

TRANSCRIPT OF PROCEEDINGS

Commission of Inquiry into SABL
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COMMISSION OF INQUIRY INTO SABL

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COMMISSIONER

MR NICHOLAS MIROU

COMMISSIONER

TOP FLOOR, GOVERNMENT PRINTING OFFICE, WAIGANI, THURSDAY
25 AUGUST AT 10.43 A.M.
(Continued from Wednesday 24 August 2011)

THE CHAIRMAN: Counsel, in our sitting yesterday, you indicated to the Commission that you will be calling on the Managing Director of the PNG National Forest Authority, Mr Kanawi Pouru, to present his affidavit this morning.

MR TUSAIS: That is correct.

THE CHAIRMAN: Are you able to address the Commission on that now? Thank you?

MR TUSAIS: Mr Pouru is present and ready to go through his – sorry, have his affidavit tendered. We will discuss the cause of his evidence after he is sworn in, perhaps.

THE CHAIRMAN: Yes, all right, have him sworn in.

KANAWI POURU, Sworn:

XN: MR TUSAIS

Q: Good morning, Mr Pouru.

A: Good morning.

Q: Just to introduce you for the record, your full name is Mr Kanawi Pouru?

A: That is correct.

Q: Presently, you are the Managing Director for the PNG Forest Authority?

A: That is correct.

Q: You have been in Forest for quite some time now. You joined the Department of Forest as it was back in 1976?

A: That is correct.

Q: Until 1999 when that name – sorry, you---

A: I resigned.

Q: You resigned, okay.

A: Yes.

Q: Then you rejoined - now called PNG Forest Authority - in 2007?

A: That is correct.

Q: Previously, you were Regional Inspector for the highlands from 1990 to 1993?

A: That is correct.

Q: Then you were Divisional Manager Operations '94 to '96?

A: That is correct.

Q: General Manager '97 to '1999?

A: That is correct.

Q: Currently, you are the Managing Director of the PNG Forest Authority?

A: That is correct.

Q: Just for clarification purposes, what is the difference between PNG Forest Authority and the PNG Forest Service?

A: I guess the difference is that - they are one organization and that is the Papua New Guinea Forest Authority. Within that organization, if you like, the umbrella organization; there is a board and there is a National Forest Service. So the board being a board that makes policy and directives of the Forest Authority, and the National Forest Service is the arm that has the implementing arm, that has all the staff, all the technical staff, and the ones that carry out all the work of the PNG Forest Authority. So together, it is then called the PNG Forest Authority.

10.46 am] Q: Thank you. Just, finally, since 2005, you have been a member of the Forest Boards?

A: That is correct.

Q: That is your capacity as Managing Director?

A: Previous to 2007, I was then President of the Association of Foresters and that capacity enabled me to be a member of the National Forest Board. When I was appointed Managing Director in 2007, then I continued to be a board member in the capacity as Managing Director ex-officio, and I resigned as the president of the association.

Q: Thank you. Mr Pouru, you have provided a sworn affidavit dated 24th of this month August. Could you just hold that up and show the Commissioners where you signed in the affidavit?

A: Yes, this is the affidavit that I had sworn on 24th of this month.

Q: The affidavit contains a true statement of what you wish to provide to the Commission?

A: That is correct.

Q: Would you object if I sought to have that handed up or tendered to the Commission to use as evidence in these proceedings?

A: No objection.

Q: I tender Mr Pouru's affidavit dated the 24th.

THE CHAIRMAN: Counsel, how do you intend to mark this affidavit?

MR TUSAIS: Yes, in compliance with our practice, we go by the initials KP. I think we are up to number 6.

THE CHAIRMAN: So it is exhibit KP6?

MR TUSAIS: Yes, Sir.

THE CHAIRMAN: Okay.

[EXHIBIT KP6 – SWORN AFFIDAVIT OF KANAWI POURU – 24 AUGUST 2011]

MR TUSAIS: Chief Commissioner, in the past, we have been having witnesses - the contents of their affidavits into the record. We have also departed from that practice. I mean, the Commission's answer about what we wish to do with this witness. But, again, I stress that for all intents and purposes, what is deposed to is in black and white and are before the Commission to use as it sees necessary.

0.50 am] COMMISSIONER JEREWAI: Counsel, I do not think we departed from that practice. I think we departed for the purposes of the additional affidavits from the Lands Department's officials. Subject to the relevance and importance of the affidavit, the affidavit may need to be gone through in detail for the purposes of the transcripts. With regard to Mr Pouru's affidavit, as I understand, you will tender that affidavit which you have and then he will be excused and he will return after he had taken the official trip which will render a period of absence, particularly from the country. When he returns, he will return on a date to be fixed which we will be shortly fixing.

