

TRANSCRIPT OF PROCEEDINGS

Commission of Inquiry into SABL
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COMMISSION OF INQUIRY INTO SABL

MR JOHN NUMAPO

THE CHAIRMAN & CHIEF
COMMISSIONER

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COMMISSIONER

MR NICHOLAS MIROU

COMMISSIONER

TOP FLOOR, GOVERNMENT PRINTING OFFICE, WAIGANI, MONDAY 15
AUGUST AT 11.21 A.M.

(Continued from Wednesday 10 August 2011)

THE CHAIRMAN: Commissioners, Counsel and members of the public, Secretary to the Commission, welcome again to our hearing this morning. Counsel Assisting, what have you got for us this morning?

MR KETAN: Thank you, Chairman. When the hearing of the Commission adjourned to this morning from 10 August, the business of this morning was to be the evidence given by the Secretary for Lands and the Deputy Secretary for – Secretary, Customary Lands Services of the department, and the Registrar of Titles and other officers of the Department of Lands.

In relation to the – basically, the process and procedure for the issuing of the Special Agriculture and Business Leases, and in relation to the legal authority for the issuing of the leases and the leases that have been issued to date during the period concerned, between 2009 and April this year, Commissioners, I am pleased to advise that this morning in relation to the letter issued by Chief Commissioner, following the adjournment on 10 August to the Secretary for Lands, the Secretary Lands and his senior management team are here this morning in response to that. A total of nine officers have given – the Secretary has given names of the senior Lands Department officers.

The acting Secretary himself, Romily Kila-Pat; the acting Deputy Secretary Customary Land, Adrian Abby; the Registrar of Titles, Henry Wasa; Deputy Registrar of Titles, Benjamin Samson; Deputy Registrar of Titles for – I think it is Southern Region – Taison Asizo; and the other Deputy Registrar of Titles for the Northern and Momase Region, Alfred Laki; Director Incorporated Land Groups, Iruna Rogakila; Director Customary Lease, Andy Malo; and Director Acquisitions, Simon Malu. They are here this morning.

Unfortunately, Commissioners, this morning, as you will recall, myself, I was appointed on 8 August, which was last Monday, following the resignation of former Counsel, Mr Davis Steven, and on reflection, we realized that in relation to the proper commencement of the hearing, that there needs to be an opening address in relation to the proceedings of the Commission. Proceeding on the assumption that that had taken place, on reflection and on review, that this has not yet taken place, and me and my team request an adjournment of these proceedings to tomorrow morning to make a preliminary formal opening for the hearings into this Inquiry.

So that opening will basically cover Terms of References (a), (b) and (c) and by extension to Terms of Reference (h) and (k), insofar as they relate and affect the Department of Lands.

So with that, Commissioners, I seek an adjournment to tomorrow morning at 9.30 a.m. The Department of Lands – Secretary for the Department of Lands and his officers have been informed, prior to your coming into the hearing venue, and they are willing to cooperate.

The arrangement has been for them to be available this week and they are aware of it and they have given us the indication and they will avail themselves tomorrow morning and the hearing will be put back by a day. So we are hoping to conclude the hearings in relation to Terms of Reference (a) and (b), in particular, and with the evidence from the Lands Department officers, by Thursday afternoon, hopefully.

THE CHAIRMAN: Thank you, Counsel. So you intend to proceed tomorrow with (a) and (b) Terms of Reference? Is that right?

MR KETAN: Yes.

[11.33 a.m.] THE CHAIRMAN: There has also been some directions issued on 28 July with respect to collation of some preliminary information or primary information for us to commence this Inquiry. For the purposes of further clarification, I would now invite Commissioner Jerewai to speak on that direction issued on 28 July.

MR KETAN: Thank you Commissioner.

COMMISSIONER JEREWAI: Counsel, you may sit down. I take it that you are all familiar with the Terms of Reference of this Commission of Inquiry and those are the Terms of Reference, pursuant to which, when we commenced this Inquiry formally on 28 July, we issued a number of directions. Let me go through those initial directions to connect with what we are doing today so that we all have an understanding as to the direction we should be moving.

I think on 28 July, the first direction was from Counsel Assisting, who I should be referring to in an abbreviation as CA, with his team to produce to this Commission of Inquiry all of the applicable laws relating to the issuance of an operation of all

SABLs. We also invited CA to produce any judicial precedence relating to any issues arising from the issue and operation of all these SABLs.

I note that, indeed, that have been provided to us and there now remains only four formal submissions. From the bar table, if I may call it that, from Counsel Assisting, relative to all of the provisions of all the relevant legislation, including the Land Act – Land Group Incorporation Act – possibly Land Tenure Conversion Act, Land Registration Act, and possibly a Forestry and Mining Act, where they link. I should think that that is what Counsel Assisting is saying insofar as to the request for adjournment till tomorrow is concerned so that you can deal with that first aspect of the Terms of the Reference of this Inquiry.

Second, is to link the Department, particularly the Lands Department to procedures, to this legal provision so that we are very clear in our minds as to the legal basis upon which these SABLs are issued and operated.

