

TRANSCRIPT OF PROCEEDINGS

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COMMISSION OF INQUIRY INTO SABL

MR NICHOLAS MIROU

COMMISSIONER

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KIUNGA VOCATIONAL TECHNICAL COLLEGE, MONDAY 21
NOVEMBER 2011 AT 9.00 A.M.
(Continued from Saturday 19 November 2011)

COMMISSIONER MIROU: Yes, good morning, Mr Bokomi.

MR BOKOMI: Commissioner, good morning to you. For this morning's hearing of the Commission of Inquiry into Special Agriculture and Business Leases in the Western Province, you would note that we have a number of witnesses' whose summons are returnable this morning. However, I would propose that those particular witnesses come back at 1.30, in particular, those are the witnesses who are executives of North East West Investment Limited; namely Waiti Kwani. Waiti Kwani, are you there? Please stand up. Foxy
10 Asobi, Ronson Moiya, Samson Ubre---

COMMISSIONER MIROU: And Mrs Waine; Betty Waine.

MR BOKOMI: And Mrs Waine.

COMMISSIONER MIROU: Good morning. Counsel will be ready to hear your evidence this afternoon if you can bear with the Commission. We need to call evidence from Tosigiba. So in regard to your evidence, we will hear you this afternoon at 1.30. So thank you for coming this morning and presenting
20 yourself, and we will be ready this afternoon to hear each of you your evidence as per the statements that you have submitted to the Commission. You may be excused to do other things during the day if you wish to, but you can come back at 1.30 pm this afternoon, okay.

MR BOKOMI: The other two witnesses in relation to portions 27C and 1C, as well as portion 14C and portion 1C Tumu Timbers Development Limited and Tosigiba Investment Limited, respectively, are as follows: Mr Michael Titus of Titus Lawyers is in the court room – sorry, the hearing room and Mr Hudson Hape, please come forward. Can you come forward?
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COMMISSIONER MIROU: Please come forward.

MR BOKOMI: These two witnesses, for the record, I know them personally. So I will refrain from cross-examining them. So Mr Tusais will bear that responsibility. He will do that tomorrow, on his indication. He is preparing to basically have them cross-examined. So he asks that these two particular witnesses, their summonses be made returnable again tomorrow. So we are asking for an adjournment to 9.30 am.

40 COMMISSIONER MIROU: Okay. The Commission notes attendance of Mr Michael Titus. Thank you for your attendance and Mr Hudson Hape. Counsel has disqualified himself from taking you – cross-examining you in your evidence. So we will allow time tomorrow at 9.30 am when Mr Paul Tusais, the

Lead Counsel Technical, will undertake that to examine you tomorrow morning. So I thank you for attending this morning on a summons that was issued to you late on Saturday afternoon and which was returnable this morning. Your attendance has been noted and we will adjourn to tomorrow morning for evidence to be taken. So in the meantime, you are both excused. But before you are excused, Counsel, is there a matter that needs to be ascertained in terms of any probable disruption or cause for concern?

10 MR BOKOMI: Yes, thank you for bringing back my recollection, Mr Commissioner. It has been brought to my attention that Mr Titus---

COMMISSIONER MIROU: And Mr Hape.

MR BOKOMI: Apparently may have been verbally and almost physically abused in Port Moresby during the openings of this particular Western Province SABLs. For purposes of the integrity and the production of the Commission's work as well as for his personal safety and security, I ask that the Commission make the appropriate direction to ensure that there are no disruptions from any interested persons insofar as the proceedings of the Commission are concerned,
20 as well as the evidences from witnesses that are given before the Commission and also for the Commission's witnesses, particularly Mr Michael Titus.

COMMISSIONER MIROU: Yes, and other the witnesses who are under summons.

MR BOKOMI: And other witnesses as well. It is an offence being contempt of the Commission if you start disrupting the Commission's proceedings as well as taking on matters physically. So for those of you who are present, please bear in mind that the Commission has penal powers to seek police assistance to have
30 you all locked up if you start disrupting the Commission's proceeding, including the Commission's witnesses. These witnesses are not your witnesses. All of you are the Commission's witnesses. Thank you.

COMMISSIONER MIROU: Maybe if I can just interpose here.

MR BOKOMI: Yes.

COMMISSIONER MIROU: For those who are present in this hearing and this is a public inquiry, an inquiry for everyone to be present. Under our powers
40 too, the Commission has the power to summons witnesses and you have seen that there are some who have volunteered information and there are some that have come under summons. That includes Mr Michael Titus, Mr Hudson Hape and the executives of North East West Limited and other persons of interest to

the Commission. This Commission also has powers under the Commissions of Inquiry Act, which in my opening address, I had mentioned that these powers will be enforced if any person interrupts or willfully insults the Commission. That includes the witnesses. The Commission must accord protection to its witnesses who have been summonsed to appear. Despite those concerns that you have with regard to your land, I must insist and enforce that direction that if any of these witnesses are insulted, or assaulted, or intimidated, or harassed and if it comes to the attention of the Commission, this Commission will not hesitate to deal with those persons. These witnesses are of interest to the Commission, and their evidence will assist us to make the necessary recommendations to the Government next year, and therefore, to allow this Commission to work in this manner, it is best that you will refrain from any such actions that you intend to do.

There was an incident, Counsel has alluded me to, in Waigani, when the opening was made in regard to these SABLs. So please refrain. The Commission does not want to go down that path of prosecuting any person for willfully disrupting its work here. We thank you. You are a good public that is here to – you have an interest in the matters, so let the law take its proper course and the Commission’s work so that we can find a better solution to what has happened in the SABLs. So I thank you for your attention and take note of what the Commission’s powers are. Thank you Counsel. Mr Titus and Mr Hape, you can be excused for the day if you so wish to until 9.30 am tomorrow.

MR BOKOMI: There is one more witness, one more person who has opted to give his evidence this morning. He is the company forester for IT&S, Independent Timbers and Stevedoring, Mr Mai Digaba. Come forward.

This particular witness, Commissioner is not under summons but he has voluntarily opted to give evidence, hence I basically seek the Commission’s direction to direct him to appear---

COMMISSIONER MIROU: 9.30.

MR BOKOMI: Together with Mr Hape and Mr Titus in the morning tomorrow at 9.30 a.m.

COMMISSIONER MIROU: Okay, yes.

MR BOKOMI: His name is Mai Digaba. Mai is spelt M-a-i; and Digaba, D-i-g-a-b-a.

COMMISSIONER MIROU: Sorry – yes, okay. Mai, you are excused. Thank you for volunteering your information to the Commission. We will hear from you tomorrow morning at 9.30 a.m. Thank you.

MR BOKOMI: Thank you, Commissioner. I will, as a matter of course, be organizing the witnesses now for Tosigiba. So I would ask for an adjournment of about 10 minutes.

10 COMMISSIONER MIROU: Yes, okay. We will adjourn proceedings for 10 minutes.

SHORT ADJOURNMENT

[10.24 am] COMMISSIONER MIROU: Mr Bokomi?

20 MR BOKOMI: Thank you once again, Commissioner. Before we proceed, in light of the evidences that have transpired, I seek consequential directions – further consequential directions from the Commission to be issued to Messrs Imen Ite Papa, the Acting Provincial Lands Advisor, Western Provincial Administration and the District Administrator, Mr Ronald Manise DMonai, to appear before the Commission today in this morning's part of the Commission's session for today and that the police be directed to drive up to their offices and advise them to come down to the Commission's hearing room immediately.

COMMISSIONER MIROU: Any particular reasons?

30 MR BOKOMI: Yes, because of their involvement in signing of all those Land Investigation Reports and their recommendations as to alienability. We need to determine the motivation behind them signing those---

COMMISSIONER MIROU: So you require them for further evidence?

MR BOKOMI: Yes, for further examination.

40 COMMISSIONER MIROU: Okay, thank you, Counsel. Upon hearing Counsel's request for the recall of two witnesses who were summonsed at the beginning of this sitting, the Commission will direct the Commission's police officers, Mr Patrick Debessa and Mr Dokta McKenzie to ensure that the witness, Mr Ite Papa, Acting Provincial Lands Officer with the Provincial Administration office here in Kiunga, as well as the District Administrator, Ronald Manise DMonai to be advised to attend the hearings prior to 12.

MR BOKOMI: Yes.

COMMISSIONER MIROU: Prior to our adjournment at 12, lunch time today. If this can be immediately attended to, together with members of our Kiunga Police Force. Thank you, Counsel.

MR BOKOMI: Thank you.

10 COMMISSIONER MIROU: The recall is basically to ascertain further information with regard to the signing of instruments in relation to the issuance of SABLs to portions 27C---

MR BOKOMI: 1C.

COMMISSIONER MIROU: Portion 1C and portion 14C which is in the name of Togisiba Limited.

MR BOKOMI: And Tumu Timbers Development.

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COMMISSIONER MIROU: And Tumu Timbers Limited.

MR BOKOMI: Yes, that is also portion 1C.

COMMISSIONER MIROU: That is part of portion 1C.

MR BOKOMI: No, that is a different portion 1C.

COMMISSIONER MIROU: Oh, I see. So Tumu Timbers which is portion 1C.

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MR BOKOMI: It is portion 1C as well, Commissioner.

COMMISSIONER MIROU: Okay, thank you.

MR BOKOMI: Commissioner, I now propose to deal with the first Togisiba witness for this morning, that is Mr Dina Gabo. Mr Dina Gabo has prepared a written statement which he will be reading into the---

COMMISSIONER MIROU: Thank you, that is very useful and quicker.

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MR BOKOMI: Yes. So Mr Dina Gabo, please take the witness box.

DINA GABO, Sworn:

XN: MR BOKOMI

COMMISSIONER MIROU: Please be seated, Mr Gabo and Counsel will take you through the introductory aspects of your evidence and then you may read your statement into evidence.

10 MR BOKOMI: Mr Gabo, for record purposes, could you state your full name and also spell your name into the microphone for our transcript record purposes?

A: Commissioner, my full name is Dina Gabo. The first name spells D-i-n-a; surname Gabo, G-a-b-o. I am the Chairman of Togisiba Timber Group Limited.

Q: Witness, I will stop you there. Where do you come from?

20 A: I come from Nomad LLG area in the Middle Fly District.

Q: What particular village?

A: I come from Sodiobi village.

COMMISSIONER MIROU: Sorry, spell that.

A: S-o-d-i-o-b-i.

Q: Thank you.

30 MR BOKOMI: What clan from that village of yours do you come from?

A: I come from Yugri clan but on my ILG because we put three clans together, we pick two initials from those clans to come up to make up to that clan group name or ILG name.

Q: What is your position within that particular clan?

40 A: My position within that clan, I am the Chairman of that ILG in the clan.

Q: Very well. Do you know anything about this particular portion 14 C, Special Agriculture and Business Lease?

A: Yes.

Q: That is now under consideration by the Commission of Inquiry?

A: Yes.

Q: I note you have prepared a written statement in regard to that. Perhaps, I suggest you read that statement to the Commission for its record purposes and thereafter, I can ask you questions on that. Thank you, Mr Gabo, you may proceed to read your statement. Before you do so, I will seek to tender for the benefit of the Commission, a copy of your statement Mr Gabo, that is dated Friday 18 November 2011. On top it reads, "Tosigiba Timber Group Limited, Kiunga, Western Province, and the title is "Submission to the Commission of Inquiry into the Special Purpose Agriculture and Business Leases."

COMMISSIONER MIROU: This one will be exhibit Tosigiba number 7.

MR BOKOMI: Yes.

COMMISSIONER MIROU: Tosigiba 7, that is under the letterhead of Tosigiba Timber Group Limited, Kiunga, Western Province, is a submission to the Commission of Inquiry, SABL, Friday 18 November 2011, by Mr Dina Gabo, Chairman of Board of Directors of Tosigiba Timber Group Limited.

[EXHIBIT TOSIGIBA 7 – STATEMENT OF MR DINA GABO DATED FRIDAY 18 NOVEMBER 2011 UNDER LETTERHEAD OF TOSIGIBA TIMBER GROUP LIMITED, KIUNGA, WESTERN PROVINCE]

COMMISSIONER MIROU: Thank you, Mr Gabo, you may proceed with your evidence.

MR BOKOMI: Mr Gabo, please speak loudly and clearly into the microphone as you are reading your statement.

A: Thank you, Commissioner. This submission is from Tosigiba Timber Group Limited, Kiunga, Western Province, submission to the Commission of Inquiry into Special Purpose Agriculture and Business Lease dated Friday 18 November 2011, submission in respect of SABL granted to Tosigiba Investment Limited. Overall, that piece of land known as Arwin Puri being portion 14C milinch Carrington Karius Strickland, Bosawi, Campbell, Aiema, Tumu River or Tomu and Sisa;

fourmil Kutubu, Wabag, Blucher and Raggi, Western Province, having an area of 632,538 hectares as registered on the Survey Plan catalogue number 28/126 publicized in the National Gazette No G218 dated Friday 24 September 2010.

[10.34 am] Submission of Dina Gabo, Chairman of Board of Directors, Tosigiba Timber Group Limited. The company number 1-25389, incorporated and registered 27 March 1996.

- 10 “1. I am the Foundation Chairman of the Directors of Tosigiba Timber Group Limited.
2. I tender a copy of the Certificate Incorporation dated 19 August 1996 on change of name of the company from Jindari No 1 Pty Limited to Tosigiba Timber Group Limited. Number of company, number 1-25389, together with the original application for Registration containing the list of directors of the 81 ILG shareholders.
- 20 3. The initial and current shareholders are 81 Incorporated Land Groups representing people of the Tomo River, the Siu River, the Girome River and the Baiyer River areas of part of the Nomad District of Western Province.
4. On 26 November 1996, our company was registered as a Forestry Industry Participant registration number F1797.
5. The purpose of forming our company was to encourage a developer of our remote areas in cooperation with a logging company. At that time we, together with other landowner groups, were being assisted by RH.
- 30 6. In 1998, we ceased discussing with RH. In 2003, Mr Kala Swokin introduced me to Mr Neville Hussley whom Mr Swokin said was with an humanitarian company which were interested in constructing road from Kiunga to Nomad.
7. The first public meeting was held in the Kiunga Local Level Government chamber and was addressed by Mr Hussley who said that he represented Independent Timber and Stevedoring Limited and a Mr Paul Japhlom who said that he represented PNG Agency
- 40 International Development PNG Aid.
8. At that time, I advised them of the existence of Tosigiba Timber Group Limited.

9. Subsequently, Mr Max Maiaba of the Damari tribe asked for my assistance in formation of his company Kebogas Investment Limited.
10. My company Tosisiba Timber Group Limited had been deregistered some years earlier for failure to submit annual returns.
- 10 11. IT&S or Independent Timber & Stevedoring Limited accountants, Dakon Accountants and Business Consultant assisted in having it re-registered on 4 July 2008.
12. Independent Timber & Stevedoring Limited and their lawyer Michael Titus assisted in preparation of all the documents which I, my fellow Directors of Tosisiba Timber Group Limited had that agent of the 81 ILGs signed.
- 20 13. In February 2009, the agent of the 81 ILGs who are shareholders of Tosisiba Timber Group Limited signed an Instrument of Lease for Customary Land Lease - Lease Back Agreement; Land Investigation Report number 1/314 over portion 14, Nomad, Kiunga, North Fly District, Western Province, containing 632,538 hectares Survey Plan card number 128/126. They signed the instrument in my presence as Chairman of Tosisiba Limited and at Nomad government station. Mr Iman Papa, District Lands Officer, and myself signed the certificate in Kiunga when I returned there on 12 February 2009. Unfortunately, I did not question the area of the land 632,538 hectares which has been inserted in all the documents prepared by IT&S, its surveyor and lawyers.
- 30 14. The National Department of Lands, if it had ordered proper land investigation to be carried out as required by legislation, we would have quickly realized that the total area of the land customarily owned by our 81 ILGS represented probably less than 1/6 of the 632,538 hectares stated to be contained in the Instrument of Lease which we have signed and would have properly refused to issue a lease over the full 632,538 hectares to Tosisiba Investment Limited or to any other proper registered company.
- 40 15. I tender a copy of the map prepared by Mr Hudson Hape, the Surveyor employed by IT&S and accepted by the Lands Department as the registered plan of the boundaries of the lease issued to Tosisiba Investment Limited.

16. I have highlighted in yellow the road of the proposed Trans Papuan Highway as surveyed by Mr Hudson Hape. It was the timber in a corridor area side of alignment which the landowners of our 81 ILGs are negotiating in good faith to say that to IT&S in consideration for them building a road and standard as laid down by the National Department of Works.

17. I have highlighted in pink the names of all the villages in which members of our 81 ILGs reside. Some of our villages have not been inserted by Mr Hudson Hape. I have highlighted that in pink and approximately of the total area of land customary owned by members of our 81 ILG groups.

MR BOKOMI: Can I pause you there, witness. Is this the map in relation to portion 14C that you are making reference to with all your inscriptions as to the road corridor called Trans Papua Highway and the area marked with ink – pink ink basically relating to the portion of land covered by the 81 ILGs? If you can identify that? Is that the map?

A: Yes.

Q: Commissioner, I ask that that particular map with the various---

COMMISSIONER MIROU: Colours.

MR BOKOMI: Lineal markings be admitted into evidence and marked as exhibit Tosigiba number 8.

COMMISSIONER MIROU: Exhibit Tosigiba number 8 is referred to the affidavit of Mr Gabo, paragraph 16; 17, where he makes reference to the yellow marking is the proposed Trans Papuan Highway and pink depicts where the 81 ILGs reside. Would that be correct?

A: Yes.

Q: Okay, and that is under portion 14C.

[EXHIBIT TOSIGIBA 8 – AFFIDAVIT OF MR DINA GABO, PARAGRAPHS 16 AND 17]

Yes, Counsel?

[9.47 am] MR BOKOMI: Thank you witness, you may proceed with the reading of your statement.

- A: Thank you Commissioner. I tender a copy of the map prepared by Mr Hudson Hape, the surveyor employed by IT&S and accepted by Lands Department or Department of Lands as the registered land of the boundary of the lease issued to Tosigiba Investment Limited. I have highlighted yellow remote roads of the proposed Trans Papuan Highway as surveyed by Mr Hudson Hape. It was the timber, a corridor either side of road alignment which the landowners of our 81 ILGs were negotiating in good faith to seek to IT&S in considerations for them building a road to standard and laid down by the National Department of Works. I have highlighted pink in names of villages in which members of our 81 ILGs reside. Some of our villages have not been inserted by Mr Hudson Hape.
- 10
18. I have diagonally highlighted in pink and approximation of the total area of land customary owned by members of 81 ILGs. From this, it is apparent that we were only ever negotiating to check a survey, a very small part of our total customary land and in consideration for the construction of the road.
- 20
19. I have also highlighted the yellow dots to locations of the lease for mission purpose of which I believe were issued to Evangelical Church of Papua New Guinea in 1970s and 1980s, in accordance with evidence previously given to this Commission by Mr Max Ako, the representative of Evangelical Church of Papua New Guinea. They are Moguru, Honinabi, Swabi, Fuma, Habi, Esalipi and Yehebi. In the schedule of the Instrument for Lease for customary land, Lease - lease Back agreement, land investigation report number 01/314 over portion 14C, Nomad, Kiunga, North Fly District, Western Province, refer to above.
- 30
20. Part 2. Term of the lease is for a period of 25 years. (a) In the schedule of the Instrument, part 4, appointed, nominated sub-lessor to is Kebogas Tosigiba Limited. However, the secretary for Lands issued the lease in the name of Tosigiba Investment Limited.
21. To the best of my knowledge, no company by that name has ever registered by the Registrar of Companies. I personally have no

knowledge of any such company. Moreover, the secretary for Lands issued the lease for a term of 99 years whereas the period requested us for a period of only 25 years.

22. The secretary for Lands has been negligent in the extreme in that manner in which he has issued this lease. I was and I still is the wish of Tosigiba Timber Group Limited that each 81 ILGs shareholders should be issued with a lease over each customary land.
23. It was never the intention of our company that it should be granted a lease over all of the land in portion 14, and particularly, not over land of Pedamuri and other tribes who are not shareholders of Tosigiba Timber Group Limited. Their land probably makes up more than 5/6 of all the land contained in portion 14.
24. In October 2010, I attended a public meeting at Kiunga Guest House which discussed issuing of the three Western Province SABLs issued on 24 September 2010.
25. On 30 January 2011, at the meeting Mr Warren Dutton of North-Fly Rubber Limited at the Kiunga Guest House attended by Mr Max Maoba, of Kebogas Investment Limited, Aiata and myself, I asked Mr Dutton to give me assistance in having new lease issued in the name of ILGs which represent the true traditional owners of the land covered by each lease. (b) Having the correctly issued lease declared null and void by consent. (c) Having appropriate road development as soon as possible.
26. I authorized him to have discussion with the following authorities: (1) Dr Bob Danaya, Governor of Western Province; (2) Mr Boga Kondra, Member for North-Fly; Mr William Boinao, provincial administrator; Mr Neville Harsley, Independence Timber and Stevedoring Limited; Tom Hawi, Evangelical Church of Papua New Guinea; Mogulu; Ian Ross, ECPNG, Australia; Brian Altris, AKK Associate, Port Moresby; William Frizzell, Warner Shand Lawyers, Port Moresby; David Sode, PNG Sustainable Development Program; the Secretary, Department of Lands; all other people whom Mr Dutton believe will be of assistance.

