

TRANSCRIPT OF PROCEEDINGS

Commission of Inquiry into SABL
Department of Prime Minister & NEC
P O Box 639
WAIGANI. NCD
Papua New Guinea

Telephone: (675) 323 7000
Facsimile : (675) 323 6478



COMMISSION OF INQUIRY INTO SABL

MR NICHOLAS MIROU

COMMISSIONER

KIUNGA VOCATIONAL TECHNICAL COLLEGE, TUESDAY 22
NOVEMBER 2011 AT 8.46 A.M.
(Continued from Monday 21 November 2011)

[8.46 am] COMMISSIONER MIROU: Good morning Mr Bokomi.

MR BOKOMI: Good morning Commissioner. You would note that we are more or less half way into the hearing of evidence on Tosigiba, portion 14C.

COMMISSIONER MIROU: Yes.

MR BOKOMI: At the same time we have been calling witnesses ---

COMMISSIONER MIROU: For NEWIL.

MR BOKOMI: For NEWIL in relation to portions 1C and 27C. I have run through the evidence of the other witnesses under summons from NEWIL except for Mrs Betty Wine, they all seem to say same thing. I do not need to really cross examine them. They basically adopt the contents of Mr WaitiKwani's ---

COMMISSIONER MIROU: If you require them to give their statements on the record, that is ---

MR BOKOMI: Perhaps not at this stage. We have two very important witnesses that we need to also call.

COMMISSIONER MIROU: Yes, okay, thank you Counsel.

MR BOKOMI: Their evidence will be basically led by Mr Tusais. So ---

COMMISSIONER MIROU: Whilst we think that, Foxy is still ---

MR BOKOMI: Yes, Foxy Aisobi is still under oath. I do not intend to cross examine him right now.

COMMISSIONER MIROU: We can complete Foxy and then ---

MR BOKOMI: I have basically no questions at the moment. So perhaps Mr Tusais can proceed with the witnesses that he has ---

COMMISSIONER MIROU: And we have to call back Foxy just to ---

MR BOKOMI: Yes.

COMMISSIONER MIROU: Foxy, can you come to the witness box.

FOXY AISOBI, Sworn:

XN: MR BOKOMI

Q: Mr Aisobi, for the time being I would ask that the Commission excuse you after you have tendered the documents that ---

COMMISSIONER MIROU: We directed yesterday.

MR BOKOMI: Yes, the Commission directed you to. I recall Mr WaitiKwani--

COMMISSIONER MIROU: Yes, also.

MR BOKOMI: Was also directed so perhaps ---

COMMISSIONER MIROU: You may sit down.

MR BOKOMI: To start with you ---

COMMISSIONER MIROU: You sit down, remain seated. I directed you yesterday to produce to the Commission those two copies of the title, also a copy of the SABL titles, do you have them in your possession?

A: Commissioner, I have titles here for 27C and 1C here.

Q: And how did you obtain those documents, from your office?

A: I obtained these from my register officer and Mr Hudson Hape.

Q: Sorry?

A: I obtained this from maintenance office under Mr Hudson Hape, through Mr Hudson Hape. Thank you.

Q: Show those documents to Counsel and then Mr Associate. No, you sit down. You should have shown those documents to Counsel before we started. It was your duty to ensure that those documents were shown to Counsel this morning before we started. Do not keep them and come into the – when we direct you to produce a document you must make sure that Counsel knows about those documents before you come and give them.

A: Thank you Commissioner.

Q: Mr Bokomi?

MR BOKOMI: Commissioner, witness has provided respective owner's copy of the two SABLs. Firstly, SABL over portion 1C which is comprised and contained in the register of State leases volume 42, folio 81; folio number 81. And the State lease was granted on 30 September 2010. I ask Commissioner, that this particular ---

COMMISSIONER MIROU: We will mark them as exhibit ---

MR BOKOMI: Yes.

COMMISSIONER MIROU: NEWIL ---

MR BOKOMI: I ask that ---

COMMISSIONER MIROU: FA number 1.

MR BOKOMI: Yes, Foxy Aisobi number 1, that is the State Lease Instrument in relation to portion 1C.

COMMISSIONER MIROU: 1C, okay.

[EXHIBIT NEWIL FA1 – STATE LEASE INSTRUMENT IN RELATION TO PORTION 1C DATED 30 SEPTEMBER 2010]

MR BOKOMI: And exhibit Foxy Aisobi number 2, that is the State lease in relation to portion 27C granted to North East West Investment Limited. And that lease is comprised and contained in the register of State leases, volume number 42, folio number 82. And the lease also was granted on the same date as the lease of portion 1C and that is on 30 September 2010.

COMMISSIONER MIROU: Thank you. Are there any other documents that we required you to produce?

A: Commissioner, yes.

Q: The Minutes ---

A: There is one that I need to present is the JV Agreement. Commissioner, with that, I do not have a copy here with me right now this morning. According to IT&S office, yesterday afternoon I rang, they said they will send it to me so that I will present it. Commissioner, thank you.

Q: So you have a day to produce it?

MR BOKOMI: Perhaps, we make the witness returnable tomorrow in the morning.

COMMISSIONER MIROU: Okay.

MR BOKOMI: That should give him sufficient time.

COMMISSIONER MIROU: Mr Aisobi, we will require you tomorrow morning 9.30 to come back. You are now excused.

A: Thank you Commissioner.

MR BOKOMI: Thank you Mr Aisobi. I have no further questions.

COMMISSIONER MIROU: Thanks, Counsel.

A: Thank you Counsel.

MR BOKOMI: You can be excused.

A: Thank you Commissioner.

THE WITNESS WITHDREW

MR BOKOMI: The next witness is Mr WaitiKwani. He was directed to provide Minutes.

COMMISSIONER MIROU: Yes, to produce ---

MR BOKOMI: And resolutions of their board meeting.

COMMISSIONER MIROU: Minutes of ---

MR BOKOMI: Yes, Minutes of the board meeting or shareholders meeting, any Minutes that he has in relation to ---

COMMISSIONER MIROU: Decision.

MR BOKOMI: North East West Investment Limited's application for lease as set out in the – as attached to the Instrument of Lease as well as for NEWIL to acquire the SABLs over these large portions of land. Mr Kwani?

MR BOKOMI: Commissioner, you would recall Mr Kwani was directed to provide board Minutes in relation to his empowerment to sign the project agreement.

COMMISSIONER MIROU: Agreement, yes.

[8.57 am] MR BOKOMI: Commissioner, you would appreciate that, based that direction essentially emanates from the fact that a single director of a company has no right to commit the company.

MR BOKOMI: Yes, you cannot act alone.

WAITI KWANI, Recalled:

XN: MR BOKOMI

COMMISSIONER MIROU: Mr WaitiKwani, thank you for coming this morning. The Commission made specific directions for you to produce to the Commission board Minutes in relation to any resolution on the board's Minute to show that you are empowered to sign the Instrument of Lease-lease Back Agreement. Do you have those documents in your possession now?

A: Commissioner, I have no meeting minutes on the instruction of the Lease-lease Back Agreement. But as a chairman they thought that I will be in a position to sign.

Q: We want to – we directed you to produce to us the minutes, the actual minutes and the resolution reached by your board to authorize you to sign that agreement on their behalf, which includes all the people. Where is that document that you were required to produce this morning?

A: Commissioner, my apology there was no meeting conducted to authorize me to sign anything, even it was not in the meeting. We did not have a meeting to apply ---

Q: So you have no board minutes to produce to the Commission?

A: Commissioner, when the consent form was issued to us to go out in teams, we briefly mentioned but not in the actual agenda of our directors meeting.

Q: That is okay, Mr Waiti we directed you to produce the board minutes. You do not have the board minutes?

A: I do not have the board minute.

Q: Did you actually hold a meeting?

A: Verbally, we held discussions but not a actual meeting or formal meeting that was agenda to discuss.

Q: Well, any verbal discussions are normally reduced into writing and they are normally signed off by all the members who are present.

MR BOKOMI: Mr Kwani, your company is a public company and it needs to maintain public records for the purposes of and benefit of its shareholders and directors and everybody who has an interest or involvement with the company. Did you keep any minutes or not? No?

A: No.

Q: So you proceeded to sign the Agreement without a proper board resolution directing and empowering you to do so, yes?

A: Yes.

Q: Thank you. I have no further questions.

COMMISSIONER MIROU: And also, are you able to produce to the Commission this morning the authority or the resolution that you were authorized to sign this agreement here, the Gre-Drimgas Project Agreement on behalf of the company?

MR BOKOMI: Commissioner, he has just answered that.

COMMISSIONER MIROU: This is the same thing?

MR BOKOMI: Yes. He has no authority.

COMMISSIONER MIROU: No vote, yes, okay. There were two directions so we ---

MR BOKOMI: There was no board resolution giving him the authority.

COMMISSIONER MIROU: So Mr Waiti, you do not have any of those documents and there was never a resolution reached.

A: Yes.

Q: Thank you. All right, we will step you down. And if there is any further need for Counsel to call you, we will call you. But we will require you to be in attendance tomorrow morning as well.

MR BOKOMI: Thank you Mr Kwani.

A: Thank you Commission.

THE WITNESS WITHDREW

MR BOKOMI: In terms of all the other directors of NEWIL who has been summonsed, as I have alluded earlier, they all seem to or in fact, expressly adopt the contents of Mr Kwani's affidavit. So in terms of the evidence that they will give, it would be very, very similar so I do not see the necessity at this stage for the whole lot of them.

COMMISSIONER MIROU: Thank you Counsel. So I will mention it to both Mrs Wine---

MR BOKOMI: Yes.

COMMISSIONER MIROU: Sorry, who are those two who ---

MR BOKOMI: These particular witnesses are namely, RonsonMoia, Samson Ubre ---

COMMISSIONER MIROU: Please stand up if you – just stand up and come forward so that I can ---

MR BOKOMI: And Samson ---

COMMISSIONER MIROU: Ubre.

MR BOKOMI: Samson Ubre.

COMMISSIONER MIROU: As you have heard Counsel informed the Commission that your evidence is very similar to what your chairman WaitiKwani and your secretary Foxy Aisobi has told the Commission. So the Counsel sees no need to call you to come in and give the same evidence. So on

that we will excuse you on the summons that was issued by the Commission. Counsel, is that ---

MR BOKOMI: Yes.

COMMISSIONER MIROU: You are excused from providing evidence to the Commission on those summonses that was issued to you. But we note your attendance and your attendance at these hearings since you were first summonsed until today. So we appreciate your coming to the Commission to assist us and also answering to the summonses. But you are excused as from now onwards. But if there is any need for any assistance to be provided to the Commission then we will require, we will call upon you to assist us. Thank you for your attendance this morning.

MR BOKOMI: As regards the appearance by Mrs Betty Wine, I would ask that the Commission deals with her evidence after Mr Tusais leads evidence of both ---

COMMISSIONER MIROU: For the matters that she raised

MR BOKOMI: Yes. Mr Titus and Mr Hape.

COMMISSIONER MIROU: Yes. Mrs Wine, you have raised certain matters that concerns the jurisdiction of the Commission so Counsel informs me that we will require you after we have heard evidence from Mr Michael Titus and Mr Hape. So we will deal with you; your matter after the two have provided their evidence too.

MR BOKOMI: Commissioner, before Mr Tusais makes his appearance and proceeds with these witnesses, I would like to hand up the exhibits.

COMMISSIONER MIROU: Thank you, yes.

MR BOKOMI: Of the State leases for your noting and record.

COMMISSIONER MIROU: Counsel, before you sit down and allow Counsel to take this, I have also noted that we have asked Mr Biyama to attend this morning to provide those reports.

MR BOKOMI: Yes.

COMMISSIONER MIROU: On Saturday, if you can recall. Maybe, we will deal with it during the course of the day.

MR BOKOMI: I do not know, yes. I do not know Mr IpihahBiyama is in.

COMMISSIONER MIROU: IpihahBiyama.

MR BOKOMI: IpihahBiyama?

COMMISSIONER MIROU: We will call this matter again later today.

MR BOKOMI: Yes, later.

COMMISSIONER MIROU: Thank you Counsel. Yes, I have received those two exhibits, Foxy Aisobi number 1, owner's copy State Lease 42, folio 81 and Foxy Aisobi number 2 is State Lease 42, folio 82.

[EXHIBIT FOXY AISOBI 1 – OWNER'S COPY, STATE LEASE 42, FOLIO 81]

[EXHIBIT FOXY AISOBI 2 – OWNER'S COPY, STATE LEASE 42, FOLIO 82]

Thank you Counsel.

MR BOKOMI: Thank you, Commissioner. There are also three witnesses for Tosigiba who failed to appear yesterday but they were under direction to do so but they failed although they were under direction. They are, Max Miyoba, SokiSamisi and IyahFami. Commissioner, we will run their evidence after Mr Tusais is finished with ---

COMMISSIONER MIROU: Yes, we will deal with them. Max Miyobi?

MR BOKOMI: Miyoba.

COMMISSIONER MIROU: Miyoba, SokiSamoi ---

MR BOKOMI: SokiSamisi.

COMMISSIONER MIROU: How?

MR BOKOMI: S-a-m-i-s-i.

COMMISSIONER MIROU: And Iyah?

MR BOKOMI: Yes.

COMMISSIONER MIROU: IyaFami?

MR BOKOMI: IyaFami.

COMMISSIONER MIROU: Please stand up please and come forward. Just stand on the side there. You were required to come and give evidence yesterday afternoon and the Commission made a direction. You advised the Commission on Monday to get your lawyer's signature on your affidavits but you failed to turn up yesterday. What was the reason for your non-attendance yesterday at these hearings? You can just speak up.

(...inaudible ...)

COMMISSIONER MIROU: All right, transportation problem. But at least you are present now so just remain within precincts of the hearing room until later today when we will deal with you. If we are unable to deal with you we will inform you. Thank you for attending this morning. Thank you, Counsel.

MR BOKOMI: Thank you Commissioner. I have no further issues or matters to raise with you, Commissioner.

COMMISSIONER MIROU: Counsel, just for the record. Just provide reasons why you are unable to proceed with these two other witnesses, just for the records?

MR BOKOMI: Yes, as I have alluded to yesterday, I am unable to proceed with, leading evidence or even cross examining these two particular witnesses, namely, Mr Michael Titus and Mr Hudson Hape. I am basically disqualifying myself from doing so on the basis that I know these persons personally and Mr Michael Titus and I have been running matters together as private legal practitioners. So in such circumstances, I may not necessarily be better placed to undertake the responsibility of taking them through their evidence for the benefit and purposes of the Commission. That being the reason, I ask that the Commission allows my application to disqualify myself. Thank you.

COMMISSIONER MIROU: Yes, that application is granted Counsel.

MR BOKOMI: Thank you.

COMMISSIONER MIROU: Thank you for putting it on the records.

MR BOKOMI: Thank you. I have no further matters.

COMMISSIONER MIROU: Thank you. Mr Tusais?

[9.11 am] MR TUSAIS: Good morning Commissioner.

COMMISSIONER MIROU: Good morning.

MR TUSAIS: With your permission I intend to proceed whilst seated. This is just for convenience. I have got exhibits left, right, center.

COMMISSIONER MIROU: Yes.

MR TUSAIS: I do not normally do, it is more convenient to ---

THE COMMISSISONER: You are allowed to do so, Counsel.

MR TUSAIS: Thank you. Commissioner, there are two witnesses under summons which Mr Bokomi has disqualified himself, Mr Michael Titus, who is lawyer on record for International Timbers & Stevedoring Limited and Mr Hudson, who is the company surveyor. I propose Commissioner, to call Mr Hape first. Before I do so, I apply to this Commission of Inquiry to ask that whilst he is in the process of giving evidence, Mr Michael Titus not be present within hearing distance or within the precinct of the hearing room here at Kiunga. My reasons basically are that questions asked to both witnesses will cover the same subject matter and for purposes of ---

COMMISSIONER MIROU: Fairness.

MR TUSAIS: Yes, fairness to everyone, the Commission as well as the two witnesses, it is best that they give evidence separately.

COMMISSIONER MIROU: Thank you Counsel. Mr Titus, you have heard Counsel and you are fully aware of that requirement that Counsel has asked the Commission that you will be excused from the hearing room and the precincts of this hearing room until you are called. The reason for that Counsel requires your absence because the questions that will be asked will be the same questions that will be asked of Mr Hape, in relation to the roles, responsibilities you play with the company. Therefore, for that reason, I will ask you to leave the hearing room until you are required to come back to give evidence.

MR TUSAIS: Commissioner, that hopefully will be at around 11 o'clock this morning.

COMMISSIONER MIROU: Please, if you may remain, come back at around 11 o'clock this morning, we may proceed with your evidence. Thank you for attending this morning. You may be excused from the hearing room.

MR TUSAIS: I call Mr Hudson Hape to be sworn.

HUDSON HAPE, Sworn:

XN: MR TUSAIS

COMMISSIONER MIROU: Thank you Mr Hape. You will give evidence in English?

A: Yes. I wish to make a request to the Inquiry if I can be ---

Q: No, wait. Before you say that I said, you give your evidence in English?

A: Yes, English, Pidgin.

Q: Okay, English. And Counsel will lead.

MR TUSAIS: Good morning Mr Hape, we are talking English. It is much more convenient for purposes of recording. Your full name is Hudson Hape, spelt H-a-p-e, Hape?

A: Correct.

Q: Speak up, please.

A: Correct.

Q: This is so that it gets into the record.

COMMISSIONER MIROU: No, it is only for recording purposes. But you have to speak up naturally.

A: Sorry. Yes, that is correct, Counsel.

MR TUSAIS: You are a registered surveyor. YouR practicing license number is number 342?

A: That is correct, yourCounsel.

Q: You are employed by IT&S which is International Timbers and Stevedoring (PNG) Limited?

A: Correct.

Q: No, Independent, excuse me, Independent Timbers and Stevedoring (PNG) Limited. Just state for the record, is that right?

A: That is correct, Counsel.

Q: Sorry Mr Hape, you need to just speak up a bit.

A: Sorry, that is correct.

Q: Thank you. Your company's address or your place of employment, this is IT&S is flat 4, level 10, Pacific View Apartments and your postal address is PO Box 171 or is it 17?

A: 171, that is correct, yes.

Q: PO Box 171, Waigani, National Capital District.

A: That is correct, Counsel.

Q: You hold a Bachelor of Tech Degree in Surveying

A: That is correct, Bachelor of Technology Degree in Surveying.

Q: Bachelor of Technology Degree in Surveying, you attained this in 1988 from the University of Technology in Lae?

A: That is correct, Counsel.

Q: Previously, you went to Aiyura National High School, you completed that in 1983?

A: That is correct, Counsel.

Q: You started work in 1989 with the Department of Lands and Physical Planning and you worked until the year 1992?

A: That is correct, Counsel.

Q: From 1992 to 1993 you joined Ok Tedi Mining Limited?

A: Yes, I did.

Q: From 1993 to 1994, you worked with Willing Pacific Engineering Limited?

A: Yes, that is correct.

Q: From 1995 to 1996, you were employed by Concord Pacific Limited?

A: That is correct Counsel.

Q: And then from 1996 to 1997 you joined another company called Asia Pacific Surveys?

A: That is correct Counsel.

Q: You left this company in 2003 to 2007 you worked with the Gulf Provincial Government?

A: Yes, that is correct.

Q: In 2007 for a year you joined Asia Pacific Surveys Limited?

A: That is correct, Counsel.

Q: And then from 2008 to the present time you are employed by the IT&S (PNG) Limited?

A: That is correct, Counsel.

Q: Your job again is as a company surveyor?

A: That is correct.

Q: All right, what does your job as company surveyor entail, what do you do?

A: My job as a surveyor involves undertaking surveys out on a field or in relation to any land matters, advising the company on the implications of the laws into how we would best do surveys and also address land issues. Particularly, land issues under the survey directions, under the Land Act, I am empowered as an agent of the, I can act as an agent for landowners or even for any employer that I am employed by.

Q: What do you do as an agent?

A: Say, supposing the company asked me to, as an employee to, direct me to undertake surveys that means physically going out on site where the subject area of survey is, either be boundary surveys or engineering surveys to collect data for engineering design purposes or to go out and on behalf of the company sit down with the landowners and discuss land issues, hear their complaints or, I mean, yes, generally, sit down with them, discuss the issues about affecting the land or whatever. The interest they want to have in land development.

Q: Before we get to those basics, you have been involved in the surveying and other activities that you are starting to talk about over portions 27C?

A: That is correct Counsel.

Q: Portion 1C granted to NEWIL, North East West Limited?

A: That is correct Counsel.

Q: You have also been involved in the survey and other activities relating to portion 14C granted to Tosigiba?

A: That is correct Counsel.

Q: Wait a minute, I finish first. You have been involved in portion 14C granted to Tosigiba Limited?

A: That is correct, Counsel.

Q: You have also been involved in the portion 1C granted to Tumu Timbers?

A: That is correct Counsel.

Q: Just for Commission's convenience, I have had those four portions just superimposed against the map of the Western Province and if you could just let me know they are roughly, it is not to scale or anything but roughly if they are just about in the right place?

A: Yes, the position seems okay to me. It is correct, yes, Counsel.

Q: I tender this. It is just for convenience so that we will follow Mr Hape's evidence throughout this morning, Commissioner.

[9.24 am] COMMISSIONER MIROU: Will mark this as exhibit after his initial?

MR TUSAIS: Commissioner, I am not sure which, Hape, yes.

COMMISSIONER MIROU: Exhibit HH1.

MR TUSAIS: Yes.

COMMISSIONER MIROU: Exhibit marked HH1 is a map, super imposed map of portions 27C, 1C and 14C.

[EXHIBIT HH1 – SUPER IMPOSED MAP OF PORTIONS 27C, 1C & 14C]

Thank you Counsel.

MR TUSAIS: You were working for IT&S, what did they tell you to do in regards to these four portions or parcels, if I can put it that way, but very huge parcels of land.

A: I actually started work with the Independent Timbers & Stevedoring Limited in June 2008. The formulation of the boundaries of the subject area, that is in question in Inquiry now, they were all well established, they were all the maps, the relevant maps that were drawn up and the service standard that was applied according to survey direction was low class 4 survey.

Q: Who did those surveys?

A: Those rural class 4 surveys, sorry for your convenience I will explain the process of the rural class 4 surveys.

Q: No, just to follow you. You said those survey and boundaries and everything were already there ---

A: Yes.

Q: Before you jointed IT&S?

A: That is correct, they were actually done. Before I was employed ---

Q: By who, who did the surveying and drew those maps?

A: Okay, together with the company with collaboration, full collaboration with Department of Lands and Physical Planning and National Mapping, through Mapping Bureau, all these were done. The boundaries were ---

Q: Who was the surveyor?

A: I do not know. Because prior to my employment there were a number of surveyors who were employed by the Department of Lands, sorry, there were a number of surveyors employed by Independent Timbers & Stevedoring Limited but none of those surveyors stayed back. They actually all took off. So I came in in 2008 and took on the responsibility, meaning to say that all the documents in relation to producing the final map was readily available to me. So what I had to do was for correctness of the mapping and correctness of the data and everything else, I went through it, I wrote a letter to the office of Surveyor General because that is the procedure before you actually make an application for registration of a customary land, you will have to apply. Like I have been saying, I can act as an agent of the company. So in this regard, on behalf of the landowners and the company, I acted as an agent, so I wrote to the Department of Lands, office of Surveyor General requesting approval for me to lodge those surveys, those maps, finalized survey plans for rural class 4 registration purposes. I have correspondence I cannot exhibit now but I have it back in the files in Moresby where I can be able to exhibit, yes, give it to the Inquiry for reference. The office of Surveyor General wrote back and approved me to undertake, lodge the survey files. So a finalized ---

Q: Yes, we have those letters Mr Hape.

A: Yes, I do. But they are back ---

Q: No, we have those letters on file. You do not need to go on.

A: Okay.

Q: What I would like to learn from you, you said there were maps previously existing. Are they the ones you referred to as geographical, sorry, topographical maps that you scaled off coordinates from to draw these maps?

A: That is correct your Honour. They are one in 100,000 scale topographic maps. All the information is derived from there to establish the boundary. Now, in rural class 4 survey standards, the boundaries of the natural features, especially mountain tops, village settlements, road tracks, rivers, banks of rivers, ridges, they normally form the boundaries of the land in survey. These boundaries are established in full consultation with the landowners and the surveyor.

Q: Yes, okay, Mr Hape, that is fine. Associate, could you just show this to Mr Hape. Is this an example of one of those pre-existing maps done by the Surveyor General from which you scaled off the coordinates? That is just one. That is the Kiungaarea. The Elevelaarea, that is where the Elevela River flows. Is that an example of the prior existing maps from which you took your coordinates and just plotted it onto ---

A: That is correct, Counsel.

COMMISSIONER MIROU: And that is done by the Surveyor General?

A: Yes, Office of Surveyor General. These are actually derived from aerial photograph, flown and these were produced by the Australian Defence Force Survey Squadron long time ago and then they were actually photographed that were manipulated through the system and maps were drawn out of it. So ---

MR TUSAIS: So that is what you refer to as existing maps showing borders?

A: That is correct, Counsel.

Q: Commissioner, I do not intend to exhibit that, it is just one but perhaps Commissioner, you could view that. It is a topographical map.

COMMISSIONER MIROU: Okay, yes.

MR TUSAIS: And for a lot of those maps, perhaps 10, 12 of those would form basically one of these SABLs?

A: That is correct.

Q: Of the immensity of 600,000 hectares, perhaps?

A: That is correct, Counsel.

Q: Thank you. Mr Hape, I would like to just show you this.

COMMISSIONER MIROU: Unless you want me to make some notation on this? An example was shown to Mr Hape in relation to a topographical map produced by the office of the Surveyor General, a topographic survey, Elevela.

MR TUSAIS: Mr Hape, if I could just show you this. This is portion 1C. Commissioner, that was exhibited, I am not sure what exhibit number it is. It is the map of portions 27C and portions 1C.

A: That is correct, Counsel.

THE COMMISSIONER: 27 and 1C, okay, that is Tosigiba number 1.

MR TUSAIS: No, these are NEWIL.

A: It should be NEWIL, Counsel or Commission.

COMMISSIONER MIROU: Yes, the actual exhibit is numbered NEWIL 27C number 1, also the same exhibit is referred to as NEWIL 1C number 1.

[EXHIBIT NEWIL 27C1 – TOPOGRAPHICAL MAP OF PORTION 27C]

[EXHIBIT NEWIL 1C1 – TOPOGRAPHICAL MAP OF PORTION 1C]

MR TUSAIS: That is a map that you did?

A: That is correct Counsel.

Q: You signed at the bottom, that is your signature at the bottom?

A: That is correct.

Q: And that is an example of you scaling off coordinates from the map that you have shown the Commissioner?

A: That is correct.

Q: So for example, the boundaries of portion 1C are bounded by Elevela River flowing at the bottom and Fly River to the left, this is portion 1C. The Fly River is the natural boundary for 27C and 1C. Is that what is shown on that map?

A: That is correct Counsel.

Q: And down towards the south toward the bottom of that map is the Elevela River?

