

TRANSCRIPT OF PROCEEDINGS

Commission of Inquiry into SABL
Department of Prime Minister & NEC
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COMMISSION OF INQUIRY INTO SABL

MR JOHN NUMAPO

THE CHAIRMAN & CHIEF
COMMISSIONER

MR ALOIS JEREWAI

COMMISSIONER

MR NICHOLAS MIROU

COMMISSIONER

TOP FLOOR, GOVERNMENT PRINTING OFFICE, WAIGANI, TUESDAY 23
AUGUST AT 10.53 A.M.
(Continued from Wednesday 17 August 2011)

THE CHAIRMAN: Counsel, from the last adjournment last Wednesday, you did indicate to the Inquiry that you will be calling on Henry Wasa, who is the Registrar of Titles as the next person to produce his evidence before the Inquiry from the Department of Lands and Physical Planning. Are you ready to proceed on that?

MR KETAN: Yes, Chief Commissioner.

THE CHAIRMAN: Is Mr Wasa available this morning?

MR KETAN: Yes.

HENRY WASA, Sworn:

XN: MR KETAN

THE CHAIRMAN: Yes, Counsel.

MR KETAN: Witness, your full name is Henry Wasa?

A: That is correct.

Q: Your position is Lands officer, Registrar of Titles.

A: That is correct.

Q: You joined the Department of Lands and Physical Planning on 18 December 1995?

A: That is correct.

Q: Previous positions you have held are manager policy analysis?

A: That is correct.

Q: Policy analyst.

A: That is correct.

Q: Manager, information unit?

A: That is correct.

Q: Project officer titles?

A: That is correct.

Q: And team leader data validation?

A: That is correct.

Q: You are member of the executive management committee?

A: That is correct.

Q: Your qualifications are Bachelor of Lands Studies from the University of Technology?

A: That is correct.

Q: And Diploma in Business Studies from Divine Word Institute?

A: That is correct.

Q: You have sworn an affidavit this morning?

A: That is correct.

Q: Do you have a copy of the affidavit with you?

A: I do.

Q: The signature on the right hand side, is that your signature?

A: That is correct, that is my signature.

Q: Could you hold it up and hand it up to the Commissioners? And you have signed on all the pages?

A: I did.

Q: You are happy with the contents of the affidavit?

A: I am happy with the contents.

Q: Commissioners, I wish to tender that as an exhibit.

THE CHAIRMAN: Have you got any objections to that Mr Wasa for your affidavit to be tendered in?

A: No objections.

Q: Okay, thank you.

MR KETAN: I tender that at this stage. Could it be marked - it is the third exhibit. If we can mark it HW3?

[EXHIBIT HW3 – AFFIDAVIT OF HENRY WASA]

THE CHAIRMAN: You want to say that again?

MR KETAN: H-W, going by his initials, HW3. Mr Wasa, could you take us through your affidavit - speak into the microphone both for recording. Just take us - read through your affidavit?

A: Thank you, I will do that.

Q: Yes, you may start.

A: On 23 day of August 2011, I, Henry Wasa, Registrar of Titles in the Department of Lands and Physical Planning, care of P O Box 5665, Boroko, in the National Capital District, hereby make oath and say as follows:

“1. I am the Registrar of Titles appointed to the office by National Gazette Number G53 dated 17 March 2010. Annexed hereto and marked “A” is a true copy of the gazettal.

2. My office is the office responsible for registration of titles to land as prescribed under the Lands Registration Act 1981, and as such I have the capacity to dispose to this, my affidavit.

.0.59 am] 3. A Special Agriculture and Business Lease, (SABL) is a type of lease

available for leasing provided under section 102 of the Land Act 1996 and section 11 of the Act gives authority to the Minister for Lands to acquire customary land for the purpose of creating a SABL.

4. Every land file containing SABL certificate of title in duplicate which have been approved and executed by the Minister or his delegate is sent to my office for registration of the volume and folio number of the State lease.
5. Before registering the SABL, my office is required to examine the SABL documents. The following is ascertained;
 - (a) Proof of registered survey plan of subject land as an application for SABL must be accompanied by a registered survey plan;
 - (b) confirmation of SABL been prepared under the applicant's name or nominee as per the customary land lease - leaseback agreement.
 - © proof of receipt of K10 application fee as per the Land Regulation 1999.
 - (d) proof of receipt of K50 lease preparation fee as per Land Regulation 1999.
 - (e) confirm if provisions of section 11 and 102 of the Act has been correctly applied.
 - (f) confirm if the instrument of lease as prescribed section 11 and 102 is approved by the Minister or his delegate.
 - (g) confirm if the instrument of lease as prescribed under section 11 and 102 of the Act has been duly gazetted.
 - (h) check if native land dealing (NLD) or customary land dealing (CLD) has been properly compiled and contains all the relevant documents.

- (i) existence of a customary lease - leaseback agreement duly executed by the landowners and the minister or his delegate.
 - (j) check if the Land Registration Report or LIR is duly compiled and executed by Provincial Lands, District Lands officers.
6. Our new leases check list form is also used to verify for the various requirements prior to the registration of a new lease. This form is applicable to all types of leases besides other checking requirements for specific leases such as the SABLs as stipulated in paragraph 5 above. Annexed hereto and marked "B" is a true copy of the check list.
 7. Once the above requirements have been checked for compliance and it is confirmed that all procedures and prerequisites are complied with, my office then creates a new title file and all the above documents are then placed in the file. The land description is then entered in the register book.
 8. The next available volume and folio number is then obtained from the register book and is affixed on to the SABL document.
 9. Once a title reference is affixed to the SABL certificate of title, it is my duty or my deputies' duty to approve and sign the SABL and the date of approval of the SABL is entered in the register book.
 10. The owner's copy of the SABL is then released to the applicant or authority agent and the register of titles copy is placed in the title.
 11. All of the above information is then captured and entered into the department's computer database system. The Land Geographic Information System or called LAGIS and the completed file is then stored in the registry.
 - [11.04 am] 12. I would like to inform the Inquiry that every effort is being made to locate the title files in relation to the list that was attached with the Terms of Reference. Fifty-five title files have been located to date, 18 files cannot be located at this stage, two are not registered, according to our register, that gives us a total of 75 files that were requested.

Annexed hereto and marked 'C' is the list of all the titles files that have been collected so far in relation to the list that was attached with the TOR together with copies of these titles. The copies of the titles were delivered this morning.

13. The reasons for the non production of all the State leases is that the Department of Lands and Physical Planning head office where the office of the Registrar of Titles registry is located had a major reconstruction of the basement where the files were stored and whereby in the midst of moving files, some were misplaced.
14. Also, on or about the end of the month of November 2010, there was a leakage of water from the fourth floor, the Minister for Lands and Physical Planning's tea room, whereby all titles files that had not been filed away in the registry were affected where some were completely destroyed or were damaged.
15. As a consequence, I produced 55 files and I still have 18 files to produce except two, and those two are portion 16C Milinch Gona, Fourmil of Tufi, Oro Province and Portion 155C Milinch Baiyer, Fourmil Ramu, Western Highlands Province. Those two are not registered.
16. I advice the Inquiry that the security of the title files is a matter of concern as there is no specific registry created for titles files due to the limited space in the existing building. The existing registry is shared by two other divisions of the department, thus compromising the security of the titles kept in the registry.
17. In reference to the Special Agriculture Business Lease or SABL process and my experience with the subject process, I advice that once a state is registered, the incorporated land group, ILG, landowner company or person who obtains the SABL rarely returns to the department to registered their subleases, if any, with the office of the Registrar of Titles as prescribed under section 49(1) of the Land Registration Act 1981. As a result, the State, the Department nor my office are not aware of the transactions that transpire after the state lease is issued.