27. In May 2011, Mr Neville Harsley asked me to attend together with other directors of Tosigiba Timber Group Limited and NEWIL or North East West Investment Limited the signing of the agreement between the State of Papua New Guinea and IT&S. I then wrote a letter to Mr Harsley which was signed by Waiti Kwane of North East West Investment Limited, Mr Max Maiaba of Kebogas Investment Limited, myself as chairman of Tosigiba Timber Group Limited, asking him to send his lawyer Mr Michael Titus with the agreement to Nomad to explain it to us, the Chairmen of three landowner companies and ILG Chairmen. Mr Harsley instructed Mrs Betty Waine to tell me that he refused to do so and that I should just come to Port Moresby to sign the agreement. I refused to sign, I refused to do so.

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28. Mr Soki Samsi, a director of Tosigiba Timber Group Limited and three other people were taken to Port Moresby where I am advised that he purported to sign the agreement between the State of PNG and IT&S on behalf of Tosigiba Timber Group Limited or Tosigiba Investment Limited.

29. I have since been advised by shareholders of Tosigiba Timber Group Limited that after the signing, Mr Michael Titus Lawyers, Mr Iafame and others flew from Moresby, Kiunga and then to Honinabi and then walked to Nomad station where they purported to hold a special general meeting of Tosigiba Timber Group Limited at which they purported to appoint Mr Soki Samsi as acting chairman of Tosigiba Timber Group Limited.

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[10.00 am] 30. In doing so they have blatantly breached the provisions of the Company Act. On behalf of the Tosigiba Timber Group Limited all its 81 ILGs, shareholders and all our neighboring customary landowners who were not consulted and did not give their consent to the Instrument of Lease for customary land signed by our 81 ILGs agents on 12 February 2009, I wish to withdraw absolutely that Instrument and ask the Commissioner or the Commission of Inquiry to recommend that the State revoke absolutely the lease over 14C, issued in the name of Tosigiba Investment Limited and publicized in National Gazette number G218, dated Friday 24 September 2010. Dina Gabo, chairman, Tosigiba Timber Group Limited.”

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Q: Thank you Mr Gabo. I have a number of questions to ask you in relation to your statement which you have just delivered for the benefit of the Commission. The Lease Instrument that you were talking about, is it dated 12 February 2009?

A: Yes.

Q: Commissioner, I believe there are two different Instrument of Leases. This is the unsigned one that has been negotiated.

COMMISSIONER MIROU: The signed one was on 24 June.

MR BOKOMI: 24 June.

10 COMMISSIONER MIROU: Yes, 2009.

MR BOKOMI: There are some discrepancies. In the sense that ---

COMMISSIONER MIROU: This one here, Mr Gabo was signed on 24th of, which also has your name as a signatory towards the end of that schedule for agents. It is dated 24 June 2009. Is there another document in existence?

MR BOKOMI: Yes. Could you identify from this where your signature is? This is the Instrument of Lease dated 12 February 2009.

COMMISSIONER MIROU: That is the document that you ---

A: Yes.

Q: You saw.

20 A: That is right, this is the document that we signed.

MR BOKOMI: Could we ---

COMMISSIONER MIROU: Then we can, yes.

MR BOKOMI: Have this tendered as well?

COMMISSIONER MIROU: Yes.

MR BOKOMI: And have it marked as Tosigiba Exhibit number 9,

COMMISSIONER MIROU: 9, yes.

MR BOKOMI: We have that Instrument of Lease dated 12 February ---

COMMISSIONER MIROU: The Instrument of lease for customary land, Lease - lease Back and this is dated 12 February 2009 is Tosigiba Number 9.

[EXHIBIT TOSIGIBA 9 – INSTRUMENT OF LEASE FOR CUSTOMARY LAND, LEASE – LEASE BACK DATED 12 FEBRUARY 2009]

That is reference to Mr Gabo's evidence. And this exhibit can be read together with Tosigiba Number, which is the Lease - lease back Agreement signed on the 24 June 2009.

- 10 MR BOKOMI: That is correct. Perhaps, for clearance of doubt Commissioner, we also give him exhibit number 4 to identify if he had actually signed the document, that is the Lease - lease Back Agreement dated 24 June 2009.

COMMISSIONER MIROU: I probably highlighted it already so.

Q: Could you confirm if the signature on that particular lease is yours?

A: Yes.

Q: Do you recall ever signing that?

A: Yes, I did sign that.

Q: Why did you have to sign two lease instruments?

- 20 A: Commissioner, on 12 February 2009, I remember walking into Mr Imen Papa, who is the Lands officer District service - lands officer at that time - with a lease like this, this document here, and he satisfied and then I signed in front of me. He signed in front of me, I signed in front of him.

Q: Where did you sign the document?

A: Near the ---

Q: At Kiunga?

A: Kiunga head office; Mr Imen Papa's office.

Q: And the Instrument of 24 June 2009, where did you sign it?

A: I have no idea Commissioner. Because after we signed, me and Imen Papa signed, he dated 12 February 2009, here in Kiunga office.

Q: Did he give you a ---

A: That was our copy we ---

Q: Did he give you back a copy from that?

A: Yes, we gave that, this copy to IT&S office. I think Commissioner, what I see inside is correct. Only this date on top, the date that we put in is not there. They put another date in there.

10 Q: How many landowners were with you at the time you signed the Instrument of Lease dated 12 February 2009?

A: Yes. That was the people who all signed here were the ones who attended the signing at Nomad government station.

Q: Could you read some of their names, just at least about four of five of them?

A: Yes. Commissioner, the first name on this signed document is Kusaiyo Gobeyalom. He is from Obeyabum village. Saga Balet is from Onabi village; Sagami Wia is from Onabi village; Sameo Goya is from Onabi village.

20 Q: Thank you. What do you say about the date of the other instrument of lease which is dated 24 June 2009? Is that the correct date or is the 12 February 2009 being the date which is borne on the first Instrument of Lease that you signed as being the correct date? Which of the two dates?

A: Commissioner, the correct date of this instrument that we signed is on 12 February 2009.

Q: So if I put to you that 24 June 2009 is a date that has been falsified for reasons only known to the persons who were falsified that date, is that a correct proposition?

A: Yes.

Q: It is a false date?

30 A: It is a false date.

Q: The 24 June?

A: Yes.

Q: 2009?

A: Yes.

Q: Commissioner, I am asking him this particular question because that is the Instrument of Lease dated 24 June 2009 on which basis the Notice of Direct Grant has been issued on the 24th or 23rd September 2010.

10 COMMISSIONER MIROU: And Mr Gabo also in initial application seeking your land to be freed up, the application was made on behalf of Tosigiba Investment Limited. This document is attached to this Instrument of Lease - lease Back which is dated 24 June 2009. Are you now aware that when this application was made on this 24 June 2009, it was made on behalf of Tosigiba Investment Limited, a landowner company, not Tosigiba Timbers Limited, of which you are the chair.

A: Commissioner, I have no knowledge. As I have spelt out on my statement that Tosigiba Investment Limited, we have never signed up a document or Lease - lease Back Agreement under that name for our land to be leased to this company. We only know is Tosigiba Timber Group Limited which we signed ---

20 COMMISSIONER MIROU: Of which you are the chairman.

A: Yes. Which we signed on the 12th of February 2009 at government station, Nomad.

[10.12 am] MR BOKOMI: You stated in your statement that Mr Asimi, is it, who actually signed the – yes, Mr Soki Samisi signed the agreement for and on behalf of Tosigiba Timber Group Limited. That is the agreement which is known as Gre Drimgas Duara Wawoi Falls Trans Highland Highway Stage 2 Road Project Agreement. Could you tell the Commission if this is Mr Samisi's signature - to the best your knowledge?

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A: Yes, Commissioner, the signature here signed on behalf of Tosigiba Timber Group Limited is Mr Soki Samisi's signature.

Q: Commissioner, a copy of that agreement has been tendered into evidence in the other two proceedings in relation to portions 14, 27C and 1C. The document at page 44 bears the signature of Mr Soki Samisi.

Mr Samisi, according to company records of Tosigiba Timber Group Limited, held and maintained by the office of the Registrar of Companies Investment Promotion Authority, Konedobu, National Capital District, has Mr Samisi as a Director of that company. Is he still a director of the company to this day?

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A: Yes, Commissioner, Soki Samisi is still a Director of Tosigiba Timber Group Limited.

COMMISSIONER MIROU: This is the guy who – this is the man who replaced you as Chairman of---

A: Yes.

Q: Okay.

20

MR BOKOMI: At that time that you signed the agreement, that I have just referred to, who was the chairman of the board?

A: I was the Chairman of the Tosigiba Timber Group.

Q: You were the Chairman of the Board?

A: Yes.

30 Q: Prior to you signing the agreement, were there any shareholders meeting or directors meeting conducted to appoint him as the company director and agent to sign the agreement?

A: No.

Q: I seek to tender---

COMMISSIONER MIROU: It is referred to as NEWIL 27C, number 7. You wish also to?

40

MR BOKOMI: No, I seek to tender the current extract for Tosigia Timber Group Limited.

COMMISSIONER MIROU: Yes, okay.

MR BOKOMI: We do not have additional copies. We can take that back from you later on and make copies.

COMMISSIONER MIROU: Yes, Counsel.

MR BOKOMI: But I will have it marked as Tosigiba---

10 COMMISSIONER MIROU: 10.

MR BOKOMI: Exhibit Tosigiba number 10.

[EXHIBIT – TOSIGIBA 10 – HISTORIAL EXTRACTS FROM IPA]

COMMISSIONER MIROU: So this is the historical extracts and the current---

MR BOKOMI: That is the historical extract.

20 COMMISSIONER MIROU: From IPA?

MR BOKOMI: Yes.

COMMISSIONER MIROU: Thank you, Mr Bokomi.

MR BOKOMI: There was no meeting at all?

A: No. The meeting was held to – him to be put as acting Chairman after the signing of the agreement. When they returned back from Moresby, they
30 went and had a meeting to put him as acting Chairman.

Q: Where did the meeting take place?

A: In Nomad.

Q: In Nomad.

A: Government station.

40 Q: What meeting was that? Was it the shareholders' meeting?

A: Commissioner, that I would not know because at that time, I was in Balimo.

Q: You were never given notice of that meeting?

A: No.

Q: Who instigated that meeting?

A: I believe it must have been done by Titus Lawyers.

10 Q: Commissioner, I would like to make an observation here. It appears Mr Max – Mr---

A: Soki.

Q: Yes, Soki Samisi may not have had the authority from the company called Tosigiba Timber Group Limited pursuant to the relevant provisions of the Companies Act 1997, as there being no shareholders meeting or a board of directors meeting appointing and sanctioning him as the company representative and agent to sign this particular agreement which is now called the Gre Dringas Duara Wawoi Falls Trans Highlands Highway Road Project Agreement.

20

COMMISSIONER MIROU: We will take note of that observation, subject to further evidence.

MR BOKOMI: Yes.

COMMISSIONER MIROU: Is he available?

30 A: Yes.

Q: He is in the hearing room?

A: Commissioner, he is here; he is in the room.

MR BOKOMI: And further, it is up to Mr Dina Gabo to challenge any changes that have been made in terms of chairman and the directorship of the company he has assisted to form, Tosigiba Timber Group Limited, by seeking appropriate legal representation as he considers appropriate to challenge the validity of the changes pursuant to the Companies Act---

40

COMMISSIONER MIROU: I mean, he has that authority, so---

MR BOKOMI: In particular, section 102 of the Companies Act which requires giving of notice as a prerequisite to any director who wishes to be changed.

COMMISSIONER MIROU: Yes.

MR BOKOMI: Whom the bulk of the directorship of a company wishes to be changed. He must be put on notice and that must also form the agenda for the meeting.

10 COMMISSIONER MIROU: So that is a matter for you to consider.

MR BOKOMI: Yes.

COMMISSIONER MIROU: But by taking appropriate legal advice. Thank you.

MR BOKOMI: I will take you back to the Lease Instrument of 12 February 2009. When you and other landowners were signing, at that point in time did you know who actually prepared the instrument?

20

A: Commissioner, I did not know who prepared the instrument but we were called into Port Moresby by Mr Harsley together with executives of North East West Investment into Moresby. We spent a day there, a night there and then we came back again.

Q: I will stop you there. When you were in Port Moresby, did anybody bring to you a copy – a draft copy of that agreement and explain to you the terms of the agreement so as to gauge your approval or not?

30 A: Yes, Commissioner, we were all at IT&S office at Pacific View, 2 Mile Hill at 10th floor. Then we were told that we will be coming back with this document for the landowners or ILG's Chairmen to sign, but I was not properly briefed or explained further on this document.

Q: Who prepared the instrument, the Department of Lands or the IT&S?

A: When I saw the letterhead, I knew that it was from the department.

40 Q: But it was never given to you by a Lands Department officer from the Customary Lands Division?

A: No.

Q: Did you ever have any meeting?

A: No.

Q: When you were in Port Moresby with officers of the Department of Lands in regard to that particular document?

A: No.

10 COMMISSIONER MIROU: Mr Gabo, you have mentioned that members of the – executives of NEWIL was also there.

A: Yes.

Q: Who was there? Can you name them?

A: Mr Waitik Wane, the Chairman of NEWIL.

Q: Yes.

20 A: Foxy Asobi, Secretary of NEWIL; and Mr Max Miaba, Chairman of Gebogas Investment Limited and myself.

[10.23 am] MR BOKOMI: When you were given that particular document, the Instrument of Lease by IT&S at their 10th floor office, Pacific View Apartments, Port Moresby, did anybody discuss with you in detail, going term by term of that Instrument of Lease, the meaning, the content meaning and effect of each of those terms of the Instrument of Lease?

A: Commissioner, the answer is no.

30

Q: Not even any Lands Department officer?

A: No, I was not explained, page by page, explaining the content of this form here.

Q: That is at Waigani?

A: At Waigani, yes.

40 Q: How about the Provincial Lands Officer, Mr Imen Ite Papa? When you went in to sign, did he go through with you before him? Did he go through with you the content of that document and explain to you in a

language that you would understand as a layman what the meaning, content and effect of each of those clauses of the agreement would be?

10 A: Commissioner, before we went into Nomad to – answer to that question – before we went into Nomad to sign this, what Neville Harsley told me in Port Moresby that he had contacted Mr Imen Papa to accompany us into Nomad to sign this instrument, but he said he has been committed to other official duties so I was sent to Nomad with Max Moeba, Chairman of Gebogas Investment Limited so two of us went. I got 81 ILG Chairmen from Tosigiba Timber Group Limited sign and then I came back here, then I took into Imen Papa's office and then he certified after we signed from Nomad.

Q: I have got another question. Did anybody including Mr Neville Harsley or Imen Papa, for that matter, because he signed on the Land Investigation Reports, that by that agreement alone, you were to lose all your customary land including that of all the other ILGs which would now form portion 14C?

20 A: Commissioner, I was not explained.

Q: You were never explained?

A: No.

Q: Because of that you also did not explain to your people the representatives of the 81 ILGs that you are talking about, the nature and content, and the meaning and the effect of that particular document called the Instrument of Lease; no?

30 A: No.

Q: Did it every occur to you at that particular point in time, being a leader – I note you were a provincial leader at one stage, a member of the Provincial Assembly here - did it ever occur to you that you should have posed the very obvious question, what is this agreement for? Did you not ask that?

40 A: Commissioner, that was the only question which I never asked to find out or to know the content of this form, if we signed this agreement, what will happen in the future, that question was not asked.

Q: What actually motivated you to sign that agreement?

A: I thought everything was okay. So having signed in this agreement, the project will come; the road will come to our area. So with that thinking, I got my 81 ILGs and we signed.

COMMISSIONER MIROU: That is the February 2009 meeting? That was when you signed that?

A: Yes.

10

MR BOKOMI: That was your understanding?

A: That is my understanding.

Q: But was it based on the negotiations or the meetings that you have had prior that there was going to be a road corridor – economic road corridor constructed?

A: Yes.

20

Q: Which would be called Trans Papua Highway which eventually will connect to Port Moresby?

A: Yes.

Q: The intention was basically for you to free up land for that particular road construction purpose only and not the entire portion 14C? Is that correct?

30 A: Yes, only that part of the area and not all of the area.

Q: You said you were going to Port Moresby from Nomad. Who purchased the tickets for you?

A: IT&S.

Q: IT&S?

A: Was purchasing tickets and accommodation for me.

40

Q: They paid you allowances?

A: Yes, the first trip I went down, I was paid K150.

Q: K150. Did they pay you any money to sign that particular piece of document called the Instrument of Lease?

A: No.

Q: Are you sure?

A: Yes.

10

Q: Are you telling the truth?

A: Yes.

Q: As a leader, do you understand, from your area, that you cannot sign a document that you do not understand or you have not even read in detail?

20

A: Commissioner, if I would have been explained by the officers from Lands Department, then I would have understood about this document but I was not explained in detail. I thought everything was okay.

Q: I am saying this because by signing that document, you have basically sold your land, completely.

A: Yes.

Q: And that is being very, very negligent.

30

COMMISSIONER MIROU: Counsel, is that the 2000 February document?

MR BOKOMI: The 12 February 2009 document.

COMMISSIONER MIROU: Yes.

MR BOKOMI: But for the record, there are two competing Instruments of Leases here.

COMMISSIONER MIROU: Yes. The one that was issued is---

40

MR BOKOMI: The one that was signed by all the ILGs is the one that is dated 12 February and it was dated by Mr Imen Papa, was it?

A: Yes.

Q: In his office here at Kiunga?

COMMISSIONER MIROU: And also at his presence?

MR BOKOMI: We have a competing document there which is dated 24 June 2009.

COMMISSIONER MIROU: Yes, which initially ended up in the direct grant?

10

MR BOKOMI: Yes.

COMMISSIONER MIROU: This one here.

MR BOKOMI: It was on the basis of that particular document which was signed on 24 June 2009.

COMMISSIONER MIROU: Yes.

20 MR BOKOMI: Purportedly, the notice of direct grant and subsequently the Special Agriculture and Business Lease was awarded to this particular company which for all intents and purpose is not even a registered company at IPA for the Tosigiba Investment Limited.

COMMISSIONER MIROU: And when you look further down, maybe this is evidence you will get from Mr Ape. Just a month later, he writes seeking an addendum to the Notice of Direct grant under section 102 to change the name Tosigiba Investment to Tosigiba Timber Group Limited.

30 MR BOKOMI: That is the letter to Lands Department, is it?

COMMISSIONER MIROU: That is a letter to the Lands Department seeking a change.

MR BOKOMI: I will ask you another question. Did you at any point in time hold a shareholders' meeting for purposes of changing the name of your company from Tosigiba Timber Group Limited to Tosigiba Investment Limited?

40 A: Commissioner, there was no decision made in our meetings to change the name of the company from Tosigiba Timber Group Limited to Tosigiba Investment Limited. There was none.

Q: No shareholders meeting?

A: No.

Q: Would the same apply to a directors meeting to effect any changes as part of the directors meetings and agenda?

A: No.

10 Q: Of your company?

A: No, never.

Q: You make mention in your statement also of your company incorporation and registration certificates. You have not provided copies of those here. Perhaps you can provide that to the Commission later?

A: I have got one copy here.

20 Q: You have copies of them there?

A: There is one.

[10.33 am]Q: Commissioner, I seek to tender and mark as an exhibit Tosigiba 10, the Certificate of Incorporation of Tosigiba Timber Group Pty Limited, dated 19 August 1996. This company may have – was registered as it appears on the record before the amendments to the Companies Act and the inception of the new Companies Act which is now called Companies Act 1997. Under the Companies Act 1997, the initials for Pty meaning a proprietary has been omitted. So all the companies registered with IPA are now called Limited Companies, hence the name Tosigiba Timber Group Limited. I seek to tender that into evidence.

30

COMMISSIONER MIROU: Yes, I will accept that document being a copy of the Certificate of Incorporation as exhibit Tosigiba 10.

MR BOKOMI: Pursuant to the changes in the Companies Act, the Registrar of Companies has issued a new certificate which now bears the name Tosigiba Timber Group Limited. I ask that that Certificate be marked as Tosigiba number 11.

40

COMMISSIONER MIROU: Dated?

MR BOKOMI: That is dated – it is also dated 19 August – no, it is dated 4 July 2008, sorry. Dated 4 July 2008.

COMMISSIONER MIROU: Yes, I will accept the document titled Certificate of Incorporation issued to Tosigiba Timber.

MR BOKOMI: Certificate of Incorporation on Change of Name.

COMMISSIONER MIROU: Change of name from Tosigiba---

10

MR BOKOMI: The title of the document is Certificate of Incorporation on Change of Name. Perhaps, I will get the boys to make copies.

COMMISSIONER MIROU: So it is now Tosigiba Timber Group Limited dated 4 June 2008; Tosigiba 11.