A: Yes, that is correct.

Q: All right. Now, is that one of the first areas you started or which one of these four now called SABLs, did you start surveying?

A: I was advised by the company to concentrate on portion 1C, Aibolo, that is in Middle Fly, that is the 790,800 hectare area.

Q: That is the other portion 1C?

A: That is correct, yes.

Q: You started off from there and then you moved upwards or northwards?

A: That is ---

Q: North and north-west?

A: That is correct.

Q: Your next ---

A: The process of registration I followed like, I first started off with Aibolo, 1C, down in Middle Fly, and then I put in the other files because the maps, everything were readily, already finalized for its correctness and the file content, the survey file content was all finalized so I decided to put the other three. That is 27C and 1C NEWIL and 14C in Tosigiba.

[9.33 am] All at one time. So that is why you noticed that the titles come out also simultaneously. As far as I understand that can be done.

Q: So after you did 1C you did – how long did it take you to do 1C?

A: Like I have explained ---

Q: 1C down in Middle Fly or well, around the Middle Fly area?

A: As I have explained earlier on, Counsel, every information that I have worked on and the final product that the survey plan that was lodged to the Department of Lands, every boundary with full cooperation assistance with the Department of Lands through National Mapping Bureau was all established. Because they also have surveyors there, they also have

cartographers who are able to do those things. So everything was in full consultations. So as soon as I, as a registered surveyor, because I authorize the survey plan. I am entitled to submit a survey file for registration purposes. So I had to check every information for the correctness of the information before me. So then I ---

Q: Mr Hape, you slow down a bit.

A: Sorry.

Q: Slow down a bit. I asked you a simple question. How long did it take you? You do not have to justify anything, just tell the Commission how long did it take you to draw this map of 1C, Aibolo?

A: It could have taken, like I said, I was not, you know they were drawn already.

Q: How long? You just tell the Commission, it is a very simple question. How long did it take you to draw it?

A: Well, I physically did not draw it. That is why I am saying. You know, I cannot tell you that answer. As far as I know it may take two or three weeks because there are a number of processes involved. What basically happens is they take a photograph of this, the topo maps, all joined together and together with the boundaries they are identified by land. And then there is a number of process that goes on eventually putting the whole data together. There is a lot of manipulation ---

COMMISSIONER MIROU: So you only used information that was already in the system?

A: Yes, the system, the information is there.

Q: National Mapping Bureau.

A: They have system in there. They can do these things, yes.

Q: You did not undertake any further survey, you just ---

A: So I really, I really did not have to like, sweat out my guts. I only have to check for the correctness of everything.

Q: You said you did not want to sweat out my guts.

A: No, not necessarily sweating, not necessarily meaning that I was fully involved in from the beginning to the end. I came in half way through the process. So my job was there to register survey files because it was already been done.

Q: But you used to sweat out your guts, you did not want to sweat?

A: I am implying that you know, like meaning to say ---

Q: No, it is all right.

A: Had I started it ---

Q: It is okay.

A: Had I started the whole process. I did not start the whole process.

Q: It is okay, I am taking your word 'sweat' that means you did not careless what you were doing as a surveyor.

A: No, it is not that. What I am saying is that it was already done so I had to take on from where I was given the ---

MR TUSAIS: Mr Hape, wait, you, wait for the question Mr Hape, slow down. You slow down. You said that map you signed it, you told the Commission already.

A: That is correct.

Q: So you signed that map, what does that tell the Commission, that is your work? You surveyed it and you drew that map. Is that what you told the Commission when you say that you signed that map?

A: I have already explained to the Commission, your Counsel. I said ---

Q: No, no, no, you answer first. Do not beat around the bush.

A: I did not do physically do everything. Information was provided to me and as a registered surveyor I can sign. That is the process that goes in the Department of Lands. Any cadet survey or graduate survey can execute a survey, can bring it to the surveyor, a registered surveyor, he can have a look at the content of a survey, if it is correct, he signs. That is the process, that is the practice in the department; Lands Department. So ---

COMMISSIONER MIROU: Yes, when a surveyor signs, alienation takes place?

A: That is correct, alien ---

Q: This particular thing here, this title here is signed because of that survey?

A: Yes, as far as I understand, yes, there was an alienation process taking place but there is no acquisition.

Q: Indefeasibility of title.

A: There is no acquisition, there is only alienation process.

Q: Well, your process is one of those processes.

A: Yes, it is the fundamental process, that is the starting process, especially doing surveying and registering.

MR TUSAIS: There is no SABL, there is no lease, no alienation as you say. There is no government lease without the survey plan. That is bottom line.

A: That is correct, yes, Counsel, yes.

Q: That is why I am trying to establish those ones.

A: Okay, fine.

Q: So you bear with me.

A: Okay.

Q: We will go through, some of us do not know maps as well as you do. You are trained for the job.

A: Yes, sorry.

Q: Us, wait, I do not know map. So you take your time, you teach us, all right.

A: Okay. Counsel, sorry ---

Q: I am still going to ask you. That map, what I understand when you signed off at the bottom is that you, the surveyor responsible for working out those borders, those marks, for example, 1C, Aibolo, up to the

Southern Highlands border, down close to Balimo and all the way west towards Lake Murray.

A: Yes. In the process, actually in the process I had to fully cooperate and collaborate with the office of Surveyor General and Registrar of Titles because there maybe some existing leases in there. There may be like the current development of the hydro carbons and mineral reserves and if there is a PDL modus of things. So I did, they advised me to actually go to Department of Petroleum and I have a reference letter from my communication with William Keket from Petroleum about these things. So I have actually wrote back to the Department of Lands saying that as far as my search is concerned, there are other leases that I am going to display and excise on the face of the plan. For instance, there is one - I will just make a reference to one of these maps. Especially, like, if you can see up here, NLD in 27C, there is NLD 658 further up. That is excise, so it is not part of this map. It is has got an existing title. So it has been excised. That is why it is actually drawn on pre-survey maps. So these are number of things the technical requirements that we have to comply with. They have raised a number of issues even in the size in relation to the size of area and all those sort of thing. So throughout the whole process there was full consultation between me and office of Surveyor General.

Q: So because there were already existing maps you just sat in the office and you drew the coordinates and came up with that map which you signed?

A: That is correct, yes.

Q: You did not actually go out there in to the bush?

A: No.

Q: And for example, follow the Strickland River down, wait, just for the map. Just for the map you have already said ---

A: For ---

Q: You sat in the office and drew that map?

A: For this map?

Q: Yes.

A: Like I said, I physically did not draw the map. I did not put the information together. The National Mapping Bureau together in consultation with the landowners, Department of Lands and a company put all these information together.

Q: Mr Hape ---

A: Yes.

Q: Look, that map is your baby, you created it; that map, you open it up and see.

A: Yes.

Q: Open it, you drew it.

A: I physically did not draw it. It was drawn and presented to me, I had a look at it. Like I said, as a registered surveyor, when a cadet or any person comes and offers a survey that I can undertake, I have a look at it.

Q: Who drew it?

A: It was drawn by the Cartographers Office, National Mapping Bureau. They were fully ---

Q: Is his name anywhere there or?

A: It says, "drawn by contract."

Q: Drawn by who?

A: It says in at the title block here, where it says, survey file number 1807(e), "drawn by contract." So I did not ---

Q: What that means? You tell the Commission and we ---

A: That means that somebody else you know ---

Q: "Drawn by contract", what that means?

A: Sometimes in a situation where, like a surveyor is trying to do a work but he does not have the capacity to draw up the maps so he brings the information and gives it to a draftsman who may have the facilities like computer software designs, drawing, mapping software, so he does – he puts all that information and draws it up. What the surveyor does is he

just looks at the map and make sure it is correct before he presents it to the department; submit it to the Department of Lands for registration purpose.

Q: So that map was brought to you?

A: Yes, it was ---

Q: By who?

A: By IT&S.

Q: Yes, but which surveyor, the guy who drew that map?

A: There was, when I started work with the, sorry, my employer, these were information readily available to me. All I had to do was have a look at it, try to correct it and make it, present, sorry, lodge it to the Department of Lands for registration purposes through the office of Surveyor General. So, like I said ---

Q: So what is the meaning of your signature at the bottom of that map?

A: It means that I undertook the survey.

Q: What does that mean?

A: Means, I physically went out and did this and that and that or ---

Q: That is it.

A: If I am, even in a case ---

Q: That is why I am asking you.

A: In a case of rural class 4 survey whether I put the maps together and then did all these.

COMMISSIONER MIROU: Hudson, can you read this, this is where you signed off. I just want you to read that portion where you signed off on that survey. Can you read the whole thing where you signed off?

A: "I, Hudson HareaHape, a registered survey, hereby, certify ---

MR TUSAIS: Speak up, please. You speak up.

A: "I, Hudson HareaHape, a registered survey, hereby certify that a survey presented on a plan was made by me or under my immediate supervision and when is completed on the 31st day of July 2008 and the survey has been executed in accordance with the provisions of the Survey Act Chapter 95 and any directions made or given by the Surveyor General.

Q: And that is your signature?

A: Yes. The provisions are there, stated clearly.

Q: So what does that say, what you have just read?

A: That means that, like I have explained at the very beginning. There are different classes of survey. Now, these ---

Q: No, no, no, forget the classes. What does that say? Does that not say, I, Hudson Hape, drew this map?

A: Yes, of course, yes.

Q: It says that.

A: Yes.

Q: So did you draw that map?

A: I did not draw the map, that is what I am trying to say.

Q: So you are lying when you signed that paper, your signature at the bottom.

A: I did not draw the map, Counsel, I did not draw the map. Like I said, there are processes involved. I have my part to do.

Q: You lied, you lied, you lied. When you signed off on that map you lied. You deceived the Lands Department that you actually conducted surveys and drew that map?

A: But that is the process in the Department of Lands. That is the regulatory process.

Q: No, it is not. You answer my question. You lied to the Department of Lands and the Surveyor General. Did you lie to the Surveyor General when you signed and said that I did this map?

A: Because the map, the map is ---

Q: Did you lie or not? You tell me yes or no?

A: I do not think I lied.

Q: I do not think? What is that mean? You say yes or no?

A: No.

Q: No? While that thing now you are saying, "I lied. I signed it but actually I did not do this map."

A: I did not that is what I am trying to tell the Commission. There are provisions, they have applications too in ---

COMMISSIONER MIROU: Mr Hape, but I take it that once you certify this survey plan, that is yours, your signature is here?

A: Yes. It is just the wording of the certificate. That thing I am trying to ---

Q: It is a certification.

A: Yes, the thing I am trying to explain Commissioner, there are different kinds of survey undertaken by Department of Lands and Physical Planning. This is one survey that maybe, you do not go actually out on a field. It is all put together by ---

Q: Mr Hape, you are not listening. This survey actually is a result of this title, the title that was issued. But before Counsel was going, seen from your – I have been asking this question to the chairman of NEWIL, I have been asking everyone so I want you to look at this tender and application form requesting for an SABL. Can you identify whose signature is down there? Sorry, Counsel. Is that your signature as the agent?

A: Yes. This is an application, a tender application form for applying for a land.

Q: What does that form – what is that form?

[9.48 am]A: Like I said, I explained, this is a tender application for land.

Q: What is that form?

- A: That is the tender application for Land.
- Q: Tender Application on behalf of whom, which company?
- A: For Togisiba Investment.
- Q: So what are they asking for?
- A: Yes, they are asking to – I am applying on their behalf for the land. See, the title is granted to them, not me.
- Q: So that is your signature on that tender form? Your signature appears on even all the other tender forms.
- A: Yes, that is correct, in my capacity as an agent.
- Q: So the chairmen of those companies, the landowner companies are not responsible for submitting that application?
- A: Well, if they do it, it does not really – yes they can but in their absence I can---
- Q: MrHape, I do not think you understand the gravity, the seriousness of this Inquiry. Are you aware of the responsibility that you have in relation to this Inquiry's role to inquire into why so much land has been given away to companies? Are you aware of that? That is the beginning process. That process has your name on it, your signature. Where did you get the authority to apply for SABL on behalf of Togisiba and North East West Investment Limited? Who gave you the authority?
- A: Like I just mentioned, I am an agent acting on their behalf. I have been acting as an agent on behalf of them.
- Q: Agent for who?
- A: For the landowner groups.
- Q: IT&S?
- A: Because we have an understanding between IT&S---
- Q: IT&S? Agent for IT&S, not the landowner company.

A: And landowner groups, landowner companies and I have been an employer of IT&S.

Q: MrHape, I think you are still not listening. You should listen carefully. This is very serious. It also can impinge on your responsibility as a surveyor; your conduct, your code of conduct under the Surveyor's Act. Do you have a responsibility?

A: Yes, I do, yes. I am fully aware of what I have done. I am aware of everything. My concern – what I really want to bring to this Commission, I really want to explain the processes of Special Agriculture Business Lease and its application. If I can correctly explain that for your convenience and for the landowners, yes.

MR TUSAIS: Commissioner I would like to---

COMMISSIONER MIROU: MrHape, you are not listening. Counsel ask questions, you answer.

MR TUSAIS: Sorry Commissioner, could I just ask this question. MrHapeare you drunk?

A: No, no, I am not; I am not.

Q: You appear drunk this morning?

A: No, no, I am not drunk.

COMMISSIONER MIROU: Are you drunk?

A: No, I am not drunk.

Q: Have you been drinking?

A: No, I have not.

Q: So why are you acting like this?

A: Why, because I am confident in what I am presenting. I feel free to talk. That is what it is all about.

Q: I can hold you in contempt if I find out that you are drunk.

A: I am not drunk. Commissioner, I did not have any beer last night.

Q: Well, act like a reasonable man. You listen to questions and ask.

MR TUSAIS:Section 11 of the Commissions of the Inquiry Act says;“Contempt of Commission.” It reads; “A person who willfully insults the Commission or willfully interrupts the Commission or act in any manner that shows contempt is guilty of an offence. That person can be fined K5,000 or go to jail for 2 years”.

You understand that? Do you?

A: Yes, Counsel.

Q: Okay, I will read you Section 10(a). It says; “Giving false evidence”. This is amore serious section. You listen carefully. It reads; “A person appearing as a witness before a Commission who having been sworn gives false evidence is guilty of an offence”. Now, the penalty MrHape is imprisonment for a term not exceeding 14 years. You understand?

A: Yes, I do Counsel.

Q: You keep that in mind; you keep that in mind. This Commission has powers. It is not a little nothing thing. All right?

A: Yes.

COMMISSIONER MIROU: Thank you Counsel.

MR TUSAIS:I suggest, you listen carefully to the question and you answer back or I will be asking the Commissioner to have our policemen lock you up in the cell until you sober up. You understand that?Are you ready to talk or you need a break? Go wash your face or something and you come back? Do not smile, I am serious. If you need a break, you go think carefully, you come back and give answers to the Commissioner. I will call Mr Titus here in the meantime.

A: Counsel, we will continue. That is okay with me, we continue.

Q: Let us start again. You just answer, I am not going to be complicated. You also do not try to be complicated. Just try listen and answer. Let us move on. We are taking too long over this issue. All right, did you brought that map or someone else did it? First question.

A: Like I have said, the map was all compiled before I put my signature on.

Q: All right, who drew it?

A: National Mapping Bureau was involved in it.

Q: So why did you sign off at the bottom as if it was your own map, a product of your sweat as you mentioned? Speak up please, we cannot hear you.

A: The process in the registration and lodgment of survey requires, like, I just merely followed the process, that involves the Department of Lands especially in lodgment of certified files by registered survey like I was explaining. Somebody else can do the survey, somebody else can do the drawing but the registered surveyor takes responsibility of the lodgment of survey. That is the process. That is recognized within the Department of Lands, Works or other agencies like who also lodge surveys. So that is the same process in private practice when a cadet surveyor does it, the registered surveyor signs the plan. So then, he becomes responsible.

Q: Okay, well, do you have any idea who did that – surveying is not a big field. I mean, you know most surveyors in Papua New Guinea, private or employed by Surveyor General. Do you know if any of those surveyors you know drew that map?

A: Like I – to be very frank, Counsel I came in half way. All I saw – met was cartographers from National Mapping Bureau putting the information together, like the preliminary information - when I – what they did, when it was given to me, I said we needed to correct it so we went back to the National Mapping Bureau. There were a couple of cartographers who were involved. KaveGodua, I cannot really recall his name, he is now based in Kimbe, he is from East New Britain. Yes, both of them were very involved in it. So from time to time they would actually come around, help, stay with us, because we had the facility also. So they would come into the office and sit down, work alongside me. That is the process that has transpired. They actually did their part and I came in to do my part and the office of Surveyor and the Department of Lands recognized it that way.

Q: Associate, could I have that map back please. Okay, at the bottom of this map, this is the map that you just saw 27C, 1C for NEWEL. At the bottom - you have already read this -you say, “I, Hudson Hape, Registered Surveyor, certify that the survey represents on this plan was

made by me or under my immediate supervision and was completed on the 31st day of July 2008.” You were already an employee of IT&S.

A: That is correct Counsel.

Q: So I will ask you one final time, and you consider carefully after I read you those provisions about lying on under oath. Did you or did you not draw this map?

A: Counsel, I find it difficult to answer a question because like I said, I am very honest to myself and I have explained myself and processes that were involved so---

Q: Did you draw this map? You have to answer question. I will read you again the Commission of Inquiry Act.

[9.58 am] There is also an offence, you understand, under section 10, it says, “Penalty for refusing to be sworn or to give evidence after being sworn.” It says, “A person appearing as a witness before the Commission who refuses to answer any question relevant to the Inquiry put to him by a Commissioner or is guilty of an offence, again you can pay K5000 or go to jail for two years or you can do both. You can be fined K5000 and spend the next two years in jail.” You understand.

A: That is correct.

Q: Now, you answer this question. Did you or did you not draw this map?

COMMISSIONER MIROU: Mr Hape, are you going to answer this question?

A: Counsel, I have to be honest with myself. Like I have been explaining from the technical side of things, there are a good number of people, you know we advise the cartographers to go through the process of formulating a map and all that because these are specialized skills. So I do not have the – I am not a specializing cartographer and I do not draw maps. Somebody else draws maps, somebody else put the mapping information together and produces the map and my job is to ensure ---

Q: But can you answer the question that Counsel asked you, straight forward question, yes or no?

A: I did not draw the map. That is what I am trying to tell the Counsel. I have not drawn the map, somebody else drew the map.

Q: No, we are not going to go into argument. Counsel asked you a specific question.

A: So, I did not.

Q: So it is no? Your answer is no?

A: Because like I am trying to ---

Q: No, no, no, do not explain. Is it no?

MR TUSAIS: This applies for portion 27C. Are you saying you did not also draw that map, 27C, that is the closest one to us?

A: Like here I am just being very honest with myself how things transpired I have already explained. When every, all those information brought to me, that is the whole process that is done in mapping and survey registration. When cartographers bring this information to me, I actually have a look at it for the correctness of it. And then when I lodge it, I sign for it. That is where my work – because I am not a qualified cartographer I cannot draw maps like that. That is where it is. And I have to be honest to advise the Counsel that that is the process, because cartographers are specifically trained for that purpose to put the maps together, edit the maps and all that. That is not my area or specialty. My area of specialty is go out in the field, take measurements, compute those measurements and then give it back to the draftsman and the cartographer to draw them. So it is the work of the cartographer and draftsman.

COMMISSIONER MIROU: That is why Counsel initially asked you, what is your role as a surveyor? You draw maps or you do the actual physical ---

A: I do surveying. That is why I said I do surveying out on field.

Q: You do a physical survey of the land?

A: That is correct, yes.

Q: Topography ---

A: That is right, in general surveying, anything, yes.

Q: Ridges and stuff which you said you did not. So why did you certify it here?

A: According to rural class 4 surveys those are the requirements. They can put a number of series of topography 1 is to 100,000 topographic map, draw up the boundaries in full consultation with the landowners and then after that is done, the surveyor comes in there. He just correctness of the final survey product. That means, if there are any existing leases that need to be excised out of it so he goes through that process and makes sure that the position of the survey is correct in relation to any other existing surveys or leases. So that is my responsibility. So ---

Q: Now it comes back to the same question that Counsel asked you and I will ask you again. Did you draw these maps?

A: Like I said Commissioner ---

Q: No, yes or no?

A: Physically, I did not draw the maps. I only assisted in them trying to put the information together. So I, actually, in actual fact I never drew the map. Thank you Counsel.

MR TUSAIS: So why did not that person who drew the map certify at the bottom?

A: Because he is not a registered surveyor to lodge a survey plan. That is the process in the Department of Lands.

Q: Sorry? You speak up, speak up.

A: He is not a, sorry, he is – the person who drew the, his job is to draw maps. He is a - that is his position, that is job to purposely draw maps. It is not my job to draw maps. That is one thing the Commission must understand. My job is very specific. That is to undertake ---

Q: Your job is to raunraun and get coordinates?

A: Undertake surveys, yes, that is correct, undertake measurements. That is what I do.

Q: So you provided those coordinates and the map drawer drew the what?

- A: Exactly, correct, Counsel.
- Q: All right, we are getting somewhere. So these coordinates that form those boundaries were given by yourself?
- A: They already formulated the map when they brought it to me.
- Q: No, no, no, wait, listen.
- A: I made the adjustments and corrections only. When the map was brought I had a look at it, I made the corrections, adjustment, like I said, explained to the Commission, I tried to correct it properly so it would be legible, it would presentable, acceptable to the Department of Lands for registration purposes.
- Q: All right, look, somebody sat down and drew these maps from coordinates provided by the surveyor out there whatever ---
- A: Yes, like I was explaining, sorry.
- Q: Wait, wait, wait, wait. These maps were drawn by somebody providing the raw data?
- A: That is correct Counsel.
- Q: Who provided those raw data?
- A: I believe it must have been National Mapping Bureau because they were fully working together with the developer.
- Q: No, no, wait, these boundaries, these boundaries going to Lake Murray towards the west, just before you come to, I am talking to Aibolo now, as an example. Just above Balimo town and to the east Wawoi Falls, I think and Nomad to the north. Who provided those boundaries? You have to follow the Strickland River, come to this point, cut across there and go there and come so the map drawer jots A to B to C to how many letters and came up with this map?
- A: The landowners in full consultation with – if they had a, like we have our provincial officers here, whether they went and saw the provincial officers who assisted them in all these process or whether they went to the Department of Lands and saw National Mapping Bureau together with the company, that I do not know. Frankly, I do not know because I

started on June/July in 2008. I was employed purposely for – because they needed a registered surveyor. So I was not there. That is why because, I do have a valid contract, previous contract, copy of contract in there. So as far as like, I am concerned and from the technical side of things I have explained, my job is to ensure that the surveys are correct and then I can lodge it to the office of Surveyor General for registration purpose. But drawing the plan and all that, putting the information together is done by somebody else. The cartographer can easily do that because the information is all there, presented by way of the topographic map. So in full consultation with the landowners when they identify the boundaries, they are actually deriving the coordinates simultaneously at that time. So that is the whole process. So once the cartographer does this, the surveyor only checks, make sure that that is correct, this is done, the correct application of everything. But for me to draw the maps, no, that is not my job, I do not do that. In every survey process if you ask the private surveyor he says yes, he only does the measurements or either corrections, make amendments. And if I can see drawings if they are not correct, I say, you change this line work, change these sort of things, that is my job. But to draw the map physically, no, I do not draw maps.

Q: Look, maybe, you should, no, you tell the Commission in your own words, I will not question you. You just tell the Commission the part you played in this whole exercise, maybe and then I later I ask you questions. Please.

A: Yes, okay. Commissioner, my part was to ensure that the map was ---

Q: Speak slowly, slowly, let us follow you.

A: Commissioner, my part was to ensure that the survey registration provisions under rural class 4 surveys were complied by. That means the correctness of the mapping that was done because under the rule, class 4 provisions where they actually join maps together, topographic maps together. This process can easily be done by a cartographer because they have sufficient training like me as a surveyor to put those information together. So in essence, they actual do the drawings. I am there to merely facilitate for the final registration of the final plan. My job is to ensure that they have done the correct thing. The coordination of the map is correct, the boundaries are correct, the boundaries are ascertained by the

landowners themselves and boundaries fall within the prescribed boundaries within the rural class 4 surveys.

[10.09 am]

So in the process of documentation the surveyor does the field work, brings the information to the cartographer, he draws the map and then he brings it back to the surveyor for the checking and correctness of everything. Once that is determined, finalized then the surveyor prepares the survey file, check all the calculations, make sure everything is correct and submits it to the Department of Lands. If there are errors on the presentation of the documents the Surveyor General does what they call requisition. So he writes a requisition to the signing surveyor, the corrections that he needs to do. So the surveyor sits down, corrects those information and then presents it back to the office of Surveyor General for final registration, approval and registration. So that is the process involved.

Q: You tell the Commission, what part did you play, what jobs did you do?

A: Yes. So what my part was in essence when they decide to, when IT&S asked me to go in have a look at the maps and then they offered the job to me, I said, these maps are not correct in a certain extent. So I said, we will have to check through everything, what needed to be corrected as a surveyor, I proposed to the cartographers, they went through refining the map in process now. When all the process was completed, when I was satisfied as a surveyor in compliance to the rural class 4 specification, I lodged the survey to the office of Surveyor General and for the Surveyor General to examine the survey file and the correctness of the survey, approve the survey. So that is where the process is.

Q: All right, that is it. So you are not involved in going out and establishing those physical boundaries?

A: No, Counsel.

Q: Who did that part?

A: Like I said ---

Q: Who did that part?

A: Well, nobody did it.

Q: No, no. Come on Mr Hape ---

A: Nobody actually worked and walked the boundaries.

Q: Mr Hape, who collected those what?

A: The information?

Q: Yes.

A: The information ---

Q: Somebody did it?

A: Yes, the National Mapping Bureau guys put the information up together.

Q: Well, who, you put a name to ---

A: Like I said, Kave, and there is another name that I cannot just recall. Yes, KaveGodua was directly involved in it.

COMMISSIONER MIROU: Names are hard to get by this time, your memories seems to ---

A: No, it has been a long time, yes, he has gone. He is actually in Kimbe. His wife transferred to Kimbe Oil Palm so he is working there. I think I can, when I recall the name if I can come and give you the name later?

Q: Do not have to give to me you have to give it in this hearing room. This Inquiry is about, it is a public inquiry you have to give names so everybody knows who was involved.

MR TUSAIS: So you did not collect the raw data?

A: Yes.

Q: You did not draw the map? Your input was very minimal, you just looked over and corrected some aspects which were on. Which aspects were wrong?

A: Checking out the coordination, especially, the position. We were trying to fix the position whether it is placed in a right place. So ---

Q: It is just a technical thing?

A: Yes.

Q: You move it a bit to the left instead of leaving it on the right.

A: That is correct, yes, Counsel.

Q: But somebody told you, okay, these are the borders?

A: Yes.

Q: Down close to that and up there?

A: Yes.