18. Further, as the subject lease and the terms and conditions are designed to empower customary landowners to conduct business transactions, have the bargaining power and control the use of their land, there is no monitoring mechanism provided in the Land Act 1996, nor Land Registration Act 1981 to monitor and ensure that subleases are registered.
19. Finally, the purpose of SABL is for the landowners to determine their own terms in the agreement between them and the sublessee. However, today it can be clearly seen that landowners are not determining the terms and conditions for their sublease agreement, rather they are agreeing to the developer's offer in most cases.
20. This therefore has been a major concern by the non-governmental organizations, the general public and landowners themselves who are illiterate or do not understand the purpose of a SABL.”

That is the conclusion of my affidavit.

THE CHAIRMAN: Counsel?

MR KETAN: Yes, thank you. Could you, Mr Wasa, for recording purposes, read the names of the titles that you have annexed to your affidavit in annexure “C”.

[11.09 am] A: Okay, to date there are photocopies of the 55 files that were located or delivered to the Commission of Inquiry this morning; the photocopies of the titles. If you really want me to go through the entire list then I will do so.

COMMISSIONER JEREWAI: Counsel, if I may. Perhaps the quickest way to confirm the list the witness has here is to have the witness - perhaps I can ask the witness directly?

MR KETAN: Yes.

COMMISSIONER JEREWAI: To simply confirm that the list that you have appended here as annexure “C” to your affidavit correspond with the SABLs as specified among the 72 which were attached to the instrument of the Terms of Reference and the establishment of this Inquiry?

A: That is correct.

Q: And if there are those among the list you have provided in annexure “C” which do not correspond to the list attached to the instrument of the Terms of Reference, you can point those out.

A: Okay, annexure “C”, all those titles that are listed on annexure “C” are the ones that are part of the Terms of Reference list. All of these are part of that.

Q: They correspond, in other words?

A: They correspond.

Q: There is ---

A: So I have got 18 more to locate that would complete the list.

Q: Right. And ---

A: Like I have mentioned earlier on that two ---

Q: Okay, let us just back up. Let us just restrict ourselves to the annexure “C” you have there in your affidavit; annexed to your affidavit. All of those correspond with the list of 72 SABL titles that were in the – that were attached, that is the attachment to the instrument of the Terms of Reference?

A: That is correct.

Q: There is none in annexure “C” that does not correspond to that list?

A: That is correct.

Q: Thank you.

MR KETAN: The 18 that are yet to come or brought in, they also correspond to the ones appended to the Terms of Reference?

A: That is correct.

Q: When do you think we can expect that?

A: Like I have mentioned, every effort has been put in to locate them. I cannot give you a specific time.

Q: Do you think you can get them to us at the end of the week?

A: Like I said, every effort is being put into it to locate them. I have given the reasons why because of the different floor levels we are in and the problems we face with the water leakage and internal renovations are going on almost every year. Every year, we seem to sit around. I mean, to date my office is also being renovated.

Q: The two that no titles have been issued are new applications, are they?

A: Not necessary. They never went to the registration stage. That is the reason why you will not find them in the register book. Registration stage meaning that they never went to the stage of titles being registered.

THE CHAIRMAN: So has a title been issued?

A: No.

Q: So how could they form part of the list if they have not been issued and never gone through the registration process?

A: That is something we will have to find out. Because after running through all the entire list that you people submitted as per the TOR those two they do not correspond to any volume and folio in my register.

Q: Counsel, can I ask another question?

MR KETAN: Yes.

[1.14 a.m] THE CHAIRMAN: If I take you back Mr Wasa to your point number 11 in your affidavit. You said that, “all the above information is then captured and entered into the department’s computer database system, the land geographical information system or for short is known as LAGIS and a completed file is then stored in the registry.” I want to think that you can - through that computer database system - be able to capture those 18 files that you are not able to find the manual copies of. Would I be correct to say that?

A: That would be the only data in the system but to get the actual file you have

to establish the other details you want to find out; the terms and conditions and everything will have to be determined from the physical file; physical title.

Q: I see. So you do not have a scanning system where you scan all the titles and have them stored away in a database for future retrieval, if you need that?

A: That has been the proposal that has been put forward but todate we have not gone to that stage yet.

Q: So there are no titles scanned? So you only have got hard copies, apart from the information that you got stored in the database system, that likely, the database system, there is no scanned copies of the actual titles? That is what you are saying?

A: That is right. That is correct.

COMMISSIONER MIROU: So are we saying, Mr Wasa, that those 18 files are lost forever?

A: We can only assume, but we are doing every effort to locate them.

Q: Which also brings me, if Counsel may allow me to ask questions of this witness?

MR KETAN: Yes.

COMMISSIONER MIROU: Mr Wasa, my questions would probably be related to the process and compliance, in particular the Land Registration that you administer. Is it correct to say that you actually administer the Land Registration Act?

A: That is correct.

Q: The 1981 Act?

A: That is correct.

Q: There is also – there is a Land Registration (Amendment) Act of 2009.

A: That one is still have to come into force yet.

Q: Ok, so under that new amendment – new legislation – that is a new process that deals specifically with customary land; registration of customary land?

A: Yes.

Q: Ok, my question to you is - just to confirm - in relation to the Land Registration Act, you have powers, in particular, once the process was started, as we can relate to Mr Kila Pat's affidavit, on the process in relation to SABLs, you are the last person to which this process is completed, that is the registration. I am relating these questions to paragraph 5 where you list a number of processes by which you have to be fully satisfied before you can issue titles to persons or the applicants and you have to be fully satisfied that these requirements are fully complied with in relation to the Land Act?

A: Yes.

Q: Does the Surveys Act also come into place?

A: That is correct.

Q: Yes. And the Survey coordination – yes, that is important for a title to be issued. It must confirm the boundary, as well as the – the boundary is important, in particular where clans and portions of land are owned by various clans and tribes.

1.19 am]

The current registration that you dealt with, is it correct to say that part 3 of the Land Registration Act is the provision that you use; section 9, 8 to 14, which deal with, if you can look at another Lands Registration Act, registration generally, PART III, sections 8 – 14. Is that the process that you normally would use or the statutory provisions that you would normally use when you are looking at applications that have been completed and processed through the normal process and eventually that comes to you and then you apply this process?

- A: That is correct. In the absence of there is no specific customary land or registration law in Papua New Guinea, SABL is a temporary State lease. For that matter we use this Act to apply.
- Q: So SABLs have been processed through this process?
- A: Through this process.
- Q: Would also sections – Division 4, The Registration Process, sections 23 to 30 or thereabouts, is that the same process that you apply in relation to SABLs as well? Division 4, sections 23 where it says, “The registration process under the Land Registration Act.”
- A: That is correct, currently that is correct.
- Q: That is the process that you use in compliance. When you are considering registration of all these information that you get and before you register, I take it that you play a very important role, the end process, to ensure that all the relevant legislations are complied with and to ensure that information that you have is correct. Is it also your duty to undertake investigations upon leases or information that you consider to be missing and that you want to ensure that you have all the information that you have?
- A: Through the registration process, we check on certification from the different levels. If at the district level they have certified, if at the provincial level they have certified, at headquarters level in the customary leases division, if they have certified, for us that is good enough, that they have checked their processes and certified that their processes are correct, and for us to vet it. But we do have powers to carry out individual investigation if an issue is raised. Prior to that, we do not go down to duplicating their work in terms of investigations.
- Q: So if the reference that you made in paragraph 5 is correct, if you were to ensure that all these information that you have is correct and then you register, would it be correct for me to say that, you know an error might creep in as to the actual registration of a title holder?

A: What we do is, if I can say, paragraph 5.(h), once CLD or NLD is compiled our office takes it that every process has been complied with, that is the reason why a CLD or NLD is compiled. On the basis of that we allow the registration to go through because they have gone through the stage of a certification from the different levels from district administration, provincial administration up to the head office. So it is not necessary for us to go and duplicate their work unless an issue is raised after registration and then we may carry out our own independent investigation.

Q: Capacity might be another difficulty that you have?

A: That is correct. Because my office is only established at the headquarters and not necessarily at the provinces because of the issue over title. We want to maintain the indefeasibility of the titles as much as possible.