MR TUSAIS: Yes.

COMMISSIONER JEREWAI: When we will go through his affidavit. So, no, in relation to the practice of going through the entire affidavit, we have not departed from that practice. We merely indicated yesterday that depending on the relevance and importance of the content of the affidavit, if they cover new grounds, necessarily, we will have to go through it and have it read through for the purposes of the transcripts' records.

MR TUSAIS: Okay.

COMMISSIONER JEREWAI: But if they are repetitive of what previous witnesses may have gone through, we will take note of that and have it recorded that it is similar to such and such an affidavit and that the contents may not necessarily be read out for the purposes of transcripts' records, and we can proceed without having to do so.

MR TUSAIS: As the Commission pleases. Mr Pours, we would like you to read the contents of your affidavit. I think it is from pages 2 to 5. The rest are attachments. You do not need to go through them.

A: Thank you, Commissioner. On 24th day of August 2011, I, Kanawi Pours, of the PNG Forest Authority headquarters, Frangipani Street Hohola, National Capital District, say on oath as follows. I, Kanawi Pours, as the Acting Managing Director of the PNG Forest Authority, I am authorized to depose this affidavit. There are two types of authorities. Type one is a timber authority, TA, issued by a chairman of a provincial forestry committee to carry out smaller scale agriculture or other land use on forested land pursuant to section 87 of the Forestry Act 1991, as amended; and type two is a forest clearance authority, FCA, to undertake large scale forest clearance issued by the National Forest Board pursuant to section 90A, 90B, 90C and 90D of the Forestry Act 1991 as amended. Section 90A and 90B deals with large scale conversion of forest to agriculture or other land use and sections 90C and 90D deal with large scale conversion of forests to roads and major roads construction.

In 2000, the principal Forestry Act 1991 was amended, (Amendment) No. 36 of 2000 by inserting section 90A, 90B, 90C and 90D.

[10.55 am] Under this amendment the person intending to carry out agriculture or other land use development or road construction is granted a timber authority. The person who will carry out the land clearing or the timber harvesting is granted a forest clearance authority. In practice, it was not workable by having two separate authorities held by two separate persons trying to carry out or implementing the same project. Given these practicalities, in 2007 being an Act to amend the Forestry Act 1991 and the Forestry (Amendment) 2000, the Forestry (Amendment) Act 2007, which is number 19 of 2007, amended some of the provisions of section 90A, 90B, 90C and 90D. The process through which an FCA is granted over the entire or part of a Special Agriculture or Business Lease (SABL) are prescribed in sections 90A and 90B. In the case of a major road, sections 90C and 90D of the Forestry (Amendment) Act 2000 and the Forestry (Amendment) Act 2007 as outlined hereunder from paragraph 7 to paragraph 15. In the case of an agriculture or land use project greater than 50 hectares, application is lodged with the National Forest Board, hereinafter as the Board, through the managing director's office in accordance with section 90A(1), or in the case of a road

project that is greater than 12.5 kilometers, application is lodged with the Board in accordance with section 90C(1) of the Act.

Section 90A(3) provided for the prerequisites or what the Papua New Guinea Forest Authority (PNGFA) evaluating team considers by way of a checklist to assist and ensure that an application lodged are compliant and complete before it is referred to a provincial forest management committee, the (PFMC) and the board for consideration and subsequent granting of a forest clearance authority pursuant to section 90B of the Act. Upon receipt of an application the managing director, acting under board's delegated powers, determines the application and refers the application to the Department of Agriculture and Livestock if the department have not already been given the application to process the application in compliance with provisions of section 90B of the Act. Under section 90A, the applicant with the assistance of the Department of Agriculture and Livestock and other relevant departments must complete and provide the following documents as part of an application for FCA.

- (1) Provide detailed development plan proposal as required under section 90A(a); Provide copy of land lease and other documents relating to other types of land tenure, section 90A(b); provide implementation of project schedule, section 90A(c); provide detailed cost of project, section 90A(d); provide map and description of project area, section 90A(e); provide verification of ownership, section 90A(f); provide support letter from other relevant departments, section 90A(g); provide approval from Department of Environment and Conservation on plans and other documentations, section 90A(h); provide detail of the equipment and manpower, section 90A(i); conduct public hearing, section 90A(j); provide agreement between the landowners and the applicant, section 90A(k); Secretary for Department of Agriculture and Livestock certification, section 90A(l); sales and purchase agreement between the landowners and the applicant, section 90A(m); and other requirements, section 90A(n).