[EXHIBIT TOSIGIBA 11 – CERTIFICATE OF INCORPORATION ON THE CHANGE OF NAME – TOSIGIBA TIMBER GROUP LIMITED – 4 JUNE 2008]

20

COMMISSIONER MIROU: Yes, proceed.

MR BOKOMI: I note you have basically a compilation of the land investigation reports that actually form the fundamental basis for the grant of this particular SABL called portion 14C. Can you tell the Commission what you basically know about the land investigations? Were there any government officers going into the area to explain to you from Western Provincial Lands Administration or even the National Lands Department, also officers of PNG Forest Authority and National Agriculture and Livestock Department at Konedobu? Any one of the officers of those three government entities, did they ever go to the Nomad area and conduct an extensive awareness of the major land acquisition exercise which was supposed to culminate in portion 14C? Please tell the Commission.

30

A: Commissioner, there were no government officers from Lands Department, Forestry Department, Environment and Conservation, Agriculture and Livestock, none went into Nomad.

Q: None whatsoever?

40

A: None.

Q: Why were you around at that time – I will give you the approximate dates – in December or any time before December or even the whole of 2008, where were you?

A: 2008, I was here in Kiunga.

Q: In Balimo?

A: No, Commissioner, I was here in Kiunga.

10

Q: Kiunga? But did you ever frequently go back and forth to the village during that time or over the last three years for that matter?

A: Yes, I went in to Nomad.

Q: Did anyone of your relatives or people that you know from within the Nomad area ever tell you that there were some government patrol or whatever going into the area talking about land acquisition, et cetera by the State?

20

A: Commissioner, no one from my area within Nomad has told me about any government officers visiting our place.

Q: Commissioner, that basically confirms the evidence given by Mr Papa that he was never involved in the land investigations.

COMMISSIONER MIROU: Yes.

MR BOKOMI: Not even from the officers of the company called IT&S?

30

A: No.

Q: Or even the surveyor cum Lands officer called Hudson Ape?

A: No.

Q: No?

A: Commissioner, I have not sighted anyone in Nomad.

40

Q: Let us go back to that Instrument of Lease. On the 10th floor at the time when you were given that particular Instrument of Lease, who actually gave you the lease?

A: Neville Hursley.

Q: Neville Hursley. Were there any people present at that time when he gave you the Lease?

10 A: Commissioner, at that time as I said, the delegation from here combined by NEWIL, North East West Investment, Gebogas and Tosigiba which, myself, I attended. During those times, those executives from North West Investment Limited, Gebogas and Tosigiba, I, as the Chairman was there, he gave me this Instrument.

Q: Was Mr Titus present at that time? I mean Mr Michael Titus?

A: Commissioner, yes, that time when we met, I did not see him in the room in that office.

20 Q: Any time after that, did you have any meeting with Mr Titus after you were given the Instrument of Lease?

A: We only spent a day and the next day, we flew this way with the Instrument.

Q: You never saw Mr Titus?

A: No.

30 COMMISSIONER MIROU: Would you also indicate in that February 2009, was Mr DMonai also present in a room in Port Moresby at that time?

A: No, Commissioner.

Q: Mr Imen Papa?

A: No.

Q: Not in February 2009?

40 A: No.

Q: Okay. Between February 2009 and June, did you receive any representation - I think counsel has already raised it but I will raise it

again – from these persons as to what was happening to that Agreement that you signed?

A: No.

Q: When did you become aware that your land was portion 14C?

A: When I was given a copy of the Certificate.

10 Q: When was that?

A: That was around October.

Q: October of 2009?

A: 2009; 2010.

[10.44 am] COMMISSIONER MIROU: October 2010?

A: 10.

20 Q: That is almost a year ---

A: Yes.

Q: And a half. So you had no idea that your land was already ---

A: Yes.

Q: Subject of this SABL?

A: Yes.

Q: Since, sorry, when was the SABL issued? On the 23rd day of September 2010?

A: Yes.

Q: I see. So you only got to know about it a month later after it was issued?

30 A: Yes.

Q: Thank you Mr Papa. I have no question to ask.

MR BOKOMI: Commissioner, I have got the copies of the exhibits Tosigiba number 10 and 11 for your benefit.

COMMISSIONER MIROU: I have no questions to ask.

MR BOKOMI: Commissioner, I have no further questions but if there are any evidence that will unfold later on which may require his presence before the Commission again then perhaps you take note of that and then you can come back later.

10 COMMISSIONER MIROU: Mr Gabo, we might require you if there is a need for you to recall so just be available on short notice. Counsel and myself, we do not have any questions to ask so we thank you for coming forward to assist us with our Inquiry. You are excused until where, if there is a need to recall you, we will call you. Thank you.

A: Thank you Commissioner.

THE WITNESS WITHDREW

20 MR BOKOMI: I believe there should also be a general direction issued to all the other witnesses for purposes of assisting the Commission as and when required, perhaps for the duration of the hearing, they be here if they possibly can.

COMMISSIONER MIROU: Yes. Just a general notice to those, including the government officials, if you can avail yourselves, the Commission, this is the last week where we will hear evidence until Friday. So if you have given evidence or you are ready to assist the Commission with any information, please be immediately available in the precincts of this hearing room so that you can assist us in a very short notice. We thank you for your willingness to assist the Commission.

30 MR BOKOMI: Commissioner, before I call the next witness, perhaps I will just make a roll call pursuant to your direction for the two government officers here in Kiunga.

COMMISSIONER MIROU: Yes, if you ---

MR BOKOMI: I made earlier; that is Mr Imen Papa and for the district administrator, Mr DMonai basically to determine whether they are in.

COMMISSIONER MIROU: Yes. Are they present?

MR BOKOMI: Mr Imen Papa? And Mr DMonai is present too.

COMMISSIONER MIROU: Okay. Counsel, do you require them or you require an adjournment?

MR BOKOMI: I will require a short adjournment of about 15 minutes.

COMMISSIONER MIROU: Yes, okay, we will adjourn.

MR BOKOMI: And then we can call them in.

10 COMMISSIONER MIROU: Yes, we will adjourn for 15 minutes.

SHORT ADJOURNMENT

[11.23 am] COMMISSIONER MIROU: Yes, Mr Bokomi.

MR BOKOMI: There was many years skirmish between certain landowners and Mr Hudson Hape as to who the actual cause of the confrontation is. I am unable to advise the Commission at this point in time because I am not privy to any report. But perhaps the police can conduct their investigations into the particular incident and provide a report later to the Commission in the afternoon
20 or even tomorrow. But such behaviour is not tolerated.

COMMISSIONER MIROU: Yes, I think it is the general feeling. Mr Hape should have known better not to be – he was excused for the day and we will determine from the report and then - not deal with it, but just a general comment that I made earlier that persons who are within the bounds of this hearing and outside are entitled to be left. But if any provocation or anything that happened then please bring that to the attention of counsel or members of the Police Force so that it can be dealt with quite efficiently. Such a disruption may cause some concern to the Commission and the work of the Commission here so - we have generally received a good reception in the past six or seven days of our hearing
30 and also of our visits to the villages - so let us hope that we will continue like this until Friday when we complete our work here. Thank you, counsel.

MR BOKOMI: Thank you. We now proceed to the – well, continue with the Tosigiba matter. Commissioner, I have three more witnesses from Tosigiba listed for the morning. That is Mr Hia Fami, Mr Max Mioba and Mr Soki Samisi. Soki Samisi is the person that basically signed the Agreement for and on behalf of Tosigiba Investment Limited in the project agreement relating to Dre Grimgas and Wawoi Falls road corridor, which is otherwise known as the Trans Papua Highway, which is proposed to be built to connect Western Province and Kiunga from and with Port Moresby.

10 These three witnesses, I understand, they just intimated to me that they have got some affidavit statements which they will get their lawyer Mr Michael Titus to sign. So they require sometime too. I asked that their appearances in the morning be adjourned to the afternoon today at 1.30 with the consequential directions that they appear as directed by the Commission.

COMMISSIONER MIROU: We also need to deal with the directors of evidence of ---

MR BOKOMI: Those are three different persons; Max Mioba is a director of Tosigiba and the chairman of Kebogas Investments Limited. That is another sister company to Tosigiba Timber Group Limited. Those are the two companies in the Nomad area that purports to represent the interest of the
20 landowners.

COMMISSIONER MIROU: So their statements will be ready after lunch?

MR BOKOMI: Yes. So they are willing to give their evidence after lunch.

COMMISSIONER MIROU: In addition to that we have those four directors ---

MR BOKOMI: So we have the two government officers. They are Mr Dmonai and Mr Papa. I am subject to your discretion. We still have 30 minutes yet, perhaps we can still ask them to come back at 1.30 or otherwise we can deal with one of them now. How do you propose? I propose subject to your discretion, if ---

COMMISSIONER MIROU: We can deal with one of that.

30 MR BOKOMI: One of them now? Okay, I propose to start off with Mr Imen Ite Papa. Please, Mr Papa, can you take the witness box.

COMMISSIONER MIROU: Mr Papa, you have been sworn already so you will continue your evidence. You have been sworn, you have sworn on the Bible already so we will continue to hear from you. Yes, counsel.

IMEN ITE PAPA, Recalled:

XN: MR BOKOMI

10 Q: Mr Papa, you recall is in relation to and arises from the evidence given by Mr Ipisa Biyama. Could you recall about what time where you in Port Moresby?

A: In?

Q: Back in 2008?

A: Around, I think, December, around there.

Q: Around December?

A: Yes. I cannot really recall the date ---

Q: The actual date?

A: Date, exact date, yes. It is quite a long time so, 2008.

Q: Why were you in Port Moresby?

20 A: I was on other official duty under District Administrator, Mr Dmonai.

Q: What was that official duty for?

A: On our other land requirements.

Q: What are those other land requirements?

A: I cannot really recall now. I was living at Sports Inn.

Q: You were staying at Sports Inn?

A: Yes.

Q: Did you meet Ipisa Biyama?

A: I saw him at Pacific View when I was signing the investigation reports.

Q: Mr Biyama was at the same time there. He was lodged at Sports Inn. Did you ever see him at Sports Inn?

A: No, I did not sight him at Sports Inn.

Q: Are you sure?

A: Yes. But I only met him at the Pacific View.

Q: How long were you there for?

A: About a week.

Q: About a week?

A: Yes.

10 Q: That was about the same time as – same period of time Mr Ipisa Biyama was there, he was there for a week. You never saw him anytime within that week?

A: After, my signing at Pacific View, I only saw his face around. But he was not together with me, Commissioner on the table while I was signing the investigation report. After that, what I heard from the IT&S was he was going to sign the Middle Fly part and I am going to sign the North Fly part. So after the signing I left and Mr Biyama was around there. I saw him hanging around in the building, Pacific, 10th floor.

COMMISSIONER MIROU: So as we note ---

20 MR BOKOMI: Sorry, Commissioner.

A: And sorry, Commissioner, one more. I was not on IT&S sponsor to Port Moresby. I was actually sponsored by my administration; District Administrator to go and do our land duties, normal other land requirements.

Q: Yes, what were those land duties? Mr Papa, you should know very well, what those land duties are. You were the one who undertook those duties, you ought to know. You tell the truth to the Commission.

A: We were preparing like, land advertisements.

Q: Land advertisements for what?

A: Kiunga town.

Q: Kiunga town?

A: Yes. This town ---

Q: You have draft copies that you can make available?

A: I have not prepared anything yet of those ---

Q: Or at least those land advertisements so that we see that they are dated around December.

A: I have to check my files on the actual, the trip that I took and with evidences of what I travelled for and what was it for.

10 Q: How about the tickets? Do you still have ticket butts there? Could you retrieve that easily?

A: We have been shifting from place to place. I will try and – it might take quite a while to check through the actual file of my ---

Q: Very well. What made you sign those land investigation reports for all these projects, starting from portion 1C, portion 14C and portion 27C? This is a massive area of land. What made you sign those documents?

20 A: Commissioner, on the first, my first response I have given my – on the intention that because people gave their consent on this Trans Papuan Highway road project, I thought the investigations were for the acquisition of the Trans Papuan Highway, for identification of landowners. On that understanding I signed as a Lands officer of the District.

Q: Very well. You already told the Commission that. If I put to you that you were paid some monies by IT&S, is that a correct position or not, for you to sign these documentations?

A: No.

Q: No?

A: No.

Q: Are you sure on that?

A: Yes.

Q: Are you sure? You were not paid any allowances, whatsoever at all, additional to what the Provincial Administration may have paid you for signing these documents; the land investigation reports? Yes or no?

A: No.

Q: Are you sure?

A: Yes.

Q: Are you damn sure? Sorry, are you very, very sure. I retract the ---

10 A: I was only assisted with fuel, I ran out of fuel and I told them that you people assist me with fuel.

Q: There you go. How much money was given to you for the fuel?

A: That I try and recall the actual figure first.

COMMISSIONER MIROU: Hire car?

A: Yes, actually the hire car was our own administration.

Q: Accommodation?

A: Accommodation under our own administration.

Q: And allowances?

A: Allowance under our own administration.`

[11.33 am]MR BOKOMI: How much money was paid to you in allowances?

20 A: I went for one week and then for one week after my mileage was about to reach – I told them that I need fuel so I got the car so you people assist me.

Q: Come on Mr Papa, there must be a certain figure?

A: I just recall the figure first. No, not very big figure.

30 Q: Money does not come from the blue. It is given with certain interest behind. Nobody gives you money free like that. You understand where I am coming from?

A: Yes, I understand.

Q: How much money was given to you for fuel? Or should we say “fuel” in inverted commas?

A: I think about a K1,000 for fuel.

10 Q: K1,000 for fuel. Five days, I run my vehicle in the city, it cost me for seven days only about 300 bucks. K300 for seven days and as a lawyer I run from one end of the city from Port Moresby to Waigani Court House and then back; it cost me almost K40 a day. And then I need to attend to class, I will be driving in and around the city, it cost me about K40 a day, right. So if you look at that for a week, 40 x 7, that is K280. How about the other excess of K760. Can you explain what that money was for?

A: I requested them for fuel, only fuel assistance so that was what I was assisted to – because the vehicle hire was a dry hire when I went down there.

20 Q: You will agree with me, what type of vehicle did you hire? Was it a Sedan or?

A: It was a car. I cannot remember the name or the model.

Q: But a small car?

A: Yes.

30 Q: Something like a taxi where you just sit down? Sit down, you will agree with me will not cost fuel that is will cost you fuel what, K1,000 for the week? Is that not correct? In other words, what I am basically putting to you is K1,000 is a lot of money for fuel consumption purposes only for the vehicle. You agree with me or not?

A: Yes, you are right.

40 Q: It is a lot of money. Now why do you think the access was given? The access of K760 right? That is based on my approximate calculations of how much fuel can consumed. K760 in excess, why was that excess sum of money given to you?

A: That I do not know but I requested for fuel assistance.

Q: Was it given to you before you signed the Land Investigations Report or after you signed the Lands Investigations Report?

A: That I cannot really recall. Probably after the signing or before the signing.

Q: Are you sure?

10 A: I cannot really recall. I cannot say. I think it is after the signing. Wait, wait, I cannot really recall whether before or after.

Q: But you said you hired the vehicle on dry hire meaning, there was no fuel in the tank when they gave you. So where did the money come from in the first instance for you to pay for the fuel for the vehicle? I am just trying to assist you to recall correctly and tell the Commission a truthful answer as to when exactly the money was given to you? Was it during the start of the week or was it in the middle of the week or was it towards the end of the week? Should I give you sometime to recall or?

20

A: Yes, I think so. I will try and---

Q: Mr Papa, could you tell the Commission, whether it is a coincidence or is it a design that yourself and Mr Biyama and Mr DMonai were there about the same time in Port Moresby and one of the things that you did, aside from your official duties, which now you are telling the Commission, was to deal with the Land advertisements in Kiunga. You proceeded to sign this, this was way outside of your duty at that point in time.

30 A: Yes, it was not out of my---

Q: The parameters of your duty when you went to Port Moresby was to deal with land advertisements only. Why at that particular point in time when IT & S presented you these documentations, which now forms the basis for the grant, the Land Investigation Reports, why did you not tell them that, "look no, I did not come to sign these documents". Did you pose that question to them?

40 A: No. What I assumed was because people were pushing for this road, they wanted all the land requirements, and I thought having in mind, it was a road Trans Papuan Highway road acquisition and the extension for log harvesting, based on that I signed. I said, if I prolong, the project might be delayed. So while I was on time there, while attending to other duties,

that was put before me so without understanding and reading the whole thing I signed, assuming that it was for the purposes of road acquisition and for log harvesting on both sides; identification of landowners.

Q: Why did you request IT&S for them to give you that K1,000 fuel allowance?

A: Commissioner, I did not ask for the amount but I requested for fuel assistance.

10

Q: But why did you request for fuel assistance? Why did you not request Provincial Administration to provide that additional fuel money if you like?

A: On the grounds that---

Q: Mr Papa, IT&S is not your employer. You were on duty travel to serve the people of Western Province through the Western Province administration. You are not a private consultant, you are a public servant, what should you have done in the circumstances? Give a correct, and truthful and an honest answer to the Commission. If you had run out of fuel, what should you have done?

20

A: Commissioner, I should have asked my authority which is the District Administrator to assist. By then he was in the city at the same time so he cannot sign any whatever vouchers for fuel and all that. Therefore, I have been assisting these people assuming that investigations was for a road – Trans Papuan Highway road acquisition corridor purpose, if they could assist me with the fuel; that is what I – on that grounds, I asked them. Because at times are – some of our duties here when private, like when Government is run short, we also ask ---

30

COMMISSIONER MIROU: What counsel is asking basically is, how much did IT&S pay you? How much did they pay you?

A: Commissioner, I said at least around K1,000.

Q: No, not for that. For everything that you have done for all the SABLs. How much money were you paid?

40

A: Commissioner, there was nothing paid.

Q: Not only this Portion 27C, Portion 1C, Portion 14C. These are reports which we know you did not do all came because of the work done by IT &S. How much did they pay you?

A: Commissioner, honestly before you, I will promise that I was not given any money. That was the only money that upon my request for fuel and that was the one that was given, on the understanding that I needed fuel to run. I cannot use my allowance because ---

10 Q: No, that is okay. The other thing is, we heard evidence from Mr Biyama and Mr DMonai that you did not give them the reports to sign. You got parts where the recommendation was it so they could sign it. You did not show this whole report to them - to both of them. Each pages just loose leaf, whatever. Where there is a title which says, 'Recommendation for Alienability', you gave it to Mr DMonai, you gave it to Mr Biyama and they signed at 10th Floor of Hugo's Building in Port Moresby if the evidence is correct, in the presence of Executives of IT & S, Mr Michael, the lawyer and presumably the Surveyor, Mr Hape. Is that true?

20 MR BOKOMI: Commissioner, from the evidence, if I can recall correctly, Mr DMonai signed the Certificate recommending Alienability at Lamana Motel. Is that correct?

A: Yes.

Q: And you accompanied Mr Hudson Hape who only brought that one page document. Is that correct or is it the whole document?

30 A: I think Commissioner, it is not one page. That investigation report, the document was I think ---

Q: But the page that was presented for Mr DMonai to sign, it was only that page which was supposed to bear his signature. The page where he is supposed to sign. I think the whole – is that correct to say that the whole book, the whole compilation was opened to the page where he was supposed to sign and Mr DMonai negligently without reading proceeded to sign that Certificate recommending Alienability. Yes? Only the signature part. He never dated it, he never put his hand on the actual place of signature.

40 A: Commissioner, each investigation report for each Portions. After I sign in Hugo's Building, the surveyor got the documents with him. Then he has to ask me where the District Administrator is.

Q: I thought you signed it at the Lands Department.

A: Sorry, Lands Department – Hugo’s ---

Q: No. You said Hugo’s Building. Is that the Department of Lands? Is that where the Department of Lands operates.

A: No, I was trying to say, Pacific View.

10 Q: So that is where the other office of the Department of Lands is located?

A: No. That was where I was called in to sign. After that the company got the documents.

Q: So the company is IT&S. So that is part of the Department of Lands is it?

A: No, it is the developer that is trying to build a Trans Papuan Highway.

Q: So who does the Land Investigation Reports?

20

A: The Investigation reports were done by IT&S. They were only produced to me at Pacific View, 10th Floor as---

[11.47 am]Q: So why did you become involved in this?

A: On the understanding that people were discussing in Kiunga several meetings that I thought in my response in black and white –

30 Q: We have that evidence but I just want to know why. Why do you have to go and sign these three at Hugo’s Building and not the Department of Lands at Waigani – Aopi Building? That is where the Department of Lands is?

A: That is right.

Q: And then you were in the company of a surveyor who is employed by IT&S.

A: That is right.

40

Q: Is that a proper way of doing things?

A: No Commissioner, that is improper, I would say.

Q: So how much did they pay you? The same question I will ask you again. You do not do services for a company for nothing. You have to get something out of it.

A: Commissioner, if I am paid huge money, the company have to have its own record and reveal it here. But to my own understanding, I am telling the truth today, that before you and before God that I was not given any money, apart from the K1,000 I requested for fuel. And that is the truth
10 Commissioner.

Q: Okay.