Q: Okay, thank you, Mr Wasa.

COMMISSIONER JEREWAI: Sorry, Chief Commissioner, I understand you to be saying, Mr Wasa, that yours is a very strict statutory duty? Once all the other processes have been completed and once you are satisfied in accordance with the check list you have annexed as annexure "B", then you issue title, and that is the document that gives that vested legal ownership and interest in the name of the person issued with the title.

11.24 am] A: That is correct, right.

Q: And it is not your function to question - if I may put it that way - the processes that had been concluded by officers responsible for the other aspects of this checklist, leading up to your going through the checklist to ensure they are all done and they are in place for you to proceed with the issue of the title?

A: That is correct.

THE CHAIRMAN: Mr Wasa, let me take you back to the 18 missing files that you made reference to in your affidavit. In the event or assuming that if you are not able to locate those 18 missing files, what would be the fall back position? What would you do?

A: The only fall-back position would be that I can recreate using the Lands files, if the Lands files can be found, then we can go and recreate them and then create them as official copies.

Q: What about those who got those titles, would they be of any assistance to you, bringing back the copies of the titles to – or title holders to recreate the files, is that possible?

A: Yes, that is possible. We can ask them to provide their own copies if they are with them and we can recreate the files.

Q: Okay, thank you. There is another question Mr Wasa, that I intend to ask you and I am making reference now to your point number 18 in your affidavit, that you did mention that, “there is no monitoring mechanism in place under the current Land Act” or “the Land Registration Act to monitor and ensure that subleases are registered and the activities are conducted as per the conditions of the title. Is that the current situation at the moment?

A: That is correct. Both leases do not provide that monitoring mechanism for us to ensure that. Whatever the deals they enter into, it is for their own good if they want to register, they must come forward because it protects them. If that is not registered then it is very hard for us to protect them. So half the time when something goes wrong then it is between them and the challenge is as per the agreement basis only and does not take the Land Registration Act into the picture.

Q: So let me get it right, that it is totally out of your control?

A: That is correct.

Q: Once the titles are issued it is totally out of your control and it is a matter between the landowners and the developers?

A: That is correct.

Q: Okay.

A: If they do come forward and register then they are protected under section 49 and 50 of the Land Registration Act, section 49(1) and section 50.

Q: Thank you.

COMMISSIONER JEREWAI: Mr Wasa, I raised this with witness, Mr Abby, from your department when he appeared here on 17th of this month with regard to issuance of title in relation to a Special Agriculture Business Leases; issuance of title to those leases to entities other than the entities either controlled or owned by landowners or individuals. Is it part of your checklist, I do not note it in your checklist, that is annexure “B” to your affidavit, that it is not among the checklist to check out if title to those SABLs to be issued to the landowners and not to anyone else?

1.29 am] A: Under section 102, there is a provision which allows for landowners to nominate whom the title can be issued to. So that is the legal part of it that though the applicant may be a landowner, they can nominate anybody to be the title holder.

Q: I understand, thank you. Perhaps I should rephrase that question – my probe, rather. It is not among your checklist to ensure that title is issued to the landowners or landowners’ entity and not to anyone else? Your current checklist does not contain that?

A: What we try to do - though it may not be mentioned – but what we try to do as much as possible is the nominee must be---

Q: No, first of all, witness, sorry, can you confirm that it is not on your checklist, exhibit “B”?

A: It will not be on this one, exhibit “B”, the reason being that exhibit “B” is used as a general checklist for all new leases that are registered.

Q: Thank you. I think that is a fair answer. Let me then move on. Mr Wasa, it is not – in fact, it is not a requirement under the provisions of sections 11 and 102 to issue titles only to landowners. So do not labour to answer me on that. Do not labour too much to answer me on that. It is not a requirement. The titles to SABLs should be issued in favour of landowners only or landowner entities. But would you be in a position to say if that should be among the matters to be included in the checklist if it is, say, a policy that titles should be issued in favour of landowners only or landowner entities?

A: Currently, these are administrative requirements that we try to practice as much as possible but wherever the nominee, for instance, must be a landowner company, or a landowner association or a landowner representative rather than a totally foreign person.

Q: Okay. I think you have assisted thus far in that line of questioning. I will not go any further on that. Thank you. Counsel, sorry?

THE CHAIRMAN: Yes, Mr Wasa, I have just got one last question, Counsel, before we move on. What about the transfer of the title after it has been issued to the landowner group or entity? Do you or Department of Lands and Physical Planning have any control over that or any say over that or do you manage that at all?

A: The transfer of the title, depending on that type of transfer because it is a state lease for the duration of the lease. The landowners have the prerogative to either dispose it or sublease it. They are not literally forcing the total ownership if they are disposing the lease as per whatever the term of the lease that is.

Q: Okay. Are you involved in that process at all?

A: We only register the transaction but we are never involved in the process.

Q: Is there a checklist similar to the one that is attached when that type of situation arises? Do you go through a checklist to making sure that it is done?

A: There is a separate checklist that deals with registration of dealings which is different from the one that is attached but this one is for the new leases.

Q: Okay, thanks. Counsel?

11.34 am] MR KETAN: Thank you. In relation to the checklist, you referred to a computer register. Is that the latest system?

A: That is correct.

Q: So every title which is ready to be issued is registered under that system, is it?

- A: It is not necessarily registering, it is just recording certain details.
- Q: Recording, I mean, yes, recording.
- A: Recording details such as the property description if it is a portion, milinch name, fourmil name, who is the owner, and all these details but does not set out – once the system is properly up and running, then the terms and conditions of the lease will also be entered in.
- Q: Yes. How long has this system been operating? I remember reading about it some time ago; it might have been a year or two years ago when the Lands Department, through a fresh conference, announced that the problems of title storage and recording were going to be something of the past under this new computerized system of maintaining title register. How long has that system been in operation for?
- A: There has been some enhancement done to the system to allow for – trying to go into the automatic system of title registration, and that is the priority at the moment they are working on with the engagement of Technology One. It has being running for about just over a year now to try to improve the system in terms of document in the process as prior to running - without documentation of the process, you cannot run the system.
- Q: Yes. These 18 files that are missing, assuming that when they are registered, the information recorded in this system, you would be able to identify them through the computer system, would you not?
- A: The better way to say it is that there are certain terms and conditions that you can only obtain from the physical title, not from the system. The system is limited at the moment in terms of capturing all these part registers and ownership details but when you say going to the details of what is the condition on the list, you will not get it from the system.
- Q: Yes. Apart from the titles themselves, this relates to the question that the Chief Commissioner asked about recording the titles – scanning it and recording onto the system, not just for registration purposes but as a disaster recovery backup?
- A: I have already mentioned to the Chief Commissioner that these were the proposals that were put forward and that is another area where we are trying

to go into, but typical is that when you have the money, you do the job. When you do not have the money, you cannot have the system up and running.

COMMISSIONER MIROU: Would this LGAS system be used, not only in Waigani, but in the other provinces as well?

A: That is correct. Further down the line that will be part of the system in the provinces.

MR KETAN: Would you be able to tell how many SABL related titles are in existence apart from the 75 that is subject of this Inquiry?

A: Right now, we will not let you know but I can finish those details sometimes later because the current register I had mentioned last time to you and your people assisting that the way it is kept does not provide the type of lease, or the acreage. When you register the lessee name and the property distribution, that is all. So we will be looking at ways to try to improve on the registration services and we also keep a track on the type of lease also and the acreage in terms of hectares or---

THE CHAIRMAN: Why is that? Why is it not capturing other information like acreage and others? Is it because it is the requirement of the law or what?

[1.39 am] A: No, because the way that register books were designed in those days and we have been maintaining that to date.

Q: How old is that register book you are talking about? Are you able to give us some indication how old that process of register book is?

A: I can give you a photograph of the register book sometimes.

COMMISSIONER JEREWAI: No, question is, how old is it?