Q: That is why I keep asking you about this. You see, these boundaries are not just lines to people who have come and given evidence. They represent, "Hey, my land is already inside there and I did not give my consent." You see that is why I keep asking you about these things. So who went and collected these data so as a requirement the landowners have to follow that surveyor or whoever around or the land investigator and say, "Oh, my land is this." So that person who draws the map and the land investigations officer then comfortably say, "Yes, these people said yes. Their land can be included." Is that not the position about things like these SABLs?

A: Like I, Counsel, can I make, there were a couple of surveyors who were already employed by this company and they were working on the road and whether these sort of information whatever, whatever they have done ---

Q: All right, we understand you are doing a Pontius Pilate, you are washing your hand off the whole thing. You never involved yourself. Is that what you are telling the Commission?

A: No, my involvement was only for the registration process of it as a surveyor. Like I was explaining the process involved and where the final submission of the survey filed to the Department of Lands and Physical Planning for registration.

Q: Mr Hape, do you know why these surveys were done, especially for the Trans Papuan or Tran Highlands Highway?

A: They were purposely done for a customary land registration purposes. Prior to my arrival in the company and employment, the landowners

together with the developer who else was in there, it is in their full consultation.

Q: They already did it?

A: They already did it. I was given the information later.

Q: So your ---

A: There were people who were already working on it when I arrived. So ---

Q: So your involvement is you never---

A: Very minimal, yes.

Q: You wait, listen to me first. You are treading on dangerous grounds, Mr Hape. You wait for the question and you answer it. That is why I asked you long time, are you drunk or you better tell the Commission.

A: No, I have not had any liquor. I did not drink.

Q: You act very much like you are drunk. A sober person will listen and talk properly. You do that again, I will apply for you to be cited for contempt, you understand. Mr Hape, you ready to be questioned?

A: Yes, Counsel.

Q: So I was trying to ask you, you say you are the company surveyor but you deny having gone in there and done the hard yaka; going, walking around and checking boundaries and stuff. You say someone else did it. Is that what you are saying?

A: Yes. Because, yes, that is one part of it. The other explanation I would add on to ---

Q: The other, you wait. The other explanation is that because this is a rural class 4 survey and the land mass is so huge, you do not really need to go out there and check the boundaries. You can sit in an office and use GPS coordinates to draw lines from one location to the next. Is that what you can do for rural class 4 survey?

A: That is correct Counsel. That is the requirement under Department of Lands rural class 4 registration purposes.

Q: Yes, the Commission is aware of ---

A: Because, yes.

Q: That. Mr Hape, the Commission is aware of that. The boss for Surveyor General's office has given evidence clarifying those issues. You do not need to tell us about those things.

A: Yes, okay.

Q: What we are asking you now is your particular involvement in these four SABLs. All right, just look at your, this map that I gave you for portion 1C that IT&S says portion 1C, Aibolo. That the natural boundaries are bounded by, I think the Strickland River to the west. Is that the Strickland River?

A: Yes, that is true.

Q: And then another river to the east.

A: Wawoi.

Q: Wawoi and another river that flows down. And the line from, just cutting a straight line, those are just – you rule a line from that river to that river. That is not really hard work, you follow the river, the contours or the natural boundaries of the rivers and where there are no rivers you just draw a straight line from there to there. Is that what was done for portion 1C, Aibolo?

A: I think that was what was done here in full consultation with the landowners and ---

Q: All right, for portion 14C too, you follow the – this was following the provincial political boundary for Southern Highlands Province and then you follow another river up. I think it is, there are two rivers, the Strickland and another river that divides 1C and 14C. Is that right?

A: Yes, that is correct, yes.

Q: For between 1C and 27C that is the Fly River and another river, these are just rivers.

A: That is correct, Counsel.

Q: So it was not really a hard job to plot this map because you just follow the river where there is no river you draw a straight line.

A: Well, basically yes, Counsel. That was how it was done.

Q: All right. So in what other way were you involved in the creation of these SABLs?

A: I raised concerns to the company and landowners about the size of the area before I lodged the file, I said the areas were too big and we needed to do, cut them down into smaller size, sizes, maybe to each tribal groups so that sort of thing. When I made this comment or suggestion to the company management, they decided to follow what they have asked me to actually submit these files as what has been produced because that was in full consultation. According to them that is what they and the landowners have agreed. So that is where I was.

Q: When they brought these coordinates to you, just so we are clear about some technical aspects. Portion 27C and portion 1C are both named as AwinPari land. Why are they named the same names when they are different portions of land?

[10.22 am] No, no, I am not very clear, I am not too sure what has happened. But like I said that was what given to me and then I worked on what was given to me.

Q: Yes, but you are supposed to be checking those things apart from those technical coordinates, name, numbering, was that not your job as a ---

A: I think ---

Q: Surveyor?

A: Counsel, I believe because there is one group of people who own that land, I think the Awin, yes, Awin people who own the land so in, like maybe for their own convenience they may have just used one name for both portion or that can happen. They are both same.

Q: They are huge pieces of land, though?

A: That is correct, Counsel.

Q: Why was not they made into just one bit of one portion of land and called AwinPari land?

A: Like I said Counsel, I raise also that issue with the company and the landowner people but I did not get very good respond. In fact, they like, they were refusing to do that. So they adhered to that. Their reason because of the project development stage, all of this area, the current chunk, big bulk of land would be further subdivided to cater for estate development and also road and everything else. So in that regard we will actually break down all these land into smaller ILG groups and then we will commence, we will redo the land investigation report and everything else again. So in the end like in 14C, 1C or 27C and 1C in Aibolo, once the subdivision is done, agriculturally, for agricultural purposes, each ILG would be given a separate, they will be – their land would be excised completely out of this whole portion they will be given a separate parcel of land, separate description. That means a separate portion. And the land investigation report would also be conducted again for that purposes. So the land will not stay as it is. As far as the project that has been signed in 25 May this year, that is the project. So it is the company's initiative trying to work with the landowners, trying to safeguard their land. In other words trying to help them to grant a title to them so that they have a title where they can be able to meaningfully use their land. So this is in full consultation with the landowners. And if the landowners leaders were unable to inform their people clearly I do not know.

Q: Okay, Mr Hape. We just clarify these things first. I was asking about the name that is AwinPari, two blocks adjoining or contiguous piece of land; same name. There is also – how do you - when you are with Surveyor Generals, how do you give numbering systems to portions of land? Do you go by consecutive or willynilly, anyhow, whatever fancy, stage of fancy you give the number?

A: Consecutive, Counsel. So there is a registry system where when, say, today ---

Q: For this, you got 27C, this is the one going up the Tabubil highway and then shooting east, next to it 1C, you drop back. Okay, wait, wait, wait. And then you go to this 14C, you go 14C, you know there is all these,

sounds very confusing. Finally you come down to 1C again, Aibolo. What is that?

A: Okay, the title, the description, the survey is lying basically in the – from the Department of Lands and Survey, sorry Department of Lands and Physical Planning, I correct myself -there is a system in place where all of this country is mapped out in zones, in portions, in milinch and fourmils. So some of these survey they fall in another portion, another fourmil. So because they are in the other fourmil, the numbering system applies. Like, it starts from 1 and continues on. So in this instance, like, IC up north because it is in a different survey zone, that is why it is given 1C, different fourmil. And if you see 1C down here it is also in different fourmil. So they are actually in different but they are in, these are technical areas where the office of Surveyor General ---

Q: Okay, look, we leave it there. It does not really go one way or the other but ---

A: Okay.

Q: It just shows - one thing it shows is that you know ---

COMMISSIONER MIROU: There is no consistency.

MR TUSAIS: Yes, there is no consistency.

COMMISSIONER MIROU: In the registration number.

A: It is just the system that is in place, yes, registry system in Department of Lands.

MR TUSAIS: It is as if people who drew this map really did not give, they did not care and said, “Oh, we will name this, nobody will pick it up, let it go.” I am just making my observations. What do you say to that?

A: Well, that is just the responsibility of Lands officers and yes, customary land administration people and because they have a registry system and Titles people and the office of Surveyor General. The office of Surveyor General has got a registry system where they, when surveys are lodged they check through where the survey falls in which fourmil and milinch. So you will notice at the bottom of the survey plan there is what they call fourmil and milinch. So those are the survey zones, those are where all

the survey zones that are put together to cover up whole of Port Moresby, sorry, Papua New Guinea. So they obviously have very – they may have similar number, they are different, in different survey zones.

Q: You have said that already, that is enough. All right, look, somebody else did the survey but you have been around Western Province for some time after your employment with Ok Tedi?

A: That is correct.

Q: You do know the terrain, as a surveyor, you would notice features, physical features.

A: That is correct.

Q: With these SABLs they just, from the naked eye, they take up almost half, maybe, not half but close to half of whole of Western Province, which is already a huge province. And this land area it represents the better part of Western Province. It is on bit of a higher ground that is where forests exist. Is that a correct statement?

A: My trips out like walking from, like I have covered, yes, like you said, yes. What should I say? Maybe around the 14C area and north tip of Kamilodoso, yes, I have observed some, like, forestation, the vegetation is thick, yes, there is huge rain forest in there. There is not so much of a mountain, it is just rolling hills over at least, distance of a kilometre or two.

Q: Yes, Mr Hape, what I am saying is this land is a land area, it is different from, for example, Lake Murray. That is swampy. It is almost like, yes, it is swampy.

A: Yes.

Q: That also applies to the south of Balimo, this is where all the river estuaries are. It is just water log, it is not very good land. Would you agree that that is a correct physical terrain description of the terrain in Western Province?

A: Yes, according to the presentation.

Q: So the company has effectively got all the best piece of land in Western Province, that is your company IT&SL?

A: As far as I understand the sublease title is to the landowner company not IT&S.

Q: Okay.

A: Not IT&S.

Q: IT&S is the developer. We leave the legal bits to your lawyer, Mr Titus. But under the Agreement that you referred to, the State is obliged to fast track granting of SABLs to IT&SL. You see, IT&SL they have got the best bit of Western Province. That is my observation. What do you say?

A: As far as the lease title is granted under Special Agriculture Business Lease, I think the title reflects it very, very clearly that it was, the title, the sublease title was granted to the landowner companies.

COMMISSIONER MIROU: No, but the title as ---

A: But there was not any sub-sublease to IT&S.

Q: No, that is all right. But the title according to evidence from the chairman yesterday is that it is with your company. They hold the original title and you have been a major player in submitting the tender form on behalf of the companies.

A: But when you looking, sorry, can I say something?

Q: You have been a major player.

A: Commissioner, when you look at the Title Instrument itself, the title is to the landowner company.

Q: So when I asked, when we asked them Mr Aisobi to produce the document, I noted that you provided that copy of these two original titles to him.

A: Yes.

Q: They are the company, North East West Investment Limited does not have the copy of even the original title. It is with your company called Independent Timbers Stevedoring Limited.

A: They are with ---

Q: Of which you are an employee.

A: That is correct.

Q: I do not need to go around the track on this argument. Simply, your company has the title, not the North East West Investment Limited, nor Tosigiba. Is that true?

A: The company ----

Q: The original title is with your company.

A: The company kept the titles for ---

Q: Mr Hape, please listen; listen and answer. Is the title with your company?

A: Yes, it in their position, yes, it is in the company's position, yes.

Q: Evidence is that it is with your company, yes, say so yes. Do not go and beat around the bush and look for an explanation. Just say, yes. Was it you who provided a copy to Mr Foxy Aisobi this morning at the back of this hearing room?

A: Yes, I did.

[10.34 am]Q: Yes, say so. Okay, Mr Hape, I still have a few questions about this map. This follows roughly the road from Gre village to Dringgas, that is the second part of the Trans Papua or Trans Highlands Highway.

A: That is correct, Counsel. The first part is from somewhere to Kiunga, that is done. The second part is from Gre to Dringgas, across the Fly to Duara and across the Strickland river to Nomad and onto WauwoiFalls, 600 kilometers.

A: That is correct Counsel.

Q: Speak up.

A: That is correct, Counsel, that is the proposed road line, yes.

Q: And you have some understanding of the agreement that was signed in May this year, 27 May by the Governor General, the newly elected Governor General Mr Michael Ogió?

A: Yes, very basic; yes, very basic.

Q: Under that agreement, your company, IT&S is entitled or has the right to cut trees, 5 kilometers each side of the road, stretching for 600 kilometers from Gre village all the way to Wauwoi falls?

A That is correct, Counsel.

Q: Now originally that 5 kilometers was not there. There is a previous agreement of 2009 which says the company IT&S was only entitled to cut trees or round logs from 20 metres each way of the road, that is a 40 meter corridor. Are you aware of that?

A: The previous, those things, I am not fully aware of these things.

Q: All right, we will ask Mr Titus. You do not have to answer. But your company has a 5 kilometers, that is a 10 kilometer corridor, for 600 kilometers all the way to Wauwoi falls. Yes, that is right, is not it?

A: That is correct, yes.

Q: Now, over and above that, the agreement says, that 5 kilometer or 10 kilometer corridor for stretching for 600 kilometers, that is not part of this SABL. That is another part of that agreement. Do you agree?

A: Sorry Counsel, can you explain?

Q: My reading of that agreement is that these SABLs, the four of them, do not include that 10 kilometer corridor for the construction of the trans Papua or Trans Highland Highway which eventually link up Port Moresby and places like that.

A: As far as I understand, the road will pass through all those SABLs.

Q: All right, that is your understanding but let us not argue legal issues. I will come back to that. I am telling you, my reading of that agreement is that the road corridor is – the granting of those SABLs does not exclude the road corridor. That is something for IT&S and its subsidiary Pizzah Company.

A: Or joint venture company.

Q: This Pizzah Joint Venture Company to develop that road.

A: There are two landowner companies, Pizzah American Lumber and AwinPariAmerican Lumber if I am correct. So AwinPariAmerican Lumber is responsible for 27C, 1C and 14C while Pizzah American Lumber will be covering 1CAibol. That is the fourmilKamalados Highway.

Q: But the developer at the back of all of these is IT&S.

A: That is correct, it is a JV arrangement, yes.

Q: The arrangement for the ShaukoLandowner company is that IT&S has 90 percent shares and the natives, the local people have 10 percent shares.

A: The shareholding thing is, I am not too sure with that, Counsel.

Q: I am telling you, I had that in there.

A: Yes, okay.

Q: Were you with the company report was undertaken or done?

A: Yes.

Q: Who did those land investigations?

A: I was instructed by the Lands Officers – the Customary Lands Officers from National Function forwarded the Lands Investigation Report and then we sent it to the landowners to have a look at it and that was it.

Q: Was that your function or is it normally be a Provincial Lands Officers from the Department of Lands and Physical Planning.

A: That is correct. It is a function of the Department of Lands at a Provincial Level.

Q: So why did you do it?

A: it appeared to me that the landowners who were unable to facilitate for those things and like provincial functions in here was not able to assist the landowners in those sort of things so what we did was we just

prepared the documents and gave it back to the landowners and see how they would go about it. It was just a funny sort of situation.

Q: All right, you tell the Commission what documents did you prepare?

A: It was the forms for entering the names of the ILG because the ILG, the Land Investigation Report registered ILG members of the ILG formed the fund raising of the Land Investigation Report or ILG enters the names and that sort of thing in the prescribed standard form of the Land Investigation Report so I was instructed by the Lands Department. Customary Lands Administration to do that because they did not have capacity to do it. They were so busy so I just stepped in to assist.

COMMISSIONER MIROU: Is that a matter between Waigani and the Provincial Kiunga Lands Officer? That is a matter between them, not you. I said is that a matter between them---

A: That is correct, yes, Commissioner.

COMMISSIONER MIROU: We will leave it at that.

Q: Okay, so your involvement was, you just sat in the office and gave out forms. Who did you give those forms to? You name some of those, Foxy and the guys who came and gave evidence?

A: That is correct, yes.

Q: So they themselves went out and got the people to fill it in.

A: I suppose to.

Q: Okay, for 27C and 1C, you tell the Commission, how many villages you have given the forms to fill out?

A: The applications were prepared with respect to the number of ILGs registered at that time.

Q: These are forms that I have seen, these Land Investigation Reports for Tumu Timbers. For 1C and 27C, these are basically clans, they do not call themselves ILGs, these are clans. Commissioner, if we could start with perhaps exhibit 27C. I am not sure what the Exhibit is. Commissioner, this was tendered on the first day of the hearing.

It is Exhibit NEWIL27C number3. Perhaps Commissioner if Associate could locate that and then we will put these documents to the witness.27C Number3”.

A: Commissioner, I do not have another copy, perhaps if it could be shown to the witness and---

[10.44 am]Q: Just open to the first lot of what – they split into different – okay, now, just on the first page it says, Instruction No 1/316. Do you see that? No, that is not it. Associate, could you just bring that, I will locate it. Do you see that?

A: It is alright, you just read out what you are doing, yes.

Q: On the first page it says Instruction No1/316. You say you are involved in the Land Investigation Report so I am trying to ask you, who was the person who asked you for this instruction number?

A: I had applied from the Department of Lands for the Instruction Number.

Q: You did?

A: Yes, I did.

Q: All right. And then when you got the instruction number you – just open the page, page 2 – you say, “The actual landowning group is TumtanClan.” Did you put this yourself or – did you write this yourself or someone else did?

A: I wrote them down, yes, I basically filled in these information.

Q: Population of landowning group 1,100. Did you write that down?

A: Yes, all these information was given to me by Department of Lands. They actually produce this information through the Customary Land Registration Division and they passed it onto me so I picked up this information.

Q: No, no. Wait, wait, we go back abit. You say something different here.

A: The information in here was typed out by the Department of Lands, Customary Lands Registration division.

Q: Where?

A: In Waigani, Moresby. So after they prepared the documents, then I just put in the name listing and all these things and we sent it away to the landowners.

Q: Who was that person in Waigani who you were dealing with who typed in all of these?

A: He is the current Director of the Customary Land Administration Acquisition, MrMalu, Simon Malu,

Q: Simon Malu?

A: Yes. And the late Jacob Wafalu, I collaborated with these two guys, we were working together very closely and yes, I think two of them.

Q: At page 6 and 7 these are just the same what. There is a list of clan members; Pauline Awetari, Rudolf Awetari, Carol Awetari, down to Margaret Awetari, they all seem to be from the same family. Can you see that? They are signing on the column to the right. In whose presence did they sign these?

A: Like I said, I just made the Investigation Reports available to the landowners and how they went on from there---

Q: Just speak up please, I am hard of hearing. May be these people want to hear what you say too.

A: We made the Land Investigation Reports available to the landowners and how they went on from there, it is up to them to---

Q: You were not there to witness this?

A: No, I was not there.

Q: Okay, you look carefully at those signatures, just look for a bit. Is there something that strikes you about those signatures? They appear to be written or done by the same person. Just from your naked eyes and without being a handwriting expert, I am saying these signatures look like they were signed by the same person?

A: I cannot really justify that; I cannot really comment on that, yes.

Q: Just look, they look similar in the strokes or the style of writing and signing. Would you agree that they look just the same?

A: To me they seem a little bit different from each other.

Q: But not that great difference. Normally when different people sign, some people write really big signatures from left to right. Others are very small and cramp. They got different styles. This one is same, same, same same, all the way down. You do not have to comment further MrHape.

A: Okay, thank you sir.

Q: Now, on a physical count, there are eight persons of the Tumten clan of Ustore village. Okay now, MrHape, this village clan, Tumten is supposed to have 1,100 persons. Is that what this form is saying? On page two. Tumten clan is suppose to have 1,100 persons.

A: That is in approximation of actual increase or something like that.

Q: No, no, the population. The natural increase is 2 percent. The population is 1,100.

A: I do not know why the officers at the Customary Lands administration - yes, 1,100 and 2 percent.

Q: So if 8 percent signed, this is less than 1percent of that 1,100 people. If there are 1,100 people, 10 percent is 110 people?. That is basic mathematics. I am saying this is less than 1 percent of the whole population; eight people out of 1,100 people.

A: Yes, that is correct.

Q: 11 people would make 1 percent at least. Are you familiar with the land that is requiring consent by a majority before land can be taken away and later on alienated and transformed into lease?

A: It is the Customary Lands Office people who provided that information so how they arrived at 1,000 plus; that I do not very well know.

COMMISSIONER MIROU: But that is the information provided to you?

A: That is correct. That is the information provided to me.

Q: Counsel is asking you, why eight people out of 1,100 signed?

MR TUSAIS: This information is the foundation, along with these survey plan maps, the Land Investigation Report or firstly the survey maps. If there is no survey maps, no lease. Do you agree with that?

A: That is correct.

Q: If that is not properly done, that land investigation report, no lease. Do you agree with that also?

A: That is correct, yes Counsel.

Q: What I am saying is, this is – from this alone, I am asking you, are you familiar with requirement for majority consent? Under the Land Act there must be majority consent before title is granted.

A: That is correct, yes Counsel.

Q: But this is not majority, it is less than 1 percent. Okay, now I am going to talk to – instead of going to what – you accept this because I went through this last night. You listen, this is from Portion 1C. For Portion 1C, the Fuli Clan of Kana village 31 sign it out of estimated 1,100 people, 31 people. Slontia Clan of Gusiore Village, 10 people; Bubeski clan of Komenai village, 31 people; Kusi clan of Kanau Village, 19 people; Wantia Clan of Diabi village, 20 people; Solontia Clan of Pipila village, 26 people; Wantia Clan of Pomnai Village, 38 people; Davakuse Clan of Igubia Village, 34 people; Utakuse Clan of Tekina Village, 24 people; Sakai Clan also of Tegena village, 30 people; Samakia Clan of Pipila village, 27 people; Iamslo clan of Dringas village, 38 people; Hian clan of Drindemasup, 31 people; Husio clan of Diringondo Village, 40 people; Gurupe Clan of Keimom Village 24 people; Surunaigas Rianta Clan of Keimom Village, 50 people; Tiamwenai Dimesup Clan of Keimom village, 9 people; Drinkimom clan of Keimom village, 23 people; Ugasomi clan of Keimom village, 9 people; Geresueumesikue Clan of Diringas village 12 people. Now on that form only one clan member signed out of those 12.

Imesuge clan of Surukmesuk Village, 9 people; Ungasomik clan of Dringas Village, 29 people; Koape Greclan of Keimom Village, 11 people; Gre Dimesuke clan of Dringemasuk village 20 people; Mepu Durangia clan of Gre Village, 24 people. Okay now, that is alot

clans. The total number I compute from these 25 clans at 1,100 people is 27,500 people. There is no time for you to write but I think my calculations are okay. And of the 27,500 people, 680 signed.

A: So the 27,000 here comes out from the listing.

Q: Land Investigation Report.

A: Okay.

[10.56 am]Q: Of that 27,500 people, 618 of the total, less than a 1000 amongst these 27,500 said yes, come and get our land in portion 1C. That is what this land investigation report is saying. I would like you to explain to the Commission if that is a true reflection of this land investigation report that you were compiling on behalf of IT&S?

A: Yes, I provided, like I said, I formulated, I put in the membership, at that time the ILG, registered ILG membership listing that was with us. We just, I transferred it on behalf of the Lands people and gave it back to the Department of Lands and then they gave it back to me so I gave it away to the landowners. So that is the only information that the landowners provided that I actually took out, extracted out and put on the what, application form.

Q: 618 out of 27,000?

A: Yes.

Q: As the person in charge of this land investigation report, these villages they also feature these, the Wisore village, Gre village to Drimgas village, the Drimdemasuk village. They also feature in 27C. You said they are the same landowners who own this vast tract of land.

A: Yes.

Q: Stretching almost to the Southern Highlands border, up near Olsobip, towards the West Sepik boarder and down starting from Kiunga.

A: The other, like after I went through the process when I started coming out to visit the site, like in my – trying to go out to, when we presented the project the Department of Lands informed us on a number of things that we needed to do. We actually on the 25th of February, 2008, did a

presentation of that project because the special projects of the Lands Department section advised us to do that. So there were a number of senior Department of Lands heads attended at the presentation. It was done in full collaboration with the landowner leaders they were there. So we presented all these things to the Department of Lands, what the project was like and what we intended to do. Then the Department of Lands wrote back to us so, I saw also these discrepancies and I also told the adviser, the Director, Special Projects Mr Adrian Abby there and also Simon Malu about the issue and then they said well, the process is still continuing on. When we commence the operation, the land will be also constructed. The land, we will, when we acquire the land, we will further do land investigation reports. Now, when you do the estate development and the surveys of the individual clan, ILGs, we will continue doing land investigation report. So their advice was at that time they felt that it was sufficient for that at that, at this – it is for the purpose of granting the Special Agriculture Business Lease title or landowner company. So as soon as the project commences we will do further more land investigation report, cover which areas that we have not covered merely because of the landowners did not have the financial ability to do those things. And I also during my awareness runs since – yes, as soon as we have met with Lands Department when they did that they wrote to us. They have indicated to us a number of corrective measures we did. So we were well into the corrective measures and then because of the Commission of Inquiry, all that has been halted. So I have actually travelled to the villages, I have explained all the situations and everything else, the process of customary land registration, the land investigation report processes to them already. And I also found out ---

Q: You are a bit late. The horse has bolted, the gate is wide open. They have granted these SABLs already. What will you correct now? These titles have been granted. What is the point of your exercise to correct things?

A: Well, that is the, sorry, Counsel, that was the instruction, maybe instruction or advice from the Department. I have a copy of the letter from the Special Projects Division of the Department of Lands and Physical Planning.

Q: We will come back to these portions 1C and 27C, I read you this list of clans, all right. These are clansmen and clanswomen from around the

Kiunga area up to Gre village, across east to Dringas and come back, basically. So would you agree the villages that I read, they are around the southern part from around Kiunga and going back, stop at the Fly River, Dringas village?

A: That is correct, yes, that is correct, Counsel.

Q: What that implies is that only that number of villages they own this first of all, 27C, all the way up close to Olsobip, that is close to West Sepik. And, wait for it. And they go east or north-east all the way to the Southern Highlands border close to Tari. And they say only these group of people around Kiunga, they own land all the way up to that border. Is that what this land investigation report is saying?

A: As far as I understand, from the beginning I also questioned the ILGs whether that was the full representation of the landowners. Okay, I was informed that that was the full representation of the landowners at that time. Because I also questioned, raised this issue about the representation of the landowners with respect to the size of area that was going to be alienated. So at that time I was told that. But when I, after the whole process was through and when I was, like I was trying to do it and I found out, I was told here in Kiunga, some of the landowners came and told me that we were actually missed out from the ILG registration process. So that is when I learned about it too. Frankly, I was aware of this. I have also made a mention a number of these things to the landowners. But I was told. They came themselves and they told me, oh, we were not included. Like, example, in 27C, north Awin, nearly whole of north Awin, the ILGs were never collected. So I was informed by the landowners themselves here. So in the previous situation I was told also that that is the full landowner and I said, no, it cannot be correct because as a technical person I can know with respect to the size of the land there has got to be a number of ILGs.

Q: So why did you submit those forms to Lands?

A: I have actually done that already. All I – I have already taken all those ILGs, mi gat lo ofis now ---

Q: No, no.

A: Sorry?

Q: At that time when you ---

A: Well, I was led to believe that those are the landowners at that time by them giving me that information. So that is how it was. Like I had instruction from the people from customary land administration to go by that. That is the instruction, that is the way it was done.