MR BOKOMI: Very well. Mr Papa, in your evidence at the start of this Inquiry, you stated that you went to Port Moresby and you were living at Lamana Motel. If I can recall correctly. And then you were at Lamana Motel, when Hudson Hape went. And you know fully well that Mr DMonai was there in one of the rooms at Lamana Motel. You brought him to Mr DMonai at Lamana Motel room where he was there. Is that not correct? You disclose in
20 your evidence in the earlier part. Now you are telling the Commission that you were at Sports Inn. I put to you, that duty travel, was it a collective duty travel for you and Mr DMonai or did you go at separate - different times?\

A: Commissioner, it was for different a purpose. I was for my Divisions – it was land requirement for the Division. District Administrator went on his own duty travel under his own---

COMMISSIONER MIROU: That is why counsel is asking, what is your business at Hugo's building and not at Aopi Building which is where the Lands
30 Department is?

A: Sorry, can you come again?

Q: So what is your business - when you say you were on a travel that was fully funded by the Provincial Government and you go and do your business on the 10th Floor of Hugo's Building, the Lands Department is located at Waigani in what we call the Aopi Building. So what is it now? Is it a private business or a Government funded trip?

40 A: It was a Government funded trip –

Q: To do business with IT&LS?

A: Commissioner, ITLS was never part of my program.

Q: But it was their office space at 10th floor. They are located at the 10th floor at Hugo's Building and Mr Hape is the employee of that company.

A: As I have stated, I went on our own government business and everybody in Kiunga Town knows my contact number.

10 Q: Everybody in Kiunga Town, as you know Mr Papa, is not sophisticated. Because of these reasons why, their sophistication, the lack of sophistication is a result of people like you taking advantage of that lack of sophistication. And that is the result of why we have SABLs being given through people like you who have no regard for their livelihood or things that they do. And so you conduct your business not at the Lands Department but you go to Hugo's Building, 10th floor. They would not know where the 10th floor is. May be you and I, all of us know where the 10th floor is in Port Moresby. People in Kiunga and Western Province do not know where Hugo's building is. Even where the Department of
20 Lands is at Waigani. Only you and I know where it is. That is why I asked you this question on behalf of the people of Kiunga and Western Province, what is your business at the 10th floor of Hugo's Building? I know where 10th floor of Hugo's Building is. You tell me, why did you have to go and conduct business on behalf of the Provincial Government at the 10th floor in Hugo's Building? Tell the people. They want to hear about what you did there.

A: As I have said earlier on, I went there because the company called me to go and sign the investigation report for the Trans Papuan Highway Project so on that arrangement they took me there. They asked me to go
30 there and then I went and I sat and they brought the documents and then without fully reading the whole thing and asking them questions, how much area the road will cover and all these, assuming because of the initial discussions in Kiunga. Thinking that Investigation Report was based on the road corridor acquisition purposes I just went ahead and signed.

Q: But Mr Papa, have you ever visited the Gre road and travelled up to Drimgas village? Do you visit that place?

40 A: Yes.

Q: We just went up on Saturday. We saw nothing. Virtually nothing. Secondary forests, a few rubber trees and when we arrived at Drimgas,

there is nothing. So whilst you work for the Government, at the same time you are doing something for the company which has no regard for the development for our people. There is virtually nothing there. You still talk about the Trans Papuan Highway here. Where is it? You tell the Commission now. Where is it? Are the people of Dringgas or the people who live along that route fully aware of what you and others have done for them including the company?

10 A: Commissioner, it is a proposed project.

Q: It is a proposed project but that project has been there for a while. What have you done to make people aware that they have got to put up an electronic bridge across a river that is really non-existent. There is a big river there but there is nothing there. People still live in traditional houses, still living their livelihood, there is virtually nothing there. So you can talk about the Trans Papuan Highway but where is it? Maybe on paper it is there but nothing. So if you can give us an explanation as to what was your real purpose to go to Port Moresby, not to go to Waigani, Lands Department but to go to 10th Floor of a private company and that is where you made all these deals. Is that the correct---

20 A: Commissioner, no. I went for our own administration duty and I was called in by ITL&S to go and sign them.

Q: Mr Papa, I do not think you are really getting the question. What are you doing at 10th floor apart from the Aopi Building which is the Department of Lands where Lands Investigations Reports are normally facilitated? That is where SABLs are issued. What were you doing at the 10th floor? Is that public or private business?

30 A: Commissioner, I know that is a private office but that was the developer that was pushing for this project with assistance of maybe other stakeholders. That is why I thought the Investigation Report was all in correct and when they were tabled to me, on that understanding that people needed road for so many years and then I actually signed to – believing the project will progress, the Trans Papuan Highway.

40 Q: And you continued with that type of behavior and you signed documents in the rooms of hotels – Granville Hotel where you had to bring the Provincial Administrator in and to sign those recommendation which is the result of the issuance of those SABLs. You facilitated most of it.

A: Yes, Commissioner, as I have said, on the understanding that the investigation was for road acquisition for the proposed Trans Papuan Highway.

Q: But you are a Lands Officer. You know what an SABL is for?

A: Commissioner, initially there was no discussions about SABL.

10 Q: If there is going to be a road corridor, normally the appropriate Department to go to is the Forestry Department. Because you are required to clear fell some sections of the forest to allow the road line to be. And that is the proper place to go to, not through an SABL. An SABL is only for agricultural purposes. Any businesses that you may relate to. If you want to do a Gre Dringas Papua Highway, you need a FCA, a Forest Clearance Authority to actually clear fell so that they create a road link. Were you able to tell the people about those differences between clear felling for the purposes of setting up a road link and SABL which is for agricultural purposes involved with the use of
20 of hectares to do oil palm, rubber, things like that where people become involved.

A: Commissioner, I understand the processes. I have not mentioned to people about SABL. You do this, do that and all that but all I know was the road in exchange of the---

Q: So you think the road was properly an SABL lease or it required a Forest Clearance Authority for a road line? That is a requirement in law.

30 A: That is right. Commissioner, in the discussions, as I have said in my paper, the discussions with the people were, the people consented for the road and then they will give so assuming the road was supposed to be acquired and then later they can, on both sides, as per my report, they agree to give their logs in exchange for the cost of the construction of the road. So my signature was purposely for the acquisition purposes. So I was not explained by the IT&S the area they covered. Later I also got shocked too and I was – I called, I think the other director, I think Dina Gabo to the office, “are you aware that you land has been taken away”, I got shocked too. I told him, all we know is about the road, and in
40 exchange for the logs. That is all we know about ---

[12.00 pm]

I mean, our administration and myself and there were series of meetings at Hotel sites but SABL was never mentioned that these large parcels of land will be acquired for SABL. I believe Commissioner, if it was mentioned there then there should have been a lot of oppositions. But that thing SABL was never talked about. All people know, even myself too, all I know is road in exchange for logs.

COMMISSIONER MIROU: Yes, that is why I said, you took advantage of peoples' lack of understanding, their lack of sophistication, their lack of things that we do out in the major cities and things, you failed, basically to inform
10 them that an SABL was to take away land for some time to do some tree crop; commercial tree crops like oil palm, rubber, things like that. And even this document here too, even says that you certified for all of them. You agreed to allow those lands to be given because you say that everyone agreed in principle to free up that land. So, now you are saying that you told Mr Gabo that your land has been given away when you yourself has signed off, certifying that they have all agreed to release those land. It is all here. What can you say about that? You certified for it. And after you certify for it then you go to the provincial administrator or the District administrator to get that recommendation to alienate the land.

20 A: Yes.

Q: To take that land away from the people and give it to the government so that the government can in the name of a company; a landowner company so that that company can be involved in development that those land for agricultural purposes. So the lack of awareness on your part failed.

A: Commissioner, I am sorry that my understanding was on the acquisition and I failed to explain, because company too, have not come out clear. As I have said earlier, this IT&S was hiding all the documents to itself and not telling us our province exactly where they are supposed to, what type of business they want to do in the area. All we know was the initial
30 consent, initial discussions, concern by people and then the project continue. What happened in Waigani and with the people, we were not aware until I also find out that large sums of land was, I got shocked too. And I said, my goodness, I signed for something else and then my signature has probably must have been used by company to extend the

boundary. It was for the road only. That was my initial thinking. Thank you Commissioner.

MR BOKOMI: Let me take you back on that. Mr Papa, you say you did not read the document, that is very negligent, right?

A: Yes.

10 Q: If you had read the document, at least one of those documents then you would have seen the type of land use that was proposed by the land investigations. Can you read this document completely, description of the land and then you look at the type of lease proposed? Can you read that to the Commission?

A: Sorry, the whole thing?

Q: You read the type of lease proposed and you read the land description.

A: Type of lease or proposed used: Special Agriculture and Business Lease; Description of land: portion 14C, Nomad, North Fly District.

Q: What is the total area of land proposed to be acquired?

A: 632,538 hectares.

Q: There you go Mr Papa.

COMMISSIONER MIROU: Continue reading. And then at the bottom, what do you do? I - say it.

20 A: Sorry, wait.

Q: No, at the bottom of that paper. I, your name, read it, read it aloud.

A: Sorry, Commissioner, I am looking for that.

MR BOKOMI: It should be at the back.

COMMISSIONER MIROU: You are now certifying it.

MR BOKOMI: At page 4, you read that.

A: "I, Imen Ite Papa, hereby certify that" ---

COMMISSIONER MIROU: No.

A: "To the best of my knowledge, the above facts" - sorry, I will read the comments and recommendation. "I fully recommend that the Department of Lands and Physical Planning assist in facilitating the registration of this parcel of land through lease and lease - lease back arrangement to allow the commencement of the project. I, Imen Ite Papa, hereby certify that to the best of my knowledge the above facts are true." Commissioner ---

Q: You certified it.

10 A: Actually, I did not read the whole content as I have said. The document was before me and where my signatures are I signed because of too many investigation reports. So I just signed and assuming that it was for the road.

Q: That would not be true now. You knew exactly what you were certifying. That is not true. You know exactly what is here. You certified it, you signed it, it is there. That is exactly what we were trying to tell you. But you keep saying that the road link was the most important thing to you than any other thing. You certified all these things. That is why this land has been given away.

20 MR BOKOMI: Mr Papa, I have one additional question. Following on from there, evidence has been given to the Commission saying that, which says that, in relation to Tosigiba in particular, Mr Dira Gabo, in his evidence in the morning, he stated that he was with you when he signed the Instrument of Lease dated 12th February 2009. That was done at your office. Is that correct?

A: Commissioner, I forgot that. Actually, I just forgot that arrangement. It was not intentionally that I did not mention. But I forgot. All I remembered was I signed at Pacific View.

30 Q: No, the Instrument of Lease, not the land investigation reports. It was after this land investigations reports were done by you on 15 December 2008, apparently. Because in your evidence the last time you came, you stated that you only signed, you did not date the document, you did not even write the place where you signed the land investigation report. Is that correct? They just showed you the signature page for the relevant land investigation reports then you signed. Now, if I put to you that it is too good to be true because there are separate land investigation reports

for the respective clans. So all of them were basically, turn to the page where you were to sign and then you were to put your signature, you know. Like, for instance, this is 81 ILGs so you did that 81 times without actually reading the content of the document?

A: Yes, that is right.

Q: If I put to you that you are now lying to the Commission, what do you say about that?

10 A: Commissioner, it is true. I did not read the whole content. What happened was on my section part only, those ones I signed those sections only. I did not read the whole, each investigation reports and the amount of area it is covering. Signing, truly, I signed. But reading the whole document to understand what it was, I think I negligently failed on that part.

Q: Let me put to you that the K1,000 that you were given was after you signed these documentations. Is that not the correct proposition for the fuel allowance?

A: That Commissioner, I said, I cannot really recall, whether it is after or before. I have to ---

20 Q: Even if it was before you signed the documentations, it was made as an inducement, if it was not, for you to sign the land investigation reports?

A: It was not on the basis that because I am signing this, you people help me, no. I said, I needed assistance on fuel. So I actually asked the company whether you people can ---

Q: Even if it was given after you had signed the documentations, it would have been made as a favour for you having already signed the land investigation report. Is that not the correct proposition to make, Mr Papa? Answer my question, yes or no? Yes, it is?

[12.10 pm]A: Commissioner, I would not know the intention of the company. But all I requested was assistance.

30 Q: You would agree with me that no person gives money to another person if it is not for any favour to be done either before or after. Is that correct? And for that matter K1,000; K1,000 by PNG standards is a lot

of money. A person in the village who is unemployed, his gross per capita income in anyone year would be much, much more or less. It could be less than 50 bucks; K50. You will agree with me on that?

A: Yes.

Q: And as I have intimated to you earlier, are you agreeing with me, with my – with that proposition or not? Please, speak into the microphone. Yes?

A: Sorry, can you repeat again?

Q: Yes. I am saying K1,000 is a lot of money. Will you agree with me?

10 A: Yes, it is a lot of money.

Q: And for a person in the village who is unemployed, illiterate, you know who is a subsistence farmer or a hunter and gatherer, K1,000 would be a lot of money to him, yes?

A: That is right.

Q: In any one year, that particular person in that circumstance, whether he is a subsistence farmer or a hunter and gatherer may make only about K50 to K100, and that is if he has access to the market to at least sell his produce or whatever meat or fish that he has gathered from the bush or the rivers to come and say, sell at Kiunga. You understand, yes or no?

20 A: Yes.

Q: Yes. So if I put to you that that K1,000 was not given because of your requirement for fuel only but it was for other fuel requirements for you having put this signature, right? Yes or no?

A: Maybe.

Q: Not maybe. I want a definitive answer yes or no?

A: Maybe, Commissioner, because I requested for fuel probably the company assumed that because I will be signing this, they may have, on that understanding they may have assisted me instead of them saying no or yes.

COMMISSIONER MIROU: That is your explanation. But if you are comfortable with that explanation.

A: That could be their intention behind assisting me with the fuel money.

MR BOKOMI: Very well. Okay, let me take you to Mr Gabo's evidence. He was with you when he signed the Instrument of Lease on 12 February 2009, right, at your office. He went in there to discuss with you and you actually wrote the date of the Instrument of Lease. Perhaps, Commissioner, could we show him the document which is now in evidence? Could you tell from the writing that is handwritten; the handwritten part dating the lease? Is that your
10 handwriting 12 February 2009?

A: Yes, Commissioner, this is my writing. I forgot earlier on about, just slipped off my mind.

Q: Could we also show him the exhibit marked ---

COMMISSIONER MIROU: This one?

MR BOKOMI: Tosigiba number 4. That is the lease dated 24 June 2009. Is that your handwriting as well? No it may have been in print?

A: No.

Q: Very well. Are you aware of the existence of that document?

A: No.

20 Q: The Lease Instrument of the 24th June 2009?

A: No, Commissioner, I do not have any records of all these, even this one too.

Q: But you are aware of having sighted ---

A: Yes.

Q: That document.

A: I am aware of my signature here.

Q: And you have not sighted this particular document, is it? That exhibit marked exhibit number 4, the lease dated 24 June, you have not sighted that?

A: This one?

Q: Before?

A: No.

Q: You have not sighted that? But you are aware that you wrote on that ---

A: Yes, the ---

Q: The Instrument of Lease dated ---

A: This is my handwriting and my signature.

Q: 12 February 2009?

A: That is right.

10 Q: Because according to Mr Dina Gabo, that is the lease that he signed. This one is not the lease that he signed. He is aware of the lease of the 12th February 2009. That is the one that he was with you when you dated it. You understand?

A: That is right.

20 Q: Did you at any point in time when Mr Gabo was there with you in your office on the 12 February 2009, read through the contents of document with him and explain to him the nature, content and the legal consequences of that particular document which is now called the Instrument of Lease? Did you or you just asked him to sign and then you dated it?

A: Commissioner, I cannot really recall exactly what words or what ---

Q: Did you read the document to him? I am just putting a question to you?

A: Commissioner, that is the one I am saying. I cannot really recall whether I read it or not, otherwise I might tell lies. I cannot really recall.

Q: If I put to you that you did not read the document, that is the evidence from Mr Bina Gabo? When he was with you, you never read the document, you have no even explain the meaning and content of that document to him?

A: That might have happened. As I have said ---

Q: No, do not use probabilities here. That did not happen. That is the evidence that we have.

A: That is right, yes, that is right, yes.

Q: That did not happen. Now, do you think it was part of your responsibility as the Lands officer here to have read to him that particular document or at least gone through the document to explain to him in simple and plain language that, “look, Mr Dina Gabo, you and your people are actually getting into this kind of arrangement, have the people really consented?” These are basic questions that you should have asked. Why did you not do that?

10

A: Sorry Commissioner, probably I did not intentionally. But probably I may have said some things but I cannot really recall. That is what I am --
-

Q: Now, if I put to you that you may have colluded with IT&S and their surveyors who actually conducted this land investigations and because you were paid, you overlooked your basic responsibility to explain to the people who went in as a government officer on the nature, extent and meaning, content, effect, the legal consequences of that particular document. Is that not a correct proposition to make?

20 A: Probably I assumed because I signed as an investigation officer at that time, assuming everything was in order. So when people brought to me the instruments – but the very thing whether I read it to them or I explained to them, I cannot really recall the – but confirming that this is my signature and this is my writing.

Q: And you agree with me that the document called the Instrument of Lease - lease Back or the Lease - lease Back Agreement that was executed on the 12 February 2009, should have for all legal purposes and intent, form the basis for subsequent land acquisition which has now been comprised in portions 14C, 27C or for 14C alone. Is that a correct proposition to make? I am basically telling you, under normal and proper circumstances, that particular document dated 12 February should have formed the basis for the acquisition of and determination and subsequent naming and description of 14C as an SABL, right? And not that document dated 24 June?

30

[12.21 pm] A: That is right. This is the document that is normally used for SABLs. But my intention was never at SABL.

Q: Let me simplify my question. All I am saying is, there are two documents there, you see that? One is typewritten, it is typeset, you see that? It is dated 24 June, at the front.

A: Okay, I see that.

Q: The other is handwritten.

A: 24 June 2000, 12 day of February.

10 Q: There is a variation in the dates that is why I am asking you.

A: Okay. Now I understand.

Q: The document that was consented to by the landowners, Mr Papa, is the document dated, the one that you physically dated.

A: That is right.

Q: With your hand. And that document, where did it come from? Who manufactured that, you do not know?

A: I do not know, Commissioner, this one I do not know. But ---

COMMISSIONER MIROU: It is a legal document. Do you know who did it? Lawyers do that work.

20 MR BOKOMI: Now, I am going to ask you again. Under normal and proper circumstances, if land acquisition were to proceed in respect of portion 14C, which documents should it have proceeded under? From those two leases, which document? Was it the one that you signed, you dated or is it this one?

A: Commissioner, I cannot really recall because I do not have copies of this, which document they used that went into, whether this one or this one. Department of Lands---

Q: All right, evidence is before the Commission that is the document dated 24 June that formed the basis for this acquisition and subsequent grant as an SABL covering, now described as portion 14C. It is the document

dated 24 June. Now, do you think that should be the document or should it be the 12 February document 2009? Mr Papa, I am asking you a simple question.

A: Commissioner, in this document there is a person by the name of Sikabu Maika. He signed as an adviser for Lands here. And here I signed probably as a district lands officer, not probably but as a district lands officer here. Probably, because the advisor for lands at that time signed so this document may have superseded this one. That is what may have happened because the boss ---

10 Q: You read through the document and tell me whether the document dated 24 June 2009 supersedes? Is there a clause in there that talks about a clause relating to that document superseding the document dated 12 February 2009?

A: No, Commissioner. What I am saying is because Sikabu was the advisor and they may have saw that Imen Papa is just a district lands officer so that is made – the department may have took it that way, I do not know. But because Sikamu Maipa’s signature is there as an adviser for lands. And they may have done away with this and took on board this one and proceeded.

20 Q: No. I am asking you a simple question, read through the document and find the clause that talks about supersession.

COMMISSIONER MIROU: Is there a clause that says in that latter document that you know, this document supersedes the previous one issued?

MR BOKOMI: The document dated 24 June.

COMMISSIONER MIROU: Under your signature, is there any clause? No, not that one.

A: Commissioner, there is none.

MR BOKOMI: There is no clause. Very well. According to Dina Gabo, the document that they signed and the landowners gave consent to was the document that you dated. As to the document that was commissioned by or
30 signed off by Mr Sikabu Maika, they are unaware of. So from that basis,

according to your experience as a lands officer, you have been working with the lands office ---

A: Yes.

Q: For the last, almost 15 years, right?

A: Yes, 10.

Q: 10 years. Which of those two documents should have been properly put through the division of customary lands to eventually get this title which is now called portion 14C? Which of those two documents?

10 A: Commissioner, I think I am the district lands officer at that time responsible for this section of the district where the parcels of land are covered. I think this document should be considered. Not this because --
-

Q: Yes, which document? You state it for the record, document dated what?

A: Dated 12 February 2009, as an officer responsible for the particular area here.

COMMISSIONER MIROU: That Lease-lease back is in the name of which owner? If you look at the schedule which is the company; the landowner company that this lease is held in, at the back, if you look at the schedule, there is a schedule Part 3 or 4.