THE CHAIRMAN: How old is it? Is it 20 years old or is it the system that you have been working on and following over the last 20 years, or over the last 10 years, or 30 years or what? Give us some indication.

A: The register book are pre-printed books with the lessee name, the distribution, and then that is what we have been using to register.

COMMISSIONER JEREWAI: Perhaps the question really is that, is the system of registration both pre-independence and post-independence?

A: This is more sort of a pre-independence type of register book that we are maintaining.

THE CHAIRMAN: So the Land Act does not make any mention or the Land Registration Act does not make any mention on all the information that should have been captured?

A: Not necessarily.

Q: So you are not – there is no mention of it in the Land Act?

A: No.

Q: Okay.

A: It just makes a mention that you keep a register but does not tell you exactly what type of details should be kept in the register.

Q: So the Land Act is silent on all these, is that correct?

A: So to say.

Q: All right. Counsel?

MR KETAN: Yes. In paragraph 5 of your affidavit, if you can just explain what you mean by “the confirmation of SABL being prepared under the applicant’s name or nominee”? Just the process how you do that when the file comes to you?

A: When the file comes to – when there is a submission, the SABL is submitted in duplicate; duplicate after execution. From the annual details that have been compiled, this also comes as part of the information that is submitted for the registration process to check who applied; and is that SABL title being prepared in the name of the applicant. If not, if it is under a different name, then you check the lease - leaseback agreement because in the lease - leaseback agreement, there would be a person they nominate and that nominee must match the person on the title document that is being prepared.

Q: The name recommended---

A: In the lease - leaseback agreement.

Q: Yes. In (e) – paragraph (e), you state that your officers confirm if provisions of section 11 and 102 of the Land Act have been complied with. Is that the instrument of the lease back and the subsequent lease, State lease?

A: There is the copy of the instrument that is prepared for gazettal.

Q: Yes.

A: So it is worded correctly prior to going for gazettal, so they are also attached and then the gazettal copy must be attached to verify that this is the instrument that went for gazettal. So they must match.

Q: Yes. The minister for – this process is a process that the minister and his delegate both had powers to approve or grant, is it?

A: That is correct.

Q: The delegate would normally be the Secretary for Lands?

A: That is correct.

Q: How about the Deputy Secretary?

A: Depending on how far the delegation goes.

Q: Yes, and the delegation is by instrument under the hand of the minister?

A: That is right.

Q: In (h) – paragraph (h), 5(h), you state that you have to check to ensure that native land dealings and customary land dealing have been complied with in terms of the documentation. Could you just restate what the relevant documents are, the investigation, the land alienability---

11.44 am]A: Yes, certification of land alienability, land investigation report, a copy of the lease – leaseback agreement, they must be in there to confirm that all the processes have been complied with and they have been documented and that becomes the NLD or the CLD document.

Q: Could you just state what are those documents for the record?

A: Those documents include land investigation report ---

Q: Yes.

A: Certification from the provincial administrator stating that the land can be taken out for SABL, the lease - leaseback agreement document and any other correspondences that may be of relevance, such as agreement between the neighboring landowner saying that the other land is the other peoples' land, they are the rightful neighboring clan signing off and the list of who the landowners are and their agents.

COMMISSIONER MIROU: Mr Wasa, are these the documents if you can confirm again? Executed lease, lease - leaseback agreement, these are the documents that will ---

A: One of the document must be the executed lease - leaseback agreement.

Q: Schedule of holders?

A: That is right.

Q: Agency agreement?

A: Yes.

Q: Declaration of customary land in relation to land tenure?

A: Yes.

Q: Certification in relation to boundaries?

A: Yes.

Q: And a registered survey plans?

A: That is right.

Q: So these are the documents that you will ---

A: Yes. That follows the customary leases process and they must be compiled, becomes the NLD document.

Q: And that is the current process that ---

A: That is the current process.

Q: Thank you.

MR KETAN: In 5.5 you referred to the ILR, the planned investigation report and mentioned that one of your check list is to ensure that that has been duly complied with and executed by provincial lands or district lands officer. When you say, “duly complied”, what are the requirements? What do you look for before you register the list?

A: “Duly complied” means that they have done the investigative report and whatever the document they sign off. When they sign off that means that they have duly complied with what they did.

Q: But what do you look for in what particular documents or requirements?

A: What we look for is basically that they were in the province and they did conduct the investigations and where they conducted the investigations. That is what we look for.

Q: How about landowner concerns and ---

A: Those are part of the land investigation report, they have to attach to the land investigation report.

Q: In relation to paragraph 8, 15 - paragraph 15, it is a question that was asked previously but if you can say it for the record. Is there any other process outside of the process in which your officers are involved in the registration, where SABLs are issued? This relates to the two SABLs over portion 16C milinch Gona, fourmil Tufi and portion 155 C, milinch Baiyer fourmil Ramu.

A: For those two, like I have stated earlier on, there may have been a SABL process that went through but never went to the stage of registering of the title. That is the reason why they would not be in my register book.

1.49 am] Q: Yes. But if they are outside of this process where you performed the end function of the process, as it were, those would automatically be not proper leases?

A: Not necessary. They may have followed the process but something may have happened and they did not reach my process.

COMMISSIONER JEREWAI: Simply put, there are no titles over those two?

A: That is right.

Q: How did they receive the portion, description of what is stated here, portion 16C, milinch Gona fourmilTufi, and similarly portion 155C milinch Baiyer fourmil Ramu. How did they receive that? I assume those are registration upon description of the title?

A: Yes ---

Q: How did they receive them?

A: The description follow a survey process, and prior to registration, survey process is part of the process but for some reason it has not reached the registration process, we do not know what happened.

Q: So strictly speaking there is no title?

A: Strictly speaking there is no title.

Q: Issued in relation to those?

A: But they are registered plans and that is the reason why this registration had been given.

Q: Thank you.

MR KETAN: In relation to paragraph 16 of your affidavit, you raised concern as to the security of the files. What were your regulations? Do you have any regulations to resolve those, the difficulty you and the problem that you have concern over?

A: Okay, for paragraph 16, my recommendations are that the titles once they are registered, they will be scanned and the funding of the scanning process is another matter that we are looking at. It has been ongoing but to date we have not received any assistance. The other one is the one that we are – once the LGAS system is up and running, because the priority is given to the data registration at the moment, so hopefully if it is done and everything is running properly, it is a matter of amending the land registration so that we can accept the automatic titling system rather than the manual which is the next thing that we are looking forward to.

THE CHAIRMAN: Thank you. Counsel, can I ask this question. You made reference in your affidavit, Mr Wasa to these two that are not registered, one, that is what Commissioner Jerewai had already asked you. If they are not registered, how did they form part of the 74 - 75 SABLs that has been referred to this Inquiry?

A: That I would not know at this stage.

Q: And how would, if I may add on to that question, how would the titles be issued, if any, if they have not gone through the exhaustive process of registration and so forth?

A: If they do have titles, I would like to know if they do have titles because according to my register there are no titles issued over these two portions.

COMMISSIONER JEREWAI: Perhaps, if I may follow up on Chief Commissioner Numapo's question by simply asking. Are they - if you are aware, that is - because you are telling us that the process had not reached you but they are among the ones that you are aware of and you have given evidence over. Would you be aware if they are SABL titles? In other words, they are customary land which is being converted through the process to an SABL lease type title?

A: At this stage I would not say that until we can find out from whoever is operating there, do they have titles because according to my register ---

Q: Okay, then simply, how did you become aware of these two?

A: From the list that you submitted I had to run through everything and after running through ---

Q: All right, that is the ---

A: All the rest have titles but not these two.

Q: That is the misunderstanding. So they are among the list attached to the Terms of Reference ---

A: Reference.

Q: For this Inquiry ---

A: Yes.

Q: And they are the two you discovered ---

A: That they got no titles.

Q: Did not have any title issued?

A: That is right.

Q: Alright, thank you.

THE CHAIRMAN: If I may, Counsel. Mr Wasa, the 18 files that you state in your affidavit that has gone missing, are you in a position to indicate to us if they are listed on that list marked "C", attachment to your affidavit?