Q: Did the company pay money to these guys in Waigani?

A: No.

Q: For them to process?

A: No.

Q: Are you sure?

A: Yes, I am sure.

Q: All right. Did you write to your bosses about paying them monies? You are under oath, you tell us, K60,000. Maybe, this will ring a bell. Did you write to your bosses about paying K60,000 to Lands Department officials so that they could fast track land investigations report which you told your bosses was risky to their career so they had to be paid monies. You remember doing that?

A: Sorry, you going – can you explain the whole process again?

Q: I will show you the letter. Associate could you show this to the witness?

COMMISSIONER MIROU: No, the letter will speak for itself.

MR TUSAIS: Did you send this letter or memo to Neville Harsley, Cliff Frazer, Noah Vikker and John Mulcady? Sorry, Commissioner, Associate for your ---

A: Yes, Counsel, I actually sent this letter, yes.

Q: All right, you read the contents of that letter so all of these people here will know what that contains?

A: Okay, “allegation of corrupt practices.”

Q: Speak up, please.

A: “Allegation of corrupt practices. I wish to bring to you all the allegations made against me of conspiring with the executive management of IT&S -
--

Q: Sorry, speak up a bit. I am getting old, I cannot hear you.

A: Sorry, Counsel. This is me writing to Neville, yes, to ---

COMMISSIONER MIROU: Sorry, it is in the letterhead of Independent Timbers Stevedoring?

A: Yes.

Q: And you are writing to Messrs?

A: Neville Harsley, Cliff Frazer, Noah Vikker, John Mulcadey, they are directors of IT&S. This letter actually came out when I was accused ---

Q: You are the author?

A: Yes, accused of like collaborating with the Lands Department giving them, trying to give them some money. So I was writing to them to clear myself. Okay, “I wish to bring to you all the allegations made against me of conspiring with the executive management of IT&S PNG (Limited) and Department of Lands and Physical to extort K10,000 from company.”

MR TUSAIS: You slow down, speak up. This will be recorded.

A: This is in relation to the K50,000 we were supposed to pay Department of Lands and Physical Planning to process project area 1 and 2 Special Agriculture and Business Lease. It was a management decision to increase the amount to”---

Q: Slow down, slow down, speak up, please.

A: “It was the management decision to” - sorry, “it was the management decision to increase the amount to 60,000 in which I informed director Cliff Frazer accordingly three weeks ago. I had no part in the decision of the extra 1,000. You all needed to clearly understand that the documents that form the land investigation which serves as the basis for the granting of the lease title were formulated inside the PNG office by me and all the landowner representatives because IT&S did not have the time.”

Q: Sorry Mr Hape, I would like you to speak up. You are going way down here, speak up.

A: Yes, “and did not” ---

Q: You can speak louder than that. Please just speak up.

A: “Did not want to provide those substantial funds required by the Department of Lands for its officers to travel to the project area to survey each and every piece of customary land, conduct social mapping, landing identification, resolve all the disputes relating to the boundaries, borders and boundaries of the customary land and carry out all other relevant investigations and prepare the report, an exercise that could almost take 12 months to achieve or more if litigation were perceived by the landowners over dispute related to ownership of land and their boundaries. The Lands Department officers agreed to meet IT&S’ request to quickly formulate a LIR and process it if they were paid a reasonable fee to compensate them for putting their career and professional standing on the line to process the LIR and defend it.” Yes, it is true, I wrote the letter.

Q: Where is this, do you have a copy of the ---

A: It was at the ---

Q: Do you have a copy of the other bit, the second part?

A: I do not think I have it, I do not think I have it, yes.

COMMISSIONER MIROU: But this is the letter that you wrote?

A: Yes, I wrote.

Q: And you signed?

A: I was asked by the Department of Lands because they wanted the money ---

Q: Who asked for the money?

A: I did not ask for the money, they asked for the money.

Q: No, who asked for the money from the Department of Lands, name them, Simon Malu, RomilyKila-Pat?

A: He is the former secretary. The money was for ---

Q: PepiKimas?

A: Yes, it was for the former secretary. He wanted that money so that was it.

[11.09 am]Q: Sorry Commissioner, do you need to ask any more questions?

COMMISSIONER MIROU: Yes, go ahead.

Q: All right, I tender that, first page of a letter written by Mr Hudson Hape, Exhibit 2 I believe.

COMMISSIONER MIROU: Exhibit HH'2". Exhibit HH'2" is a letter from Mr Hudson Hape, company surveyor under the letter head of Independent Timbers and Stevedoring to Messrs Neville Harsley, Cliff Fraser, Noel Victor, John Makahi without prejudice letter, subject matter is allegation of corrupt practices and it is undated.

[EXHIBIT HH2 – UNDATED LETTER FROM MR HUDSON HAPE TO MESSRS NEVILLE HEARLEY, CLIFF FRASER, NOEL VICTOR, JOHN MAKAHI WITHOUT PREJUDICE LETTER - SUBJECT MATTER - ALLEGATION OF CORRUPT PRACTICES]

MR TUSAIS: On that land investigation, before you go to page 10, not the first LIR by Tumten clan? Page 10 – Certificate in relation to boundaries. It says; "I, ImenIte Papa of Kiunga Land, certify that I am in company with MontfordAwetari, walked the boundaries known as AwinPari, 149,117 hectares in Kiunga on the 19 December 2008."Imen Papa has come and told the Commission that he never did any land Investigations and never walked any boundaries at all within Portions 27C, 1C and I believe 14C.

You are the guy compiling the Land Investigation Report so this one you just included it, took it to Moresby and had ImenPapa sign it. Yourself and Michael Titus.

A: He actually travelled for duty and I called the Kiungaoffice and he was not there. They told me that he travelled to Moresby. So I went to the Department of Lands and they said he was in there Moresby for some work. So I caught up with him and I explained the scenario behind the case, I said we formulated this – the Customary Land division in the

Department of Lands asked me to formulate all these things, and that is where it is. Knowing fully aware, like I explained already, I told him that Land Investigation Process will still continue on as soon as the project starts off. So in the interim whatever information I have, because the landowners cannot – they do not have money for us to do this and the company also is in a position that they are refusing to give money, I do not know why. That is the whole reason, I made a mention to my expenses.

Q: You were under pressure by IT&S to fast track it so knowingly you took this form to Imen Papa and said sign, although he did not actually, physical walk the boundaries with Montford Awetari who I believe is present in this hearing room.

A: I asked him and he knowingly signed knowing that we will still revisit the Land Investigation Report in the future.

Q: In the future, after you lodged this with Customary Lands Division for processing and for grant of SABL?

A: Yes. And later on we will still---

Q: No, no wait. Based on this SABL was granted. It was granted based on a lie. You and Imen Papa lied to the Lands Department. You told lies. What do you say?

A: We were only merely following instructions from the Customary Lands administration at the Department of Lands. That is what they told us to do, that is what we did.

COMMISSIONER MIROU: No, you actually prepared the documents. You tell Counsel, what – is it true or you tell the Commission whether you lied to the Department of Lands or not?

A: I guess you can say that if I lied to the Lands Department.

Q: You lied with all these information. This bulky information; that bulky report of yours is all full of lies and deceit. Is that correct?

A: I do not think everything is all lies. Some may, some may have not.

Q: Not only that. Counsel is only referring to one part. If Counsel were to go through the whole 81, would you answer to that as being saying,

“some of them were okay and some are not okay.” How will you answer to the other 79 or 80 that Counsel referred to? If we go through the whole lot of them, we will spend the next two weeks here. What is it? Yes or no? Did you lie to the Department Lands with that information you had in the Lands Investigations Report?

A: Yes, I lied to the Lands Department.

Q: You lied? Thank you.

Q: Okay, MrHape, just on the last page, page 13. Would you look at page 13 please? This is the recommendation as to alienability. Now you undertook as you described yourself as an agent, the land compilation of the land investigation. What is the normal procedure for signing of this bit, the recommendation as to alienability? Who is supposed to sign?

A: I think, yes, the Provincial Administrator or District Administrator?

Q: It is the Provincial Administrator as delegate of the Secretary for Provincial Affairs who is trustee for customary land. That is the legal provision. Do you accept that?

A: That is correct Counsel.

Q: At that time it was Mr Henry Hungabros who was the Administrator for Western Province – Nelson, not Henry; Nelson Hungabros. But he was not willing to sign these papers that is why you went to Mr Ronald ManaseDMonai. Is that the case?

A: When the Department of Lands Customary and National Function advised me to execute these things, sorry, when Imen in his presence, he told me – also made a mention that the District Administrator was there. So we took up the matter with the Department of Land and they said it is okay for the District Administrator to sign. So we invited the District Administrator if he could sign.

Q: And he signed in Port Moresby on the 10th floor of the Pacific View Apartment?

A: No. They were actually based at Lamana Hotel.

Q: So you signed these at Lamana Hotel?

A: That is correct.

Q: MrDMonai?

A: That is correct.

Q: MrDMonai, he never knew anything about his investigation. He could not be independently verify that; first there was no landownership issues.

A: No.

Q: So again, this is a lie. You just say, walked in, you just said, “Hey, MrDMonai come and sign this paper.” Is that what happened?

A: I presented the documents to them and I explained where things were and I was advised by the Customary Lands Administration Division and I just left it to them. I said, this is what the Customary Lands Administration people are telling me to do so I have given it to you, so you want to sign – it is up to them to make a point, whether they will want to sign or never sign. There was no duress, they were never forced or anything else. I explained myself very clearly that I was instructed by the Customary Lands Administration to do that.

COMMISSIONER MIROU: They will sign if you paid them money? You paid them money?

A: I never paid them money. The only money like---

Q: The company paid them money for signing the---

A: I cannot really remember whether – because the money side of things is that Management deals with it so I remember Imen Papa one time he needed some fuel money because he had a hired car, two of them maybe had a hired car. So I asked the boss if we could assist them with some fuel money; they did not have fuel money. So if I can remember correctly, it is about K400 that we gave him.

Q: Or is it that you heard this evidence from MrImen Papa during the process of these proceedings that you are only here to confirm what MrImen Papa said.

A: No, I have a record of it in my file so I can provide – produce the report - record.

Q: Can you provide that letter?

A: It is only a voucher that he signed receiving K400.

Q: Yes, I want to see that voucher. The Terms of Reference also covers corrupt activities. So our Terms of Reference also covers this type of malpractices by Government officials and officials want to indulge in such activities. That is how serious it is.

[11.20 am]A: In the contents of the letter I have advised the Company in so much---

Q: That is why the Terms of Reference that we are guided by also includes covers these aspects; malpractice, corrupt activities. Unless you want me to read out the Terms of Reference and you are fully aware of that. So you will provide to the Commission the voucher and any other payments that were made to Government officials in the process of procuring that land investigation report. So the presentation that you made to MrDMonaiin Granville Hotel, that is also a sham and a lie. You deceived the Lands Department.

A: Well, that was the instructions that was given to me by the Department of Lands, Customary Land Administration. I just merely followed the instruction.

Q: MrHape, we are fully aware of the process and this is one of the aspects of that process; recommendation to alienate the land is on the delegate of the custodian of land which is the Secretary for Provincial Affairs. That authority is exercised by the Provincial Administrator of each Provinces in the country. How you used MrDMonaito take his signature, is undermining the head of the Provincial Administration in the province. That is how serious it is. It was not even signed in Kiunga; signed in Port Moresby at a Hotel. You realize how serious this is? And you keep telling the Commission that everything is okay, as far as you are concerned. This Lands Department, you took ownership, this is your work. You take ownership of that work. Tell the Commission that you own the document, not the Department of Lands. This is your own work. Not only that report, these three other documents as well; the same bulky documents called, "Land Investigation Reports." You take ownership of them and take ownership of it, become responsible.

Counsel, MrTusais.

MR TUSAIS: Did you pay any - did the company pay any money to MrDMonai?

A: No.

Q: You do not know? It may have been paid but you do not know?

A: As far as I am concerned, I do not recall anything, that we have paid some money to MrDMonai or Imen Papa.

Q: Okay, I am just going through 27C. But like Commissioner said, if I went through each of these 26 clans who signed, it will probably sit till Friday, so I will put this to you. I have marked them out so you take it from me that I am sure about what I am saying. All of these reports, the boundary walk was signed by MrImen Papa? For all of these, that is from 1 to 26. Do you accept that?

A: Yes. We are of the opinion that we will still do the Land Investigation Report in the process of development so that is where we are; where we have been.

Q: But you also accept that all of these 26 Certificates relating to walking the boundaries are alike? Yes or no?

A: Yes, in the sense, yes, they are like, yes.

Q: That is for 1C. For 27C as well, you take my word. I have gone through all of the boundary - certificates have been signed by Mr Imen Papa. And they were also signed at the Lamana Hotel. Is that what you are saying?

A: That is correct.

Q: Okay, so all of these are a lie. Imen Papa never walked those boundaries. And you knew that he was committing a lie when he signed these boundaries so both of you are telling lies.

A: He had the liberty at that time whether to sign or not to sign. See that is what I am trying to say.

Q: But when he signed, you knew---

A: Well, if he did not sign---

Q: You wait, wait.

A: Sorry.

Q: He signed, that is a fact, he signed. So when he signed, he knew what he was signing and you knew that both of you are telling lies. Is that true?

A: Yes, you could say that.

Q: Portion 14C, Tosigiba. Again, take it from me. All of these forms were signed by Imen Papa all on the same day and you gave us the location at Lamana Hotel. Now for Portion 14C, there were 28 recorded clans. This is all the LIRs, Land Investigation Reports. When Imen Papa signed, he was also telling lies. He was signing and saying, "I walked", but you never walked. For the record, is that true?

A: I guess, yes.

Q: Now, I will just go back to Portion 1C, if I may. That is the one you have before you is it, 1C or 27C?

A: Sorry?

COMMISSIONER MIROU: 27C.

MR TUSAIS: The LIR, is that for 27C or 1C?

A: This is 27C. I have 27C.

Q: Alright, for 27C, you go to number 17. I have clipped my what together but if it is hard for you, it is ---

A: Page 17 or?

Q: No, it is not 17. It is LIR No 17. It is DrimKimom Clan of Kimom Village. Let me show you mine. May be it should be easier. Let us just see that, it is contained in there. Now you just go through – flipthrough and I will ask. Okay, if you come to page 4, that is where MrImen Papa is supposed to sign. He did not sign that, did he? Page 4. Did he sign or he did not?

A: No, he did not sign.

Q: Okay, just speak up please.

A: He did not sign.

Q: Page 5, page 6, go to the last page. As to the schedule of owners and the list of clans people, they are listed but did any of them sign?

A: No, they did not sign.

Q: The declaration of custom in relation to land tenure on page 7, did anybody sign that?

A: No.

Q: As the form saying, "appointment of agent or a leader", this is the form that is co-signed by ImenIte Papa. Was that signed? Page 8.

A: No.

Q: Speak up please.

A: No, it was not signed.

Q: All right. Declaration of Recognition of Custom. That section, it is also supposed to be signed by executive of clan and counter-signed by Imen Papa. That is not signed is it?

A: That is correct.

Q: And certification in relation to boundaries, that is not signed? Is that right?

A: That is correct.

Q: The final page, recommendation as to alienability. That was supposed to be signed by Nelson Hungrabros. Is that his name at the bottom?

A: Yes.

Q: Did he sign?

A: No he has not signed.

Q: So that promise – because nobody signed. Not a single person. Did you see that or you overlooked it or?

A: Yes I have seen it.

Q: But you sent it off to the Lands Department. Did you try to go out there and say, “Oh, where are these Lands men. Come and sign before I send it?” You do not have any comments do you?

A: No, I do not have any comments.

Q: All right, Associate, just show the Commissioner what we are talking about first before you bring it back.

[11.33 am]COMMISSIONER MIROU: Yes I have noted that most of it is blank.

MR TUSAIS: Thank you. Associate just bring that back to me.

Mr Hape, would you accept from me - we can verify this if you want - but would you accept from me that insofar as Portion 27C concerned, there are three other Land Investigation Reports which are blank. No official of the Lands Department signed, no Administrator signed, none of the clansmen signed. And these relate to No 21 - Dimesuke Clan of TurutMesuk village; No 25 –GreDimesuk Clan of TimindMesuk Village; and No 26 – Mepudurakia Clan of Gre Village. Would you accept that as a correct statement, if not I will show you now those forms?

A: Yes, they may be correct here, yes.

Q: None of them have been signed. You submitted blank forms to the Lands Department. Were you so confident that this will get accepted anyway, you did not really care.

A: Maybe I did not check the contents of the what---

Q: You did not care, I am putting that to you. You said, I will just submit it as it is.

A: If I had checked, maybe I did not check. Most probably I never checked it so.

Q: That is why I am putting to you, you had connections already in the Lands Department so you did not really worry about going through and

checking through making sure everything was in order. What do you say?

A: Well, this is the advice they gave me so I just followed what they wanted to do so I just merely followed what instructions given to me, what was advised to me.

Q: Okay, Mr Hape, for Portion 1C, I have also find out those blank LIRs. Now Portion 1C, if you want I will show you, but I will read them out now. LIR No 5 – (1) Waitia Clan of Biabi village; (2) Ugasomi Clan of Kemom Village; (3) Dinesuke Clan of Turukmesuk village; and (4) GreDimesuke Clan of DrimDemasuk Village. Nobody signed, no public servant signed, no landowner signed. You just sent it off to the Lands Department. Do you accept that?

COMMISSIONER MIROU: Do I hear an answer?

A: May be I did not check the contents of the documents.

Q: So you agree that there were blanks in that---

A: Yes, I think they were blanks that I signed; I sent off.

Q: Okay, now look, I have got some other questions. You said you exercised existing leases or sorry it was not you, you did not draw those maps. But the leases that are in there were excised so I am asking about Rumgenai Hospital. Is that part of 27C.

A: Yes, I guess, yes. That is correct, that is correct.

Q: All right. There was a witness who came to this inquiry, very concerned that he cannot do anything with his missing lease because your company is now, well it has title, through the SABL over the missing lease. Would you tell the Commission and let the public know, you know, I do not know, what will you tell them? Is Rumgenai within and covered by the SABL or they want to know?

A: It is an existing lease so it has got its own boundaries on the ground, also recorded by way of the survey plan. So what we did, when we did the customary lands boundary of 27C it is excised out there. I do not know whether it is depicted in there. My last visit up there, people came and raised these concerns with me so I explained to them, the existing lease is not affected by the SABL. The boundaries are also shown. That is why

when they are excising the boundaries of the existing leases are shown on the face of the plan, that means that there is a lease there. So it is not part of the other new survey.

Q: Mr Hape, you are an expert, you are a surveyor, would you, if the Commission asked you, go to your office, look at your maps and come back to the Commission later on in the week and just tell the Commission, whether these various leases granted or issued to the Evangelic Church of Papua are covered by those four, at least three of those SABLs. I will read you the names if you know, you answer, if not we will ask you if you could go, come back and just reassure this Commission that the SABLs held effectively by the developer company, the IT&S do not cover these leases.

The first is Atkamba, it is an airstrip. Do you know if this falls amongst one of those four leases; SABLs?

A: Atkamba along the Alice River or?

Q: I am not sure, I am not from here. If you know, you tell me.

A: I think Atkamba is out here. Atkamba is outside of the lease area.

Q: The Amo Airstrip?

A: The Amo could most probably be inside Portion 14C – It could be in 1C or 14.

Q: Depepari Airstrip?

A: I do not know whether they have existing leases in the Department of Lands and Physical Planning. If there were leases over these areas, they would be depicted on what they call Milinch maps and fourmil maps but according to my search in the Department of Lands, these leases were never drawn and portrayed on the milinch map so that draws the conclusion that there may not have been leases so I am not too sure whether there is an existing lease over those areas. Former airstrip?

A: I do not know whether there is a lease existing.

Q: Hauwewemai Airstrip?

A: No, I am not too sure.

Q: Kesalipi Airstrip?

A: I am not too sure.

Q: Koininapi Airstrip?

A: I am not too sure whether there is an existing lease or not.

Q: Moubulu Airstrip?

A: I do not know.

Q: Opo Airstrip?

A: I do not know.

Q: Runginai Airstrip and Health Centre? 53 almost 54 hectares.

A: There is an existing lease for that. I am aware of that lease. Runginai like I have said in the Inquiry, the areas that I have encountered through my search were Runginai, Nomad township and Kiunga and adjoining areas up these way.

Q: Suabi Airstrip?

A: I am not too sure about the lease, whether there is an existing lease or not.

Q: Vehebi Airstrip?

A: I do not have any idea.

Q: Okay, I am going to have this copied right now as we speak and you go back, you ascertain from your office records and you come back and you let the Commission know, tomorrow or Thursday.

A: Okay. Yes, I will do a search through the Department of Lands for Lands file archive system and if they exist---

Q: If you came on Thursday, this is hypothetical and told the Commission, yes they are within the SABL site, what would that say? I am saying, it would show that you never did your homework and you make sure you check that there are other existing leases which pre-exist these SABL and should be taken account of and noted.

A: Counsel, if there was a lease, the lease would depict correctly and accurately on the noting maps. Now, when I investigated – searched the noting maps, there are no indications of those leases so I know that there are airstrips existing in those sites whether they were probably surveyed and acquired off from the landowners, that I do not know. But I will try my best to establish those, whether they have records from the Department of Lands of acquisitions and all these sort of thing.

Q: Okay, I am coming back to another point I raised earlier. You admitted or you considered that for Portion 27C, the northern part of the lease, people were never consulted which is reflected by one person from the Olsabi area testifying that.

A: Yes, that is correct. I was also informed about it, yes.

Q: Is that also approval for 27C – stretching to the Southern Highlands Province? 1C, excuse me 1C.

A: Yes, that is true. Like I was saying, according to the show of the registered ILGs, I drew the conclusion that that was not correct so I also advised and I was told that that was it, that was the only available - those are the landowners of the registered ILGs. But then later on I find out that by coming to site and after all these processes were executed, I found out, I was advised that there were other ILGs that were never conducted. So I went back to the landowner leaders and I said, is it true that these ILGs were not consulted. They said, yes. Why did you not tell me at the first place. So really I am not trying to say, I am blaming the landowners but like I was never informed correctly at that point of time when I was in the process of trying to execute this, otherwise we could not have gone into all these execution of the customary land leases. Had I was given the correct information at the right time at the earlier stages, we could have done the correct thing.

Q: For Portion 1C, it true that there is a lot of villages out there, a lot of people from – out from Dringas Village and all the way to ---

A: That is correct.

Q: Wait, wait, I have not finished. All the way to the Southern Highlands border, close to Tari. May be some Tari people too, they have got parcels of land in that area, they did not say yes. Is that true?

A: That is correct.

Q: So these SABLs, Portion 1C and 47C, they are flawed? Majority of people did not give their consent. Are you saying yes?

A: Yes, you can say that, that is correct.

COMMISSIONER MIROU: And we had a witness who walked eight days to come here to testify that she does not know about this thing from Nomad. And she cried here. How do you feel about that? That is the feeling people have. If she can walk eight days from Nomad just to come to Kiunga to tell this Commission how she feels about those things? How do you feel about that? That was on Friday. What was her name, Counsel? She walked eight days to get here.

MR BOKOMI: Her name is Viola Bugaebo. MrsBugaebo.

COMMISSIONER MIROU: And she cried there. That is the place where you are sitting, to talk to this Commission about how she feels about her land was alienated, taken away from her because of the things that has happened. And she may not be the only one. There could be more and there will be plenty having the same feeling.

MR TUSAIS: Sorry, Commissioner. I would like to hand this to the witness. This is already being marked as an exhibit. It is Exhibit 27C"8". It is a statement by Mr MaxAko and others regarding Rumginai and others. The witness could go through the names listed at the back, they have got coordinates---

[11.47 am] COMMISSIONER MIROU: Got a list of, yes.

MR TUSAIS: Yes, latitude, longitude, I think and map readings and if the witness could come back to this Commission by Thursday and tell the Commission whether those airstrips and other leases fall within ---

COMMISSIONER MIROU: Mr Hape, the Commission will direct you to ensure that you get enough information on those; that list of coordinates on those airstrips marked on that letter and if you can produce to the Commission on Thursday morning whether they are within the SABLs 14C, 1C, 27C or outside of it.

A: Yes, this ---

Q: So there is no need for you to comment on it. I am directing you to produce to the Commission on Thursday. Yes, thank you Counsel.

A: Sorry, what was the concern of, excuse me, sorry, what was the concern, that I will verify whether they have existing leases or?

Q: No, there is no need to comment on it. You do your homework and then bring it on Thursday.

A: Sorry, so what am I supposed ---

MR TUSAIS: Just find out whether they fall within any of those SABLs?

COMMISSIONER MIROU: SABLs or not.

MR TUSAIS: 27C, 1C, 14C and 1C again, 1C, Aibolo or whatever you call it. Yes, these are existing leases; government leases granted to the Mission.

A: Okay.

Q: And they have raised concerns you are the best placed person to come to this Commission and reassure them. They are very worried.

A: Okay.

Q: Commissioner, I have no other questions unless you, Commissioner wishes to ---

COMMISSIONER MIROU: I have no questions to ask Mr Hape except to thank him for submitting to the jurisdiction of the Commission and answering our questions. You are excused until Thursday to produce further information on those coordinates of the airstrips, whether those airstrips fall within the SABLs or outside of the SABLs that the Inquiry is looking into. You may step down from the witness box.

THE WITNESS WITHDREW

MR TUSAIS: Commissioner, the next witness is Mr Michael Titus. But I think it is going up to lunch. Perhaps we start promptly at 1.30 and ---

COMMISSIONER MIROU: Yes, 1.30. We will adjourn proceedings to 1.30.

MR TUSAIS: Hope to get to his evidence on time.

COMMISSIONER MIROU: If there is any other - no other business we will adjourn proceedings to 1.30 this afternoon for further examination on Mr Titus. Thank you.

LUNCHEON ADJOURNMENT

[1.40 pm]THE CHAIRMAN: Yes, thank you, Counsel.

MR BOKOMI: Thank you Commissioner. For this afternoon, Commissioner, you will recall that you issued directions yesterday and for Friday for MrImen Papa and MrIpsahBiyama respectively to provide certain document to the Commission. The direction to Mr Papa was for him to provide copies of his vehicle registration certificate in relation to the vehicle that he is now using. That is the Toyota land cruiser 10-seater, brown in colour, registration number CAX765.

Mr Papa?

Mr Papa is not in but he has provided copies of the Certificate of Registration.

COMMISSIONER MIROU: Okay, the certificate. Is Mr Papa in?

MR BOKOMI: He is not in. I think he is still on his way here.

COMMISSIONER MIROU: Okay, we will probably deal with it later. His vehicle is outside.

MR BOKOMI: I believe his vehicle is at the back.

COMMISSIONER MIROU: He is here. Mr Papa, please come forward.

MR BOKOMI: Yes, Mr Papa, please.

MR ITE IMEN PAPA, Recalled.