20 A: Kebogas Tosigiba Limited, appointed, nominated, sub-lessor. The landowners in nominating, appointing the persons, land group, business group or other incorporated body has resolved for the Special Agriculture and Business Lease to be issued to the Kebogas Tosigiba Limited.

Q: Does not say anything about Tosigiba Investment Limited?

A: No.

MR BOKOMI: Now, what happened after you dated that document as 12 February 2009? Did you keep the document or you gave it back to Mr Dina Gabo?

A: Mr Dina Gabo got it.

30 Q: Why did you give it back to him?

A: There was no reason.

Q: There was no reason? You think that Mr Dina Gabo would have had any use for that, in terms of the administrative processing of the portion of land that is now called portion 14C? No?

A: I assumed that because they have come through process so they need this document so I signed and gave to him and then probably he could take it up with other processes that he wanted to.

10 Q: Why did you not pose to him at that point in time, you said, “look, alright, I think I am the district lands officer, I should take the responsibility here now. The buck now stops with me. Because the land that I am supposed to advise on and be responsible over for its administration, acquisition, et cetera is within the Western Province and more particularly, within the Nomad area which falls under the district of North-Fly.” Is that correct?

A: Commissioner, Nomad area is split in half. Part of Mugulu area is part of North-Fly.

Q: Well, very well, but I am just posing to you that question. Did it not dawn on you that you should basically keep the document and then follow it up from there for purposes of carrying out your duties fully?

20 A: That is right.

Q: No? So you have basically failed in that respect, you would agree with me?

A: Yes.

Q: Right? And because the company has paid you that K1,000 you failed, is that correct?

A: No.

Q: No?

A: No, not because of K1,000, Commissioner.

Q: That may be too good to be true, Mr Papa, right or wrong?

30 A: Right.

Q: Thank you Commissioner, I have no further questions.

COMMISSIONER MIROU: Yes, okay, thank you Mr Papa. We thank you for coming at short notice.

A: That is okay.

Q: To answer further queries in regard to – you are excused.

THE WITNESS WITHDREW

COMMISSIONER MIROU: Counsel, I think it is lunch now.

10 MR BOKOMI: We are well into lunch hour. I will be asking for an adjournment for at least one hour. We resume at 1.30.

COMMISSIONER MIROU: Thank you. Adjourn.

LUNCHEON ADJOURNMENT

[1.52 pm] COMMISSIONER MIROU: Thank you, Mr Bokomi.

MR BOKOMI: Thank you. Commissioner, Mr Papa is not here yet, but there are some additional questions that Mr Papa will be asked. In the meantime,
20 perhaps, we will proceed with Mr DMonai.

RONALD MANASE DMONAI, recalled: XN: MR BOKOMI

COMMISSIONER MIROU: Okay Mr DMonai, if you can take the witness box. You are still under oath. Counsel when you are ready?

30 MR BOKOMI: Thank you Mr DMonai and good afternoon to you. You were recalled to give further evidence to the Commission has being necessitated by the fact that there have been other evidences which have transpired during the hearing of the Commission that one way or another is related to your involvement. I will be asking you certain questions and speak up please. You

have signed off on all recommendations as to alienability of three large portions of land as you are aware. That is portions 14C, 1C and 27C.

Mr Papa, as you would know, indicated in his evidence that in or about December of 2008, all of you were in Port Moresby. You, as the District Administrator for North Fly, what was the purpose of you going there? There meaning Port Moresby - to Port Moresby?

10 A: Commissioner, that is 2008, 2008 is about 2 and a half years away from – so as a District Administrator, I went for official duty.

Q: What was the official duty that you went for?

A: I cannot recall but I went for official duties. There are other duties that we did, one is the land advertisement of the State land and the other one was the acquisition of the land at Stage 2 where you can see it, I do not know Commissioner, if you have driven in.

20 Q: Yes, that is Stage 2, portion 1C?

A: Yes.

Q: Stage 2 of that project. It was for that acquisition you went?

A: Yes, plus other official duties that we went to. Other official duties that we went to.

30 Q: Okay. What particular activity or thing in relation to that acquisition of Portion 1C that you went for?

A: Portion 1C or 14C and 27C is the – this Portion of land, we were not involved at the first place of the kind of acquisition of land meaning the Land Investigation to identify landowners along the corridors of this proposed road. Western administration and North Fly District for that matter was not a party to that other land investigation that was conducted around this corridor from Gre to Wawoi, Nomad and these portions and behind that---

40 Q: Witness, that evidence you have already given. It is in evidence, you do not have to repeat. My question simply put to you was, you said that you went for the purpose of this land acquisition. For what particular purpose in relation to this land acquisition did you go for?

A: That is, Commissioner, to do this land purpose to acquire government land, this land here---

Q: No, you indicated earlier that it is also for Portion 1C.

A: No, it is not for Portion 1C. This is Stage 2 – this block here in Kiunga. This block where the government houses are now built.

Q: Stage 2?

10

A: Yes, Stage 2. And line of blocks on the other side.

Q: Very well.

A: Yes.

Q: So you were there strictly for that Government business.

A: Yes.

20

Q: Right?

A: Yes, that is correct.

Q: All right. Then you signed this Land Investigation Report as the person recommending alienability, right?

30

A: Yes, on the condition that what we anticipated for was to acquire a portion of land from here to there. Not what you are driving at. This SABL is a different concept and from the way we understood, even though we were not involved in the Land Investigation, meaning no officers of mine was deployed to do this work.

Q: Very well. Okay, you were there about the same time as Mr Imen Papa and Mr Ipisa Biyama in Port Moresby? Where were you lodged then?

A: Mr Ipisa Biyama, Commissioner, is the an officer from Middle Fly. I have no authority and power over Ipisa Biyama.

40

Q: I am not asking you about your authority and power over Ipisa Biama.

A: No, Commissioner, with due respect---

Q: I am asking you a specific question. Where were you lodged at? Perhaps witness, you listen to the question attentively and you answer the question as it is put to you.

COMMISSIONER MIROU: You and Mr ---

A: I was lodged at Lamana Motel.

10 Q: You and Mr Biyama are very much holding the same positions but looking after different districts?

A: Yes. I was lodged at Lamana Hotel. For Biyama, we went for the same purpose but he was doing that while I was doing other work.

Q: Where was Biyama lodged?

A: We were at Lamana.

20 Q: Both of you were at Lamana?

A: Yes.

Q: Commissioner, Mr Papa stated in his evidence today that he was lodged at Sport Inn.

A: Sorry, no. He was lodged in at Sports Inn but in Port Moresby. I was lodged in at Lamana.

30 Q: Are you sure?

A: Yes.

Q: Are you very very sure on that?

A: Yes.

Q: Now, you were called to sign this Land Investigation Report, sign the part relating to the alienability, how was that done?

40 A: Commissioner, the surveyor, like I did the evidence on what day was that, Monday I think; Thursday I think, the surveyor and Mr Papa brought the document over to me. He told the surveyor of IT&S that I was in town and

they brought the document over. I thought everything was verified and certified. It was in order so I signed it.

Q: You simply had to sign?

A: Yes.

Q: Even without reading the last page?

10 A: Without reading the last page or what, I just signed thinking that you know – my field of profession is different from the field of profession that regarding land matters.

Q: With due respect witness, it is not a complicated land document that you were supposed to sign. It is a one page document which is in clearest of terms, and I will put it back to you---

A: Look Commissioner, I did not read the document. I went ahead thinking that everything was in order with the perception that we wanted the road
20 to go from here to where “X” where, this proposed Trans Papuan Highway.

Q: Witness, that is your perception. I am now giving you back the document that you signed to read.

A: Commissioner, I do not – I mean---

COMMISSIONER MIROU: Just look at the document.

30 MR BOKOMI: It is only a document. It is in plain language, it is in very very plain English, it does not have any technical surveyor’s language or land valuer or land management graduate’s language. You read the top part, particularly in relation to the amount of land that was being taken away from the landowners. Can you state the figure?

[2.02 pm] A: Look, it is just like something stuck in my throat. Whether it is directly or indirected questions, line it up properly. What I am trying to say here is that I ---

40 Q: With due respect, the question is not blindly inappropriate. Can you retract that language? It is not blindly inappropriate. Could you just read---

COMMISSIONER MIROU: Mr DMonai, can you just read from that document what the figure is there?

A: Commissioner, just give me – spare me some time. I am actually not capable of answering these questions. I have other---

Q: Mr DMonai, under the Commissions of Inquiries Act you are required to answer. Unless you want me to read that particular provisions that deals with – if you refuse to do so, then I can apply the provisions of the Act.
10 Are you refusing to answer or you will answer?

A: No, I will answer and I will answer thank you. But, okay Counsel, I will read this one –this statement and then with a comment. “The total number of hectares is 632,538 hectares of native own land known as portion 14C situated near the Nomad in the North Fly District, Kiunga, Western Province.

- (a) There is no dispute to ownership;
(b) The native owners of the aforesaid land and the native owners of all improvements thereon are willingly to sell and lease the land and
20 improvements to the State;
(c) The sell, the lease of the aforesaid land improvements to the State will not be detrimental to the best interest of the native owners or their descendants either now or in the foreseeable future;
(d) I have fully considered the questions of reserving to the named owners, and/or their descendants’ right of hunting, gathering, collecting, fishing and access and I recommend that so such reservations be made or I recommend that certain reservations be made in accordance with the attached sheet marked “A”.

30 The aforesaid land is not required for public purposes given under my hand at Kiunga this 19th day of December 2008.

Q: It is noted in evidence that you did not take any steps to ascertain whether or not there were any disputes as to ownership. Is that correct? Of the land that was being acquired? Number 2, you have stated in your evidence also that you did not author this. You were merely given this particular document to sign and you signed. You did not date it and you did not put the place where you signed. You did not write “Kiunga” in. Is that not your handwriting or is that your handwriting?
40

A: Commissioner no.

Q: That is not your handwriting?

A: No.

Q: Very well, you would agree with me that had you taken time to read this documents, this particular one sheet of paper containing the recommendation as to alienability, you would have understood that the land proposed to be purchased or leased by the State of Papua New Guinea, they do not properly state the legal name of Papua New Guinea which is the Independent State of Papua New Guinea but it merely states, by the State of Papua New Guinea, totals to about 632,538 hectares. What made you not read the document before you signed?

A: There are a couple of anomalies here on this---

Q: I am asking you a specific question, what made you not read the document before you signed?

A: I was told to sign so I signed.

Q: During your normal line of work as the District Administrator, do you sign documents without reading?

A: No.

Q: No? In almost all instances?

A: Yes.

Q: Yes. But then why did you not read this document? If that is your practice at work?

A: I was told to sign so I just signed.

Q: You were told to sign and you signed.

A: And I did not use the handwriting here – Kiunga and the date and December here – this is not my handwriting. This is a fine small writing, my writing is not like this.

Q: How long were you in Port Moresby for?

A: Seven days.

Q: Seven days just like Mr Papa?

A: Yes.

Q: And Mr Biyama?

A: I am not too sure.

Q: Mr Biyama also says in his evidence that he was there for about a week.

10

A: Well, he is from Middle Fly.

Q: You reckon it would have been proper for you to sign all these documentations within the customary lands Division? Be given to you by a Lands Officer and not an officer of or a company official who has no interest whatsoever insofar as State matters are concerned

A: Correct.

20

Q: Yes?

A: Yes.

Q: So why did you overlook that?

A: I think consultations have been done and that this document was presented to me in a hotel room.

30 Q: Would it have been proper for this document to have been presented to you by a Customary Lands Division Officer of the National Department of Lands which is actually responsible for Customary Land Acquisitions?

A: Yes, should have been that way.

Q: Should have been that way. Then why did you not question the officer that went to give you? Even why did you not prompt or caution Mr Papa who was together with Mr Hudson Hape Ape when they gave you the document to sign?

40

A: Commissioner, I thought formal concensus were reached between him and Papa, lands surveyor liaising with customary lands office at Aopi Haus in Waigani. I thought consultations were already done so I was

there just to sign. So thinking that all these consultation was done so when they gave me the document I just went ahead and signed.

Q: Did you hire any vehicle while you were there in Port Moresby?

A: Yes.

Q: Who funded for the hire of the vehicle?

10 A: North Fly District Administration.

Q: North Fly District Administration?

A: As a DA, I had to hire a vehicle.

Q: I believe you have evidence on the kind of travelling allowance as well as car allowance that they have given you? Can you actually retrieve that from your records at your office?

20 A: I can. I will try and get my District Treasurer to retrieve that information.

Q: What sort of vehicle did you use?

A: It is K2,800. Today they have, Herts Rent a Car has CRVs today.

Q: You used a Herts Rent a Car in 2008?

A: Yes, that is normally my clients, yes.

30 Q: In 2008?

A: Yes. I hired ---

Q: So you hired a vehicle from Herts Rent a Car?

A: I always and all the time I hire a car from Herts Renta a Car.

Q: So the District Administration paid for the car?

40 A: Yes, it is a normal package travel – We get our travelling allowance, airfares and hotel accomodations.

Q: And it was a Dry Hire was it?

A: Yes, Dry Hire, yes.

Q: Dry Hire.

A: Yes. If they fuel first and when it is finished, you have to pay your own fuel.

Q: Very well. Okay, the amount of fuel that they filled in the first instance, what happened to it? Did it take you the whole week or?

10

A: It depends. Normally because it is a petrol vehicle, they issue petrol vehicles, so petrol vehicles consumes a lot of fuel when you drive around in Port Moresby. So approximately it is about three days at the most, the rest two days and what you have to pay.

Q: You have to pay?

A: Yes. As a hire, as a driver, you have to pay to---

20 Q: Where did the money come from for that purpose?

A: North Fly River Administration operational budget.

Q: North Fly District administration?

A: Yes.

Q: You did not receive any allowances whatsoever, no money from IT&S for signing this document?

30

A: No.

Q: No, nothing? Not at all? You have got to give your answer truthfully and honestly to the Commission. Did you really receive any allowances whatsoever from IT&S?

A: Not that I know of.

Q: How long have you been associating with IT&S?

40

A: May be in 2009. Not too much.

Q: Between 2009 and today, did IT&S give you any monies at all?

A: No.

Q: No, you did not draw any allowances whatsoever from them?

A: No, because what they were doing was not in consultation with the Western administration.

10 Q: Did they offer you any lunches, dinner et cetera that they organized and did you attend?

A: Only once that I know of.

Q: Only once; when was it?

A: Just between Waigani, there is a restaurant there – Waigani BSP and Westpac and that restaurant in the middle there. From Westpac you come up driving from Boroko, it is on your left hand side.

20 Q: All right. When was that?

A: Somewhere around 2009.

Q: 2009. How long were you there for?

A: For about two hours.

Q: Two hours.

30 A: One hour or two hours at the most.

Q: Apart from the luncheon, did they pay for any beers, any alcoholic beverage for you to consume?

A: Only food.

Q: Only food?

A: That is right.

40 Q: On top of that, did they not give you any money?

A: No money at all.

Q: No money at all?

A: Yes.

Q: Todate, you have not received any single toea ---

A: I tell you Commissioner, nothing of that nature.

10 Q: From the Independent Timbers and Stevedoring Limited? No?

A: Nothing of that nature.

Q: Then why did you proceed to sign this document that was basically for the acquisition not of the road project but it is for the acquisition of 632,538 hectares of customary land. It is not for the road corridor as you are presumably presupposing. Why did you do that?

20 A: I will have to further reiterate on that. It is just that my answer to the first question, that same question, I have answered that already. I have answered the first question already. So this is I think the second time that you are asking me. So thinking that all the papers were done correctly and all that and that it was in order for the land acquisition, so I went ahead and signed.

Q: You went for a government business, for a specific purpose to Port Moresby, not to sign this document.

30 A: That is correct.

Q: All right, then why did you overstep your line of duty, to sign this document when you were not supposed to sign?

[2.17 pm] Does that amount to a clear breach of some of the Public Service Rules and Regulations that govern your conduct, operations and activity as a Public Servant? I am talking about General Orders.

A: Yes.

40 Q: The duty to serve and a duty to protect the interest of the State and State means the people of Papua New Guinea. And with particular application too the people of Western Province and for that matter the people of North Fly District.

A: Correct.

Q: You would agree with me on that, right?

A: Totally agree.

Q: You have over stepped, you have breached and you have exercised no
10 duty of care at all in your conduct. Right?

A: Yes.

Q: Yes, as a Government Officer?

A: Yes. Commissioner, I had to sign, I was given the document and I
thought everything was okay so---

Q: You have already said that. I have not finished with my questions.
20 There is another question that I would like to pose to you. I am just
interested to find out about the fleet of vehicles that you have at the
District Administration. Does each division own or a use a government
allocated vehicle or?

A: Correct, yes.

Q: Yes?

A: Yes.

30 Q: So I take it that the Toyota Landcruiser 10-seater used by Mr Papa is a
government owned vehicle but bearing a private number plate?

A: That is correct, yes.

Q: Yes?

A: Yes.

40 Q: Can you produce those documentations, registration documentations
tomorrow to the Commission?

A: Yes, but he is at the provincial level, he is a Principal Advisor, Lands.

Q: Very well, perhaps we will get---

A: So you can liaise with the office of Provincial Administration.

Q: Or we will probably get Mr Papa himself to provide that.

A: I am not at his level so all fleets of vehicles that are within the District is under my responsibility.

10 COMMISSIONER MIROU: Under your jurisdiction.

A: That is right.

Q: May be we will ask Mr Papa.

MR BOKOMI: Yes, we will put him back right now. I have no further questions.

20 COMMISSIONER MIROU: I have no questions to ask Mr DMonai except to thank you for being patient and assisting us further with the Inquiry.

MR DMONAI: Commissioner, I would like to thank you. Counsel, any information that you require in regard to this, do not hesitate to call me back. I am going to stay here until Friday and we will close everything up.

COMMISSIONER MIROU: Yes.

30 MR DMONAI: The recommendations are all precise and clear. You know some of these things; today is a computer world. If these people have got other intentions behind to lead to us and the people to SABL and they scan documents and signatures to offload for the purpose they want, that is supposed to be not uncalled for.

40 MR BOKOMI: Mr DMonai, before you go, I just make a statement that the Special Agricultural and Business Leases have no room for reservations. So once you give up customary land, you forgo all the customary land rights and that includes the right to hunt and gather or even the right to do gardening. Unless it is stated in the reservation part of the Land Investigations. Because most of the leases that we have gone through with copies of the SABLs, the Special Agricultural and Business Leases granted under Section 102, two things become very very apparent; one, grant is not payable to the landowners. Landowners do not even get one single toea for the land that they give away. To what might, at the end of the day become very very unscrupulous

developers. They do not get one single kina in rental for the entire 99 year period of the lease and that is the law pursuant to Section 102 of the Land Act. Grant is not applicable where Special Agricultural and Business Lease is granted under Section 102 is concerned.

So that is why, you see the important of all these, that is why we brought you and Mr Papa here to at least assist the Commission and any evidence that you give, you must at the end of the day, give to us truthfully because it will go down with your conscious. Thank you very much.

10

COMMISSIONER MIROU: Thank you Mr DMonai.

THE WITNESS WITHDREW

MR BOKOMI: I will have to call back Mr Papa.

IMEN ITE PAPA, Recalled:

XN: MR BOKOMI

20 COMMISSIONER MIROU: You are on your previous oath so you will continue.

Q: Mr Papa, I am just going to ask you about the vehicle that you are using, the Toyota 10-Seater landcruiser, brown in colour. What is the Registration Number? CAX?

A: I cannot remember, the details are in the vehicle.

Q: CAX765?

30

A: Yes, sorry it is here.

Q: Is that a Government owned vehicle?

A: Yes.

Q: It is Divisional car?

A: Yes.

Q: Very well.

A: Just a few months ago, budgeted under our normal provincial administration budget.

Q: Very well. You do not have any other vehicles apart from that?

A: Nothing, I do not have a private vehicle too.

10

Q: You do not have a private vehicle?

A: Yes. House nothing, nothing good in my house too.

Q: Very well. I basically asked you for the Commission's satisfaction to provide copies of the registration documents so that we will keep it on file. Thank you Mr Papa, I have no further questions.

20 COMMISSIONER MIROU: Thank you Mr Papa, if you can provide us the registration papers for the vehicle, we will be much obliged to receive it. You are excused.

A: Thank you.

THE WITNESS WITHDREW

MR BOKOMI: Commissioner, I seek a brief adjournment. I do not know whether this particular Iama Fami, Max Mioba and Soki Samisi, whether they are here or not.

30

COMMISSIONER MIROU: We will adjourn.

SHORT ADJOURNMENT

[2.36 pm] COMMISSIONER MIROU: Yes, Mr Bokomi?

MR BOKOMI: Commissioner, as it appears, the three persons whom you directed to give evidence on Tosigiba Investment Limited this afternoon, namely Pia Fami, Max Mioba and Soki Samisi, despite your directions, are not here. So I basically instructed the police to go and look for them.

COMMISSIONER MIROU: We will have to get those witnesses from North East West.

10 MR BOKOMI: So we will proceed with North East West Investment Limited directors, who are witnesses under summons. I will call firstly Mr Waidi Kwani.