A: Those – "C".

Q: The 18 files that you are referring to.

A: No, those 18 files are not part of that exhibit "C". Exhibit "C" is all the files that we have located.

1.54 am] Q: Okay, I see, thank you.

COMMISSIONER JEREWAI: So the remaining 18 are yet to be produced, those are the ones you have indicated variously throughout your affidavit then also in your verification through this questioning?

A: Yes.

Q: That needs to be still produced.

A: That is right.

THE CHAIRMAN: So if we go by the list that was been referred as part of the Terms of Reference for this Commission, we can easily note that the 18 that are not listed in the list that you have submitted in your affidavit, and of course plus the two that you say have not been registered, is that correct?

A: Yes, two are not ready, yes.

Q: We can easily find out the 18 that have gone missing out of the list that was given to us, if we compare with the list that you are now providing to the Inquiry? Is that correct?

A: That is correct.

Q: Okay, thank you.

COMMISSIONER MIROU: And also you – you have also said that you can be able to reconstruct the files and recreate copies?

A: Copies.

Q: If that information is available from the department, if ---

A: From the Lands files.

Q: Yes.

THE CHAIRMAN: Counsel?

MR KETAN: Witness, have a look at that list which is the list of 75 SABLs that were appended to the Terms of Reference. If you look at the top of that page in relation to 16C, mostly 16C, Gona, Tufi, Oro and across it says, “revoked by an order of the National Court and gazetted 10 February 2010, the lease was awarded

to Musida Holdings Limited.” Could one of - in your recollection, would portion 16C – it is the portion 16C that you referred to in your affidavit in paragraph 15, does it ring a bell? That does correspond to what is on the list? Could that be the reason why ---?

A: From the documentation that is possible that it never went through the registration process because of the revocation.

Q: Yes, but from information from your affidavit, paragraph 15, the information from the list that we are showing you, you confirm that that is the same ---

A: That is the same portion.

Q: That is the same portion?

A: That is the same portion.

Q: Thank you. If I can take you to paragraph 17. You state that the landowner company who obtains the SABLs rarely returned to the department to register their subleases with your office in accordance with section 49 of the Land Registration Act and as a result the State, the department or your office are not aware of the transactions that transpire after the State lease is issued. Now, just think about that for a moment. How about any other dealings on a particular SABL, after it has been issued; after the title has been issued? Any SABL? If someone wants a sublease or – for a period for more than three years and they are required to register that by law or if there is going to be a dealing, a conveyance, transfer of interest, that has to be registered too. Do you mean by your paragraph 17 that you have not come across any applications for leases more than three years or transfers of interest involving SABLs?

[11:14 am]A: Not that I am aware of. It is very rarely they come forth and say, this is a sub lease, we want to register, and there is nothing that tells my office to go looking for them to say, you better register that sub lease.

Q: I am not saying you should you make it your business to go looking for people who wish to sub lease, but given the number of SABLs that exist at the moment, I am going to ask you this question at this moment. In your

experience and in dealing with registration of leases, and I know you have dealt with thousands and thousands of that, how many SABLs do you think exist at the moment? Not just subject – once the subject matter is in Inquiry but just generally.

A: Currently, we are trying to compile data on that one to establish the number of SABLs to date and the acreage that has been leased out.

Q: Yes.

A: Like I said, from the Register itself you cannot establish until you go physically into the files and determine those type of information.

Q: So what do you think, in your opinion, is happening if people are not registering interest, dealings of interests in SABLs such as sub leases or transfer of interest?

A: In my opinion, if they are not registering their sub lease or interests, then they are not protected by any law unless they want to go and use other law but not under the Land Registration Act. Because then they make reference to Section 49 and Section 50. They are not---

COMMISSIONER JEREWAI: Such as unenforceability?

A: I beg our pardon?

Q: Such as unenforceability.

A: That is right.

Q: That is fair enough.

A: So for the landowners for them to enforce it, it will be very hard because they have not registered those sub leases. So they cannot use Section 50 of the Land Registration Act to enforce to the sub lease conditions.

MR KETAN: Have you dealt with situations where lessees have come to you, to your office as the Registrar of Titles or people with competing interests complaining over the registration over a certain lease?

A: Only on one or two occasions but not very often. Because half the time you want to find out in the Court.

Q: And do you recall the reason why they have come to you?

A: After going through I found out that most of them is relating to internal leadership disputes.

Q: Implicating the consent for the lease?

A: Normally they would say, there was never consent because we were in Port Moresby or something like that and something happened by other people, something along those lines. But normally when you really look at it, it is normally leadership dispute, somehow agreed by others and then that is the reason why they take that matter up.

[2.04p.m] Q: If the submission by a group with competing interest over a certain piece of a customary land, awards and SABL has been issued, if the submission appears genuine, and if you identify that there have been – the lease has been issued in error as a result of a not proper compliance with the check list that you referred to in paragraph 5 of your affidavit, do you have the powers to cancel the list after it has been registered?

A: For those issues, I think we try to confine ourselves as much as possible in terms of defining what are errors and what are frauds. As per the Land Registration Act Section 160 – 161, we try to apply that as much as possible. If there are administrative errors, we try to correct them as much as possible. If it is things with legal issues, then we try to refer them to the appropriate Courts for them to sort them out and if there is any judgments that are made or orders that are made, then we try to apply that as much as possible.

Q: Yes. Where there is administrative errors, do you have powers to cancel?

A: Administrative errors meaning administrative error to correct what is on the title but not re-cancellation.

Q: Have you, in your position - in the current position - cancelled any leases? Have you yourself exercised cancelling leases whatever the circumstances may be?

A: Cancelling leases, yes. We do comply with Section 160 and 161.

Q: So you have cancelled some leases?

A: That is right.

Q: So you do have the powers to do that?

A: I do have the powers to cancel only when I am directed by the Courts to cancel. Section 160 specifically says that, if the person refuses to surrender, and then I have to seek the Courts to summon him to answer.

COMMISSIONER JEREWAI: How about if a title holder surrenders the title?

A: Then, from that on you establish whether you need to cancel it or try to establish the mechanisms as to why as to why the title was issued, if he surrenders the title. Because sometimes surrounding does not mean necessarily mean you cancel the title.

Q: The title still remains but he merely surrenders the title?

A: For us to carry out our investigations.

Q: The title that specifies the SABL for 40 years, 99 years remains valid, except that the title holder surrenders and period, it reverts back to the State and it is up to the other applicants, perhaps even the landowners themselves to apply under another entity?

A: That is correct.

Q: Those are the possibilities?

A: Those are the possibilities.

MR KETAN: In relation to the registration processes, you of course have discretion to refuse to register even if the Lands Department, even if the Secretary and Minister have approved the deal?

A: That is correct.

Q: In relation to your evidence about the gazettal of the persons entitled to leases, having gone through the process that you obviously have to make sure that the names correspond with the names that are published in the National Gazette?

A: That is correct.

Q: Very well. Thank you your honour. No further questions. Sorry, if I can – these are the 56 titles that the witness has produced. If I can get him to tender those through the witness, get him to---

2.09 pm] THE CHAIRMAN: Counsel, how do we mark them?

MR KETAN: No, the witness will identify them first.

COMMISSIONER JEREWAI: I thought that there are only 55---

MR KETAN: Identify them against your list.

A: Okay.

Q: Your list which is annexure “C” to your affidavit.

A: Annexure C. The first ones are – I mean, I have grouped them in regions for the purpose of us because how we run the division is through regions. So---

COMMISSIONER JEREWAI: Whichever way is the most convenient way.

MR KETAN: Just go through those leases and confirm if they are ones in your list and you can identify them just in a bundle.

A: Okay. The first 23 are for Southern Region. The very first one when you see it, that is 27216, that is one of the one – they have got two titles. The old one has been cancelled but I decided to put those two together, so it becomes one only.

Q: Yes.