XN: MR BOKOMI

MR BOKOMI: There are also purchase documents here including Decision No 3.0.7/2011 adopted at the meeting No 01 of 2011 in relation to purchase of two new Land Cruisers 10-Seater Station Wagon; one for Division of Finance and the other for Lands and Physical Planning. That is from the Western Provincial Administration. All these documents are there.

Could you advise the Commissioner what those documents are and then we can read into---

A: Yes, thank you.

COMMISSIONER MIROU: If you can identify each of the documents you are holding in your hand?

A: Commissioner, this front page that I have is Certificate of Registration and Insurance for the vehicle that is sleeping at the back. Second page is the Motor Vehicle Inspection Report from the Department of Transport, when they purchased the vehicle they did the inspections there.

Q: Which Inspection Report?

A: The inspection for the vehicle from the Motor Vehicle Inspections, Department of Transport. I also have a Certificate of Road Worthiness here, Registration No. CAS765 Toyota on the 2 December 2011. There is another one here, it could be the same one. There is another one here, Department of Transport, a Motor Vehicle Inspection Report, Western Provincial Administration, PO Box 347, Tabubil, Western Province. When the vehicle came in, after few months I took it – first 5,000 kilometers and then I took it out for first service at Tabubil, the branch of Ela Motors is in Tabubil so and then came down and second one was just recently went down for service.

Q: We can have the most current one and the Registration paper will do. That is okay, those other documents will suffice. You can hand the documents up.

A: Yes. Also we have Provincial Tenders and Suppliers Board decision on the purchase of this one plus the other one is for the Division of Finance

and other one is for the Lands. So two of them were purchased at the same time by the decision by the Provincial Tenders Board.

Q: Okay.

A: The requisitions are there.

Q: General expense forms and the FF3 and the FF4?

A: Yes. And this other – this is the cheque copy from the Provincial Government.

Q: Thank you. I will receive that and tender that into evidence so thank you for producing the documents.

Exhibit ImenIta Papa is IIP”1” – That is the Certification of Registration for Toyota Land Cruiser 10-Seater Registration No. CAX 765 and other documents relating to the Registration documents, the bundle of documents including the tender documents and purchase Invoice or cheque is Exhibit IIP”1” . Thank you.

[EXHIBIT IB1 – CERTIFICATE OF REGISTRATION FOR TOYOTA LAND CRUISER 10-SEATER REGISTRATION NUMBER CA765 AND OTHER DOCUMENTS RELATING TO THE REGISTRATION DOCUMENTS, THE BUNDLE OF DOCUMENTS INCLUDING THE TENDER DOCUMENTS AND PURCHASE INVOICES OR CHEQUE]

You may step down.

A: Thank you Commissioner.

THE WITNESS WITHDREW

MR BOKOMI: Commissioner, we will get copies of those later from you. The other witness who was under Commissioner’s direction to produce documents in relation to the matters that he was involved, he is MrIpisahBiyama, the District Lands Officer for Balimo. Commissioner, you would recall he was directed by your good self from Friday to furnish the respective land investigation reports for the file SABLs which he was involved in conducting land investigations for in the Balimoarea, Commissioer, namely, the SABL held by Haubawe Holdings Limited, Foifoi Limited, Godae Land

Group Incorporated Limited, Mudau Investments and La-ali Investment. I have got copies here. MrBiyama is present in the hearing room now.

Please Mr Biyama.

IPISAH BIYAMA, Recalled:

XN: MR BOKOMI

COMMISSIONER MIROU: MrBiyama please take your stand. Thank you for attending the hearing this afternoon in response to my direction to you on Friday 19 November asking you to produce to the Commission a set of reports that you prepared. So we will receive those reports into our evidence.

Okay, if you can go through each one of them and pass them onto me.

MR BIYAMA: Thank you Commissioner, Defence Counsel.

COMMISSIONER MIROU: What is the first document?

MR BIYAMA: As per direction from Saturday, asking me to provide the signed documents for the five Land Investigation Reports for WauweGuavi, Nicholas Laba, oil palm project.

The first document I have here is for Haubawe Land Group.

COMMISSIONER MIROU: Okay, you can hand it up.

[1.52 pm] Exhibit in the initial of IphisahBiyama is IB2 is proposed nucleus oil palm estate Wavoi, Guavi, Tiavi concession area - Kamusi Land Investigation Report. That is IB2.

[EXHIBIT IB2 – PROPOSED NUCLEUS OIL PALM ESTATE - WAWOI, GUAVI, TIAVI CONCESSION AREA, KAMUSI LAND INVESTIGATION REPORT]

COMMISSIONER MIROU: Yes, continue.

MR BIYAMA: The second Land Investigation Report is for Godae Land Group.

COMMISSIONER MIROU: Exhibit IB3 is – so the first one is for Haubawe ---

A: Habawe Land Group.

Q: And this one is for Godae?

A: Godae.

Q: Okay, the second Land Investigation Report is for the Godae Land Group. That is IB3.

[EXHIBIT IB3 – THE SECOND LAND INVESTIGATION REPORT FOR GODAE LAND GROUP]

Yes?

A: The third Land Investigation Report is for Mudau Land Group.

COMMISSIONER MIROU: Exhibit IB4 is the Land Investigation Report for Mudau Land Group.

[EXHIBIT IB4 – LAND INVESTIGATION REPORT FOR MUDAU LAND GROUP]

Yes?

A: The fourth Land Investigation Report for the same project is for La-Ali Land Group.

THE COMMISSIONER: Exhibit IB5 is the Land Investigation Report for La-Ali Land Group.

[EXHIBIT IB"5" – LAND INVESTIGATION REPORT FOR LA-ALI LAND GROUP]

Yes?

A: The final Land Investigation Report under this project is Kubie Land Group. Commissioner, I wish to make my clarification here and some justification. Foefoe Holdings is the name of the company. The land investigation was done under KubieLand Group.

Q: Okay. Thank you for clarification. The Land Investigation Report prepared by MrIpsahBiyama is Exhibit for Kubie Land Group which is now held under Foifoil Landowning company is Exhibit IB6.

[EXHIBIT IB6 – THE LAND INVESTIGATION REPORT FOR KUBIE LAND GROUP WHICH IS NOW HELD UNDER FOIFOI LANDOWNER COMPANY]

Thank you Mr ---

A: Commissioner, another additional information.

Q: Yes?

A: As per requested by the defenceCounsel was those who asked me to walk the boundaries are pertained in the report – in the Investigation Report on pages 11 and 12 it varies in taking the individual land investigation reports. Thank you.

MR BOKOMI: Thank you Commissioner. We will also be requiring copies of those.

COMMISSIONER MIROU: You require these ones to be copied?

A: Yes.

Q: I will hand it back to you Counsel and---

MR BOKOMI: Yes, thank you. We will hand them to you.

COMMISSIONER MIROU: Is there any additional matters to be required of MrBiyama?

MR BOKOMI: No, but perhaps a reminder to him that he is still under oath and under summons. So based on our perusal of these Land Investigation Reports, we will be able to be in a position to question him when we mention these matters. So perhaps if he can be advised that he readily avails himself when called upon by the Commission.

COMMISSIONER MIROU: MrBiyama, these matters will be heard in the next day or so; La-ali, Godae and these matters here so Counsel will look at them and we will require further attendance particularly in our examination of the Land Investigation Reports so please be around the vicinity of the hearing room

so that we can easily call upon you to come forward and assist us with our Inquiry. Thank you for producing the reports as per our direction.

MR BOKOMI: MrBiyama, for your record again, I will show you this Land Investigation Report for land described as Portion 1C, Aibolo held by Tumu Timbers Development Limited. From the evidence that you gave, you were involved in this. Could you tell the Commission to what extent you were involved?

A: Is this Tumu timbers?

Q: Tumu Timbers. Did you do the Land Investigations or not?

A: Thank you Counsel. Commissioner, as I have mentioned in my first hearing over the weekend on the Saturday and in my affidavits, I denied the fact of physically carrying out the Land Investigation for Tumu Holdings. But I was asked to sign papers in Moresby.

COMMISSIONER MIROU: Who was involved in the investigation?

A: I denied the fact that I was not involved in the Land Investigation. There was no physical land investigation by me. I was only asked to sign documents in Moresby.

Q: Who asked you to sign?

A: Michael Titus was there with me and Hudson.

MR BOKOMI:Hudson who?

A: Hudson Hape.

Q: Hudson Hape?

A: Yes. When I first saw my counterpart sign, I had to sign the paper.

Q: Who is your counterpart?

A: District Lands Officer, North fly then that time was Imen Papa. On my first accord I refused to sign the document, walked downstairs on the 10th floor from Pacific Place, formerly it was---

MR BOKOMI: Pacific place or Pacific View Apartments?

A: Yes, something like that but formerly ---

Q: Hugo's building.

A: Hugo's building, yes.

Q: Then it should be Pacific View Apartments.

A: Pacific, okay then.

Q: Pacific place is the building opposite IRC Building down town.

A: I rushed down the stairs, walked all the way down, not on the lift. Hudson followed me down, I swore him. I said I am not signing documents because I did not physically take part in the actual land investigation. He asked me, we pay you money, I said, f.....you with your money. Sorry for my slang language but that is exactly what I said to him. Thank you Chairman. That is the language I used to him.

COMMISSIONER MIROU: Okay, we can accept that as part of the conversation.

A: That is how I expressed myself to him. Thank you.

MR BOKOMI: I think most of his evidence is already in insofar as this particular matter is concerned. It is just for him to basically be careful. I would ask that, that particular Land Investigation Report in relation to Tumu Timbers Development Limited, in respect of Portion 1C in relation to the land described as Aibolo, be tendered into evidence as marked as Tumu Timbers Development Limited Exhibit No 1.

COMMISSIONER MIROU: Thank you. The Land Investigation Report for Aibolo, which is now owned by Tumu Development Limited is Exhibit Tumu Development No 1.

MR BOKOMI: Tumu Timbers Development. That is the name of the company.

COMMISSIONER MIROU: Tumu Timbers Development Limited No 1. Exhibit Tumu Timbers Development Limited No 1.

[EXHIBIT TUMU TIMBERS DEVELOPMENT LIMITED NO 1 – LAND INVESTIGATION REPORT FOR AIBOLO]

[2.02 pm] COMMISSIONER MIROU: Yes, Counsel?

MR BOKOMI: The same would apply to that exhibit. We would make copies available to you Commissioner, at a later date.

COMMISSIONER MIROU: Thank you Counsel.

MR BOKOMI: Thank you.

COMMISSIONER MIROU: Yes, Mr Biyama, you may be excused until we require you.

A: Thank you Commissioner, just before I leave, I wish to apologise to the Commission and the general public for the obscene language that I have used. Thank you very much.

Q: Yes, that was something that was said during that time so it forms part of the evidence ---

A: Thanks.

Q: As to how you felt. So it may sound derogatory but that was the line of conversation you undertook so it is part of the evidence.

A: Evidence, thanks a lot.

Q: Thank you. You are excused.

THE WITNESS WITHDREW

MR BOKOMI: Thank you Mr Biyama. Commissioner, Mr Tusais still has one more witness to run through with his evidence. I leave the table for Mr Tusais. Thank you.

COMMISSIONER MIROU: Thank you Mr Bokomi for your assistance this afternoon. We may proceed with the other witness. Mr Tusais.

MR TUSAIS: Thank you Commissioner. I call Mr Michael Titus. He is present at the back.

COMMISSIONER MIROU: Mr Titus, please take the witness box and Mr Sarufa, could you swear Mr Titus in. Thank you Mr Titus and first of all, let me thank you for submitting to our jurisdiction under summons. And I think you have prepared yourself to assist the Inquiry further with the questions that Counsel will be asking of you. So thank you for attending this afternoon. Mr Tusais, you may proceed.

MICHAEL TITUS, Sworn:

XN: MR TUSAIS

Q: Good afternoon. Your full name is Michael Titus?

A: That is correct.

Q: You speak up, we need to record.

A: That is correct.

Q: You are a lawyer by occupation and it appears you are self-employed as Titus Lawyers?

A: That is correct, Mr Tusais.

Q: Your address is PO Box 472, Konedobu, NCD?

A: That is correct.

Q: You also have another address, it is Offices of Pro-Max Limited?

A: Yes.

Q: Section 2, allotment 7, Emirau Street, Kavieng, New Ireland?

A: That is correct. That is where my current practice is.

Q: So you are operating out of Kavieng?

A: I am operating in Kavieng, yes.

Q: You attained your law degree at the University of PNG or Papua New Guinea, Waigani Campus, in 1995?

A: That is correct.

Q: The following year in 1996, you went on to do post graduate Legal Training at LTI?

A: That is correct.

Q: And probably at the end of that year you commenced work starting off with Young and Williams Lawyers?

A: That is correct.

Q: You worked with them for about three years until 1999 when you again, joined Blake Dawson Waldron Lawyers?

A: That is correct.

Q: You worked for further three years, as it appears, until in 2002 you joined Mr Vincent Mirupasi operating as Mirupasi Lawyers?

A: That is correct.

Q: You were with him for four years until 2006 when you left to form your own private practice?

A: That is correct.

Q: Mr Titus, you appeared on record in your correspondence with the Commission as acting for NEWIL, that is North East West Investments Limited?

A: That is ---

Q: Tosigiba, which is the landowner company for which portions 14C was granted.

A: That is correct.

Q: And Tumu Timber Development Limited portion 1C, Aibolo?

A: That is correct.

Q: Are you also lawyer acting for IT& ---

A: S.

Q: S?

A: No, I am not.

Q: Have you ever acted for IT&S, that is Independent Timbers and Stevedoring Limited?

A: No.

Q: You wait for the question, you wait. Have you ever acted?

A: No, I have not yet.

Q: You did not hear my question. Just wait a minute, we got time, we will get through. Have you ever acted for Independent Timbers & Stevedoring (PNG) Limited?

A: No, I have not.

Q: Would you tell the Commission firstly, maybe we should start. I will show you this map that we have done, it is a rough map which is accepted by Mr Hudson Hape this morning as a rough indication of where all these SABLs are located in the Western Province. I am referring to, it is not, I think it is exhibit H2, sorry, HH1. Yes, look, Mr Titus, is that a rough or is that a correct indication of where all those SABLs, starting from 27C through the first one 1C to 14C and then to the second 1C?

A: That appears to be so.

Q: That is where all those SABLs lie. And you are lawyer on record for all of those SABLs, landowner company.

A: If I can explain the arrangement I have with IT&S and the landowners, would that assist. So that then I can explain how I was involved in respect of all these?

Q: Sorry, I cannot hear you, could you speak up. I am getting a bit deaf.

COMMISSIONER MIROU: Mr Titus, can you speak up so we can hear what -
--

A: I said if I explain the arrangement I have with IT&S and the landowner companies, perhaps that might answer your question.

MR TUSAIS: Perhaps, it would, yes.

A: Yes.

COMMISSIONER MIROU: Yes, you may proceed.

A: My involvement with IT&S and the landowners is, occurs only when there is an issue that IT&S believes the landowners require legal assistance, legal advice and help. That is when I am informed that I need to be part of the process, part of the discussions ---

MR TUSAIS: Who informs you?

A: IT&S and the landowner companies.

Q: IT&S informs you?

A: And the landowner companies, yes.

Q: Well, who informs you, is it IT&S or the landowner company?

A: Well, IT&S advises me and then I have a meeting with the landowners discussing whatever concerns they have and how we can address them.

Q: Just back up a bit. You just said you have not acted for IT&S. Can you define or you explain that?

A: Yes, I do not act for I---

Q: Because you do not seem to have a direct working relationship with IT&S?

A: Yes. And I am explaining that my relationship with IT&S is this. When there is an issue that requires legal assistance for landowner companies, IT&S refers the landowners and that issue to me to help the landowners deal with it.

Q: So IT&S pays your bills?

A: IT&S does pay my bills.

Q: Therefore, you are on retainer or you are acting for IT&S?

A: No, I am not. The landowners are not able to afford my fees so the arrangement is for IT&S to pay my bills.

- Q: All right, let us back up a bit further. How you are trying to explain is this. When IT&S encounters some obstacle in its path, it calls you?
- A: Obstacles in their path mean ---
- Q: Legal obstacles, let us put it that way, something to be cleared, it calls you or your firm?
- A: Yes, it refers the landowners to me, yes.
- Q: Okay. But you also act for the landowners?
- A: I help the landowners on those occasions.
- Q: No, no, wait, you do not say help. You are on record as acting for NEWIL, acting for Tosigiba, and acting for Tumu Timbers.
- A: Yes, for purposes of this Inquiry, yes.
- Q: Look, are you or are you not acting for them?
- A: I am acting for them, yes, for purposes of this Inquiry.
- Q: All right, so that is it, you are acting for NEWIL and you are also acting for other landowner company.
- A: NEWIL and the other landowner companies, yes.
- Q: Do you see any conflict in that arrangement? It is a triangle you see. It is like a man with two girlfriends. Where is your loyalty in that situation? Are you acting for IT&S or are you acting for these landowners in the bush?
- A: No. I am acting for the landowners to help them with the issues that arise.
- Q: And your help is paid for by IT&S?
- A: Yes, because the landowners cannot afford my fees, yes.
- Q: Well, so where is your loyalty to the guy who is paying for your food on the table or to the guys in the bush?
- A: To the landowners.
- Q: Come on Mr Titus.

A: My loyalty is to the landowners for purposes of these projects.

Q: But you do accept that there is potential for conflict?

A: Yes, I do ---

Q: In that relationship?

A: I do realize that there is potential for conflict. I try to be honest and straight forward with my advice to the landowners and with IT&S.

Q: Could you explain to Commissioner, how you involved in all of these massive piece of land containing four SABLs in Western Province?

A: I would be happy to do that. Commissioner, I was not involved in the SABLs with the land investigation. That was a matter, I understand IT&S and Mr Hapewas dealing with. So insofar as how the land investigation was conducted and the identification of who the owners were and all the other processes involved in the land investigation, I was not involved in it.

Q: Just wait there, Mr Titus. Maybe, we should clear that point. You said you are not involved in the land investigation report stage.

A: No.

Q: Commissioner, I refer to land investigation report for portion 14C if that was exhibited. I was probably not present.

COMMISSIONER MIROU: 14C, what is 14C under, Tosigiba?

MR TUSAIS: 14C, this is for Tosigiba.

COMMISSIONER MIROU: Yes, that is Tosigiba number 2.

MR TUSAIS: Thank you. Associate, would you show this first land investigation report to Mr Titus?

[2.16 pm] Mr Titus, that report, that is the first of about 28 separate land investigation reports for Tosigiba 14C. It says at the bottom there that report or that the bundle of reports were submitted by your firm, Titus Lawyers, and your address and telephone number, contacts are given on the right hand bottom corner.

A: Yes, I can see that. But that was not my doing, yes. I did not ---

Q: Yes?

A: That was not my doing.

Q: What do you mean not your doing?

A: I did not print this page out of my computers, that is what I mean.

Q: Are you telling the truth, Mr Titus?

A: I am telling the honest truth, Mr Tusais. You will have to ask Mr Hape.

Q: You are a lawyer, Mr Titus?

A: That is correct, Mr Tusais.

Q: You are quite aware of the Commission's of Inquiry's Act.

A: Yes.

Q: You are aware of serious consequences, attendant upon telling lies under oath.

A: I do, Mr Tusais.

Q: It is called perjury.

A: I do, Mr Tusais.

Q: That is one of the first lessons they taught you when you went to Law School and myself, a bit earlier, about lying under oath.

A: Yes, I do, Mr Tusais.

Q: Okay. Just reminding you Mr Titus. You were telling the Commission about your involvement or as it seems, your noninvolvement in the actual process through which these SABLs were created. Perhaps, you could continue and if I got a question along the way, I will put it to you. If not, well, you have got the floor.

A: Thank you Mr Tusais. So after the SABLs were completed, I think earlier on in 2007 thereon I became involved with Tumu Timbers, yes. So that is the first landowner company that I became involved in. And my involvement was when 2007, 2008, my involvement arose when some members of the board of directors then decided to pursue carbon trading

instead of this road project, selective logging and agriculture project. So that is my first involvement with Tumu Timbers. The meeting was about – and also the discussions in the meetings with the landowners, Tumu was about how to stop the, then we were calling them rogue directors who were abandoning the project with IT&S and pursuing carbon trade instead. So that is my first, that is when I first became involved with Tumu Timbers. With 27C and 1C, I have had no dealings with them. With 14C, I became involved after the signing of the final project agreement. When the owners of the company Tosigiba Timber Group Limited had to convene to ratify the decision of the acting chairman, SokiSamisi signing the final project agreement. So very quickly, that is my involvement with the landowner companies.

Q: It just sounds odd that you involved in all four landowner company ---

A: Yes ---

Q: NEWIL owns two portions.

A: Yes.

Q: 47C and 1C. But you say now that you do not act for NEWIL, are you saying that?

A: Sorry?

Q: What did you just tell the Commission that you do not, you are not acting for NEWIL?

A: No, I am acting for them, Mr Tusais. I am acting for them for purposes of the Inquiry. But I am saying involved insofar as the SABLs and my assistance to them, I have just explained this, how I have assisted them.

Q: How did you assist them? I did not hear you, you are talking too softly, Mr Titus. You need to speak up.

A: I said I just explained to the Commission how I was involved with this various landowner companies insofar as the SABLs are concerned. That was my involvement there.

Q: Just rounded by me again, for NEWIL, what was your involvement? Are you saying you are not involved in having the SABL?

A: That is correct. With NEWIL I was not involved in the SABLs for NEWIL.

Q: At what stage did you come in for NEWIL?

A: I did not get involved with NEWIL for purposes of the SABLs at any time, yes. Tosigiba, 14C, portion 14C, the only time I was involved was when we had to go back to Nomad to conduct the shareholders meeting to ratify SokiSamisi's signing of the final project agreement with the State. That is when I got involved with it.

Q: All right. Well, for NEWIL, why were you acting for them? Why were these companies formed? For what stated reasons?

A: My understanding ---

Q: NEWIL, what form?

A: Yes, my understanding was the landowner companies would represent all the landowners in the project area. Then they would enter into a joint venture agreement with IT&S. Out of that joint venture agreement, a special purpose vehicle, a company would be created to manage the project and drive the project.

Q: Yes, this is for the Trans ---

A: For the Trans ---

Q: Trans Papuan Highway.

A: For the Trans Papua Highway, yes.

Q: So at that stage you were acting for IT&S or for NEWIL in regards to the Trans Papuan Highway?

A: Which part do the, which ---

Q: Well, it starts from 27C Gre to Dringas.

A: Like I said, I was not involved with NEWIL for purposes of the SABL or anything like that.

Q: You know which lawyer assisted them to get the SABL? Have they told you?

A: No. I am not aware which lawyer helped them get the SABLs. I understand that IT&S and its technical officers did that.

Q: IT&S helped them?

A: IT&S, yes.

Q: So apart from yourself, which other lawyer does IT&S engage?

A: I believe Gadens, Gadens are the lawyers here.

Q: You see any Gadens lawyers hanging around here to do this SABL?

A: No, I am not aware of that.

Q: It is only you who is hanging around here.

A: Hanging around with ---

Q: Well, it is you with clients around the Kiunga area and in portion 1C.

A: For purposes of this Inquiry yes, I am here with them. But at the time the SABLs were being done I was not hanging around with them, yes.

Q: Look, witnesses have come to this Commission, you probably heard about it, there is big talk in town. And they said, firstly Mr Imen Papa, he said he signed lots of paper, some of them are here; three lots of paper, portion 27C, portion 1C, portion 14C. He signed all the papers and you told him to sign?

A: Did Imen Papa say that?

Q: He said it to the Commission. I heard it myself, a lot of these people heard it. Imen Papa, he was sitting where you are sitting and he said he signed these papers even though he did not carry out land investigations for all three portions, 27C, go to 1C and go down back to 14C, Tosigiba.

A: Mr Tusais, that is not true. I have heard ---

Q: If you are saying Imen Papa lied?

A: No, I am saying that what you are saying Imen Papa said is not true.

Q: No, no, he said it. You have to accept that.

A: No. I would like ---

COMMISSIONER MIROU: Mr Titus, it is on record.

MR TUSAIS: All of us here, we heard it. Commissioner will tell you.

COMMISSIONER MIROU: Mr Titus, it is on record. He is on record and you can read from the records if you get the transcript.

A: Okay.

Q: Mr Imen Papa came and confirmed that he did not walk the boundaries. He only signed because Hudson Hape insisted that he signed on behalf.

A: Yes, well, Mr Commissioner, I am just ---

MR TUSAIS: And Titus and Mr Titus.

COMMISSIONER MIROU: And called your name.

A: That is not true.

MR TUSAIS: You are saying Imen lied?

A: I am saying Imen lied, yes.

Q: Okay. He said, Imen said and it is in evidence, he said, "Mr Titus called and drove down to pick me up" - that is Imen Papa - "at Able Computing and he" - you took him to IT&S office on the 10th floor of Pacific View Apartments where he signed this land investigations report on 15 December, 2008.

A: No. Mr Tusais, that is not true. If Mr Imen Papa really said that, it is not true. Mr Imen Papa is at the back and he is nodding his head in disagreement. Mr Imen Papa is at the back, nodding his head in disagreement.

Q: That is immaterial. He already said that here, Mr Titus. You cannot alter it, it is recorded there.

A: All right.

Q: This big crowd you see, they heard it with their ears. Imen Papa said, "Mr Titus and Mr Hudson Hape, told me to sign this great big bunch of land investigations report which I never did." What do you say?

A: No, that is completely not true.

Q: Okay, one of you is lying, either you are lying Mr Michael Titus or Imen ---

COMMISSIONER MIROU: Or Hudson Hape is lying.

MR TUSAIS: Or Hudson, no, Hudson came this morning and he said, yes, he made Imen Papa sign those documents. But between yourself and Imen Papa, one of you is lying. Is it yourself or Imen? You tell the Commission.

[2.28 pm]A: I am not lying as God is my witness as I have sworn. I did not sign these documents, I did not ask Mr Imen Papa to sign those documents, I was never involved in the land investigation report, I did not type up the documents, I did not put one word in the land investigation report.

Q: Okay, Mr Titus ---

A: I was not present.

Q: Okay, yes. Mr Titus, whilst going inside the hearing room, Mr IpihahBiyama gave evidence just now.

A: Yes, I heard that.

Q: You heard his evidence. He said he never conducted land investigation report into portion 1C Aibolo, held by Tumu Timbers, that one you heard?

A: I heard that, yes, Mr ---

Q: Loud and clear.

A: Very loud and clear, yes.

Q: Yes. He said you, Michael Titus and Mr Hudson Hape, made him sign. What do you say?

A: I think he said he asked, we asked him to sign and my answer to that is, no, I did not ask him to sign. He understood why he was there. Him and Hudson Hape were dealing with that land investigation report. I recall seeing him in the office at IT&S office and greeting him and shaking his hands. But other ---

Q: Why you shake his hands?

A: Pardon?

Q: Why you shake his hands?

A: Well, it is polite.

Q: You are happy that he signed the land investigation report?

A: No. No, I greeted him when I saw him for the first time. When I came in and saw him I shook his hands. I did not shake ---

Q: So you are on good terms?

A: Pardon?