COMMISSIONER MIROU: Thank you.

MR BOKOMI: To come forward to the witness box to give evidence.

COMMISSIONER MIROU: What, sworn evidence in English or Pidgin?

MR BOKOMI: English.

20

COMMISSIONER MIROU: Okay, please take the Bible.

WAIDI KWANI, sworn:

XN: MR BOKOMI

COMMISSIONER MIROU: Thank you Mr Bokomi.

30 MR BOKOMI: Commissioner, this particular witness comes before the Commission under summons number 224 issued by the Commission. Witness, can you tell the Commission your full name?

A: Commissioner, my name is Waiti Kwani, W-a-i-t-i K-w-a-n-i, surname.

COMMISSIONER MIROU: Yes?

MR BOKOMI: Where do you come from?

A: I come from Dringgas village in the portion 27C, Awin Pari.

40

Q: Where is Awin Pari? In Kiunga, is it?

A: In Kiunga.

Q: Kiunga, and Kiunga is in North Fly District?

A: Kiunga is in North Fly District, correct.

Q: Very well. What clan do you come from in that village of yours which is called Drimgas village?

A: I come from Gase clan.

10

Q: Gase clan. How do you spell your clan name?

A: G-a-s-e.

Q: G-a-s-e. Commissioner, this particular witness has prepared---

COMMISSIONER MIROU: A written statement or affidavit?

MR BOKOMI: He has prepared his affidavit to which he has attached an
20 incomplete Statutory Declaration attaching the various signatures, I believe, whom they had sought earlier this month seeking to support the SABL. Witness, could you indicate to the Commission if that is your affidavit?

A: Yes, Commissioner, it is my affidavit.

Q: When is it sworn? When is it sworn?

A: The affidavit was sworn after the summons issued to me.

30 Q: Yes, but when?

A: On---

Q: 17 September 2011?

A: Yes.

Q: You read the first line of your affidavit on the first page.

40 A: It is on 17, Thursday 17.

Q: Okay. That signature there on page 7 above your name, can you confirm whose signature that is?

A: That is my signature, Commissioner.

Q: Commissioner, because this particular evidence that the witness is going to give just as much as, perhaps, all the other witnesses under summons, cover portions – two portions, 27C and 1C, I would ask that their exhibits be marked in their respective initials in block capitals.

COMMISSIONER MIROU: Yes.

10

MR BOKOMI: I seek to tender the original of the affidavit containing all the signatures of the various landowners into evidence and mark it as exhibit---

COMMISSIONER MIROU: M.

MR BOKOMI: Exhibit NEWIL.

COMMISSIONER MIROU: Okay.

20 MR BOKOMI: Exhibit NEWIL WK.

COMMISSIONER MIROU: WK1 or just WK?

MR BOKOMI: WK. I do not think he has any other evidences.

[EXHIBIT NEWIL WK – ORIGINAL AFFIDAVIT – ALL SIGNATURES OF THE VARIOUS LANDOWNERS]

COMMISSIONER MIROU: Yes, you may proceed.

30

MR BOKOMI: Witness, I am basically going to ask you to read into, for the records of the Commission, your affidavit. You may please proceed and speak loudly and clearly, please.

A: Commissioner, my affidavit; “On Thursday, 17th day of September” – it should be November 2011 – “I, Waiti Kwani, care of North East West Investment Limited, N-E-W-I-L, Kiunga, say on oath as follows:

40

I am the Chairman of NEWIL or North East West Investment Limited. I come from Dringas village portion 27C, Awin Pari. There are a lot of facts I will have to share with the Commission of Inquiry, COI, about how Sam Wingen, Kala Swokin and then ourselves who now lead the N-E-W-I-L as directors, joined the long eight years to bring the integrated

Trans Papuan Highway, selective logging and agricultural project to the point where it is now ready to begin. I shall only present the facts which I believe the COI is concerned about in its Inquiry.

Landowners and IT&S.

10 On 16 March 2003, I, together with Max Miava and Foxy Asibi, Samson Ubri, called a meeting at Sare Corner and more than 300 landowners from portions 1C, 27C and 14C attended the meeting and advised that IT&S had heard our cry for development and was interested in constructing a road, selective logging and agriculture project from Drimgas, Duwai Falls and all landowners must form ILGs to participate in the project.

On 23 March 2003, Neville Hussley of IT&S came and met more than 500 people at the old Kiunga Rural LLG Council chamber and Mr Hussley advised everyone he was prepared to partner them by carrying out the developments in exchange for forest resources.

20 Awareness and Incorporation of Landowner Groups.

I then organized landowners into teams and then sent them out to all the villages where the proposed developments would take place to give awareness about the proposed development and help them complete their ILG forms.

[2.47 pm] All the landowners along the proposed road corridor from Gre-Drimgas, Diabi, Tegena, surrounding villages were all aware of the project. The awareness teams also went to Tipanzuwi village, along the Fly River, Jemskai village along the Fly River, Smifen village along the Palmer, 30 Kana village, Kana Komnai village, Pipila village, Wakela village, Tegena village, Timnaz village, Monaia village, Koaru village, Timnaz Gringas village, Gre village, Gesome village and Waringre.

The landowners cried for the proposed development and earnestly began completing the applications to form their ILGs. Max Miaba went to all of the Nomad villages, Juha, Behami villages, Wawoi Falls and Lake Campbell for the awareness.

The awareness and ILG registration.

ILG registration work took us up to 2006 when all ILGs were finally registered. Other villagers and landowners were aware of the proposal developments and agreed but had other issues like land disputes to be solved. They described that they would join in later.

Changes to NEWIL shareholdings.

In 2006 changes were made to NEWIL to make the registered ILGs owners of NEWIL because NEWIL would now be the umbrella company to drive the project on their behalf.

Project feasibility studies.

10 IT&S then began feasibility studies on all the components of the project. Approval for development by roadline timber authorities refused by the government because of changes to Forestry Act. In 2007, the National Forestry Authority refused to grant us road line TAs for proposed road because, roads more than 12.5 kilometers had to now be constructed through an FCA.

Decision to apply for SABL.

20 In order to apply, get the FCA for the construction of the proposed road, it was necessary to get the consent of the landowners. And since NEWIL represented the landowners now given all of the awareness programs, the landowners consented for the project, annexure of activities to be undertaken in the project based on Department of Land's advice. It was agreed the appropriate way forward was by way of an SABL. Through the SABL the customary lands would be secured for the project fundamentally, because aside from main Trans Papuan Highway, the potential request for feeder roads by the landowners would see feeder roads closing the entire project area. Through the SABL they would need to spend further millions of kina to go through the process of securing the other customary lands and compliance requirements for the feeder roads. That also applied to selected areas where landowners
30 wanted selective logging for agricultural projects away from the highway corridor and road side developments.

Aside from securing the customary lands for the principal development of the trans Papuan Highway and roadsides development, airstrips and base camps and provision to allow for the feeder roads and selective logging,

agricultural projects away from the corridor of the Trans Papuan Highway, the size of the highway, the customary lands would be protected from exploitation by any other collaterally or falsity claiming on such customary land such as what is happening in Juha by the Tari people and at the PNG LNG Project at about this time. Apart from the Trans Papuan Highway, corridor and the developments alongside the corridor of the highway, airstrips, base camps, all other parts of the project area would not be utilized unless the landowners wanted feeder roads, selective logging or agricultural projects on their customary lands.

10 Awareness of SABL.

After learning the need to secure the land by way of an SABL in November 2008, we had a meeting with all the Paoli, Waitu, Awin, Nomad, Biyami tribes at Sare Corner and then formed teams and we went to advise them of what we understood and described to the landowners was the agriculture lease, timber over their land for the road and agricultural forest project. We went to all the same villages along the proposed road corridor and up the Fly and Palmer River.

The land investigation report.

20 After returning from the awareness of the agriculture lease title, we went to see Sigava Maika, who was the then Provincial Lands adviser but he was always absent and we learnt that the Lands division was short staffed and did not have any budgeted funds to carry out land investigation. We advised IT&S of this predicament and it agreed to help us with its Surveyor, Hudson Hape, to assist us. For the purpose of land investigation report, we confirmed the ILGs and membership of the ILG owners of portion 1C, portion 27C. Their respected chairmen, agents, NEWIL, ILGs who can confirm the boundaries of their ILGs, chairmen, agent who knows their boundaries and then pass the confirmed information to surveyor Hudson Hape of IT&S.

30 Instrument of Lease for customary land.

In March and April 2009, the Instrument of Lease for customary land was delivered to us to go and give final awareness about the agriculture lease title and to obtain the signatures of ILG chairmen's, agents for that purpose.

On 24 June 2009, the Instrument of Lease for customary land after being signed by all the chairmen and agent was finally signed by Simon Malu of the Department of Lands at Lombiro Hotel, after he explained the SABL scheme further and asked all chairmen to confirm their consent on behalf of the ILGs and members again for the SABL, proposing 1C and 27C. And they all said that they consented.

Title.

After September 2009, the title over portion 1C and 27C was granted to NEWIL or North East West Investment Limited.

10 Landowners support for the project.

Annexed and marked with the letter 'A' is a true copy of statutory declarations showing the support of the landowners back in the villages and not the Kiunga landowners.

Allegations of fraud, falsities and malpractices, et cetera.

Imen Papa's statement is false. He was flown by IT&S to Port Moresby to give his opinion and advice on the land investigation report, stayed at Port Moresby for almost four weeks for that purpose.

20 Steven Kwani also lied to the COI. He was not present at the time of awareness on the agriculture lease titles but he was present at the time of the signing of the Instrument of Lease and he heard what Simon Malu said in explaining the SABL scheme and then complained that he should sign instead of his brother, Julius Manguman, an ILG chairman. And he signed next to his brother signature.

Jack Kwani also lied to the COI. He does not represent any 12 ILGs for purpose of the project at all. He is my brother and he eats and wakes up with me at Sare Corner and at Drimgas village and knows about my explanation to him about the agriculture lease title.

30 Seiwol Kebukena also lied. He was always a director of NEWIL and aware of what we were doing. He lost to Kala Swokin in the JV director elections in 2000 and then lost to Foxy Asobi in the 2010 JV director elections. He became angry and then started opposing them.

Monford Evatari also lied to the COL. During our awareness of the agriculture lease titles, Samso Ubre looked for him and found him at his bush camp, three kilometers from Drimgas village and spent three hours explaining it to him and then he signed.

Patoro Akwas, a customary land inside portion 27 is in dispute. The way forward if there was been any failures or irregularities in the acquisition of the SABL over portion 1 and 20C. If the failures and irregularities complained about by our oppositions have any merit then if they can be fixed, they must be fixed.

[3.00p1m]A: The project must commence for the benefit of the majority of the landowners who have cried for this development since Independence. Those who now want to withdraw their customary lands from Portion 1C, 27C can simply excise their customary lands from Portion 1C and 27C and no longer be subject to SABL.” Thank you Commissioner.

COMMISSIONER MIROU: Your last request cannot be done because under law, that lease cannot be revoked. 29, where you say, “those who now want to withdraw their customary lands from Portion 1C, 27C can simply excise their customary lands from Portion 1C and no longer be subject to the SABL.” There
20 is a direct grant, a lease in your company’s name, under law, we cannot revoke that lease.

A: Commissioner, if it is just the landowners, as I have said, they want to be – if the landowners themselves if they want to be excised from the SABL, I said, they can, if the law permits.

Q: Counsel.

MR BOKOMI: Mr Kwani, what the Commissioner is basically telling you is
30 that the law does not permit. If certain landowners from within a SABL area do not give their consent, irrespective of whether or not that SABL covers areas where landowners have given their consent the entire SABL must be revoked. That is the law. Any way you seem to demonstrate from your affidavit, Mr Kwani, that you are more or less an expert on Special Agriculture and Business Lease, having conducted very very extensive awareness according to your

affidavit. Could you briefly tell the Commission your knowledge about Special Agriculture and Business Leases?

A: Commissioner, I have no knowledge and I have never further studied in Lands. The concept that I want to be is that I want my land titles to be under my land or my name.

10 Q: Mr Kwani, you stated in your affidavit in most of the relevant parts that you have conducted awareness on this concept of SABL extensively. Now, you will definitely know more about SABL than any other person in all these villages that you have been to, right? Yes or no?

A: Yes.

20 Q: Okay, tell us what you know about a Special Agriculture and Business Lease? Because your company got the title under section 102 of the Land Act for a Special Agriculture and Business Lease to cover a very big area; portion 27C. We have the map of that particular land area which is portion 27C and it starts basically from the township of Kiunga and it goes further north up towards almost the border of Southern Highlands and then it follows the Palmer river down and connects again with Fly River and it comes down. That is portion 27C, 149,117 hectares. And then you have portion 1C which is 270,642 hectares of customary land which both of these portions now are literally and technically legally owned by your company and not the customary landowners. I will give you this map for you to take time to appreciate the enormity of your company's acquisition. Can you show the people here how much land your company owns? Show it to the people. Those two portions. Can you add them up and tell the Commission how much land your company
30 owns in the Western Province now?

COMMISSIONER MIROU: The figure is on the map, done by your surveyor, Mr Hape.

A: Commissioner, the title is 619759.

Q: Hectares?

A: Yes. 6,19759 hectares.

MR BOKOMI: Is it 6,95759 or can you add up the figures properly?

A: 61, sorry. 61,975.9.

Q: Mr Kwani, are you good at mathematics? It is just a basic addition.

COMMISSIONER MIROU: Is it 61,759 hectares?

10

MR BOKOMI: Mr Kwani, let me tell you that your company now owns 619,759 hectares of customary land. All of those villages within that particular two portions of land have lost their land, customary land, without any reservations of any rights to the customary landowners. Now your company, North East West Investment Limited owns the two entire portions of land. Can you safely say that all the villagers of all those villages starting from the township of Kiunga all the way up to the northern part, that is where the Osobip LLG is in portion 27C and across to near Strickland river to the eastern side of the border of portion 1C, all of those villages, villagers of those villages have
20 given consent. How safely can you say that? Have they given their consent or not?

A: Commissioner, the whole entire villages did not give their consent but the consent given to us was those along the road corridor; those along the road corridor and those further inland from the road corridor where the main line road will be. Because of the stories what this company will be doing, they have expressed for us, the landowner company, to getting further when the operation is on, sir.

30 COMMISSIONER MIROU: That story we have being hearing since we arrived here, we have being hearing about that road work, road corridor. We have not being hearing anything, no proper explanation as to how your company got to own 619,759 hectares. Forget about that road work, talk about how you got to get all these large chunk of land?

A: Commissioner, all these started as when the road project was told to us that the road project will link from here to the ending part, we will all

give our consent that the road project can come through where our land would be.

Q: So do you need an SABL to build a road?

A: That was instructed by us by the Lands Department because we will start off with a TA---

Q: Who from the Lands Department instructed you?

10

A: It was Mr Hudson because he is also a Lands officer and a Surveyor instructed us to do.

Q: Mr who?

A: Hudson.

Q: Hudson who?

20 A: Hudson Hape.

Q: He is a surveyor with IT &S?

A: He is a surveyor with IT & S and as with the Lands office. So we were given advisors from the office. It is actually their function to advise us what to do because when we were trying to do at the first place, they rejected us.

30 Q: You do not require an SABL to build a road. Only you need is you require a Forestry Clearance Authority to clear fell trees so that you can build a road. You do not need a SABL.

A: Commissioner, we were advised to get a SABL from the forestry – not forestry – FCA from the forestry and also for the road.

MR BOKOMI: You advised you to get FCAs?

A: The Lands Department.

Q: Are the Lands Department experts in forestry matters?

A: Yes, the advice from the ---

Q: You listen to my question properly, Mr Kwani.

A: Sorry.

10

Q: Are the Lands Department officers experts on forestry, to advise you on whether or not an FCA was needed?

A: No.

Q: No? Then why did you follow their advice? Did you not go back to consult with the forestry officers?

A: It was advice I followed it.

20

Q: Mr Kwani, you are the chairman of your company. There is something that they call due diligence. Director's roles and responsibility under the Companies Act. If your lawyer has not explained to you, those are matters of due diligence. You must go back to seek a second opinion. You did not do that did you?

A: Yes, sir.

[3.13p.m.]Q: You stated in your affidavit that the first FCA application was refused or National Forest Authority refused to grant you a road line timber authority for the proposed road because roads more than 12.5 kilometers had to be constructed through an FCA; 12.5 kilometers of road in terms of what? In terms of its breadth, the width in some in terms of its length? Now, let me tell you that that particular refusal might not have been proper for the simple reason that all that you needed for the road corridor to go through was to apply for a roadline TA. That is all you needed to

30

do. There was no need for further forest clearance left or right of the road; on the left or right side of the road. You understand that?

A: I understand that.

Q: Now, what was the actual intention of your company to acquire the entire portions of land, which now I have shown you on the map, or was it for the road construction only?

10 A: It was for the road construction only. We knew that if construction goes well, landowners from inland will come also with their interests. So we decided to further---

Q: The decision made by your company to apply for Special Agriculture and Business Lease – I am reading at paragraph 13 of your affidavit if you can open your affidavit to that page, bearing paragraph 13. It is at page 3 of your affidavit. Now, who actually advised you to get the FCA? Was it from the Lands Department or was it from Mr Hudson Hape? Can you recollect correctly?

A: It was from the Lands Department.

20 Q: Lands Department, which particular officer at the Lands Department?

A: He will witness that. He will tell that because it was from his end to us.

Q: From which end to you?

A: From the Lands Department to ---

Q: Hudson Hape?

A: Hudson to us because he was dealing with them.

30 Q: Okay, you stated it correctly in your affidavit it was Hudson Hape who advised you that you were going to get an FCA and not a Lands Department officer because you were not dealing directly with the Lands officer. Right? You were not directly dealing with Lands officers at Waigani. Is that correct? Department of Lands officers?

A: We were dealing with ---

Q: Hudson Hape only.

A: Hudson Hape and a few officers but the advice they gave us was this that we---

Q: Who those few officers? Mr Kwani you should know them by name?

A: I do not know them by name.

Q: How long were you dealing with them for?

A: They came in once to IT&S office to explain things when we request.

Q: Who are those Lands officers? We need to know their names.

A: The Land officers were like Mr Simon Malu himself.

10 Q: Simon Malu. Now, how much money did your company pay him?

A: That I would not know. I do not know.

COMMISSIONER MIROU: IT&S?

MR BOKOMI: IT&S, have they paid Simon Malu anything?

A: That I have no record, I do not know.

COMMISSIONER MIROU: But you say in your affidavit that you worked closely.

A: We worked closely---

20 Q: Paragraph 11. "IT&S then did feasibility studies on all components of the project." You were linked directly with IT&S. You were linked directly with that project so you have ---

A: Yes, we were linked together with IT&S but on the spending part of the money, that I would not know. I do not know how that was done.

MR BOKOMI: Okay, let me take you back to your decision. That is paragraph 13, decision to apply for SABL. Who made that decision? Was that your company? Is it North West East Investment Limited?

A: The decision of SABL, firstly I would say that SABL did not, was not recognised. We only know agriculture title, agriculture lease released the title so our intentions---

Q: Mr Kwani, I will put a stop to you there. You are saying, decision to apply for SABL and then you go on to say that based on Department of Lands' advice, it was agreed that the appropriate way forward was by way of an SABL. Now, here you are running a company, Mr Kwani. Major decisions, major transactions affecting company's resources, et cetera under Section 110 of the Companies Act, require board approval. Now, did you at any point in time conduct a board meeting to promulgate this decision for purposes of applying for the SABLs over the two portions of Land? Was there a board meeting conducted?

10 A: Yes, there was a board meeting conducted.

Q: Where are the minutes of that board meeting? When was it conducted?

A: The minutes will be attached later.

Q: Will be attached later, what? Why did you not put them in your affidavit? You firmly state all these but where is the evidence to support them?

A: Commissioner, that I failed, I did not attach the---

Q: If I put to you that you are already lying under oath, what do you say about that?

20 COMMISSIONER MIROU: You are required to ensure that you provide those documents. Those board minutes are very important to ascertain that you had obtained an approval from the board. Do you have those minutes in your person?

A: Not at this---

Q: In your company records? Can you provide it to the Commission tomorrow morning at 9 o'clock? You will provide those minutes of the meeting to the Commission tomorrow morning at 9 o'clock.

A: I will try.

Q: Do not try, you must provide them.

A: Not try but I have got it. I will try.

Q: Because are major decisions affecting alienation, acquisition of customary land, it is not a simple play thing.

MR BOKOMI: Mr Kwani, in your Dringas village, did you ever hold a meeting to discuss this concept of Special Agriculture and Business Lease with the people of your village?

A: Yes.

Q: Of your immediate clan members?

A: Yes, I did.

Q: You have minutes of that?

10 A: No.

Q: No? Why did you not keep minutes?

A: I did not keep the minutes because it was only matters that I did for the village people so that they answer where we are trying to go.

Q: If I put to you that what you are saying is a total lie. Because we went up there on Saturday and we asked some of your village people there, they said they were not aware of any meetings conducted by North East West Investment Limited and its company officials with regard to this particular SABL thing. All they were aware of was the road corridor project. What do you say about that?