A: So the first bundle, this one, will be for Southern Region.

THE CHAIRMAN: And there are 23 of them, all together?

A: There are 23 of them all together. These copies match this order.

Q: The list, yes.

MR KETAN: Yes.

A: We have put them in order.

THE CHAIRMAN: Yes.

A: The next bundle is the NGI region.

Q: How many of them all together for NGI, New Guinea Islands?

COMMISSIONER JEREWAI: Just for consistency, the islands region you have here in your – in annexure “C”, you call it Islands Region. That is the same as New Guinea Islands Region?

A: That is right.

Q: Just for consistency for the record.

THE CHAIRMAN: So how many of them all together for the islands?

A: There are about 20; I did not count them. I just put them in one order.

Q: 20?

COMMISSIONER JEREWAI: 20?

THE CHAIRMAN: 20?

A: 20; yes, there are 20.

Q: Okay.

A: In Northern Region, there are 10 of them.

Q: Okay.

A: The remaining two are for Highlands Region.

Q: A total of 55 all together?

A: Total of 55.

Q: Okay, Counsel?

MR KETAN: Yes, I tender them and we can – it is part of his, the witness's affidavit.

THE CHAIRMAN: We attach it to the affidavit?

MR KETAN: Yes.

THE CHAIRMAN: Okay. Then you might have to mark them as D, E, F, G. Is that correct? Because if it is going to become part of his affidavit that has been submitted, you have got A, B, C, so we will just continue.

MR KETAN: And D.

THE CHAIRMAN: Yes, D, E, F, G, or you just want to?

COMMISSIONER JEREWAI: Just D will do.

THE CHAIRMAN: Just D will do, bundle all of that?

MR KETAN: Just D will do in the bundle, yes.

THE CHAIRMAN: Okay, instead of in the regions, all right.

COMMISSIONER JEREWAI: Annexure D.

THE CHAIRMAN: Yes, annexure D.

MR KETAN: That is the end of the examination.

THE CHAIRMAN: Okay, thank you, Counsel. I have consulted with my brother Commissioners. We have decided we will adjourn for lunch, and it will also give us the opportunity to go through the list that has been provided, plus the original list that has been given which is attached to the Terms of Reference. After lunch, we will come back. We also need to look at the other previous affidavits that have been submitted prior to Mr Wasa's affidavit and hopefully ask a few more questions after lunch and the Commission would be able to be in a position also to issue some directives with respect, particularly to the 18 missing files. So that will be the order of business after lunch today. So we will adjourn until about half past one for us to recommence.

MR KETAN: Very well.

COMMISSIONER JEREWAI: We have gone past half past 12, Chief, perhaps 2 o'clock.

THE CHAIRMAN: Okay, note, the timing, it is almost half past 12. So---

2.14 pm] MR KETAN: 20 past ---

THE CHAIRMAN: Yes, maybe we start at 2 so it gives people sufficient time to find lunch and we will start at 2 when we come back. Mr Wasa, thank you for coming. I want to remind you that you are still on oath. We got one or two more questions to ask you after lunch today and we will be done with you. So thank you for coming. We will adjourn until 2 o'clock this afternoon.

LUNCHEON ADJOURNMENT

[2.44 pm] THE CHAIRMAN: Counsel, this is a continuation from just before lunch this morning and Mr Henry Wasa is still on oath and that required him to come back for few more questions before we close off his evidence, this Inquiry. So unless you got anything to say at this stage, Counsel, I will be inviting the Commissioners to ask any questions if they wish to and then I will make some final remarks and we will close off for the day and also close off with Mr Wasa.

MR KETAN: Thank you Chief Commissioner. I was at the end of my examination of this witness when we adjourned. So I have no further questions to ask.

THE CHAIRMAN: Thank you Counsel. Commissioners, I will now open it up and ask anyone of you if you got any questions that you wish to raise with regard to Mr Wasa's affidavit that was tendered in this morning plus the other information he has given as part of his evidence this morning. Commissioner Jerewai?

COMMISSIONER MIROU: Mr Wasa, just one question. I think this was a question asked by Counsel Assisting relation to your powers to refuse if you find there are anomalies or omissions in the instruments that are submitted to you before registration. If you look at the powers that you have under section 155 of the Land Registration Act, it really spells out clearly the powers that you have in relation to those where you may refuse to receive the instrument and you may instruct for fresh instrument to be submitted. Do you normally - would it be correct to say that these powers that you have in relation to ---

A: Yes, I do. If the issues or anomalies are highlighted prior to the registration then I can refuse.

Q: Yes, and that is no need for you to go to the courts to get a direction?

A: There is no need. I can refuse registration if anomalies are pointed out prior to registration.

THE CHAIRMAN: Commissioner Jerewai?

COMMISSIONER JEREWAI: Mr Henry Wasa, when you issue title you - once you have gone through the process to issue title, you have it gazetted. Is that the final process, you have it gazetted or you do not gazette it at all?

A: We have it gazetted. It is upon gazettal that kick starts the title process because then when it is gazette, the lease starts or the lease commences and we have to – the facilitating process is the one that we try to make sure that title is issued. Upon gazettal the lease commences.

Q: Right, I understand.

A: The registration is done after.

Q: I understand. So it comes down from your office, from you to the Government Printer for gazettal?

A: Not, it is not that way.

Q: All right, that ---

A: The registration process kick starts the lease process, the lease term and then it follows the process to my office for registration to give effect to the lease.

Q: All right, thank you. That explains it.

THE CHAIRMAN: Mr Wasa, in your affidavit this morning to this hearing, you indicated in your affidavit that 18 files were missing and that is why you are not able to complete the list. What you have got that is appended to your affidavit contains 55 files, in fact?

A: That is right.

Q: And the reasons you have given why you are not able to locate the 18 files were that there was a leakage from the Minister's office sometime ago and that was the reason why the files got damaged and for that reason you are not able to locate that. The other reason that you gave in your affidavit was, due to some renovation work being carried out in the office and because of that they have been moving files all over the place and as a result some of the files went missing.

A: That is right.

Q: Which is obviously part of that 18 that have gone missing and you are not able to locate them to this day. You also mentioned that and raised concern about the security of the files that you are currently sharing the same office space with another division.

A: The same, registry. The file storeroom so to say.

Q: File storeroom?

A: Yes.

Q: Okay, thank you. Mr Wasa, this Commission is of the view that locating and producing of these 18 files is very important to this Inquiry.

[2.49 pm]

This Commission of Inquiry will inquire into each and all the 75 SABLs that was been given to it under the Terms of Reference when the government established this Commission of Inquiry. The Terms of Reference came with the 75 SABLs, and therefore, the Commission will be required and expected by the government to inquire into all those 75 SABLs that were attached to the Terms of Reference. It is for this reason that it is very important that those 18 files be produced, be located and produced to this Inquiry. Because in due course this Commission of Inquiry will be inquiring into each and all of the SABLs, totaling 75 altogether. You indicated earlier on this morning that you are able to reconstruct the files based on some of the information that you have got in your computer database system and other records that you might have that will help you to reconstruct the files. If you are able to do that, it will be of great assistance to this Inquiry. Then it will mean that the 75 SABL listing will be completed with the inclusion of those 18 that has gone missing. This Inquiry is given a specific timeline or timeframe to be completed and to submit a report to the government through the Office of the Prime Minister and time is running and time is of essence which I wish to remind the whole lot of us. For that reason Mr Wasa, I will give you a – the Commissioners and I have decided we will give you seven days to reconstruct or whatever you are able to do to produce those files. We are giving you up until next week Tuesday, which is 31 August, 2011 to produce

file and have it presented to this Commission of Inquiry. So effectively you have got almost seven days to locate those 18 missing files and have them presented before this Inquiry on Wednesday, 31 August when we resume again at 9.30. Is that clear Mr Wasa?

A: Very clear.

Q: You got any comments you would like to make with respect to this directive?

A: Not at this stage.

Q: Not at this stage, okay. Counsel?