Q: You are on good terms with him?

A: No, I do not know Mr Biyama.

Q: So why you shake his hand, you are complete stranger.

A: Mr Tusais, if you meet anybody, you shake hands and say hello to them.

Q: I do not shake hands with anybody. I might get their germs, you know.

A: Okay.

Q: It is true. You tell me, why you shake Mr Biyama's hand. You do not go around shaking any Tom, Dick and Harry's hand.

A: It is my custom. I always shake hands with people I meet. Mr Bokomi can vouch for that.

Q: Well, that is between you and Mr Bokomi. I am asking you the questions now. He said you and Hudson Hape made him sign this?

A: No.

Q: Tumu Timbers?

A: No, we did not make him sign it. We did not, well, insofar as I am concerned I did not say anything to him to cause him to sign it. I did not ---

Q: Did you see him sign in your presence?

A: I saw him looking at the documents. I did not witness him signing.

- Q: He said he refused to sign and went.
- A: No, no. I am not aware of that part of his story.
- Q: And Hudson Hape followed him down and insisted and he tell him or swore at him “f....., I do not want your money.” That is what he said.
- A: Yes, no, Mr Tusais, I do not know that part of the story. All I know is I came to the office to the IT&S office from my office at DefenseHaus and I met Mr IpisahBiyama, shook his hands, said hello to him and that was it.
- Q: Mr Titus, maybe, we are just wasting time arguing between ourselves. The question is this. The land investigation report in this case is flawed, it is based on fraud. That is for 27C, 1C and 14C, according to Mr Imen Papa. He never walked the boundaries, he never conducted public hearings, there is no guarantee that majority consent was given in this case. Now, Hudson Hape has come to this Commission, he said the survey plan too is flawed. So those two posts, they are gone. For these three SABLs they do not have a leg to stand on. Is that why you are suddenly saying you had no involvement at all in the formation of SABLs for portion 27C, 1C, and 14C?
- A: No, that is not true. I am not, this is it ---
- Q: I am saying to you, you got no legs to stand on so this is your version of events
- A: No, that is not true. I was not involved in the SABLs.
- Q: But you would agree with me that based on evidence so far before the Commission, these SABLs do not have legal basis? There was no proper survey done, the land investigations reports are a fraud, they were never carried out in the first place?
- A: If ---
- Q: Therefore, there is no foundations of these SABLs, at least?
- A: I have not heard all the evidence. I cannot form an opinion if you ask me to form an opinion, not at this point.

Q: What if that was the case, that evidence before this Commission shows witnesses coming under oath saying, I am the lands officer in Kiunga, I never walked the boundaries, I never went out, talked to the people, I never did or took those prerequisite steps that Lands officers are supposed to do before issuance of title? Would that seriously, I mean, seriously rock the legality, you know, whether this SABL was properly created?

A: Well, I think the land investigation report serves those purposes. I have not given much thought to it but I will think as I try to answer. I think the land investigation report determines who owns the land, determines the boundaries of those people that own the land within the area and then identifies the people who will represent the landowners in the agreement to lease their land to the government for purposes of the Lease-lease Back process. So, if there are evidence that – if there is evidence that the identification of the landowners, the determination of the boundaries and the identification of who should represent the landowners for purposes of the Lease-lease Back, if there is insufficient evidence to show that, then I think that means that the landowners; all the landowners for those whichever area that the land investigation covers, have not been identified.

Q: Mr Titus, look, section 102(2) of the Lands Act, that is the basic section for SABL, is it not?

A: That is correct.

Q: It says “A Special Agricultural and Business Lease shall be granted to”, subsection (a) a person or person or (b) to a land group, business group or other incorporated body to whom the customary landowners have agreed that such a lease should be granted to.” That is basically it, is it not?

A: Yes, that is correct.

Q: And this land investigation report capture the agreement given by those landowners?

A: Yes, that is correct.

Q: Without the land investigations report, no SABL title is to issue. That is what I am saying. This form the basis, this is the foundation, without

which lease under SABL will not be granted. Is that the correct legal statement, I mean, interpretation of section 102(2)?

A: My interpretation is that, the land investigation report simply identifies who the owners are, what the boundaries are, who is going to represent the landowners and then I think it is the Instrument of Lease, I think that creates the SABL.

Q: Come on, Mr Titus.

A: Sorry?

Q: I said, come on. Instrument of Lease is issued after the customary section of the Lands Department and the delegate is satisfied that consent was given.

A: Yes.

Q: And that consent is reflected from the land investigation report.

A: Yes, that is what I am saying.

Q: Step by step, that is what I am saying. You jumping, high jumping to that next step.

A: Yes, I am saying that the land investigation report identifies all of that. But the creation of the SABL is the Instrument of Lease.

Q: Yes, thank you. We have to agree on this. So without this, no Lease-lease Back Agreement, no notification in the gazette, no final lease granted to the landowner company or whoever individual the SABL is issued to.

A: Well, that is correct.

Q: That is correct.

A: Who is the landowner, what are the boundaries, who is going to represent them, yes, has not been determined.

Q: In this case, it appears that these ones are fraudulent.

A: I do not know yet.

Q: They are fraudulent.

A: I have not read the evidence yet.

COMMISSIONER MIROU: Maybe, you should look at this one here. That was, this is in the affidavit of Mr WaitiKwani. Counsel has made references to clan ownership where signatures are made. You look at them and you tell me if in fact, what is signed there looks very similar from the top right down and whose signature is right at the far left?

A: Commissioner, at the far left, under the column before me, those are my signatures. The signatures of the named persons, I am unable to comment on.

Q: But do they look very similar from the way it has been written? Somebody with the same biro, forgery?

A: No. I would say by just looking at this I would not say forgery, Commissioner, honestly.

Q: Well, look at it very closely, they are very similar. The signatures are very much similar.

A: Yes, I see the writings. No, Commissioner, I would say ---

Q: And you signed it off.

A: I would say by just looking at it ---

Q: You authenticated it.

A: Yes, that is correct.

Q: See, these are very serious matters. Counsel, referred you to section 102, consent of the landowners is very important. From the way I look at this, somebody using the same pen mark seems to have signed the whole lot. Maybe, pass it to Counsel, Mr Tusais to look at it.

A: Commissioner, I cannot take it any further than ---

Q: But you have signed it at the end of it. And this statement is attached to the evidence of Mr WaitiKwani who is a landowner. And this was only taken on 2 November 2010.

A: That is correct.

Q: Sorry, just two, three weeks ago.

A: That is correct.

Q: Did you question why you were question why you were signing something that was done recently or was it because the Commission of Inquiry was coming to town?

A: I understand that because the landowners were living very far away and the Commission of Inquiry was going to be conducting its hearings just in Kiunga, it was considered helpful and appropriate to find out if the issues that the Commission of Inquiry was ---

Q: I am asking you Mr Titus because you said you are assisting landowners company.

A: Yes.

Q: Counsel asked you about your involvement with IT&S and you say it is only basically for land issues. These are land issues. These are issues which reflect that you have been involved in the signing off of consent agreements. And when you look at this

[2.41 pm]

When you look at this, I will just show you one glaring aspect of what the chairman actually signed for the whole lot. These are just examples that I need you to look at. May be show it Counsel before - Mr Titus, look at that. Would you consider it to be an appropriate consent from each of the individuals whose name is on that schedule?

A: Commissioner, as I said earlier, by just looking at it, I cannot see if it was a fraudulent signature or ---

Q: But if you put your name, would you sign for your name or sign for another person?

A: If you put your name you sign for yourself, Commissioner.

Q: You sign for yourself.

A: Correct.

Q: If you sign on behalf of somebody else, you must put on behalf of.

A: That is correct, Commissioner.

Q: But here, that does not reflect consent and agreement on the part of them. Somebody actually signed the entire schedule where the signature is.

A: Yes.

Q: The column for the signature.

A: Yes, I ---

Q: The names are different but somebody else's signature is there.

A: Yes. Insofar as my signing is concerned, I did ask if the ---

Q: Why did not you authenticate it at the end, you are a lawyer you should know better than that? That is your signature at the far left.

A: That is correct, Commissioner.

Q: What do you say about that?

A: Before I signed, I did ask if those signatures were correctly the signatures of those people, before I signed. I would propose that the persons who carried out, who took these documents to the villages ---

Q: Mr Titus, just look at the document and look at the signatures. Is it reflecting the signature of each one of those persons listed on the further column, the names and the signature? The signature does not really reflect those persons whose names are there. This is from Mr WaitiKwani's affidavit on which you sworn; it was sworn before you. Did you check that?

A: I only asked if these signatures were the signatures of those people whose names appear on the list and I was informed that, "yes, those were the signatures."

Q: But this was only taken some two weeks ago?

A: That is right, I verified it

Q: But the SABL is already been given out to the company, September last year, is that correct, Mr Bokomi?

MR BOKOMI: That is correct.

COMMISSIONER MIROU: Why is this consent been taken? Is it because the Inquiry is now looking into agreements and consents by the landowners and all over a sudden, that type of document has been created to mislead this Inquiry?

A: No, I do not believe the intention was that.

Q: And at the further end of it your stamp is there.

A: Yes.

Q: Mr Titus I think you do not really get the real crutch of this. Essentially, that does not reflect the true consent of the landowners; each individual clan members that is on that list is not actually signing it. Somebody else is signing on their behalf.

A: Yes, I understand what Commissioner is saying and I am saying that the highest I can go in my response is that before I signed I asked the people who brought these documents to me, to tell me if the signatures are the signatures of those people listed in there? And they said yes and then I signed as Commissioner for Oath.

Q: But look at that signature there? It is the same signature that just go right down to the end of the sheet?

A: Yes, I see that Commissioner.

Q: Would you accept that?

A: My answer Commissioner is that I asked and they said, yes and I signed.

Q: Thank you, you know you are under oath Mr Titus and these are serious matters that you should consider carefully before you answer, because from the way we see these things it seems like this entire document was an attempt to mislead the Commission in its inquiry, particularly with the signing of this and the presentation of it to the Commission of Inquiry through Mr WaitiKwani.

A: If I may, I understand that was, it was intended to – because the Inquiry would not reach a lot of the places where these people are, it was considered.

Q: Look at this one here for AwinNugason. The same signature for the whole family, look at each of those columns there with the dates. It is the name of the family but the one family member signs for everyone.

A: Yes.

Q: You agree with me that and you authenticated it; you certified it as true and correct?

A: Yes, that is correct.

Q: You see these are the glaring deficiency in how the consent was obtained, a very deficiency that Counsel is asking you but if there are defects in the consent an SABL is not good.

A: Yes, I agree that if the consent is truly not the consent of the landowners then there is no consent.

Q: And maybe Counsel should be able to go through each one of them. It will take us – it will be time consuming for us to go through each individual clan but definitely those defects are present. Mr Tusais?

MR TUSAIS: Okay, Mr Titus you effectively distant yourself from these three companies; NEWIL, Tosigiba and Tumu, I think, insofar as SABLs are concerned?

A: That is correct, yes.

Q: But you have also stated, I think, unmistakably that you are also effectively at the back or on call of IT&S to resolve any legal issues in relation to those portions of land?

A: Yes, if an issue arises, yes.

Q: Are you aware that this company, IT&S, through its employed surveyor, Mr Hudson Hape, conducted land investigations report?

A: Yes, I am aware that he was involved and in charge of that part of the work, yes.

Q: He has come to the Commission and this morning he told them, he just sat in the office and gave out forms. So we have discussed that at length. But you agree that Hudson Hape was ---

A: Yes, he was.

Q: When did you become aware of that fact?

A: I think Hudson Hape started in 2007, Mr Hape can correct me. Mr Hape can correct me but I think it was around 2007 when they started working on the ---

Q: No, he said he joined the company in 2008.

A: 2008 when they started working on the SAB---

Q: Were you aware at that time? Were you assisting him in anyway or shape and form?

A: No.

Q: So, what Mr Hape did basically led to the granting of SABLs to those companies which you also say to – you claim to be lawyer on record so --

-

A: That is correct.

Q: NEWIL, Tosigiba and ---

A: Tumu Timbers.

Q: Tumu Timbers.

A: That is correct.

Q: But you are telling the Commission you ---

A: No, I was not ---

Q: You did not have a hand at all in ---

A: No, I was not involved in SABL, yes.

Q: But the result is good. Now your company has got massive tracts of land on which they can legally do business, carry out agriculture, negotiate with people like IT&S for payment of royalties and such like.

A: Well, I understand that after the land investigation report the proper processes were done and then a title was obtained. I understand that the Inquiry is now ---

Q: So what year did you become, well, did you first become, sorry, did IT&S first engage you?

A: I think around 2007 when the Tumu defection of rogue directors to pursue carbon trade.

Q: So you are aware of the agreement that was signed in May this year?

A: Yes, the final project agreement, yes.

Q: Did you have a hand in that?

A: No, I did not. That was done by the Public Solicitor, sorry, State Solicitor, I understand.

Q: Did IT&S ring you and say, look, please, these are what we want. Can you get Mr Minjihau to draw up the agreement to reflect our requirement?

A: No. No, I was not involved in that, yes.

Q: You say Mr Minjihau himself drew this agreement up from his own instructions.

A: Yes, from his name on the document, yes. Otherwise, I have never spoken to Mr Minjihau or met with him at any time to discuss anything yet.

Q: His name is on the document but who instructed him, that is the thing?

A: I do not know.

Q: You do not know?

A: No.

[2.55 pm]Q: This agreement basically, mainly in favour of IT&S (PNG) Limited? That is just an overview. It is very much in favour of IT&S.

A: I would not say that.

Q: There are tax exemptions, yes?

A: Yes.

Q: It gives them - all right, look, it is about building a road, this agreement.

A: That is correct.

Q: It is about a road called, it is called Part 2, Gre to Dringas, across the Fly, across the Strickland to Nomad down to Wawoi Falls.

A: That is correct.

Q: 600 kilometers.

A: That is correct.

Q: Initially, and to build that road, IT&S, your client, said it will build it and fund that road by cutting logs along the way on that corridor.

A: I understand, yes. That was the agreement between the landowners and --
-

Q: And initially, it said it would cut logs 20 meters both sides of the road. It is on a 40 meter road corridor. Do you remember that?

A: I believe so. Is it 20 meters or what is ---?

Q: 20 meters. This is a -- I will show you this. Commissioner, this is a forerunner I suppose, to the agreement that was signed on 27 May 2011 and exhibited as 27C, exhibit 7. Just go to the tagged page, it is page 9, paragraph O. Do we have the same document, paragraph O? Yes, I will read it. If it is a ---

A: I do not Mr Tusais. I have got paragraph A up to G.

Q: Sorry, Associate, could you bring that back please.

A: What page?

Q: There was this tag, it is at the top, page 7. Mr Titus, I will just read it so we will not waste any more time. Paragraph O, "IT&S in consultation with the landowners is seeking a timber authority permit to cover the timber harvesting period of 25 years and also to cover the harvesting of log product covering some 7000 cubic meters per kilometer or selective harvesting of timber from 1000 hectares per kilometer of road. 600 kilometers of road length or which is the greater of the two for selective harvesting of commercial species and the removal of timber from the 40 meter road corridor or 20 meters either side of the road center line, which

has been initially agreed with by traditional landowners.” Do you see that?

A: Yes, I see that.

Q: Are you aware of this first draft agreement?

A: No, I was not.

Q: Commissioner, I seek to tender that if it is not already before the Commission. This is an unsigned ---

COMMISSIONER MIROU: The signed one ---

MR TUSAIS: Unsigned agreement, I think dated 2009.

COMMISSIONER MIROU: The signed copy is dated the 23rd ---

MR TUSAIS: The signed copy is already exhibited, exhibit 7, NEWIL.

COMMISSIONER MIROU: And the very part that you referred to is also in this?

MR TUSAIS: That goes further. I will be referring to Mr Titus.

COMMISSIONER MIROU: We will accept the ---

MR TUSAIS: This one is unsigned by the Governor General and ---

COMMISSIONER MIROU: Yes.

MR TUSAIS: Various people included and it is dated 2009 but no month or date.

COMMISSIONER MIROU: So we will ---

MR TUSAIS: If this could be exhibited as part of that other one, it is exhibit NEWIL 27C ---

COMMISSIONER MIROU: 9A.

MR TUSAIS: Yes, it is 7, I think.

COMMISSIONER MIROU: 7A.

MR TUSAIS: 7A.

COMMISSIONER MIROU: The exhibit NEWIL 27C, 7A is a document relating to the Gre-DrimgasDuaraWawoi Falls Trans Highlands Highway Stage 2 Road Project Agreement and that was dated unsigned 2009. Yes, Counsel.

[EXHIBIT NEWIL 27C, 7A – DOCUMENT RELATING TO GRE-DRIMGAS, DUARA, WAWOI FALLS TRANSHIGHLANDS HIGHWAY STATE 2, ROAD PROJECT]

MR TUSAIS: Mr Titus, I will show you this other one, this is the signed one of 27 May, I think, 2011, 23rd, excuse me, 23 May. It is already exhibited before this Commission. I would just like you to go to the tagged page. It is paragraph O again. I will read it. So “IT&S in consultation with the landowners is seeking a timber authority permit to cover the harvesting of log product covering 7000 cubic meter per kilometer or selective harvesting of timber from 1000 hectares per kilometer of road length or which is the greater of the two for selective harvesting of commercial species. The removal of tree from the 40 meter road corridor or 20 meter either side of the road center length and the distance of 5000 meters on either side of the road corridor, which has initially been agreed with by traditional landowners.” Same paragraph, 5000 added to it, meters, 5000 kilometers either side.

A: Yes, I see that.

Q: You know who inserted this into the agreement?

A: No.

Q: Did you, IT&SL lawyer, maybe you did it?

A: No. No, I did not do that.

Q: If you did not put it in for Independent Timbers & Stevedoring, did you pick it up as the lawyer for first NEWIL, Tosigiba and Tumu Timbers?

A: Yes, I did read it.

Q: And did it concern you? This is a huge tract of land going to your client's land.

A: Yes, we understand that.

Q: What did you do about this?

A: Whether, you mean whether I discussed that with the landowners or?

Q: Well, what did you do about it?

A: No, I did not do anything.

Q: In the interest of your clients NEWIL, Tosigiba and Tumu Timbers?

A: No, I did not do anything about it.

Q: You failed your clients. Is that what you did?

A: No, I do not believe I failed my clients.

Q: Your obligations are split. That is why you did not do anything for your client?

A: No, I understand that that was the agreement between the landowners.

Q: Here, you are acting for Independent Timbers, good for them, 5 kilometers either way. Now, you are acting for NEWIL, Tosigiba and Tumu, what will you do, you cannot very well go up to Independent Timbers and say, wait a minute. They are paying your fees, not anybody else. They are paying your fees so you see, your loyalties are divided.

A: No, I think it is a matter of whether what was the agreement between the landowners and IT&S. And that is it.

Q: You go to page 15 of that agreement, page 15, paragraph 3.2 it says “Conditions precedent to State obligations.”

A: Yes.

Q: And down, down at subparagraph (d), you see that?

A: That is correct.

Q: It is highlighted so it should show out. That paragraph says, the landowner companies NEWIL, Kebogas and Tosigiba “are obliged”, “are obliged” by this agreement to fast track SABL Lease-lease Back processes and appoint Independent Timbers & Stevedoring as the developer company in order to carry out this project. Is that what the provision says?

A: No, I think the provision says that the parties should pursue the Lease-lease Back arrangement for purposes of the project but not appoint anybody.

Q: You go to page 17.

[3.05 pm]

Paragraph 6 says “Development License and -okay, I will just read that. Just so we are clear about what is said: “The State undertakes to ensure that upon receiving application from the company or the joint venture company under the Land Act for the Lease-lease Back and the Business Lease provided for in clause 3.2(d)” - that is the previous one - “and necessary development license, the Land Board or other relevant authority or officers hears and determine such applications expeditiously and recommends to the Minister for Lands and Physical Planning that such license and leases should be granted to the company or the joint venture company within reasonable time.” That obligates the State to fast track Lease-lease Back agreements in favour of your client, IT&S.

A: Yes, it does say that.

Q: It does.

COMMISSIONER MIROU: And also it also obligates the State to ensure that the Forestry Board can compromise its position by ensuring that an FCA is issued for forest clearance in respect of road line and the felling of extra 5,000 kilometres. Would that be so?

A: Yes. I think it provides for the applications to be expeditious but for each, how that application is determined by the responsible line departments, I think is a matter for ---

Q: No, read this. That very paragraph ensures that those entities will also have to compromise their regulatory and monitoring powers to ensure that IT&S obtains that State lease expeditiously, FCA, forget about the environmental damage, Environment and Conservation provisions and level 3 environmental damage, all these. When you look at SABLs they have to include these provisions for agriculture, environment conservation permits, forestry, agriculture is the number one thing.

A: My reading is that, well, the application should be expedited and dealt with each line department, I think still ---

Q: But, why expedite? This each individual bodies like Lands Department, Forestry, they have their legislation, they are regulatory, they regulate. Forestry is most about conservation of forests, they have to manage our forests. This particular agreement is in relation to a road line, 600 kilometres, road line. You think an SABL should cover that. Is SABL lease an appropriate lease for this type of agreement?

A: Well, my understanding from my discussion with the landowners and IT&S is that the SABL was the model adopted because the nature of the project ---

Q: What project?

A: The road project. The nature ---

Q: Is it an SABL lease?

A: No, it is ---

Q: Or road line project?

A: It is a road project, trans Papua Highway project.

Q: So which is the appropriate body to obtain such authority? Is it the Forest Authority or the Lands Department?

A: No, the Lands Department.

Q: Because most of these land is customary land owned land.

A: That is correct.

Q: State has no authority over this land.

A: That is correct.

Q: So the Forestry, FCA, happens to local landowner company has to be a forest participant to be registered as a forest participant before they are given this authority to clear fell 600 kilometres from Gre to Dringas and across to the Fly River and onto Wawoi Falls.

A: Yes, that is right. They have to have an F---

Q: You do not need an SABL, you need a forestry clearance authority.

- A: Yes.
- Q: A road line, forestry clearance authority.
- A: That is right, FIB.
- Q: To clear fell trees so that to make sure that there is a road line.
- A: Yes an FCA. But ---
- Q: So is that some of the things that you discussed with your clients, some of the landowner issues?
- A: No, as I ---
- Q: Or is it because of your engagement with IT&S so you decide that because of that SABL is the best option available?
- A: My understanding was that the SABL was considered appropriate because when the road, when the Trans Papua Highway was built - would be built there would be a lot of request for feeder roads to the remote areas along where the Trans Papua Highway was going. So in order to accommodate their request without the need to apply for various licenses for new feeder road, for any new agriculture or logging projects, the SABL would cover that. And when the request was made, the road could be constructed right away. So that was the thinking that the landowners and IT&S had.
- Q: But do you think that thinking is right, is it in the right direction for the people?
- A: Well, I believe it is right if everybody agree to it. I believe it would minimize the need for the compliance requirement purposes to build the feeder roads apart from the main Trans Papua Highway.
- Q: Mr Titus, that thinking is not right. When you make a request for a SABL, the process is that the Lands Department through the provincial lands officer must conduct an independent land investigation authority. You, as a private lawyer, you are not involved, landowner companies are not involved, IT&S is not involved, the Lands Department takes ownership of that land investigation report. It is their duty and within that process of SABL, where there is a need to do agro forestry then forestry

plans are submitted to the Forest Department to clear fell certain hectares of land. And that is a requirement under the Forestry Act to clear fell. Before you do that too, the Environment Conservation people must also come in to conduct environmental impact study. Is it going to affect the river streams, affect the livelihood of people. At the same time agriculture must be involved in that process before an SABL is issued. That is the process. What you are thinking is not correct.

A: No.

Q: That process is that before - you are thinking that, get an SABL and then we will think about doing all these things. That is wrong.

A: No, sorry Commissioner, if you give me the chance to ---

Q: You do not need to change it. Just tell me what is your view of it.

A: No, my view is that or my understanding is that this was the thinking ---

Q: Because you never consulted people from the Department of Lands.

A: No, I did not. I am explaining the thinking that formed the decision.

Q: That is why you need to get proper advice so that you can advise the people about those type of things, the impact it will have on their lives. That is why Counsel is showing you this huge tract of land here, coloured, that has been taken away, actually taken away from the people now. And an agreement of this nature requires an FCA. It does not require an SABL; an FCA is required, a road line FCA. But it must also include Environment, Forestry and Agriculture.

A: Yes.

Q: And you do not just clear fell for a road clear corridor and then you clear fell 50 meters on both sides, 50 kilometers on both sides, 5 kilometers on both sides, that is ridiculous. That is actually taking away forest from the people. It cannot be done.

A: Yes, Commissioner, as I was explaining, I was not involved in the decision making process. I was only describing my understanding of why the SABL was pursued for purposes of this three project areas, four project areas.

Q: It is because of these very project, the result is this, huge tract of customary land been taken over and acquired; alienated for the people for 99 years. That is what has happened. 99 year of all these portions of land have been taken away from the people.

A: My understanding ---

Q: How do you feel about that? You feel happy that these huge portion of land have been taken away?

A: I can explain my understanding of that. My understanding that is that they have not been alienated in the way that they no longer have rights over it. I understand that the SABL process allows the land only to be set aside and freed up for business and agriculture purposes. And I understand that the 99 years is for that purpose. After the 99 years the land reverts back to the landowners as their customary land.

Q: But three or four generations will lose that right. Three or four generations.

A: Yes, that is if the 99 years is allowed to last. I understand that the landowners through their landowner company have the title, not any foreign company or IT&S, it is up to the landowner companies. If whatever period they have allowed for the business has come to its end then they can cancel the lease, rather cancel the term or do whatever they wish. They are still, they still own the title of the land through the, they still have rights over the land through their title they have to the landowner company. It has not been alienated in a way where they no longer have any control over it. That is my understanding of the SABL.

Q: Well, if you read that part where recommendation for alienability is. In all the documents that we have sighted, no, it is all in the land investigation report which was signed, purportedly signed by Mr Biyama and Mr Dmonai. There is no such reservations made. They say that they saw no need for reservations to be made for hunting rights, fishing, whatever, total alienation.

A: I think, I understand that the ---

Q: Your understanding is there but the documents indicate otherwise.

A: Yes, I think the JV Agreement between the landowners, I think ---

Q: That JV Agreement can go. If you look at the owners document, that reservation is not made.

[3.19 pm] A: Yes. I think I understand that it is not in the land investigation report.

Q: So, it is better not to understand but to see what processes are there. That is where we as lawyers must be very careful about how we advise clients on matters that may impinge on the rights and freedoms of people.

A: Yes. I would only ---

Q: That is what this Inquiry is all about that.

A: I would only say this about this project, Commissioner. My understanding from all these time that I have been involved with the landowners is that the SABLs were always intended to provide the development that the people in that area wanted. It was never intended for any other purpose. It was never intended for the land to be given away or acquired by IT&S. The SABL, as the landowner have always told me over the years is only for that road project and to accommodate the feeder roads and any other agro forest project. That is my understanding of why the SABL was pursued.

Q: Only for the road project?