20 A: Mr Commissioner, the people were all aware of it. SABL frame came in later but agriculture title, lease – lease back title was announced to them or made awareness to them and everybody, all the landowners are aware of it.

COMMISSIONER MIROU: But these are villagers actually on the actual site where this proposed road is going to run over the Fly River to portion 1C, is it?

A: That is from 27 to portion 1C.

Q: They told us that they had no idea that any awareness was brought to them about the SABL.

30 A: Commissioner, they had lied. Factually I had mentioned that the framework of SABL was not known even to me but the agriculture lease

– lease back title was announced because at the first when the proposed plan was made, we mentioned that there will be agricultural activities along the road corridor.

Q: You want to go and tell your people that they lied? You want to go right now, drive to Dringas and tell them that?

A: Yes, I will say that because we were together, they know.

Q: I am telling you, would you go down the road to Dringas on the Fly river and tell them that?

A: I would not go, I will just tell them.

10 Q: You want to insult your people?

A: No.

Q: Why do you say they are lying?

A: Commissioner, I said that because the plan we were together, it was their interest that we worked along. But now they say they do not know. I will say that but I am sorry---

Q: They do not know because their land has been taken from them and it is owned by you, the company called North East West Investment Limited of which you are the chairman. You own their land.

[3.24 pm] You can tell them to pack up and move out? If you want to do that
20 tomorrow or this afternoon?

A: No.

Q: That is what is going to happen. Do you realize how serious that is and to come here and insult your own people about them not being aware of it? What is the truth?

A: Commissioner, the truth is that looking at these people on this side here, on the road corridor that is, we are in the dark, blind with no projects, no nothing since Independence. This is the landowners' own initiative that we have all tried, put our efforts together to put it in a road, in a way that we could get development and services through the means of road linking
30 to our areas, through the means of all these activities so that we be

benefited. And it was all the community plus the company executive, we all made a team effort with the assistance of the developer to get this project on; off the ground so that we will be benefited. Now that they say they do not know. I disagree with it because everybody has asked us or put an interest for us to do means, look for means and ways to get through for developmental services on that particular portion even this area.

Q: Okay, we can take that. But they are not fully aware that their land is now under an SABL which they do not own anymore.

10 A: Commissioner, as I have said, the name SABL came in but agricultural title lease or lease title was explained to them and they are aware of it.

MR BOKOMI: What was the explanation that you gave showing that you seem to know very much about Special Agriculture and Business Leases as you have stated in your affidavit? You have conducted extensive awareness as I have alluded to earlier on. What was the kind of explanation that you gave to the people that you went to see?

20 A: Simple explanation that I gave, Commissioner, was that while the road project is on because road project, forestry and agriculture is a component. This might be the opportunity that when we get the road going along this five kilometre side, side, we might want to practice these agricultural activities, like planting rubbers, all these so this title might help us or will help us, when we get the agricultural title, it will help us to get the agricultural projects along the road side.

Q: Sorry, can you repeat that?

A: I said the title, agriculture title – lease title, if we had as the road got through, that will enable us to do agricultural activities along the road corridor.

Q: Who did these land investigation reports; land investigations?

A: The land investigation reports were done by Mr Hudson ---

Q: Hape.

30 A: Hape.

Q: Is he an employee of North East West Investment Limited?

A: No. He is an employee of the Independence Timber and Stevedoring.

Q: Why was the land investigation done by Mr Hudson Hape?

A: Commissioner, the land investigation was done by him. We requested him to do it for us because in our province here, our Lands officers have limited staff and that they have no finance to do it. We requested IT&S to do it because he was interested.

Q: Did you ever approach the Lands officers to do the Land investigations?

A: Commissioner, we did a couple of times to Mr Sigabu.

Q: Where is the evidence of that? Did you write to them?

10 A: I did not write Commissioner. But I approached with my directors several times for them to come out along with us.

Q: Did you talk with Mr Imen Papa to do the land investigations at the time he was the dispute lands officer for North-Fly?

A: I did mention to him that we have this project going on in ILGs, he is aware. Couple of our meetings we conducted he was aware.

Q: And what did he say?

A: He said he has got his staff he said - his office is down staffed so he cannot do much. Some of the things that he can, he can come in.

20 Q: How extensive did you go to conduct your awareness? I will give you back the map and you tell me which particular areas that you went to conduct your awareness on what this SABL is all about? And in fact, what villages and how many villages in all that you covered in conducting your awareness or your so called extensive awareness that you are talking about? That is the map of the two portions. This is where Kiunga is. Your village is somewhere up there, Dringas is somewhere here, all right. Okay, you tell me exactly which particular areas that you and your company officials visited insofar as these two portions are concerned?

30 A: From Kiunga up the river we have covered Gibaratamin, Gibune, Kipinwantok, Dinska, Smifern, that is on the 27C. And up the Gre Dringas road is Gre, Moreya, Womb, Chindamasup, up the Kiunga town

- Tabian highway is Dringgas, Gii, Gre itself, go up to Miasumi, Waraingre, then to Sisimakam and then across to Pineng.

Q: What was the kind of awareness you were conducting? Was it for the acquisition of their customary land or what?

A: That awareness was for the ILGs and the agricultural TA lease title. And then all these villages to ---

Q: What did you explain to the people? What did you actually tell them?

A: I actually told them about the agricultural TA title.

10 Q: Yes, what in particular about that TA title or agriculture lease or whatever?

A: Okay, Commissioner ---

Q: Did you explain to them the consequences of title being issued to your company?

A: Yes ---

Q: And the fact that they will lose all their land, did you explain to them?

20 A: Yes, I did. When I explained to them I told them that the title at the meantime, from my understanding, I said, the title at the meantime is the NEWIL but as the development proceeds what we will do lands is to this particular landowners and then sublease the land title back to them so that everyone can have their title.

Q: Mr Kwani, I will put a pause on you there and tell you that you are now lying to the Commission. Because in your earlier statement you did say that the consent was basically for the road corridor construction not for the acquisition of all these lands, is that correct?

A: Yes.

Q: Yes, so why are you now lying to the Commission by saying that you did explain everything and that they are going to lose their rights to customary land in respect of all the portions?

A: Commissioner, I mentioned that from the road corridor I mentioned to them. And these areas they have expressed interest to come in so I have to explain the same thing to them.

Q: But how will that be affected by the road corridor? The road corridor does not run through them. The road corridor will only cross from Gre-Dringas into portion 1C. It will not go further north.

10 A: Commissioner, from my understanding, I want to make sure that these projects are on and the benefits is received by the people along the road corridor. And that people from outside will also come in with expression to or express their interest to come in and join in the company through their ILGs. So we had a plan in advance that we could extend if we start off and they see what we doing is good, they come in we can extend them or we can extend it to where they want. Because everybody in this area, particular area they also want road linked to their areas. Looking at the situation we are here is that all of these areas are, we still need development and services to these areas, sir.

20 COMMISSIONER MIROU: Before counsel ask you, look at this document, it is an application or a tender form. This application or tender form actually results in an SABL been issued. It says the applicant is the North East West Investment Limited of which you are the chairman, Care of P O Box 154, Kiunga, Western Province. Type of lease applied for: Special Agriculture and Business. See in your application form to the Lands Department in Port Moresby for forestry, reforestation, sawmilling, agriculture, major road infrastructure construction. So you, as the chairman together with your board knew that you said road construction but here, in this SABL application, it says forestry, reforestation, sawmilling, agriculture. So did you tell that to the people when you made this application on their behalf?

[3.35 pm] A: Yes, Commissioner, I did, with the directions that these things would come in when we had a title of all land with us.

30 Q: So now you seem to say – you seem to agree that, yes, your whole intention for the company was to obtain all these land, because you used the road construction as a means of getting the people’s consent basically to get a SABL over all these portions of land. That is what you are saying now.

A: Commissioner, yes---

Q: And that is the application form?

A: Yes, Commissioner.

Q: Now, you look---

10 MR BOKOMI: Perhaps, Commissioner, I suggest we put it to him the document.

COMMISSIONER MIROU: You look at this document and you tell me whose signature is right down at the bottom and tell me whose signature is that? I want to know about that signature. Whose signature is that?

A: This one, I do not know, Commissioner.

20 Q: I mean, that is in the name of your company. You are the applicant. How you do not know who is signing for you? Who signed that document?

A: I do not know.

Q: This is the actual document that starts off the process on law and investigation to be conducted and then the issuance of SABL. That is the very form that is submitted to the Department of Lands. It is in the name of your company or am I reading it correctly? Just tell me who is the applicant on that tender form?

30 A: The applicant is the North East West Limited but the signature, I would not know whose signature it is.

Q: It says something like an agent there.

A: Yes, Sir.

Q: So who was acting on your behalf?

40 A: I do not know anybody, but the Lands office from our end was the company's---

Q: No, I am asking you, who signed that?

A: So I do not know who the agent is.

Q: Normally, you as the Chairman would sign that application and submit it to the Lands Department and say, look, I am trying to free up my land. That is how you start the process for SABL. That is the process. That is the starting. The first document that the Department of Lands receives is that document. It has the name of your company there and you do not know who signed it.

10 A: Yes, Commissioner.

Q: So whose signature is that?

A: I do not know.

Q: Thank you, bring the document back.

MR BOKOMI: Mr Kwani, before that application for lease that you have just read certain parts of, was made by your company or purportedly by your
20 company, did you ever conduct any meeting, board meeting, for instance, that you were going to apply for a lease?

A: Yes, we have conducted board meetings; mentioned in our board meetings and---

Q: I will stop you. You are saying, yes? Can you provide copies of the board meeting minutes?

A: The copies, Commissioner, I will make sure I will provide that.

30

Q: We do not want any fabrication between now and tomorrow; we want actual board minutes. You understand that?

A: Yes.

Q: Can you provide that by 9.30 am tomorrow?

A: Yes.

40 Q: Do you understand the enormity of your undertakings now to the Commission, the seriousness of what you have just stated? If the board minutes are not there, then you need to also tell the Commission that, sorry, I do not have the – no meeting was conducted; no minutes were

taken, right? So you need to appreciate that. I am only trying to help you here. Which is the actual correct position? Did you ever hold any board meeting to discuss all those issues of SABL, including lodgment of an application as you have just now seen a copy of?

10 A: Commissioner, that is why I said I will try and check but if I – our meetings have been conducted but I said because whether it is in the meeting or not, I will – I think I do not have a meeting basically based on this SABL; but other meetings of directors meetings, we verbally mentioned all these; I can provide, but on this SABL, that I do not have.

Q: Did the IT&S Surveyor, Mr Hudson Hape, at any point in time, explain to you and say that your company is going to acquire very, very major tract of land to the value of several hundreds of thousands of hectares?

20 A: Commissioner, yes, he did mention based on the interest of the landowners and the situation where he said he will – I mean, the landowner company has to apply for the SABL to get the land so that in time when it is subleased to the landowners, it can then make a sub – lease - lease back later when the operation is on and they will be in close contact to check through and make sure that all of what we do is correct.

Q: In the process of that explanation, did Mr Hudson Hape also explain to you the effect of having a big area like this under a SABL in that, one, rent was not even payable to the landowners, did he? Landowners will never get their land rent for having given the land to your company. Did he explain that?

30 A: He did not explain that. He explained that we will all be paid for our land and all these other things as well.

Q: Paid what? Paid for what? What sort of payment would that be?

A: Like, Commissioner, if we are given or if we are doing agricultural activities or if we are doing other things when the logs are harvested the same similar will apply to all these feeder roads so they said, we will pay it; pay royalty for our land.

40 Q: How about the effect that an SABL would have over customary land rights in that once now that your company has leases over two major tracts of land, all those villages - perhaps we will call back the District Administrator, he will tell us basically how many villages there are within these two portions of land, then you will tell me whether you have

actually walked the length and breadth of these particular portions of land. You understand, Mr Kwani, the enormity of what you are basically telling the Commission now?

A: Yes, I understand.

Q: You see, did Hudson Hape ever tell you that once the land is taken away and granted as a SABL, then there been no reservations made in the Land Investigation Reports, no rights of landowners will be retained by them insofar as their hunting and gathering, the right to go fishing, gardening et cetera on their land and whatever their rivers and streams et cetera, they will lose it all. Did he ever tell you that?

A: No. Commissioner, what he did tell me was that while we get the projects on, we will pay when the road or logs harvested along the road, to every individual landowner.

Q: So if I put to you that not all the landowners, in fact majority of the landowners did not give their consent for this SABL from the evidence that you have basically stated. What do you say? Yes?

[3.46 pm] A: Commissioner, I also know because I am only based – the company was only based on those landowners who came through ILGs who expressed interest. For that land mass that we put, it was just a plan that we had for them if they want to come in.

Q: Why do you say no? Your judgment is only based on, as you have just now stated, is only based on those landowners that came to you, not the entire population. Is that correct?

A: Yes, Commissioner, that is what I mean.

Q: Not the entire population?

A: Not the entire population but the landowners that came to me with their concerns or expressing interest and the others who will be coming in later.

Q: Those landowners, are they from basically the areas that will be covered by the road corridor?

A: Yes, Commissioner, these landowners will be – those ones will be covered by the road corridor.

Q: That is what you have started saying when you opened your statement. You said, our whole intention – the overall intention was for us to allow for the road corridor landowners and the acquisition of their land within the road corridor to proceed, not the entire SABL. You have basically blatantly lied to the Commission, yes? You have lied to the Commission?

A: Commissioner, no.

10

Q: You have lied to the Commission.

A: If I have lied---

Q: Why then are you contradicting yourself? If such contradiction is not a lie, then what is it? What is the contradiction? You answer my question. I do not need any explanations from you. You answer my question, witness. You have contradicted yourself. How can you now be believed?

20 A: Commissioner---

Q: You have contradicted yourself; yes or no?

A: I said yes on the road corridor.

Q: There you go.

A: And further from the land corridor and those who are interested who will be coming in.

30

COMMISSIONER MIROU: So that road corridor is just from Gre village off – when we turn off after a drive of 20 kilometres from here from Gre to Dringas?

A: And then - yes – and then close over Fly River from 27, you continue to 127 to Strickland.

Q: So how did your company end up getting this whole area? It is not a road corridor any more.

40 A: Commissioner, perhaps we were based on the road corridor but this SABL or agricultural project, we think that in future other interested landowners from outside of the land corridor who express in it will fall in

line with what we are doing, and we might all benefit from the projects that we have proposed there.

Q: I want to ask you about this attachment here, the ILG attachment. When did you conduct this ILG and when did you obtain those signatures?

A: When we physically worked in teams after our second hearing in Port Moresby.

10 Q: Okay, you worked in teams. Gre village, when you got all these signatures here, that is 2 November 2007?

A: Yes, Commissioner, that was when we came back from the second hearing.

Q: But the SABL has been issued. This should have come even before the SABL was issued. Why has it taken now on 2 November 2011, and from the way I read it, the same biro was used; even the signature too is very, very funny.

20 A: Commissioner, that signatory---

Q: Did they sign it or is it the same person that is putting his---

A: Some of the signatories some of them are in ILGs, those are children or those are kids.

Q: Look at your document - look at the document. I am beginning to suspect that somebody else was forging. There seems to be forgery here. You put names up there and the same biro is used right across. "Before me"; who is that "before me"? Whose signature is that "before me"? Look at that first document where you say Gre village, ILG number 5: Nema Sika; Gre Gruman Rangia, ILG number 1245. Did this same person who did this write up sign all these - put all these signatures here?

A: Commissioner---

Q: Yes, the first document.

40 A: First document.

Q: Look at the first document. Who is it before? Who is it signed before, that first one?

A: This is portion 27.

Q: No, the first page when you come to the attachment, this one here; the first page. Whose signature is this?

A: Commissioner, 27C or 20---

Q: 2 November 2011, two weeks ago; two or three weeks ago.

10

A: Commissioner, that was Neme Sika.

Q: Who is Neme Sika?

A: The Chairman of Gre Sumra clan in Gre village.

Q: Who wrote this – who put all these names in here? Who wrote these things? Whose handwriting is this?

20 A: It is me and the other escorting team whom we walked together.

Q: Can you see any similarities in the way it is written down here, the signature part? It does not indicate to me that any of these persons signed it. It must have been you.

A: But they were there. They signed it themselves there.

Q: How? You look at this writing. How is it done?

30 A: The writings were done by us, Commissioner, but the signings were done by them. We went around getting them to sign.

Q: But the way it is written suggests to me that you put these signatures. Counsel – if I may give Counsel this. If I may give counsel this document to look at.

MR BOKOMI: Yes.

40 COMMISSIONER MIROU: They all have very – it is used by the same biro, the same handwriting. Second one, Gimson village. That was conducted on 1 November 2011. Here, we have fingerprints here. I think so, Mr – he can probably tell me better. I am probably looking at the wrong place.

A: Yes, mine is a mix up here. Commissioner, this is of Dumasuka clan Trutmas village; Chairman of Dumasuka clan.

Q: Look at the thumb prints there. They all seem to be the same.

A: Yes.

Q: Same thumb prints.

10 A: These same thumb prints was done by the Chairman himself and his elder children; the grown up children.

Q: So you produced this document to the Commission to do what; to mislead us? Is that what you are trying to do with this affidavit and the ILG forms? You are misleading this Commission?

A: Commissioner, no. It is basically---

Q: Why did you attach all these documents here?

20

A: This is how we were advised to let the Commissioner know that we all supported the project.

Q: Counsel?

30

MR BOKOMI: Mr Kwani, what the Commissioner basically is telling you is that you would have done better by getting all these signatures before the grant. You cannot put – you cannot jump the band wagon now because it is already gone. You understand? The train has left. You cannot pull it back with all these signatures.

COMMISSIONER MIROU: So you are misleading the Commission.

MR BOKOMI: They may be genuine, they may not be genuine but that is already after the event, you understand?

A: Yes.

Q: And besides, it seems to me that all these---

40

MR BOKOMI: Signatures were obtained and the person signed before your Lawyer Mr Michael Titus. Was he present at all those villages that you went to? You see the last column there. It says “before me”.

A: Commissioner---

Q: No?

A: No.

10 Q: No. Thank you. The Statutory Declaration that you attached also is incomplete. There is no second page to it, the signature page is incomplete. You see that, or is it an omission? Where is the other page that should go that says that "sworn at before me" et cetera, et cetera and then the relevant caution that normally goes with the Statutory Declaration that says that if you make a false declaration, then you will be liable to a certain fine, penalty or 6 months imprisonment. Where is that clause there? Can you tell me?

A: Commissioner, I was only given one page, this one here.

20 Q: I am asking you. You tell the Commission. You sit at the table as well.

A: Commissioner, I am only given this page.

COMMISSIONER MIROU: But you should be fully aware of what a Statutory Declaration form looks like since you are Chairman of a company. Do you know what a Statutory Declaration looks like?

[4.00p.m.]A: Yes.

30 Q: Well, it is incomplete. The most important part of it is missing which is where the signatures go in. Your signature before a Commissioner for Oaths and the date and the place. That is not there.

A: Commissioner, I was only given this so I have attached it as I have said.

Q: You look at this other page too of this ILG, the signature part. Somebody seems to have signed for everyone there in that village.

A: Some of these signatures are while we were---

Q: Not some, there is only the same person signing it all, the whole page.

A: Yes, Commissioner, it was the chairmen. Some of them went in there---

Q: These chairmen are very cunning. They are very cunning.

A: This happened at Komo village. When I was in the house of the councillor the chairmen came and signed for their members.

Q: But the signature, a signature must be signed by the person whose name is there. Not anybody signing for you. If I put my name, I sign it. If you put your name, you sign it. Nobody signs for you. If anybody signs for you, it is signed on behalf of ---

A: Commissioner, the reason was the chairman signed. I was there twice---

10 Q: But you do not have to speak on behalf of him. That is okay. The document speaks for itself.

A: Yes, sir. Thank you.

MR BOKOMI: Mr Kwani, I have one question and that is that from documentations before the Commission, your preferred developer is Independent Timbers and Stevedoring Limited. Is that correct?

A: Yes.

Q: And most of these documentations were done by your preferred developer?

A: Yes.

20 Q: And if I put to you it was done in its interest and not in the interest of your company, what do you say about that?

A: Commissioner, I would say that he did it for the interest of us, the landowners of the company.

Q: How sure are you?

A: I am sure he did mention that to us and he has been working together.

Q: These logs for road concept has come about, that is for purposes of building the Trans Papua Highway which you are pretty much aware of and probably you are perhaps the expert on it. What do you understand by the logs for road concept?

A: The logs for the road concept that we initially initiated as based on our conditions that we are out in the dark without surveyors and development. We intended to negotiate with that developer that when our logs are harvested, we will exchange it for the road project or road links to the various ILGs that we are.

Q: In simple terms what does that mean? I am going to put to you again. Does it mean that the company, Independent Timbers and Stevedoring Limited will come into the area aligned or marked for the road project, it will cut the timber, sell the timber and then from the money that it makes from selling the logs that it has cut on your customary land, it will then turn around and build the road. Is that correct? Is that your understanding of the logs for road concept or what? What is it?

A: Yes.