.1.00 am]

Where the managing director is satisfied that an application is in the prescribed form and complete, he refers the application to the respective Provincial Forest Management Committee (PFMC) for its consideration as required in section 90B(1), and the PFMC shall consider the application in accordance with section 90B(2) and (3).

Where the PFMC is satisfied with the application, it submits its recommendation to the board as required in section 90B(4). Where the board is satisfied with the PFMC's recommendation, it shall grant a FCA to the applicant in accordance with section 90B(8). The description and content of a FCA is prescribed in section 90B(9) of the Act. Prior to commencement of a FCA operation, the applicant must lodge for approval by the managing director the following;

- (1) Lodgment of a performance bond in accordance with section 98 of the Act; plans of base camp and log pond; a five year forestry and agriculture plan; an annual forestry and agriculture implementation plan.

Given the changes in legislation, some of the approved FCAs were granted pursuant to the Forestry (Amendment) Act 2000 while others were approved and other provisions of the Forestry (Amendment) Act 2007. In my view the application of the FCA legislation applies only where the person intending to carry out agriculture or other land use and road wish to commercially use or sell merchantable timber that maybe felled and cut down to waste. Those FCA projects that were considered and approved under the Forestry (Amendment) Act 2000 were:

- (1) The Illi-Wawas Intergrated Rural Development Project, the Illi-Wawas Road Line Development and Construction Project and the Illi Stand-Alone Integrated Project.

Annexed and marked with letter A is a copy of the checklist used by the managing director against 90A and 90B in its evaluation and criteria; and annexed and marked with a letter B is a copy of the PNGFA guidelines for issuance of agriculture and other land use; forest clearance authorities.
Thank you.

MR TUSAIS: Thank you, Mr Pouru. Commissioners, there is attached to this affidavit, quite a few documents. There are several documents and they are bulky. I doubt if the Commissioners will have time between now and sometime mid afternoon or late afternoon to digest all of these for purposes of clarification with the witness while he is present. I am in the Commissioner's hands, but I would suggest that the witness be excused and for the Commission to be given time to peruse the affidavit and have the witness returned. He has agreed to do so in principle. He says he will be travelling, on duty travel, until late next week

Thursday. He says he is available on Thursday and will be travelling out again on Friday. So Thursday is suitable.

COMMISSIONER JEREWAI: Could Counsel indicate when witness will be travelling out?

MR TUSAIS: This afternoon, I believe.

A: Tomorrow morning.

Q: Sorry, tomorrow, okay.

COMMISSIONER JEREWAI: Counsel, not only is it important for us to peruse the annexures to the affidavit, but in light of the earlier witnesses, particularly from the Department of Lands and Physical Planning, we need to connect what the witnesses said as far as regards forestry aspects of SABLs to the evidence from the Department of Lands and Physical Planning with regard to SABL so that we can have some sensible and connecting inquiry to make with this particular witness. So the period of time he will be absent will enable us to do that. Thank you.

1.05 am] MR TUSAIS: Thank you.

THE CHAIRMAN: Counsel, I have consulted with the Commissioners. Basically, we agree to your request for us to take note of the affidavit and go through it, including the annexures that are attached to the affidavit; and that will give us the opportunity to be able to go through it. In the meantime when Mr Pours had to take on his duty travel, and hopefully, we will get him back on Thursday. It is a matter between you and Mr Pours, when he is ready to come back, he can indicate to us at a time when you are ready. He does make some very important reference to the role that Department of Environment and Conservation also plays apart from the evidence we have got from the Lands Department. So, I guess, this will help you to set out how you intend to proceed after we will close with the PNG Forest Authority. So, generally, we have no objection to your request to have this matter further adjourned for purposes of questions and examination, if any, to Thursday next week if you are prepared to proceed on Thursday.

MR TUSAIS: At about 10 – oh, sorry, 9.30.

COMMISSIONER JEREWAI: 9.30.

THE CHAIRMAN: Yes, we will set it for 9.30. It is Thursday next, is it? We will see the date.

COMMISSIONER JEREWAI: 1 September.

THE CHAIRMAN: 1 September? 1 September. Would that be okay with you, Mr Pouru?

A: Yes.

Q: 1 September on Thursday?

A: That is right.

COMMISSIONER JEREWAI: Mr Pouru, in the meantime, you are to remain on oath with regard to your evidence which also means that you cannot discuss outside of this Inquiry the content of your evidence until we have completed the whole of the presentation of this evidence.