MR KETAN: Just a clarity, it is the 18 files with the titles?

THE CHAIRMAN: Yes, that is the titles we are referring to, yes.

MR KETAN: Yes.

THE CHAIRMAN: 18 titles, 18 files. That is the title, the copies of the titles that were produced this morning, 18 have gone missing. So we are asking that those 18 missing titles be located or be produced and we have given Mr Wasa seven days to locate them, to reconstruct whatever he want to. But we need to have those 18 files also tendered in so that the SABL listings is complete for the purposes of this Inquiry. Counsel, any other matters you wish to raise?

MR KETAN: Not with the witness.

THE CHAIRMAN: Mr Wasa, you may be excused. You can take a seat at the back.

THE WITNESS WITHDREW

THE CHAIRMAN: Counsel, you need to indicate to us as to what you intend to do with the other witnesses and what would be the business for tomorrow if we are to reconvene tomorrow again.

MR KETAN: Yes. Right now as you can see Senior Lawyer Assisting is interviewing the Acting Deputy Secretary for Environmental Control from the Department of Environment and Conservation and we hope to call him tomorrow and the Secretary. Again, it will be on sworn evidence as to the procedure and processes with the SABL related applications for permits under the Environment Act and the various regulations pursuant to it.

1.54 pm] THE CHAIRMAN: Counsel, can I take you back to the listing that is provided by the Department of Lands and Physical Planning. There are a number of people who are on the list to give evidence and produce affidavits to this Inquiry and we have done three already. What about the rest? What is your intention with the rest of them?

MR KETAN: We intended to call Iruna Rogakila, the Director ILG, Andy Malo, the Director Customary Lease and Simon Malu, Director Acquisition. In view of the adjournment – in view of the directive that you have issued to the Registrar of Titles, I was thinking it might be appropriate for other three witnesses to follow in whatever transpires after the Registrar of Titles. But they have all sworn affidavits which - that is just for Andy Malo and at this stage Andy Malo. Sorry, just pardon me for a moment.

Situation is, Andy Malo, the Director Customary Lease which is the other appropriate and relevant position, he swore an affidavit which is ready. It has been presented to me now. We can call him and have his affidavit formally tendered as we have been doing with the other ---

COMMISSIONER JEREWAI: Counsel, before you do that, if I may just inquire what his evidence will be?

MR KETAN: His evidence will be in relation to the procedure for the – the actual procedure for the acquiring of the customary land under the lease - leaseback ---

COMMISSIONER JEREWAI: That is generally whether they be SABLs or compulsory acquisition of, I mean permanent acquisition of customary land by the State?

MR KETAN: This is his evidence is into the SABL process.

COMMISSIONER JEREWAI: Let me explain why I am asking. We have heard of the procedures ---

MR KETAN: Yes.

COMMISSIONER JEREWAI: From the Acting Secretary, Romily Kila Pat and then we have heard of the formulated, being formulated procedures by Mr Abby, one of the deputy secretaries and we have heard that these procedures are being formulated to be made law to provide with some clarity as to the processes that must be followed for SABLs to be issued – titles of SABLs to be issued.

[2.59 pm] We have heard the Registrar of Titles has given evidence to the effect that he follows a certain checklist. He has nothing to say whatsoever insofar as the processes and procedures to be followed to ensure any customary land being processed to be turned into land that is described as SABL leases – lease - leaseback, in other words. The checklist is – he goes by the checklist, he is satisfied that every process that is necessary has been undertaken and he then registers the interest in that customary land, thereby, converting it into a SABL type lease. If we continue to hear of procedures when I believe and I believe my brother Commissioners, including the Chief Commissioner, will be of the same view, we will be spending the entire time of the Inquiry listening to procedures. Unless if this witness is going to add on or detract from what has already been given in evidence by his two superiors, I would like to suggest, Counsel to consider if we can begin to go into the specifics. Of course these specifics cannot be addressed in the absence of the completion of the entire list of SABLs and we have just been told by the Registrar of Titles that 18 have not been provided. So we are still short by 18 to even commence the specifics which are covered under Terms of Reference (c).

MR KETAN: Yes.

COMMISSIONER JEREWAI: Maybe, this witness will be very relevant when we begin to go into the specifics. We are very far I must tell you Counsel and those who are in the audience. We are very far from getting anywhere near the specifics at the rate we are going. That is why Chief Commissioner just issued a direction. We are not going to be given in excess of the period that had been specified in the instrument of establishing this Inquiry to mess around waiting for this information. We will want that information within the seven days that has been directed and Mr Wasa must take note of that. We have not even begun considering our powers under the Act to make sure Mr Wasa produces the remaining 18 files and

information we want from those files. Therefore consider carefully, Counsel, if we need to consider any more procedures. On those aspects in terms of further witnesses to be called, much of the SABLs are related to forestry operations. I would have thought that, therefore, the next set of witnesses who must come before this Inquiry ought to be forestry authority with the relevant evidence for us to weigh up against the various issuance of permits – timber permits of various types with the related forest clearance authorities before we call the Department of Environment and Conservation people. Because the Department of Environment and Conservation people, as I understand, merely respond to requests from forestry people – Forest Authority – in respect of applications for the different types of timber permits and if environmental requirements are properly in place upon the request being sent from the Forest Authority, then the Department of Environment and Conservation satisfies itself that the environmental plan meets all the environmental requirements and they give the clearance before the forest clearance authority is given or sometimes before even the timber permit is given.

1.04 pm] I would like, and if I may speak on behalf of all three Commissioners, including Commissioner Mirou and Chief Commissioner and myself, that if we can take the Inquiry down the path where we get over the land titles information as the most primary information based on which we will move into other aspects; and if we can then move into – because most SABLs are involving forestry business and forestry operations - if we can move the Inquiry into inquiring into these forest operations relative to these SABLs, and then while at it we bring in the Department of Environment and Conservation as we go from each one of those until we get to other forms of SABLs that are not involving forest operations, for instance, mining or even conservation, straight conservation under the climatic change arrangements that many people are discussing. We need to move in that kind of direction so that we are progressing in some orderly fashion. If we have the Environment and Conservation people come in straight after Lands, and Lands - I think, the function relating to SABLs really is to convert on a lease - leaseback basis and we have not touched the kind of business that is going to be operated on this SABL so that we can connect that kind of business to the environment people. That is my comment, Counsel, and if you can take those comments into consideration. I am not saying that you adopt to what I am saying up here. I am just making this comment for you to appreciate that we must first of all complete the entire process of acquiring that information as per issued title by the Department of Lands and we must complete it by completing the 18 outstanding titles whose files are missing or misplaced and that is Mr Wasa's responsibility to ensure he produces them in the next seven days. After which you can then consider how appropriate it will be to call in Forestry, Agriculture and hand in hand with them come in with Department of Environment

and Conservation so that we can get down to the specifics. We will go each SABL by SABL. Thank you, Counsel.

MR KETAN: Very well, Commissioner. The evidence of Andy Malo as Director Customary Lease, his evidence is in some way similar to the acting Secretary Romilly Kila's evidence but specifically on the investigations into the customary rights and the concerns prior to getting the approval from the district and provincial officers and the administrator in relation to the availability of the land. So in view of your comments, Commissioner, I suggest that by way of a way forward that we – the evidence is in the affidavit - that we accept the affidavit into evidence and then adjourn. We can take this and read it along with the other evidence that is already before the Commission and then adjourn with Mr Wasa, with the requirement for him to produce the 18 files and the leases that relate to them, and then take it on from there as far as the Department of Lands is concerned. From there while we, the legal team and the technical advisers complete the process in terms of the Forestry and followed by the Environment and Conservation.

[3.09 pm] In relation to Forestry we have 10 files, we have received 10 files of the 12 that they said they had in relation to the FCAs. So we have the majority of the files here with us. And the Environment and Conservation can ---

COMMISSIONER JEREWAI: Yes, Counsel, I am also mindful of the fact that you still have to put the team together to examine each one of the files that are already at hand from the Department of Lands ---

MR KETAN: Yes.