A: Road project and to accommodate the feeder roads from connecting from the remote areas to the main highway and for any other agriculture or logging projects far away from the road corridor. I understood that the SABL would minimize or if not when the project submissions for the activities allowed the whole area to be – to allow the whole are to be permitted, logging and agriculture project to be permitted, then there would not be no need for you to be going through the individual requirements for all those other activities. You already had an SABL, you already had the permits and license for all those activities, so when the landowners from the remote areas away from the road, highway, corridor wanted a road to be built into their area or wanted any logging in their area or some agriculture project, then all they had to do was just to speak to the manager of the project and the manager would start building the road or helping them.

Q: I understand that. So it makes it easier to get this huge junk of land under SABL so you can do what you are saying?

A: Yes.

Q: As you understand it?

A: Yes, for, yes, for ---

Q: That is very wrong.

A: For the interest of the landowners as I understand.

Q: That is not right.

A: And for, and in agreement with IT&S.

Q: SABL is not like that, it should not be done in that way. You get an SABL and then you think you can do anything under the sun, which will happen and it is happening. That type of thinking is actually what is here. That is actually happening.

A: I am describing my under---

Q: The thinking around that is that SABL, before you grant an SABL you must ensure that landowner consents are obtained.

A: Yes.

Q: Agriculture plan, projects, whatever must be there before an SABL is issued.

A: Yes, I agree, I agree with you, Commissioner, yes. The landowners have to consent ---

Q: That is the result of this. You cannot get an SABL and then start talking about, we will sublease and do – you do not do that. You never sublease under an SABL lease.

A: Yes. Commissioner, I believe that and I have, from my dealings with the landowners, I have always understood from them that they consented to this. The people behind the executives of the landowner companies, I have not met them or spoken to them, but from my dealings with the executives, the landowners were happy for this project. And yes, I agree

with you Commissioner. If the landowners do not consent then it should not occur.

Q: Okay, yes. Counsel.

MR TUSAIS: Well, Mr Titus, could I just, you said landowners rights are still there. But do you say that also with subsection (2) of section 11, bearing in mind that provision. This is the Land Act. I will read it. It says, “where the Minister leases customary land under subsection (1), an Instrument of Lease in the approved form executed by or on behalf of the customary landowners is conclusive evidence that the State has a good title to the lease and that all customary rights in the land, except those which are specifically reserved in the lease are suspended for the period of the lease to the State.”

A: Yes, I am aware of that provision.

Q: It is “suspended”, it is “taken away”, that is what Commissioner was talking to you about.

A: I believe, my understanding of that provision is rights for purposes of giving away the land in terms of under custom because under the SABL that land is now set aside for agriculture and development purposes. The customary landowners cannot under custom give some part of their land to somebody in exchange or in, because their daughter is married to another clan, something like that.

Q: Just look at portion 1C, Aibolo. Portion 1C, Aibolo, there is no reservation in the land investigation report. Reservations are usually made by the provincial administrator saying customary landowners have rights to hunt, gather, fish, farm, basically subsistent, and the right to go and break a firewood or pluck a tree branch, if they are sick and use it as traditional medicine. These are customary usages. But under section 11 they are suspended. It is no longer there. That is the significance of this SABL. It takes away their customary right unless it is reserved. And for all four SABLs there is no reservations.

A: Yes, I under ---

Q: How do you explain? You keep on explaining and we will listen.

A: No, I understand that the land investigation report do not have the reservations, Commissioner. But for purposes of this project I understand the protection of those rights are in the JV Agreements. As to why there are no reservations, I think the appropriate people have explained so I will not comment on that. But the Land Act that Mr Tusais has just read out, I believe does define what rights is. But my understanding as I was explaining was that because the concept is that the land is set aside for development, the rights are being contemplated in that provision would be rights of having the land given away.

COMMISSIONER MIR`OU: Mr Titus?

A: Yes.

Q: What Counsel is reading you is the law. I will read you what is here, the indefeasibility, the title. This is the title. "The Minister, on behalf of the Independent State of Papua New Guinea grants to the lessee North East West Investment Limited, a Special Agricultural and Business Lease under the Land Act (1996) for a period of 99 years from 24 June 2009 to 23 June 2108 for agricultural and business purpose of the land referred to in the schedule and or shown coloured yellow on the next plan. This lease is not subject to the payment of rent. The reservation, covenants and conditions if any containing in the lease from the customary landowners to the State under section 11 of the Land Act (1996) to which this lease is subject to are, the lease shall be used bona fide for purposes specified in the schedule. The lease shall be for a term specified in the schedule commencing from the date of the land was leased from the customary landowners to the State under section 11. The lease shall be rent free for the duration of the lease, provision of any necessary easement for electricity, water, drainage and sewerage reticulation." There is no such reservations made for hunting, gathering, fishing, doing whatsoever you want. There is no such reservations made in this title.

A: Yes. But ---

Q: Do you see the significant of it? It is lost. They have surrendered their rights because the provincial, based on the land investigation report prepared by IT&S through the surveyor, Mr Hape and eventually signed off by Mr ImenIte Papa and recommended to by Mr Dmonai or Mr Biyama, no reservations. It does not say so in this lease. This is the

lease, the title holders lease. Unless you want, if I am reading it wrongly I want you to look at it.

A: No, Commissioner, that is correct. It is not on the title document.

Q: So if you have seen that document, did you ever consider that for 99 years now, there is nothing for the people. They are just squatters living on their own land. They are squatting on their own land.

A: If I may be ---

Q: They are squatters, people without any land. Counsel.

MR TUSAIS: Look, Mr Titus, just referring to that map, portion 27C. Mr Hape, he agreed this morning that the landowners that gave consent for 27C only come from villages around Kiunga, that is in the southern bottom part of 27C, not the northern part going past Tabubil and up to Olsobip. That is what he said.

A: He would know.

Q: He would know, yes.

A: He dealt with them.

Q: We have had witnesses also from Olsobip come and say, we did not give consent. Now, this is also applicable to 1C, Mr Hape said that and for 14C. Now, 14C goes to the border of Southern Highlands, that is where Tari is. They are very strong headed people and none of them came to this Commission or there is no record that they said, we gave permission. Because some of them, maybe they have customary rights within that area too. Do you agree?

A: I know that Juha is up there and the Biyami people are there.

Q: Juha area, those ones and then down to 1C. The road starts from Gre, you know basically where it is, that is where Kiunga is marked.

A: Yes.

Q: Cross over to Nomad, come down to Wawoi Falls and onto Gulf Province, is that right?

A: That is correct.

Q: It just takes a short, it is a corridor, thin line going through this map. So why does the company need all that extra land both sides of that proposed highway?

A: As I was explaining to the Commissioner, Mr Tusais, my understanding of why the decision was made by the landowners and IT&S to get an SABL was that, when this Trans Papua Highway would be built from ---

Q: But that is the thing, which landowners? Not those ones up towards Olsobip?

A: Yes.

Q: Not those ones towards the Southern Highlands border?

A: Yes.

Q: And some from Nomad.

A: That is right.

Q: They did not say yet.

A: That is right. And you have explained that Hudson Hape explained that, yes.

Q: They are far away from that road, they will not benefit.

A: Yes. As I was trying to explain, it was anticipated that these people would want, naturally would want feeder roads to their area far away from where the corridor would be, highway would be going.

Q: Your company IT&S it suggest in its agriculture plan to raise chickens. Is that one of its proposal?

A: No, I am not aware of that.

Q: I saw it in one of their proposals to raise chickens. Do you need all that land mass to raise chickens?

A: No. I understand that landowners from various areas far away from where the road corridor would be, would want to have projects like that. So instead of applying for the license and permits for these various projects that landowners might want by getting an SABL and having the

permits and license for such projects would allow you to just quickly do those projects.

Q: Yes, IT&S says it will raise so many chickens, it will supply PNG and export some overseas. Just chickens and it needs all these area to raise chicken? Is that what your company is trying to do?

A: I have not seen the agriculture plans for IT&S. But certainly, just for chicken, no. I understand it is for selective logging and agriculture purposes.

Q: Perhaps, it is really for logging not for chicken. Your client IT&S, it has got, it is a permitted timber. It has got a timber participating certificate, forest participant.

A: FIP, yes.

Q: Foreign Industry. It is all here to lock not to grow chicken. What do you say?

A: I understand it is selective logging, meaning the landowners would advise IT&S that they want this part of their bush for logging and then logging would occur. If they do not request that logging will not occur.

[3.32 pm]

That is my understanding. So for example, if people at the top of 27C, when the road starts to be constructed, people right at the top of Olsobib will want to access that road. So they will want the feeder road going all the way to them and then people at Olsobib will probably want a bit of selective ---

Q: Yes, but did your company ask them? Did you talk to them?

A: I am not aware of ---

Q: You are not aware so do not speak for them.

A: No, I am ---

Q: They have come and emphatically said they do not want to be part of this SABL.

A: Yes, Mr Tusais, I agree with you. I am just explaining the, my understanding of why the decision was made for an SABL.

Q: Well, that is why ---

A: But I agree with ---

Q: I am stepping in, okay.

A: Yes. But I agree with you.

Q: You are saying you are doing it for the landowners up in Olsobib but you never talked to them.

A: That is right.

Q: That is my point.

A: Yes.

Q: You tell the Commission, how do you reply to that?

A: And I am saying Commissioner, I agree that they should be consulted, they should give their consent before the SABL can cover their customary land. But insofar as this project is concerned and how I understood the business and agriculture plan was that when the road was started to be built, there would be requests from people for feeder roads, especially to go right up to Olsobib and to have to go through the process of getting permits and licenses to build the feeder road again would take time and money. So through the SABL, there would be permits and license already granted for the agriculture and feeder roads and so on so that it would be quicker to build those roads and do those projects. I am not saying that those ---

Q: What you are saying is that you are doing it for their own good?

A: That is the ---

Q: Whether they give consent or not does not matter. What you are doing it, you are doing it for their benefit?

A: No. No, I am saying that that was the intention. But the landowners have to be consulted and they have to give their consent. That is what I am saying. But I am saying that the intention of the project was there to accommodate that interest.

Q: Where are your principals, sorry, your clients, Mr Neville Harsley, where is he now?

A: I understand he is in Moresby now, Port Moresby now.

Q: He is in Moresby. Cliff Frazer?

A: I understand he is in Australia.

Q: Noah Vicar?

A: I understand he is in Australia.

Q: And Don MulCaehey?

A: In the United States.

Q: You think Neville Harsley will come anytime to Western Province and explain to the people of Western Province what he really intends to do?

A: Yes, I have spoken to---

Q: Could you speak to him, bring him over?

A: Yes. I have spoken to Mr Harsley. He is unable to come but he is ready in Port Moresby to help the Commission of Inquiry. So ---

Q: Perhaps, you should strongly urge him to come here. In Port Moresby he will be speaking to foreigners. He should come here and talk while these people are listening. Can you make that undertaking to this Commission that he come here before the end of the week?

A: Yes, I shall undertake to put that request to him.

COMMISSIONER MIROU: You can tell him get on a plane on Thursday and come here.

A: I undertake to inform him of that.

MR TUSAIS: Sorry, Commissioner, if that could be put in a form of a direction to Mr Titus to get Mr Harsley.

COMMISSIONER MIROU: Mr Titus, it has become necessary for the Commission to inquire further into the activities of IT&SL and therefore, I am

directing you to inform Messers Neville Harsley, Cliff Frazer, Noah Vicar and John MulCaehey.

A: Mr Harsley is the only one in PNG.

MR TUSAIS: Perhaps, the first witness, sorry for missing out Neville Harsley who was in Port Moresby.

COMMISSIONER MIROU: Neville Harsley, if you can ensure that Neville Harsley make arrangements to come to Kiunga before the Commission of Inquiry?

MR TUSAIS: To arrive by at least Friday this week.

COMMISSIONER MIROU: Before Friday of this week.

MR TUSAIS: Or sorry Thursday again to give evidence by Friday this week.

COMMISSIONER MIROU: So that the people of Kiunga will see him and hear him as to what his dreams are about helping the people of the Western Province.

A: Yes, Commissioner, I undertake to do that.

MR TUSAIS: Further, Commissioner, Mr Titus is to appear before the Commission at 11 o'clock tomorrow and advise the Commission of what his clients tell him.

COMMISSIONER MIROU: Yes. And if you can come in at 11 tomorrow morning just to give us a progress on your communication between yourself and Mr Neville Harsley and Independent Timbers & Stevedoring Limited in Port Moresby?

A: Yes, Commissioner.

Q: Thank you.

MR TUSAIS: Just finally, Mr Titus. The Commission will be recalling Mr Imen Papa to give evidence in relation to the variance between your evidence.

A: Yes.

Q: You still maintain that you did not have in any shape or form put papers before Mr Papa to sign as provincial lands officer?

A: Yes, I maintain that, that is the truth.

Q: Do you deny also that you went physically in your vehicle to Able Computing to pick Mr Imen Papa up and to bring him to Pacific View Apartments for the signing of this voluminous papers for three SABLs?

A: That is correct, Mr Tusais.

Q: You realize that we will be taking his evidence and from that evidence we maybe basing possible future prosecutions against yourself or Mr Papa, depending on which side the police believe.

A: Yes, I understand that Mr Tusais and I maintain my position.

Q: Thank you. I have no further questions.

COMMISSIONER MIROU: Thank you Mr Tusais. I have no questions to ask Mr Titus except to inform you that on those directions that I have issued and that you are still on oath and a word of caution that you do not discuss your evidence with anyone until the sittings here are closed on Friday or thereafter. But in the meantime we will excuse you from the hearing now.

A: Okay, thank you.

Q: Until 11 o'clock tomorrow just to let us know on the progress between your communication here and Moresby.

A: Thank you Commissioner.

Q: Thank you. You may stand down.

THE WITNESS WITHDREW

MR TUSAIS: Commissioner, I have no other business, perhaps if Mr Bokomi could advise whether he is calling witnesses that - they have come since the morning and are waiting to give evidence.

COMMISSIONER MIROU: Yes.

MR TUSAIS: Sorry, Commissioner, could I just call Mr Imen Papa?

COMMISSIONER MIROU: Yes. Mr Imen Papa, please come to the witness box. You are still on your previous oath so we will hear from you. Counsel requires to make some inquiries. Mr Tusais.

IMEN PAPA, Recalled:

XN: MR TUSAIS

Q: Mr Papa, just briefly. I called you because of evidence this afternoon from Mr Michael Titus. He denies on oath and he is saying he stands by that oath or he swore on the Bible he says you are not telling the truth. He says that he did not give you those land investigations report for portions 27C held by NEWIL, portion 1C held by NEWIL and portion 14C, held by Tosigiba. You gave evidence previously that you signed those documents without having conducted land investigation report. Do you still stand by your story?

A: Commissioner, my statement is the same. I have not conducted any field patrols. I have said the documents were before me. Because of plenty documents so I signed where it is supposed to be signed where my name was.

Q: Who showed you those documents and told you to sign?

A: It was at Pacific View. I stated in my response. In my previous statement I mentioned that I have not heard of Michael Titus, that is what I have correctly stated at my earlier, I have not known him even I have not known his name until last week. That is what I said. In my initial statements. So that was, I am just trying to make a correction in my statements with my previous statements about Michael Titus. But the documents were before me Mr Hudson Hape as we have already in my report indicated.

Q: Was Mr Titus present when you signed these papers?

A: I saw him around the building, but no conversation or sitting close to me or what. But he was in the building, in the floor. I saw him around, hanging around.

Q: How far away from you was he when you signed?

A: Pacific View, 10 floor as I have stated. In the conference ---

Q: Was he close to you when you were signing these many papers?

A: He was like going into their own office, I mean, office at the back and then coming to the main conference room while I had these documents before me on the table sitting down and just signing where I supposed to be signing.

Q: So you could see him, he could see you ---

A: But about his, sorry, Commissioner, knowing about his company, his name and all these, I only see him by appearance. I mean, as a human being walking around in that building. But actually from that whatever time to date I have not actually talked with Michael Titus. And he would confirm that, or even a normal conversation.

Q: This is on 15 December, is it or?

A: Yes, around December.

Q: Were you picked up to go to Pacific View to sign the land investigations reports?

A: I was asked to come. I had a government vehicle, I mean, government hired vehicle as I have said in my earlier report. I was on official duty in other purposes and I was called in to sign.

Q: You said earlier after you swore on the Bible that Michael Titus picked you up at Able Computing and took you to 10 floor, Pacific View to sign these land investigation reports.

A: No, Commissioner, I think that was not my statement. It could be another officer Mr Biyama's statement.

Q: Sorry, I think we stand corrected.

[3.48 pm] COMMISSIONER MIROU: So Mr Titus ---until last week?

A: Yes, I personally do not know him, yes. His background, I do not know.

MR TUSAIS: We will excuse Mr Imen Papa.

COMMISSIONER MIROU: Mr Imen Papa, thank you for your assistance. You are excused.

A: Thank you Commissioner.

THE WITNESS WITHDREW

MR BOKOMI: Thank you Commissioner, I am looking at the time. I wonder whether you are ---

COMMISSIONER MIROU: Shall we rise at half past four?

MR BOKOMI: Commissioner, you - that is very well then. I have the last, perhaps the last three witnesses from Tosigiba so that we close Tosigiba and move onto Tumu Timbers tomorrow. He is still a witness under summons, perhaps I would ask that she returns tomorrow, that is Mrs Betty Wine. Her evidence may not really be ---

THE COMMISSIONER: Do we have to call Mrs?

MR BOKOMI: I suggest I call the three; the Tosigiba witnesses.

COMMISSIONER MIROU: Okay.

MR BOKOMI: To complete their evidence.

COMMISSIONER MIROU: I think we will have to ask ---

MR BOKOMI: Mrs Wine can come tomorrow in the morning.

COMMISSIONER MIROU: Yes. Sorry, Mrs Wine, we will give you priority for tomorrow morning. If you may be excused. Thank you. Call the witness, Mr Max ---

MR BOKOMI: Yes, Mr Max Miyoba.

COMMISSIONER MIROU: Mr Miyoba, you sworn testimony in English.

MAX MIYOBA: Pidgin.

COMMISSIONER MIROU: But have you a prepared statement?

MAX MIYOBA: Yes.

COMMISSIONER MIROU: You may be sworn first and I will ---

MAX MIYOBA, Sworn:

XN: MR BOKOMI

COMMISSIONER MIROU: For the purpose of your evidence, since there is a statement before you, Counsel will lead you through the introductory bits and then he will read your affidavit into evidence.

MR BOKOMI: Thank you. Can you state your full name for Commission's record? Please speak loudly and clearly.

A: My name is Max Miyoba, surname M-i-y-o-b-a.

Q: Which village do you come from?

A: I came from Kukulubabi village in Nomad District, Iamidrai.

Q: What clan do you come from?

A: I come from Kimilafi clan.

Q: I note you have a prepared statement, perhaps for evidentiary record purposes, we ask that you – we tender this in and you can read into the microphone for Commission's record. Can I have a look at it? How many copies have you made?

A: Six.

COMMISSIONER MIROU: Did you make any copies, extra copies?

MR BOKOMI: Did you make extra copies or is that the only?

COMMISSIONER MIROU: He made two copies only.

MR BOKOMI: Very well.

A: Two copies only.

Q: Perhaps, we run a copy.

COMMISSIONER MIROU: You may be excused Mr Tusais.

MR TUSAIS: I seek to be excused, thank you.

MR BOKOMI: Mr Miyoba, in the meantime when a copy is made for the Commission's and the Counsel's benefit of your affidavit statement, I would

ask you to basically read into the microphone your statement for Commission's transcript record purposes. Please, proceed to read.

A: Thank you. In the matter of Commission Inquiry ---

COMMISSIONER MIROU: Sorry, you can ---

MR BOKOMI: Perhaps, you do not need to read all those details.

A: Thank you.

Q: You start with from whatever date.

A: Yes.

Q: And then go into the substantive part of your statement, please.

A: Thank you. "On Friday, the 18th day of November, 2011, I, Max Miyoba, of care of Kebogas Investment Limited, Kiunga, say on oath; which follows; I am director and chairman of Kebogas Investment Limited. I come from Kukulababi village. I am leader of Miyami people in portion 14C and play the principle role of promoting the Trans Papua Highway, selective loggings and agriculture project in Nomad, Juha and Biyami.

(2) I have read affidavit of WaidiKwani about how we meet IT&S begin negotiation started with the feasibility studies and the formation of ILGs and confirm, verify as account of events. Awareness of the Agriculture and Business Lease.

(3) In October 2008, affidavit where advised that I travelled to Nomad, Soabi and Mogulu, explain the best way of implement the proposed highway, selective loggings and the agriculture project was by way of securing an Agriculture and Business Lease over the whole project area because of a following reasons; the landowners could be making numberless requesting for agriculture projects on their respective lands at various locations in the project area outside of the proposed agriculture development along both side of Trans Papua Highway corridor.

The landowners could be making numberless request for selecting loggings projects on their respective lands and various locations in

the project area outside of the proposed selective loggings development along both side of the Trans Papua Highway.

(4) This reason made is appropriate for the whole of Project Area II to be best assigned by way of an Agriculture and Business Lease through the Lease-lease Back scheme to allow for the numberless landowners requesting to be accommodated properly and requested project started without delay for funding and the spending further substantial monies on new feasibility studies and compliance requirements for such projects.

[3.59 pm]

(5) Dina Gabo and I were then flown on an IT&S charter to Nomad and Mogulu to inform the landowners back at home about the decision to set aside their customary land for the project.

(6) Land investigation report and the application for the Agriculture and Business Lease present by Tosigiba Timber Group Limited on behalf of project area to landowners. Kebogas Investment Limited had not complete its ILGs so it was decided that Tosigiba Timber Group Limited could be applied on behalf of all landowners in Project Area II for Agriculture and Business Lease and hold the title in trust for the other landowners until such time when other landowners form their own ILGs and were in a position to apply for their own titles.

(7) Tosigiba Timber Group Limited leased by the Tinagabu then applied for an Agriculture and Business Lease for Project Area II.

(8) Instrument of Lease for customary land and the Project Area II and grant the title over portion 14C to Tosigiba Timber Group Limited. Tinagabu and other ILGs shareholders of Tosigiba Timber Limited then signed the Instrument of Lease of customary land for Project Area II.

(9) The Agriculture and Business Lease was given to Tosigiba Timber Group Limited. The title document, however, area time the number of Tosigiba, sorry, name of Tosigiba Investment Limited requested were made by IT&S surveyor or Hudson Hape for a name change but that has not been done yet.

Landowners support for the Agriculture and Business Lease for portion 14 and the Trans Papua Highway, annexed hereto the marked with a letter 'A' is true copy of the survey declaration expressing the consent and the support, objections and the various role, allegations about the project.

All negotiations I have heard so far here from landowners who live in Kiunga and surrounding themselves with Warren Dutton. Annexed and marked with a letter 'B' is a true copy of the email that Warren Dutton send around to everybody. Those objecting were aware of a pain and the cry of their people in the village for development but they have deliberately decided not to share that with a Commission of Inquiry. They have not proven any corruption or false blame but they want to fall to Commission of Inquiry to think that SABL concept has been used by IT&S and the North East West Investment Limited. And Tosigiba has schemed to steal land from the landowners for some wrong or corrupt motives. As God is my witness, we have not committed any corruption. And most importantly we have not stolen any landowners' customary land and given it into any foreigner.

The true facts as follow: SABL title is the name of the umbrella landowner company whose shareholders own the customary land inside portion 27C, 1C and portion 14C. It is not held or owned or in the same of IT&S. Landowners, who for one reason for other in the case of the Juha people and Biyami people in the portion 14 and also in Awin and Bali who did not complete their ILGs have now completed their ILGs and will be registered and then given shares in the umbrella companies.

The Agriculture Business Lease are barred from corridor of the Trans Papua Highway and the development alongside and the corridor of highway allows feeder roads that the landowner want from highway corridor to all their villages. Further it allows selective loggings and the agriculture project that landowner want to their land away from the selective loggings and the agriculture process along the highway corridor.

If the Agriculture and Business Lease was not applied for and obtained any feeder roads, selective loggings and the agriculture projects that landowner want on their lands that are outside of the highway corridor and alongside it, we will have to go through and process of finding the money, doing new feasibility studies, meeting all these, the line departments' compliance requirements, getting the final government approvals, mobilization of equipments and the personal, and then construction will start from the expense it lies years to do all of these. The landowners in portion 27C, 1C and portion 14C who lives far away from the Trans Papua Highway corridor want feeder roads to connect them to the main Trans Papua Highway whoever own their lands, that they do not need and where they want to make some money or do businesses from their timber trees. They also want selective loggings likewise to make some money or do businesses from agriculture project. They want agriculture project.

The Agriculture and Business Lease allows the kind of development to reach the many forgotten and the scattered landowners in Awin, Bali, Nomad, Juha, Biyami and the Kamuladoso and the quick way, given the kind of environment they live in, there is no other way to secure such a massive development.

IT&S will not manage the project on their own or by itself. The IT&S and the NEWIL have formed the own Awin, Bali, Nomad, American Lumber JV Company Limited to manage project as JV partners. That means the landowner are in the private seat of this development and are not visitors or spectators on their own land. To date, now one, including the provincial and national government, Warren Dutton, who is not a landowner, who false claims to be a champion of landowners' right or any of the so-called landowners who say they have been robbed off their land have put forwarded a plan to bring development to portion 27C, 1C and 14C. These complaints, all spoke out in public over the last 80 years in support of SABL project and they did nothing. And now at this Inquiry the crowd observe it because they do not know anything about it. The further despite these objections, the SABL

and the project is the best thing that has happened for the landowners, in fact, area. The evidence of this who object so far, if they are honest is that some landowners did not understand SABL concept and now it is related to the respond developments that evidence does not mean that we have robbed tree, taken the land so that SABL should be thrown out. It means we have no explain - it marks more clearly to them so they understand it fully and accepts it. Otherwise, no one else in Papua New Guinea in the feasible further is ever going to come and help them give them a quality of life that they have right to live. Mr Max Miyoba.”

[4.11 pm] MR BOKOMI: Thank witness for having read the statement. I will ask you just some questions. I think most of the evidence – crucial evidence in relation to the legality of the establishment of this particular SABL, Portion 14C has been given by the relevant officers who basically authored the Land Investigation Reports. As you have heard in the morning, Hudson Hape, admitted that it was a lie. This whole documentation is a lie. There is nothing truthful about it. So I note you have said so many good things but that will not help in terms of watering down the lie that is now before the Commission insofar as it has been admitted into evidence.

I seek leave first to tender this affidavit of Mr Max Miyoba sworn on the 18th Day of November 2011.

COMMISSIONER MIROU: That is the one he read into evidence?

MR BOKOMI: That is correct. And have it marked as Exhibit Togisiba 7, is it?

COMMISSIONER MIROU: No, number "12". This is exhibit Tosigiba 12, affidavit of Mr Max Miyoba, sworn on 18th November 2011, before a Commissioner of Oath. Six pages, including an attachment, which is an email address to AgemaGarisonGegi. Yes, it is a three page email.

MR BOKOMI: Commissioner, can I proceed?

