. Mitige*, for the First and Second Respondents

*Mr. T. Tape*, for the Sixth Respondent

**26<sup>th</sup> April, 2021**

1. **HARTSHORN J:** This is a decision on a contested application for injunctive relief. The sixth respondent seeks that the appellant and its agents and servants be restrained from conducting any logging or related activity on 17,000 hectares which is the disputed land area the subject of this appeal.

### **Background**

2. The appellant appeals the dismissal of a judicial review proceeding by the National Court.

3. The dispute concerns a timber permit and the excision of part of the land of the timber permit for an FCA.

4. The appellant holds a timber permit for the area described as Amanab-Blocks 1-4 and the Imanda Consolidated Forest Management Act at Vanimo, Saundau Province (**Amanab FMA Area**). The Permit is for 35 years from 17<sup>th</sup> May 2012.

5. The appellant claims that 17,000 hectares of land area forming part of the Amanab FMA was excised by the first and second respondents to form part of an **FCA**. This excision was without the approval, knowledge or consent of the appellant, contrary to s. 90(A) (2) *Forestry Act*.

6. An FCA was granted to the fourth respondent on 28<sup>th</sup> September 2015 for 34,000 hectares and 17,000 of the 34,000 hectares is comprised of the excised land.

7. The appellant commenced a judicial review proceeding to review decisions of the first and second respondents and leave was granted. That proceeding was dismissed upon application by the sixth respondent. That dismissal is the subject of this substantial appeal.

8. The first, second and sixth respondents claim amongst others that:

a) the excised land was excised before the timber permit was issued to the appellant and so the appellant's consent was not required;

b) the FCA to the fourth respondent has been cancelled and a new FCA was granted to the sixth respondent on 2<sup>nd</sup> November 2020. The new FCA is not the subject of the National Court proceeding and this Supreme Court proceeding.

### **Consideration**

9. The sixth respondent makes application for injunctive relief pursuant to s.5(1)(b) *Supreme Court Act* and s. 155(4) *Constitution*.

10. As to s. 155(4) *Constitution*, the reliance by parties and counsel in the National and Supreme Courts upon this provision is ubiquitous. It is settled law however, that amongst others, s. 155(4) may only be relied upon to protect primary rights in the absence of other relevant law. I refer to *Evan Paki v. Don Polye* (2011) SC1095 and *Behrouz Boochani v. State* (2017) SC1566 as examples.

11. In this instance, s. 19 *Supreme Court Act* provides the jurisdiction to grant a stay and s. 5(1)(b) *Supreme Court Act* provides the jurisdiction to grant an interim order. So in this instance, there is not an absence of other relevant law. Consequently, the relief sought pursuant to s. 155(4) *Constitution* is refused.

12. As to s. 5(1)(b) *Supreme Court Act*, is as follows:

“(1) *Where an appeal is pending before the Supreme Court—*  
(a) .....  
(b) *an interim order to prevent prejudice to the claims of the parties;*

*may be made by a Judge.”*

13. In *Kawari Fortune Resources Ltd v. Apurel* (2015) SC1614, the Court said that in determining whether to make an interim order to prevent prejudice to the claims of the parties, attention should be focused on the following questions:

- a) what are the claims of the parties?
- b) what is the alleged prejudice?
- c) what is necessary, pending the hearing and determination of the appeal to prevent the prejudice?

14. For s. 5(1)(b) to be enlivened, it must be shown that whichever interim order is sought, it is necessary to prevent prejudice to the claims of the applicant.

15. In the affidavit of Mr. Henry Enda upon which the sixth respondent relies in support of this application, Mr. Enda does not depose as to any prejudice that will be caused to the sixth respondent's claim in this appeal if the relief sought is not granted. Consequently, I am not satisfied that the sixth respondent has enlivened s. 5(1)(b) *Supreme Court Act*. The sixth respondent has not successfully made out that it is entitled to the orders sought. Given this, it is not necessary to consider the other submissions of counsel.

### **Orders**

16. The Court orders that:

- a) The Application of the sixth respondent filed 30<sup>th</sup> March 2021 is dismissed;
- b) The sixth respondent shall pay the costs of the appellant of and incidental to the said application.

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Bradshaw Lawyers: *Lawyers for the Appellant*

PNG Forest Authority: *Lawyers for the First and Second Respondents*

Kandawalyn Lawyers: *Lawyers for the Sixth Respondent*