To be able to proceed thereafter, I believe, you have been in the process of conducting title searches on all of these SABLs, not only the ones that I stated and listed in the attachment to the Instrument of this Commission of Inquiry but any others that may not have been disclosed at the time of the institution of this Inquiry. If not known at the time of the institution of this Inquiry, they have to be added to the ones that are already attached to the Instrument instituting this Inquiry. I understand, Counsel, and you may need to confirm that for the records, so far the Department of Lands had only availed about 16 files, in relation to only 16 SABLs. Is that so?

MR KETAN: About 20.

COMMISSIONER JEREWAI: About 20?

MR KETAN: Yes.

COMMISSIONER JEREWAI: For the record, it is about 20 at this point in time?

MR KETAN: About 20 at this point in time.

COMMISSIONER JEREWAI: Thank you Counsel. As you can see, we are about one month into the Inquiry and we have only 20 files, which constitutes only about 30 per cent of what we are looking into. I want the officials of the Department of

Lands to take note of this. We cannot proceed any further with this Inquiry without the preliminary information we will require from all of these files. I will be on record as saying that we do not need you to come in and tell us the procedures with regard to the issuance of SABLs and their operation, as a matter of generality. Because this Commission of Inquiry is about looking into each one of these SABLs, as issued so far. We will require all information, in relation to every single one of them. I understand your technical set - back up there, which relates to photocopying and the staff, but I urge you to seek assistance, as appropriate, and deal with this because this Commission of Inquiry will not be able to proceed any further without the preliminary information that we require; that can only be conducted through searches of these files. That will affect the Terms of Reference ©.

Nonetheless, for the purposes of getting this Inquiry underway, to work substantive, we will reconvene tomorrow morning to at least deal with the legal aspects as well as the procedural departmental aspects tomorrow.

We, Commissioners, were minded to seek further directions, but we will not this morning, subject to what transpires tomorrow. Perhaps, particularly Secretary Romily Kila-Pat, if you can take note, and perhaps you will advise Counsel Assisting so that he can formally advise us tomorrow morning when we reconvene as to how we can deal with getting over the search of all of the SABLs, as listed and attached to the Instruments of appointment of this Commission of Inquiry, and any others that may not have been disclosed at the time of the Instruments been executed.

Those being the matters, Chief Commissioner, I hand it back over. I spoke on behalf of the Chief Commissioner and my brother Commissioner so that these are highlighted and we will get this Commission of Inquiry underway in the substantive ASAP – as soon as possible. Thank you Chief Commissioner.

THE CHAIRMAN: Thank you Commissioner Jerewai. Counsel, are you in the position to advise difficulty of any of – the reason why only 20 SABL files are produced to date, and what sort of problems or difficulties the Department of Lands is facing and what sort of assistance they might require from the

Commission of Inquiry secretariat to be able to fast track the production of the SABLs files, the whole lot of that?

[11.43 a.m] I am saying that with a view in mind, Counsel, that it will probably come to a stage where the Commissioners will have to decide and determine a deadline set on the production of the files, but we do not want to go down that path until we understand clearly and precisely the difficulties the Department of Lands is having in producing all those SABL files. Let us be mindful of the time as well that is given to this Commission of Inquiry to be completed. Thank you, Counsel.

MR KETAN: Chief Commissioner, we are informed by the Secretary for Lands and his officers that they are doing everything they can and they are able to at the moment with producing the files. By way of assistance, as you may be aware, the Commission has provided a photocopier and posted two staff of the Commission at the Department of Lands who are helping with the photocopy.

We will discuss this issue after the adjournment with the Secretary and see what else can be done to fast track this. But so far, it is what they can manage and given the fact that the files are very thick files. But I can report again on that tomorrow when we resume. But we will discuss that with the Secretary, who is here, anyway. So we will---

THE CHAIRMAN: Thanks, Counsel.

COMMISSIONER JEREWAI: Chief Commissioner, if I may?

THE CHAIRMAN: Yes.

COMMISSIONER JEREWAI: I must not be lax to mention, for the record, that so far, Secretary Kila-Pat, we appreciate your department's cooperation so far. But I hope from the comments that I have made, you will realize that we will be thankful for your continuing cooperation and the number of SABLs involved here, if indeed, it is at 72 or a little bit less or more. It is a tedious process to go through to check out each one of them, but we are obliged under the Terms and Reference to do that and we shall not be lax to do that. We look forward to your continuing cooperation.

Last of all is our desire to exercise any of the powers available to us to take more drastic action. That should be the last resort, we should be on the record as saying this. We are thankful for your continuing cooperation. Thank you very much.

THE CHAIRMAN: Thank you, Commissioner. Mr Mirou, you have got anything you want to say or add on?

COMMISSIONER MIROU: No.

THE CHAIRMAN: Thank you. Counsel, we will adjourn as per your request until tomorrow morning. When we resume tomorrow morning, you would be in a better position to address the Inquiry on clause (a) and (b) of the Terms of Reference, which have been given to the Commission of Inquiry. So we will adjourn until 9.30 tomorrow morning, Commissioners?

COMMISSIONER MIROU: Yes.

THE CHAIRMAN: All right, so we will adjourn until 9.30 tomorrow morning to recommence our hearing. Thank you.

MR KETAN: Thank you.

**AT 11.48 A.M. THE COMMISSION OF INQUIRY INTO SABLs
ADJOURNED TO TUESDAY 16 AUGUST 2011 AT 9.30 AM.**