A: I understand, thank you.

COMMISSIONER MIROU: Mr Pouru, we would also like to inform you that the evidence that you give in this Inquiry will not – any evidence that you give will not be used against you in accordance with section 13. So whatever you say remains with the inquiry.

A: Thank you.

COMMISSIONER JEREWAI: That is a proviso in the Commission of Inquiry Act.

A: Thank you, I understand.

THE CHAIRMAN: Counsel, if you are done with Mr Pouru, then he can be---

MR TUSAIS: I am done.

THE CHAIRMAN: He can be excused. Mr Pouru, thank you for coming.

THE WITNESS WITHDREW

THE CHAIRMAN: Counsel, any other business or matters you wish to address the Commission apart from---

MR TUSAIS: We do not have any other witnesses from any other department lined up for today. We still are not sure about Department of Agriculture. We are trying to confirm, yes, a meeting for Monday. Hopefully, we will sort them out on Monday. At this stage, we envisage calling them in on Wednesday or having affidavit material ready by Monday, anyway.

THE CHAIRMAN: Sorry, which department is that?

MR TUSAIS: Agriculture.

THE CHAIRMAN: Okay.

MR TUSAIS: But I have advised the Commission about Environment and Conservation. They should – sorry, we are confident – we are pretty confident they will be able to give evidence on Tuesday morning.

THE CHAIRMAN: That is next week Tuesday, is it?

MR TUSAIS: Tuesday 30.

1.10 am] THE CHAIRMAN: How many witnesses are coming from Department of Environment and Conservation are you looking at?

MR TUSAIS: About three witnesses, that is, the Secretary himself, Dr Wari Iamo; there is his Deputy Secretary in charge of environment monitoring, Mr Michael Wau; and one of their advisers, Mr John Wilmot, who will be tendering files.

COMMISSIONER JEREWAI: Sorry, clarify the status of Mr Wilmot in the department.

MR TUSAIS: He is a senior adviser. He is not---

COMMISSIONER JEREWAI: He is not a departmental staff?

MR TUSAIS: He is not. Yes, I do not believe he is a permanent staff of public service.

COMMISSIONER JEREWAI: Okay.

MR TUSAIS: But he is a special adviser or consultant.

COMMISSIONER JEREWAI: You might like to consider if it would be appropriate for him to tender the department files if he is only an adviser, and consider if it would be more appropriate to have a departmental staff who has carriage of and management of these files to be tendered.

MR TUSAIS: We will consider that.

COMMISSIONER JEREWAI: Thank you.

THE CHAIRMAN: You might actually - Counsel, you might want to check with Secretary Dr Wari Iamo regarding that. Talk to him the best possible way of tendering the files and the evidence because I think the position we are taking basically is that consultants and advisers are in for a certain period of time and then they go off. They are only engaged on certain projects and then after that they leave. So you might want to raise this one with Dr Wari Iamo and find out what would be a better way to address this. But we are just simply raising that for your information. So we will commence with Department of Environment and Conservation on Tuesday - next week, Tuesday, 30 August. We will start at 9.30. Just before we go, our public notice - the notice that we put out in the papers - stated 26 August which is tomorrow as the closing date of all the submissions, affidavits and statements to come in. But as we all know, that 26 tomorrow is the public holiday. For that reason I would suggest that we extend the closing date to next week Monday because I do not think the office will be open here to accept the submissions and the affidavits. That was the notice that we published before we heard from the government that 26 August is a public holiday. So I think it is only fair and proper that we extend the deadline from tomorrow to 26 to Monday 29. Is that correct, of August?

COMMISSIONER JEREWAI: Yes.

THE CHAIRMAN: Yes, so we extend the deadline for all the submissions and affidavit to Monday to 29 August.

MR TUSAIS: Yes.

THE CHAIRMAN: I would suggest, Counsel, that you advise all our staff here at the Secretariat so they will be able to accept affidavits and submissions that come in on Monday next week due to the public holiday tomorrow.

MR TUSAIS: Yes, sir.

THE CHAIRMAN: If that is all, Counsel, we will adjourn until next week Tuesday to commence. That is on the 30 August.

COMMISSIONER JEREWAI: 30th.

THE CHAIRMAN: On 30 August. All right, we will adjourn until then.

**AT 11.15 AM, THE COMMISSION OF INQUIRY INTO SABLES
ADJOURNED TO TUESDAY, 30 AUGUST 2011 AT 9.30 AM**

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