COMMISSIONER MIROU: Yes, please proceed.

MR BOKOMI: Mr Miyoba, you are a leader of your clan. Did you at any point in time personally give your consent for your land to be included in the SABL or was it only for the road corridor? You are under oath. The SABL covers a very, very large portion of land that is portion 14C, well over 600,000 hectare of land. Now, did you or your clan members ever gave your consent for

your entire customary land to be taken up by this company, Tosigiba Investment Limited, which is not even registered at all?

A: As I said under Tosigiba is only 82 ILGs who have listed.

Q: 82 ILGs, yes?

A: And others not to be listed yes. My clan was involved in that not to be listed.

Q: But the ILG does not own the land, you understand?

A: Yes.

Q: It is the clan that owns the land both the ILG and the land, correct?

A: Yes.

Q: So did you have a clan meeting no? With regard to giving away all your customary land including all your land rights, no?

A: I think there was an awareness through the whole portion 14C.

Q: What was your understanding at that time when you were conducting the awareness? Was it strictly for the road corridor for customary landowners to free up the road corridor, the area of the land that the road was going to run through? Or was it for the entire area that will go up all the way to Mogolu and into the border with Juha, along the Southern Highlands and then across Strickland river, bordered by Strickland river and all the way down and including Nomad station which is a government station, which is a government land, and all those areas, no?

A: Yes.

Q: What do you mean by saying yes? Meaning it was never your understanding?

A: My understanding that the people of Nomad want the feeder road must go through the villages.

Q: Very well, what do you say about this particular witness who has come before the Commission to give evidence? And she literally cried from the witness box saying that might be her clan or her husband's clan

rather, they never gave their consent. Which means you never conducted any land investigations yourself, is that correct? Did you conduct the land investigation together with government officers?

A: No.

Q: No, see now it confirms what Mr Hudson Hape in the morning admitted that he sat down in his office and filled this out at the behest of customary lands Division Director, Mr Simon Malu, within the Department of Lands for purposes of fast-tracking all these registration of so-called SABLs which are now under consideration by the Commission. Now, you say that the landowners will not be left out, they will be in the driver's seat in any development activity having formed a joint venture with the company called IT&S. It is stated in your affidavit, it is AwinPari, American Lumber Joint Venture Company and then there is another one. And all these landowners companies, you tell me how many people from your area are educated to an extent where they are able to run, make meaningful decisions of how to management a company, where the profit should go, et cetera? Do you have any such persons to help the landowner company?

A: No.

Q: No, then how can you safely say that the landowners will be in the driver's seat? You know what it means when you say that the landowners will be in the driver's seat of any development activity? Now, it unfolded in evidence during today's hearing that 90percent of all the proceeds will be owned by IT&S. The landowner company will own only 10percent. That is accordingly to the joint venture agreements that you have signed or your companies have signed or proposed to be signed. So my suggestion to you is you reconsider your position in so far as all these matters are concerned. There is clear evidence now before the Commission that majority of the landowners only consented for the road corridor and it was a 40 metre road corridor with an extension of about 500 meters either way, left or right, not for 5,000 meters. That is 5 kilometres. That is a lot of land. You do not need 10 almost 11 kilometres of straight line corridor road clearing to build what you call the Trans Papua highway. So perhaps, you go back - how well do you relate to Mr Harsely? How well do you know him?

A: No, he is different boy.

Q: How well do you know him?

A: When we started, making sure the development ---

Q: No, just---

A: With IT&S, I know him.

Q: Okay, how well?

A: When I go to Moresby, Hugo building, I know him.

Q: You go and see him? He gives you money?

A: No.

Q: Who funds your ticket to go to Moresby?

A: IT&S.

Q: IT&S. Okay, that is an indirect form of giving you money. But does he gives you allowances for the time you are there in Port Moresby?

A: Allowances only K50for a day's stay.

Q: For a day? And he funds for your hotel accommodation he pays for that?

A: Yes.

Q: So you see, indirectly he gives you money, right? So if I put to you that what you are saying, all that you are saying may not be true, because you are being funded by IT&S what do you say about that? All that you are saying in your affidavit, you are saying very good stuff. It is clear, evidence has been clear you have been here for the last two weeks almost. Almost all the landowners have come and said, no, that was not our idea. So where are you coming from with this particular statement? Is that the reflection of the actual facts or are you basically trying to impliedly trying to protect somebody's interest?

COMMISSIONER MIROU: In fact, it does not sound to me like factual; this is more your propaganda to say that the landowners have no right to come to this Commission of Inquiry and say what they feel. Whose agenda you are on from the way I read your affidavits, paragraph13 or paragraph12. "Those

objecting are aware of the pains and cry for the people in the village for development but they deliberately decided not to share that with the Commission of Inquiry.” 13, “they have not proven any corruption or foul play but they want to fool the Commission of Inquiry to think that the SABL concept has been used by IT&S, NEWIL, Tosigiba as a scheme to steal land from the landowners for some wrong or corrupt motives. As God is my witness we have not committed any corruption and most importantly we have not stolen any landowners’ customary land and given it to any foreigner.” Okay, you tell me this portion of land, who owns it? Portion?

MR BOKOMI: Portion 14C.

COMMISSIONER MIROU: 14C, who owns it and in whose name is it in?

A: The people of Nomad.

Q: No, who owns it? There is a title owner?

A: 14C title is given to Tosigiba.

Q: That is it. Tosigiba Limited. And you are the Chairman of Kebogas. So what do you think about the people? You say that they have no right to come here and tell this Commission of Inquiry about what they feel. Do they have no rights at all? Tosigiba, your company took away that. You own this huge portion of land. And you come to this Commission of Inquiry and talk about a road project but yet you still look at it, it is colored – huge chunk of land. And a woman from Nomad, she walks here eight days from Nomad to this place, to Kiunga, sits there and she cries. Because people like you do not care about them. So what you want to tell this Commission of Inquiry through these statements that you make, what is it you want to tell us? Is it any truth at all or you want to come and make a general propaganda because you feel that you have no obligation to your people and that you to come and say that what they are saying is not true. Is that what you want to say?

A: Commissioner, I walked from Nomad last week, I slept for five days because of this Commission of Inquiry. I started from my home all the way down here. When you look at the people of Nomad it is really neglected.

Q: Yes, I know that. That is why I am saying if you say if she does not have the right like you to come and say how she feels, why are you saying that she has no right to come and tell this Commission of Inquiry that she did not give her consent but they took my land away and she cried there. And yet you come and say that landowners have no right at all to come here say it. That is what I am telling you. She walked eight days did I say that? You walked five days that is how it feels.

[4:28pm]

And so what Counsel is saying that literally everything that you are talking about, this land, is all a pack of lies. All done through this company called IT&S. It does not exist anymore. So if you want to make general statements, let them be factual, do not make generalized statements because that is how you think it is. In this Commission of Inquiry you must come and tell the truth, factual, we want to hear facts, we do not want to hear some story.

MR BOKOMI: Commissioner, I basically have no further questions but unless MrMiyoba has anything to say.

COMMISSIONER MIROU: We shall give him the opportunity to – Mr Max Miyoba, if you want to say something you can say it before we excuse you from the witness box.

A: Before I excuse, can we look at the fax went around Papua New Guinea. Warren Dutton, he belongs to Western Province and he is from Arwin tribe or Nomad tribe. Thank you Commissioner.

COMMISSIONER MIROU: You are excused, thank you. You can go.

MR BOKOMI: Thank you MrMiyoba.Commissioner?

THE WITNESS WITHDREW

COMMISSIONER MIROU: I am in your hands. You wish to proceed with the next witness?

MR BOKOMI: MrSokiSamisi.

SOKI SAMISI, Sworn:

XN: MR BOKOMI

COMMISSIONER MIROU: Yes, okay, MrSoke thank you for presenting yourself under summons. Was it; we issued a summons? Counsel, we issued him a summons?

MR BOKOMI: These Tosigiba witnesses are not under summons. They have voluntarily opted to give evidence.

COMMISSIONER MIROU: Yes. Thank you for coming forward, Counsel will ask you questions. Have you a written statement?

MR SOKI SAMISI: Yes.

COMMISSIONER MIROU: How many copies do you have there?

MR SAMISI: Three copies

COMMISSIONER MIROU: Three copies, okay good. MrBokomi?

MR BOKOMI: Thank you, before we proceed to ask you to read the affidavit statement that you have, perhaps for record purposes please clearly state your full name, your village and what clans you come from and what district in the Western Province that you also come from?

A: Thank you Commissioner. My name is SokiSamisi. I come from Nomad LLG in Western Province. My village is Wodibi in the Middle Fly district.

Q: Thank you, your clan, does it have land in the SABL area?

A: Yes.

Q: Very well, you may proceed to read your affidavit statement please. Just start from where your statement actually begins after the word affidavit.

COMMISSIONER MIROU: Maybe we can receive the other two copies and we can make---

MR BOKOMI: Can I have a copy of your affidavit?

COMMISSIONER MIROU: That will be Tosigiba 13.

MR BOKOMI: Yes, exhibit TosigibaNo 13.

[EXHIBIT TOSIGIBA 13 – AFFIDAVIT OF MR SOKI SAMISI]

COMMISSIONER MIROU: Yes, the affidavit of SokiSamisi, yes?

MR BOKOMI: Please read your statement.

A: Thank you Commissioner. “on Friday 18th November 2011, I, SokiSamisi, C/- Tosigiba Timber Group Limited, Kiunga, say on the oath as follows:

1. I am a Director and acting Chairman of Tosigiba Timber Group Limited.
2. I was not involved in the SABL process, but I understand that process was pursued and endorsed by Dina Gabu on behalf of Tosigiba Timber Group Limited representing all the landowners of Nomad, Juha and Biyami. Execution of final project agreement for the Trans Papua Highway, selective logging and agriculture project between the State, developer and the landowners.
3. I signed the final project agreement at Government House on 23rd May 2011. Endorsement of my signing by ILG shareholders of Tosigiba Timber Group Limited.
4. After the signing of the final project agreement on 23rd May 2011, I called for all the 82 ILGs to have their respective meetings and special shareholders meeting to endorse my signing of the final project agreement.
5. The ILGs had their respective meetings from 1st to 6th June 2011 on 7th June 2011. The shareholders convened a special shareholders meeting.
6. Annexed hereto and marked with the letter “A” is a true copy of the meeting of the shareholders meeting of 7th June 2011. Landowners support for the SABL for portion 14C and trans Papua highway selective logging and agriculture support.

7. Annexed hereto and marked “B” is a true copy of the Statutory Declaration expressing their consent and support, objection against the SABLs and project.

11. All the people I have met back in the villages in North Fly, north Awin, Juha, Nomad, Pari and all the Biyami people I have met do not have any objection to freeing up of their land for this development that they have cried and pray to God for – since Papua New Guinea has been independent. Those people I have heard speaking at the Inquiry against the freeing up of our customary land for development in portion 27C---

COMMISSIONER MIROU: Mr Sogi. Counsel, this seem to be the same statement he is making. MrSogi. Counsel there seem to be replicate of what---

MR BOKOMI: Yes, it is a replicate of what---

COMMISSIONER MIROU: We cannot sit down and listen to the same thing being said.

MR BOKOMI: It is a replicate of what MrMiyoba has stated. The only difference here is that you seem to attached those landowners support that you obtain but this will not help the Commission of Inquiry into SABLs as you have heard the Commissioner say when he dealt with the evidence of MrWaitiKwani yesterday and even relied on that today. This schedule of owners of portion 14C, Nomad---

COMMISSIONER MIROU: You are raising the same issues that Mr – we cannot hear the same thing. All you have got to say is how you took over from Mr Dina Gabo. Are you going to make some statement against what Mr Dina Gabo said in his evidence as to how you took over the leadership of Tosigiba Timbers Group Limited?

A: Commissioner, yes.

Q: We will accept this document into evidence together with the attachments that you have made but we will not sit down and listen to the same thing that was already read into evidence by your colleague, Mr Max Miyoba , very much the same. And the Commission has no time to sit down and listen to the same statement being read. So in what form or in what

manner did you take over from Dina Gabo? Because you heard evidence from Dina Gabo yesterday?

[4:39p.m]A: Thank you Commissioner, as I have read the first statement already, I was in Kiunga, I was on my own my personal trip. Somehow, I was hooked up by IT&S office, Port Moresby. I was called by the IT&S office to go and sign the project agreement. I have denied three times I said no, I cannot sign that project agreement because I am not the founder of the company and I should not sign on to the project agreement.

MR BOKOMI: Witness, I will stop you there, or perhaps you complete your statement first.

A: Sorry it is a short statement. Thank you Commissioner, I said I am not the founder of this company I am just only a director I cannot sign onto the document and three times I refused to sign, but they insisted me three times so I went.

COMMISSIONER MIROU: Who was that person from IT&S?

A: I was called by Michael Titus.

Q: The lawyer?

A: The lawyer, and Neville Harsley so then I went. They bought my ticket and I went.

Q: Where did you go?

A: I stayed in Kevau, Kevau Inn.

Q: Where is Kevau Inn?

A: Four mile. I stayed in Kevau Inn and next day.

Q: You know what time you travelled there?

A: I cannot get the date but actually I flew on Wednesday.

Q: Wednesday, what month and what year?

A: May 2011.

Q: Oh, just early this year?

A: Yes.

Q: Okay.

A: All right I was in Kevau and after two days we went for signing and we signed the project agreement at the Government House Konedobu on the 23rd May 2011, thank you.

MR BOKOMI: Thank you I have a number of questions. On cross-examination Mr Titus did say to the Commission today in his evidence that he was never involved in any form or manner insofar as the drafting and signing of the project agreement was concerned. Now, you are saying that he actually called you to go to Port Moresby and attend to and execute this particular project agreement to facilitate for construction of the Trans Papua highway?

A: Yes.

Q: Did he call you?

A: Yes.

Q: How many times did he call you?

A: Three times.

Q: Three time and when you went to Port Moresby did he explain to you the document?

A: No.

Q: Did he give you a copy of the document anywhere, did you talk to him?

A: I was not given any document to have a look at it and look through the content of the agreement, I just signed the project.

Q: He never explained to you the meaning and the effect or the consequences of that particular project agreement, as he claims being your company lawyer. Was he at that time your company lawyer?

A: At that time, as soon as when I went for signing I knew and I realized that he was the company lawyer.

Q: Which company lawyer, IT&S or Tosigiba?

A: He was assisting IT&S.

Q: Commissioner, perhaps that line of evidence be confirmed tomorrow by Mr Titus. He was under oath. Say, perhaps Mr Titus be directed to appear again at 9:30am?

COMMISSIONER MIROU: We will take his evidence, be immediately present.

MR BOKOMI: For Mr Tusais to cross-examine him.

COMMISSIONER MIROU: This would be a specific direction to our police officers to ensure that Mr Titus is recalled tomorrow morning to confirm what Mr Samisi now saying in evidence.

MR BOKOMI: Okay, before you went on to sign and I note that you have attached minute of the shareholders meeting, I believe not before you signed but after you signed and noting the effect that you may not have had the full power so what they are saying in company and legal language the proxy from your board of directors or your shareholder to give you the power to sign the project agreement. You came back to Nomad is it under IT&S ticket, together with Mr Titus?

A: Yes.

Q: And then you conducted this particular meeting?

A: Yes.

Q: To rectify in other words?

A: Yes.

Q: Your signing of the project agreement?

A: That is correct.

Q: Was the notice, was there a notice given for the meeting?

A: No.

Q: A shareholders meeting or even a directors meeting attaching the agenda for the meeting to all the relevant shareholders before you contacted the meeting at Nomad?

A: No.

Q: At least a 21 day notice, no?

A: No.

Q: At that meeting, apart from rectifying your signature of this particular project agreement under consideration, the Trans Papua highway project agreement, was there any notice given to Mr – did you decide on any other issues including the management of your company?

A: No.

Q: On whose advice that you hoped to conduct a shareholders' meeting and not a board of directors meeting? On whose advice advising about all the

ILG chairmen I think, Chairmen are present here. The meeting was held on the 7th June 201, that is annexure A to you. And you signed as the Acting Chairman. Now who is the Secretary? Was secretary also advised that there was going to be a meeting by way of a notice?

A: Thank you, Commissioner I was advised by Michael Titus to conduct shareholders meeting and I did conduct.

COMMISSIONER MIROU: To remove Mr Gabo? To remove Mr Gabo as the Chairman?

A: He is still the Chairman.

Q: Yes, but he was removed?

A: Due to his absence during the signing of this final agreement then the lawyer advised that because we cannot sign onto this project agreement, so they advised me to sign. So I refused three times.

Q: Very well, did Mr Titus who is knowledgeable in the law advised you at that point in time that we need to give for purposes of compliance with the relevant requirements of the Company Act relating to notice under section 102 of the Company Act, notice to Mr Dina Gabo also attaching a draft agenda to the effect that one of the item on the agenda was for his removal. No such notice was given?

A: No, no such notice was given and served him the notice that because of your absence we are going to sign the project. There was no notice.

Q: If I put to you that your appointment is not in compliance with the relevant of the Company Act and also the calling of this meeting was not in compliance with the requirements of the Company Act and also your signing of the document for the project agreement which you were not legally empowered to do so. Was this particular meeting contacted on the advice of Mr Titus to make what would be legal cover of all your actions, is that correct?

A: Yes.

Q: Is that a correct proposition? You speak loud in the microphone.

A: Yes.

COMMISSIONER MIROU: So it was a cover up?

[4.52 pm] MR BOKOMI: Your company is a public company just as much as North East West Investment Limited is. You see, these are matters that your company lawyer must be explaining to you all. You are all not persons knowledgeable in the law. When things like this happen then they must explain to you properly and they say, look, we are need to give this kind of notice except not because if we do not then if the matter is taken to court then we will lose the legal challenge. So your election will be declared null and void, you see. And then you are thrown back to square one. It breeds a lot of problems. This now calls into question, I believe you should question your lawyer as to where his allegiance is. It is noted he was dodging a lot of questions today but you know, that is the crux of the matter. Anyway, insofar as the land investigations reports are concerned, Mr ---

COMMISSIONER MIROU: He is unreliable. It is no use.

MR BOKOMI: Mr Soki Samisi, these land investigations reports are already totally unreliable. They are legally, factually untenable at all. So we might as well not place reliance on anyone of this, you see. So all the pillars as Mr Titus was saying during his submissions to the Commission ---

COMMISSIONER MIROU: Is nothing. There is no structure.

MR BOKOMI: The basic pillars, the fundamentals, the foundation, you know, those posts upon which this house called SABL is built have already crumbled just by the admission of Mr ---

COMMISSIONER MIROU: Hape's ---

MR BOKOMI: Hudson Hape this morning. This document is totally concocted, false, totally untrue, it is a sham, it is a scheme, it is just totally deceitful. That is what it is. So I believe you should basically be questioning your lawyers as to the last ditch attempt, very, very futile to either remove Mr ---

COMMISSIONER MIROU: Gabi.

MR BOKOMI: Or even to gather landowner consent. Who funded this gathering of landowner consent exercise? You tell me who funded it? IT&S, is it?

A: There was no funds assisted by IT&S. It was a free job.

Q: Free job but at the behest of whom? Who asked that this happen?

A: Michael Titus.

Q: But did he explain to you why?

A: Just to protect the signing of this project agreement.

Q: You see, just to protect or just to cover up, right? Protect may not necessarily be a good way but perhaps you will agree with me if I put to you that this was an exercise; a massive cover up exercise. Right or wrong?

A: Right.

Q: Thank you, I have no further questions for Mr Soki Samisi.

COMMISSIONER MIROU: Thank you Mr Samisi. We will allow you to go now because we have heard your evidence and we will consider all aspects of it together when we finalize our Inquiry on this particular SABL. Thank you.

A: Thank you Commissioner.

MR BOKOMI: Thank you Mr Samisi.

A: Thank you.

THE WITNESS WITHDREW

Q: The last witness for Tosigiba is Mr Ia Fami.

COMMISSIONER MIROU: Mr Fami.

MR BOKOMI: Please take the witness box.

IA FAMI, Sworn:

XN: MR BOKOMI

COMMISSIONER MIROU: Please sit down and before you do that, can you give your submission to, your affidavit to Counsel to look at to see if we are not having the same problem that we had with the last witness.

MR BOKOMI: Commissioner, the attachment relating to schedule of owner's portion 14C, Nomad, these are the ---

COMMISSIONER MIROU: We can ---

MR BOKOMI: So-called landowners that they, I mean, the so-called mobilization of landowners support that they were trying to get at the ---

COMMISSIONER MIROU: Is it very similar? The affidavit is similar.

MR BOKOMI: After the 11th hour and the content of the affidavit is basically the same.

COMMISSIONER MIROU: We can accept the tender of it and just make reference to what was already read into record by Mr Max Miyoba.

MR BOKOMI: Very well.

COMMISSIONER MIROU: And then we will just ask general questions as to his knowledge about ---

MR BOKOMI: Yes, if I may ask him a general question now, because ---

COMMISSIONER MIROU: I will accept the tender of it.

MR BOKOMI: Yes, all right.

COMMISSIONER MIROU: It is very similar to what Max has said ---

MR BOKOMI: Yes.

COMMISSIONER MIROU: And also similar to what -- so we will not go into the same thing. We will accept into our records. That is Tosigiba No 14.

MR BOKOMI: Yes, affidavit of ---

COMMISSIONER MIROU: Except that we know, Counsel notes that you have added some additional attachments which is the ILG consent lists.

MR BOKOMI: Not ILG consent. It is basically landowner, a schedule of landowners who support the SABL. That is basically similar to the evidence in Waidi Kwani's affidavit.

COMMISSIONER MIROU: Yes, okay.

MR BOKOMI: Thank you Commissioner.

COMMISSIONER MIROU: Yes, just a brief background and then we will proceed into the general ---

MR BOKOMI: Basically, Mr Fami, could you state your full name clearly and loudly into the microphone and also tell the Commission where you come from, what village, your clan and whether it owns their clan land within the portion 14C, SABL?

A: Thank you Commissioner. My name is Ia Fami. I come from Sodiri village in Nomad Local Level Government area. I come from a small clan called Girikei and my ILG name is Endaxioba. I am the secretary of my ILG group. I have about 68 members in my clan.

COMMISSIONER MIROU: That is all, thank you. Counsel, you can ---

MR BOKOMI: Commissioner, I seek to tender the affidavit of Ia Fami, sworn on 21 day of November, 2011, and ask that this particular affidavit be admitted into evidence and marked as exhibit Tosigiba No 14?

COMMISSIONER MIROU: Yes, okay, I will accept the affidavit of Mr Fami, sworn on 21 November 2011, as Tosigiba 14. Mr Fami, your evidence has been noted by the Commission. It will form part of our records.

[EXHIBIT TOSIGIBA 14 – THE AFFIDAVIT OF IA FAMI, SWORN 21 NOVEMBER 2011]

A: Thank you.

Q: That is for your information.

A: Thank you Commissioner.

MR BOKOMI: Now, Mr Fami, you have been here all throughout the proceedings of the Commission and more particularly today. And with regard to the land investigations compiled in that land investigation report, the author of those land investigation of that set of land investigation reports, Mr Hudson Hape, unequivocally admitted to the Commission of Inquiry today that that was his own handy work based on instructions purportedly given from and by the Department of Lands, Customary and Lands division to undertake and fast track all these land investigations. He concocted, meaning he made up those land investigations in his IT&S office. There was no land boundaries surveys done, no proper awareness carried out etcetera, etcetera as required by the relevant provisions of the Land Act, in particular sections 10 and 11 of the Land Act 1996, as amended to date. Now, I do not know what kind of story you are going to tell the Commission now insofar as your evidence is concerned. You have any particular statement to make?

A: Commissioner, I have no personal evidence or particular say to all the documents that was presented by the land surveyor. But what I could say is this, I was with them and I believe that what they were doing was all correct because they were professionals.

Q: They never at any point in time explained to the requirement of them being professionals going onto the ground with your people and yourself to do land boundary survey for each of those clans, where your clan land starts and ends and then where the other clans land starts and finishes, et cetera, et cetera, nothing of that job was done on the ground in the Nomad area. No, nothing?

A: No.

Q: No. I have no further questions. Thank you witness.

COMMISSIONER MIROU: Thank you. Mr Fami, thank you for your patience and opportunity to hear you. And your evidence is now part of our records also you are recorded there. We will consider all these evidence when we complete this investigation next year and compile a recommendation on this particular SABL that belongs to Tosigiba Timbers Limited.

MR BOKOMI: Thank you Commissioner. I have no further matters apart from of course, those directions issued to Mr Titus to appear ---

COMMISSIONER MIROU: You may be excused.

THE WITNESS WITHDREW

MR BOKOMI: For further cross examination. That formally ends the hearings into Tosigiba Investment, portion 14C. Tomorrow we will start with in the morning at 9.30, perhaps Commissioner, we start at 8.30 again.

COMMISSIONER MIROU: Yes, let us start early.

MR BOKOMI: Tomorrow we will start with Tumu Timbers Development Limited portion 1C.

COMMISSIONER MIROU: We will hear from Mrs Wine too tomorrow.

MR BOKOMI: Yes. In between we will try and slot the other witnesses which are still under summons. Perhaps I will put her first but as for, as a formal announcement ---

COMMISSIONER MIROU: Tumu Timbers Limited.

MR BOKOMI: Tumu Timbers Development Limited, portion 1C, we will start tomorrow.

COMMISSIONER MIROU: Any persons here that has an interest in the SABL that is owned by the company called Tumu Timbers Limited, portion 1C?

MR BOKOMI: Witness, you may be excused, please.

COMMISSIONER MIROU: Call them out, call out.

A: Commissioner, may I make some, make few remarks before I ---

Q: Yes.

A: Just few say before I leave.

Q: Yes, okay, you can have your say.

A: General expression of my concern. Commissioner the whole process was maybe about 70, 50 percent supported the project knowing that the professionals were doing the right job on the understanding that we, portion 14C, particularly Nomad people were ignored for 35 years since Independence. And we supported that project process for the project of building the road. Because we Nomad people have suffered for the road

for some years. Commissioner, for that reason we were at the back of this project. Thank you.

Q: Thank you. You are excused. Thank you.

THE WITNESS WITHDREW

MR BOKOMI: Thank you Mr Fami. Commissioner, I have no further matters. I ask that ---

COMMISSIONER MIROU: I thought some, those ones who have an interest in the SABL portion 1C, that is in the name of Tumu Timbers Limited, are you present? Okay, you will see Counsel when we adjourn proceedings to tomorrow.

MR BOKOMI: Tumu Timbers we will start tomorrow in the morning at 8.30. Commissioner, I ask that this, the hearings of the Commission be adjourned to -
--

COMMISSIONER MIROU: 8.30.

MR BOKOMI: 8.30 am, tomorrow in the morning.

COMMISSIONER MIROU: Thank you Counsel. The proceedings are concluded and we will adjourn to 8.30 tomorrow morning.

AT 5.09 PM, THE COMMISSION OF INQUIRY WAS ADJOURNED UNTIL FRIDAY, 23 NOVEMBER 2011 AT 8.30 AM

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