COMMISSIONER JEREWAI: Particularly the 55 and when we can have the other 18.

MR KETAN: Yes.

COMMISSIONER JEREWAI: Go on, Counsel.

MR KETAN: From the Lands we have 35 files as at today, that is the Lands Department file. The Registrar of Titles has his own files. Of that we have 55 with us and the remaining 18 should complete the files from the Registrar of Titles. We have the complete files from 10 of the 12 files from Forestry. So if the Commissioners adopt your, well, your comments and suggestion, Commissioner Jerewai, then we can follow that. Me and my team should be in a position to ---

COMMISSIONER JEREWAI: Yes, and of course we are – those files we already have in hand including the corresponding ones between the Registrar of Titles and Department of Lands, we can commence while waiting for others to come, that would be all right. We can commence with the specifics under Terms of Reference (c) file by file ---

MR KETAN: Yes.

COMMISSIONER JEREWAI: While the others are still flowing in, especially the remaining 18.

MR KETAN: Yes, which we have already began with Technical Adviser Pupaka already working on one of the main contentious leases. It has already begun so, yes – and as we get more, you know additional stuff we should be able to do that. There are lot of correspondences in response to the advertisement calling for evidence they are beginning to flow into. So hopefully by the time we, within the next seven days, if we get the complete files, with the 18 leases, then we can commence that process.

THE CHAIRMAN: Counsel, I think we generally agreed to your proposition that we get the affidavits tendered in.

MR KETAN: Yes.

THE CHAIRMAN: Of all those who are listed in the list that was given to us by the Department of Lands. Whatever you got now you can have it tendered in without having for us to go through everything. If there is any specific question we need to raise then we will indicate to you which will then require you to therefore call upon the particular person to appear before the Inquiry to expound or to explain, to answer questions that are specific to his affidavit. But you can tender all affidavits that you have on hand of the people who are listed on the list submitted to us by the Department of Lands.

MR KETAN: Yes, and they have been told that this may not be the only time they give the evidence that ---

COMMISSIONER JEREWAI: That they may be recalled.

MR KETAN: That they be recalled once individual examination of the files are done. So ---

THE CHAIRMAN: So Counsel, you are now ready to tender one affidavit now or how many have you got with you that you want to tender?

MR KETAN: I have got one of Mr Andy Malo, who is the Director Customary Lease which is a sworn affidavit. I can deal with that, tender it through the witness.

[3.14 pm] THE CHAIRMAN: Okay, I will seriously do that now. You get Mr Malo, is it?

MR KETAN: Yes, Andy Malo. He is number 8 on that list.

THE CHAIRMAN: Yes, and get him to - what about tomorrow, you intend to call one or two others who are also listed?

MR KETAN: I was but in view of the interchange, bench and bar interchange with Commissioner Jerewai, on reflection it may be advisable that the hearing is adjourned to whenever – for seven days – and we work on the receiving the files and going through the Forestry and, essentially the forestry guys for a date next week.

THE CHAIRMAN: Counsel, we are thinking that once you have completed with the affidavits from the other listed witnesses from the Department of Lands, the next thing we propose that you consider would be to call in maybe one or two people from the PNG Forest Authority to come and do the similar thing like what the Department of Environment – that is, to come and inform the Inquiry about the process and procedures involved in the FCA and how they interlink with the other government agencies involved directly or indirectly with the SABL.

MR KETAN: Yes.

THE CHAIRMAN: Before we go into the specifics, I think there need to be some information to this Inquiry about the procedure that is adopted by the PNG Forest Authority in such applications, particularly for FCAs.

MR KETAN: Yes.

THE CHAIRMAN: So what we are trying to say basically, Counsel, is that for purposes of adjournment, that is when we look at the specifics; and they can be called later on to come back.

MR KETAN: Yes.

THE CHAIRMAN: But we need to get the – we need to learn about the basic procedures within the Department of – sorry, within the Forest Authority similar to what we have been doing with the Lands Department last week and this week.

MR KETAN: Yes. That is the way we have been planning, so that is very well.

THE CHAIRMAN: Okay, that is fine, yes. Counsel, do you require time to organize the people from the Forest Authority? Do you require time?

MR KETAN: We indicated tentatively to them that they might be required to give evidence on Thursday but given that this week is a short week, I am in your hands. If we adjourn and with the assistance of the legal officer from the Department of Lands, if we get the other affidavits of the other officers in through affidavit form--
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COMMISSIONER JEREWAI: And have them all tendered, say tomorrow?

MR KETAN: Yes.

THE CHAIRMAN: Can we do that? We would like to suggest that you do that.

MR KETAN: Yes.

THE CHAIRMAN: Get the other two as well, plus the one that you got right now.

MR KETAN: Yes.

THE CHAIRMAN: Because tomorrow is Wednesday, right?

MR KETAN: Tomorrow is Wednesday.

THE CHAIRMAN: So you can get all his affidavits and you are done, basically, with the preliminary side of things for the Department of Lands. We can get them in and on Thursday, you arrange for the Forest Authority people to appear.

MR KETAN: Yes.

THE CHAIRMAN: So I will retract from what I said earlier on, that you have this affidavit tendered in, and hold onto that and with the two others, have them all tendered in tomorrow.

MR KETAN: Yes.

THE CHAIRMAN: That will complete the Lands Department. Then on Thursday, we will start with the Forest Authority.

MR KETAN: Yes, very well.

THE CHAIRMAN: Is that okay with you, Counsel?

MR KETAN: Very well, yes.

THE CHAIRMAN: Okay, thank you, that is fine. Have you got any other things you want to say?

MR KETAN: No, not at this stage.

[3.19 pm] COMMISSIONER JEREWAI: Thank you, Mr Ketan.

MR KETAN: Yes.

THE CHAIRMAN: Counsel, that being the case, we will have to adjourn until 9.30 tomorrow morning. When we commence tomorrow morning, hopefully, you will be in a position to tender to this Inquiry the three affidavits?

MR KETAN: Yes.

THE CHAIRMAN: For the three remaining witnesses from the Department of Lands and that will basically complete the evidence from the Department of Lands on general matters, procedures and processes on SABLs.

MR KETAN: Sorry, just a correction, Chief Commissioner, I have got one. There will be only one more.

THE CHAIRMAN: One more other?

MR KETAN: Which will be from Iruna Rogakila, the Director for the ILG.

THE CHAIRMAN: Okay. So, you have got two affidavits to tender in tomorrow?

MR KETAN: Tender tomorrow, yes.

THE CHAIRMAN: You have got one already but you are only waiting for the other one?

MR KETAN: The other one.

THE CHAIRMAN: Any possibility of it being completed by tomorrow for tendering at 9.30, the second one?

MR KETAN: Yes.

THE CHAIRMAN: Okay. Yes, all right, fine, thank you.

COMMISSIONER JEREWAI: There is one thing, Counsel Assisting. I think we need to announce again publicly and formally so that witnesses do not hesitate to come forth to give evidence and that is, section 13 of the Commission of Inquiry Act specifically states that, "A statement or a disclosure made by a witness in answer to a question put to him by a Commission or by a Commissioner in a Commission of Inquiry is not admissible in evidence against him in any civil or criminal proceedings." So all witnesses take note. You are well protected. The whole purpose of such an Inquiry of this nature is to examine the administrative defects in whatever we are looking into, in this case, SABLs. So if those who may not be aware of it and those who are sitting in the audience, you relay this to your fellow officials that have no fear because you are not subject to any form of criminal culpability or even civil culpability. Thank you, Counsel.

MR KETAN: Very well.

THE CHAIRMAN: Counsel, any---

MR KETAN: No, no further.

THE CHAIRMAN: All right, we shall adjourn until tomorrow morning at 9.30.

**AT 3.22 PM, THE COMMISSION OF INQUIRY INTO SABLES
ADJOURNED TO WEDNESDAY 24 AUGUST 2011 AT 9.30 AM.**

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