Q: That is the understanding. But have you ever pondered further to find out whether or not the company has the ability to build the road even without having to log the area first? Does it have the technical and the financial ability? Does IT&S have an office here?

A: Commissioner, IT&S does not have an office in here.

Q: Does it have plant and equipment, machinery, et cetera here in Kiunga?

A: No, it does not.

Q: How can you place reliance on such a company?

A: I place reliance on IT&S because he said he will do it in respect for the landowners under the humanitarian grounds. Since we are in the process of trying to get the approvals or get the legal clearance from the various departments concerned, as everything cleared and all the okay is given to us, when operation starts, he said he will assist the landowners. That is why we trusted him and we have been together seeing that no company investor in the country has ever done that for the landowners.

Q: Okay, I will stop you there. Has IT&S, to the best of your knowledge, carried out any major road construction or let alone road maintenance throughout Papua New Guinea?

A: No.

Q: No. If I put to you that the profitability margin of that company if it were to use the money that it gets from selling the logs cut from your land and that of all the other customary landowners would be very very low. Do you think that it would seriously consider the option of constructing the road?

A: According to his promise, he said he will seriously take the road to where its end is.

COMMISSIONER MIROU: You still trust the company today?

A: Yes.

10 Q: Where is the managing director now?

A: Yes, Commissioner, that must be explained by him but I still trust that he will do it.

Q: Where is he? Is he living in Kiunga? Port Moresby? Overseas?

A: IT &S office is based in Port Moresby.

MR BOKOMI: Mr Kwani, I am sure that you and all the directors may have been assisted one way or another by the company called IT &S. How often do you normally travel in and out of Port Moresby?

A: Commissioner, when we are needed in Port Moresby we travel, on the basis that the company only allow us accommodation and plane tickets.

20 Q: Does it give you any allowances?

A: No.

Q: How sure are you? How sure are you?

A: I am sure. Allowances you mean is when we are accommodated we are paid K50.

Q: Per day. How long has that been going on for?

A: Since the negotiation process from 2003 until now.

Q: You will agree with me that since 2003 up til now a considerable amount of money may have been spent on the board of directors of North East West Investment Limited, yes?

A: Yes, in the process of planning and negotiating.

Q: And in the event that – follow on from there, I am going to ask you now – in the event that the logging actually takes place for purposes of clearing the road, clearance of the forest, for purposes of building the road, as you say, I am getting back to you on the benefits that your landowners would get. You understand? There is something called, “Timber Premium” and there is something called “Timber Royalty”. These are two different things. You understand? The Timber Royalty is normally given to the landowner for every merchantable timber – tree that is cut – or harvested by the Developer based by records kept by Forest officers. The Timber Premium will come to your company. Now you tell me, given the level of indebtedness that your company may have already placed itself in, insofar as its relationship with IT &S is concerned, do you think this particular project will actually benefit your company or your people for that matter; who are shareholders in your company?

A: Yes Commissioner. I think that when the timber is harvested from around the road corridors, the Premiums, the Royalties are paid, it will be directed to the landowners so I believe that they will be benefitted.

[4.11p.m] Q: Mr Kwani, did you sign this project agreement? See if you can confirm this. Gre Dringas Duara Wawoi Falls Trans Island Highway Stage Two Road Project Agreement. Tell the Commission if this is your signature?

A: Commissioner, yes, this is my signature.

Q: Thank you. My further question to you is that, was there a board meeting in which a collective board resolution was made and minutes thereof kept in relation to giving you the proxy to sign for and on behalf of your company as the chairman?

A: Commissioner, there should be a minute giving me the authority to sign on behalf of the landowner company.

Q: North East West Investment Limited. Perhaps you can also provide that to the Commission by 9.30 no later than that. We do not need any fabrication. We need authentic records. A direction that Mr Kwani provides ---

COMMISSIONER MIROU: Yes. If you can provide that amongst the other documents that we have requested for by 9 o'clock tomorrow morning.

MR BOKOMI: Minutes of the meeting empowering him to sign the ---

COMMISSIONER MIROU: Yes. The minutes of the meeting authorising you to sign on behalf ---

MR BOKOMI: The Project Agreement.

COMMISSIONER MIROU: Tomorrow at 9 o'clock.

A: Commissioner, I will do that.

10 MR BOKOMI: I am referring to paragraph 9 of your affidavit in which you say that other villages and landowners were aware of the proposed developments and agreed but other issues like land disputes to resolve and they decided they would join later. What villages are those? Can you name them? I am looking at paragraph 9 of your affidavit.

A: Commissioner, when I say other villages means those villages who did not come in the area, in the SABL mappings, and the same villages we went through but some of their lands got disputes so they did not want to come in because it was on the disputes so they ---

Q: Yes, what are those villages?

20 A: They are Dringas, Kamog, Monoia, all these villages mentioned in the affidavit in here.

Q: Very well. And if I put to you that based on this evidence alone, not all the landowners gave their consent for this SABL to proceed to this stage where title has been granted? What do you say about that? Yes or no?

A: Yes.

30 Q: Thank you. Commissioner, unless you have any other questions to ask this particular witness, I would ask that this evidence be – his summons be also adjourned to tomorrow and he is still under oath, he can proceed to answer certain questions tomorrow from the Commission. I would simply like to call upon all those persons that he has named in his affidavit as having told lies to the Commission to come before the

Commission so that I will put his evidence to them before we proceed on to the next witness under summons.

COMMISSIONER MIROU: Yes. So we will release Mr Kwani. We will stand him down for tomorrow morning.

MR BOKOMI: Yes, we will stand him down to tomorrow.

COMMISSIONER MIROU: Mr Kwani, you will continue to come to the witness box tomorrow morning because we require you further. We have requested that you direct to the Commission those board minutes and we also require you to come in to ascertain from other witnesses that you have said –
10 Counsel, what are their evidence? Or to ascertain the truth, the statements that he has made.

MR BOKOMI: Yes. He has stated from paragraph 22 onwards and made some serious allegations against persons who have come before the Commission to give evidence.

COMMISSIONER MIROU: You have made some allegations against some of the witnesses who have given evidence testified in this Commission. 22, you said Imen Papa's testimony is false. 23, Steven Kwani also lied to the COI. 24, Jack Kwani, also lied to the COI. 25, Samuel Kepugna also lied. 26, Montford Awetari also liked to the COI and Patoro Ako. We will have to ascertain and
20 then we will require their evidence to say whether what you are saying is true or not. So you will stand down until tomorrow morning. In the meantime I will caution you that you are under oath and you will not discuss your evidence with anybody between now and 9 o'clock tomorrow morning. Is that clear?

A: Yes.

COMMISSIONER MIROU: Thank you. You are excused.

A: Thank you.

MR BOKOMI: Thank you Mr Kwani.

30 **THE WITNESS WITHDREW**

MR BOKOMI: Mr Papa.

COMMISSIONER MIROU: Thank you Mr Papa. Counsel will ask you a few questions.

IMEN ITE PAPA, Continuing:

XN: MR BOKOMI

10 Q: I will put to you the entire statement made by Mr Waiti Kwani at paragraph 22 of his affidavit which essentially says verbatim as follows; “Even Papa’s testimony is false. He was flown by IT&S to Port Moresby to give his opinion and advice on the land investigation report and stayed in Port Moresby for almost four weeks for that purpose.” Now, I want you to tell the Commission as to the veracity of this statement. Perhaps for your noting you can basically look at paragraph 22.

20 A: Commissioner, I was not flown under - as I have stated in the morning – IT&S. I was on administration’s duty travel on other purposes which I also stated in the morning the vehicle was hired under our own administration. Just that I was living in Sports Inn and I was called in and I was called in to come and sign the land investigation report at the 10th Floor as I have testified at the first place. I have not gone to the field and did whatever land investigation out on the field. Thank you.

COMMISSIONER MIROU: And did you stay there for four weeks? It says here you stayed there for almost four weeks.

30 A: No. I went on government duty, I mean our own and then I was told that I will come and sign those documents.

Q: Were you there for four weeks?

A: No, I do not think so.

Q: Thank you.

MR BOKOMI: It is stated that you were flown to Port Moresby to advice on the land investigation report. Now what sort of advice, if any, did you give to IT&S? Did you give any advice or were you merely told to sign on the page where you were supposed to sign?

A: All the documents were before me to sign. So having as in my response I made on Wednesday that on that understanding of the concern about these roads that everybody were talking about, I signed on the land investigation report.

10

Q: You never provided any advice, is that what you are saying on the land investigation report?

A: That is right.

Q: Thank you Commissioner, I have no further questions.

A: But signatures I did sign; I did sign, that is the truth I did sign the land investigation report.

20

COMMISSIONER MIROU: Yes. We will stand you down again. Thank you.

A: Thank you.

MR BOKOMI: Thank you.

THE WITNESS WITHDREW

COMMISSIONER MIROU: Mr Steven Kwani, present?

30

MR BOKOMI: Yes, Mr Steven Kwani, are you in?

COMMISSIONER MIROU: Mr Steven Kwani, you are still on oath.

MR BOKOMI: He is still under oath.

STEVEN KWANI, Continuing:

XN: MR BOKOMI

Q: Mr Kwani, Mr Waiti Kwani, is he related to you in any way?

A: No, he is from Drimgas village and I am ---

10 Q: And where are you from?

A: From Kimingolo village.

Q: Kimingolo?

A: That is in Awin common language. Kwani is a popular name for every surname of the tribe.

Q: Okay. I would like to tell you now that Mr Waiti Kwani at paragraph 23 of his affidavit says that, "Steven Kwani also lied to the Commission of Inquiry. He was not present at the time of the awareness on the
20 Agriculture Lease Titles but he was present at the time of the signing of the Instrument of Lease and he heard what Simon Malu said in explaining the said SABL scheme and then complained that he should sign instead of his brother, Julius Monguman, an ILG chairman, and he signed next to his brother's signature."

A: Commissioner?

COMMISSIONER MIROU: Thank you, yes.

A: If you see on the ---

MR BOKOMI: On paragraph 23. Can you tell the Commission what you know are the facts, the actual facts, considering the seriousness of the allegations that
30 or facts which are raised in the affidavit of Mr Waiti Kwani?

A: Okay, I will speak what had happened during that time of signing. In the morning I was given a court order regarding the land we had a dispute. So I took that court order to the Lobilo Hotel and the Highlander guy by the name of Paio, he swung me here. He swung me here and said,

“Steven, you own the land or wanem kain save yu gat na yu landowner long dispela portion?” So I went away. We had argued there and he drag me out of Lobilo hotel, I went away. And then they forced me to come back. That time was the team coming from Moresby.

Q: Sorry, who is Mr Paio?

A: Paio Bare is a local, I mean he is the businessman here in Kiunga town. So that time they were trying to sign the lease wanem ya?

Q: Yes.

10 A: We had an argument and they swung me. So I walked away. I walked away and the developer and the team, the officers came down at 2 o'clock, came down to Kiunga and the team gathered at the back of Lobilo hotel and I was told to come back. In that gathering I observed that they wanted my authorisation to sign that thing but then already someone, the next brother, Julius Maguman had signed already so as the chairman of the association I argued to sign the document. And the majority they gathered there. I was trying to walk away but then Neville was trying to pack up and go and then the people just, “Sign, sign”, they all shouted. And then I said, “Who is going to sign this document?”

Q: Who is that Neville? Yes, what is his full name?

20 A: The CEO of Independent Timbers and Stevedoring.

Q: Neville Hussley?

A: Neville Hussley. So just because I heard shouts calling from Nomad, Awin Pari and all the way up, they want the road project. The only concern that I had was for road project, Trans Papuan Highway to be built from Gre Dringas all the way to Nomad.

Q: And not the SABLs?

A: Not the SABLs.

30 Q: And even I could not see the content of the signing, the paper was just there, the name at the back, already my brother Julius signed but I do not want, I refused to take that document away because I act on the behalf of the Association Act. So I do not want to give away my land. It must be

done in the procedures where anything to down in the incorporate, we have to down with the ILGs so it has to be according to the Association Act so that we endorse to the Developer. That is what I was standing for and I refused to sign. But just because of the shouting from the far end villages up here, their purpose was to my witness to sign and take the document back.

[4.25 p.m]

10 That is what it happened that that was the time I was – so I told Neville to sit down, I came to Neville, and because of the problem in the morning by swinging me – “wanem kain save yu gat?” So I had this trouble in mind to stay away from that signing but just because of the people shouting, they want the road project and if I do not put myself forward for that road project, then the road will never go. So I just came at the back to sign that on behalf of my brother.

Q: That instrument of lease, did Mr Hussley or who else from the company was there? From the Developer company?

A: That I only know Hussley because Hussley I know him that time---

Q: How about the Lands officers?

A: They said one of the Lands officers from National Lands office but our guys who are there should know the name of it.

20 Q: Did they ever explain to the people there, the nature and content of the instrument of lease?

A: The explanation was---

Q: Did they explain?

A: Yes, they were in there. I just came in there because I was arguing with Paio that is why I just came in to sign. I just came in to rush in to sign. And I just said I do not want to sign and we argued and I signed and I went back. I did not want to stay there because my argument went over the cloud.

30 Q: What do you say about the statement, that particular statement made against you. Is that a correct statement of what actually happened or---

A: He was not present at the time of the awareness of the Agriculture Lease. But at the time of the Agriculture Lease, I was not present, I was doing other oil and plenty work out of the province so I do not stay around the province. But at the time of signing, I was the one who came and agreed and then they forced me to sign and that it what I did.

Q: But did you talk about the matter to any other clan members of yours and find out from them whether they gave their consent for their clan land or your clan's land to be included as part of the SABL?

10 A: I just heard the name of 99 year lease so I argued over 99 year lease. I do not want to give away my parcel of land that we have. If you are talking about the land, yes, we are signing for the land on the main corridor because our clan is also situated on the road corridor.

Q: But not any one of your other customary lands?

A: No other customary so when we went through – I was involved with the inventory too and I secured my clan members that this is how much we will get. Only this part of land will be given for this part of the projects. Others have to be negotiated through my Association, through me, in round table. That is my aim from day one until now.

Q: And what has the company done? It has not---

20 A: No. My MOA is just sitting there waiting for IT&S to sit down with me and plan for what we can do – I can do.

Q: Thank you Commissioner, I have no further questions.

COMMISSIONER MIROU: Thank you Mr Kwani. You may be excused.

THE WITNESS WITHDREW

MR BOKOMI: The next person I wish to call to verify the statement of fact made by Mr Waiti Kwani at paragraph 25 is Samuel Kepugna. Samuel Kepugna, yu stap? He is probably on the tourist operator. He is a tourist operator I think.

30

COMMISSIONER MIROU: And Jack Kwani?

MR BOKOMI: Mr Jack Kwani? Jack Kwani, is he here? Montford Awetari?

MONTFORD AWETARI, Continuing:

XN: MR BOKOMI

10 Q: Mr Montford Awetari, at paragraph 26, Mr Waiti Kwani says that,
“Montford Awetari also lied to the Commission. During our awareness
of the Agriculture Lease Titles, Samson Ubre looked for him and found
him at East Bay’s Camp 3 – at his bush camp, three kilometres from
Drindemasup village and spent three hours explaining it to him and then
he signed.” I do not know what sort of document you signed because
there is no mention of the document here but can you assist the
Commission by telling the Commission whether what Mr Waiti Kwani
has stated in his affidavit, paragraph 26, is a true version of what actually
happened?

20 A: Thank you Commissioner. The document that I signed was only the
consent form for the road corridor. That was the thing that has been
explained. The other thing he mentioned about three kilometres is not
true. It is beyond Camp 2, it is about two kilometres. He mentioned that
three hours with me was not true. I have not sat with him for that three
hours.

COMMISSIONER MIROU: But did at any time during that period you talked
to him?

A: Yes, I will.

Q: And what was your discussion?

A: Discussion only was to brief me on the road corridor. And the consent
form was only for a period of 25 years not 99 years.

Q: So any reference to any discussion over agricultural leases? You have no
idea?

30 A: I have no idea.

Q: That was the discussion you had with Samson Ubre. Did you have any discussions with Samson Ubre?

A: Yes, the other thing I discussed and I did argue over was my ILG certificate which was not given.

Q: The consent?

A: No, the ILG certificate.

Q: Okay. Your ILG?

A: Yes. Under my own clan.

10 Q: That is your explanation in relation to this statement here? That is your explanation in relation to what Mr Waiti Kwani has said about you lying to the Inquiry?

A: What he had mentioned is I have no idea about what he has stated about my lying to the Commission of Inquiry.

Q: Okay.

MR BOKOMI: Commissioner, I have no questions.

COMMISSIONER MIROU: Montford, you have anything further to say?

20 A: Yes, I have lack of I think having the SABL into the system under my own customary land group, I think I bring in this matter again that gazettal number G218 to be cancelled and whoever – and also the SABL number 26 and 7 to be cancelled as well.

Q: Portion. Portion 26---

A: Portion 26, 27C and 471C and return the land rights to the respective landowners.

Q: Is that all?

A: That is all.

Q: Thank you.

A: And also deport whoever is involved in the system, and also the landowner company who is involved can be ceased.

Q: Thank you Mr Awetari.

A: Thank you.

Q: You are most welcome and you can take your seat.

MR BOKOMI: Thank you Mr Awetari.

THE WITNESS WITHDREW

MR BOKOMI: Commissioner---

COMMISSIONER MIROU: Mr Bokomi, what is the time like?

10 MR BOKOMI: It is 25 to five. I am subject to your inclination.

COMMISSIONER MIROU: I mean I am willing to sit until five.

MR BOKOMI: You are willing to sit up to five?

COMMISSIONER MIROU: Five, yes.

MR BOKOMI: Very well then I call the next witness. The next witness is Mr Foxy Asobi. Mr Asobi appears under summons number 225 issued by the Commission.

COMMISSIONER MIROU: Mr Asobi, thank you for attending the Inquiry and answering to the summons. You may stand up and be sworn. You will give your evidence in English or Pidgin?

20 MR FOXY ASOBI: English.

COMMISSIONER MIROU: Thank you.

FOXY ASOBI, Sworn:

XN: MR BOKOMI

COMMISSIONER MIROU: Counsel, we may allow him to read through his affidavit and then when we will adjourn then---

MR BOKOMI: Yes, thank you Commissioner, we will basically employ the same procedure that was applied to Mr Waiti Kwani.

COMMISSIONER MIROU: And then we can adjourn.

MR BOKOMI: Yes. Perhaps witness for record purposes, if you can, before you read your statement into the microphone for transcript purposes of the record of the proceedings, if you can state clearly your full name, what clan you come from, what village you come from and also spell your name please. Proceed witness.

10 A: My name is Foxy Asobi. F-o-x-y, father's name A-s-o-b-i. I come from Drindamasuk village, Kiunga, Western Province. I come from a clan called Drim, family population of 20 members and our village population of about 700 from other clans. Thank you Counsel.

[4.42p.m] Q: Please you can proceed to read your affidavit statement into the microphone.

COMMISSIONER MIROU: Counsel, that is okay. Do you have a copy? Do you have a copy of the affidavit?

MR BOKOMI: Yes please.

COMMISSIONER MIROU: And if we can identify it?

20 MR BOKOMI: Please, pardon me, Commissioner. Before I proceed with the reading of his affidavit statement, I ask that this particular witness's statement be marked as Exhibit NEWIL (FA).

COMMISSIONER MIROU: Thank you.

[EXHIBIT NEWIL (FA) – FOXY ASOBI'S AFFIDAVIT STATEMENT]

Yes, thank you Counsel.

MR BOKOMI: Mr Asobi, you may now finally proceed. Thank you.

30 A: Thank you Commissioner. On Thursday 17 day of September 2011, I Foxy Asobi, of North East West Investment Limited, Kiunga, says on oath as follows: I am the company secretary of NEWIL and I come from

Grendamasup village. I have read the affidavits of Mr Waiti, both sworn in and felt today and adopt the respective amount of how the people were deployed and first present to this point in time and on the other matters.

Q: Witness, I will stop you there. Please read the statement as it is. You have misread the statement.

A: Misread, okay, thank you.

Q: Is your copy legible enough?

10 A: Thank you Commissioner. Number two. I have read the affidavit of Mr Waiti and Samson Umbre, both sworn in yesterday and fell today and adopt their respect account of how the project was developed and persuaded to this point in time and on the other matters.

99 year lease term of the SABL, three. There is a misunderstanding. The 99 year lease was a standard term agreement by the Lands Department or as we understand it and it was explained to the landowners from the beginning and always the intention of NEWIL that the title it held would only last until individual ILGs and clan customary lands was surveyed and then the titles held by NEWIL would be surrendered and individual titles granted to each ILG. It was always agreed with IT&S and explained to the landowners who consented to it that the sublease to the 20 JV company, Awin Pari and Nomad American Lumber Limited, that would manage and drive the project was 25 years.

NEWIL never intended to steal land away from the customary landowners. It has not done anything that proves that it has stolen the land from the customary landowners. The respective terms of the year were intended to facilitate the project only. No one has given any evidence in this Inquiry to prove that we have stolen customary lands and given it to any foreign company like IT&S.

30 NEWIL is owned by the landowners inside the project area and the title of Portion 21C and 1C are held by NEWIL. IT&S and NEWIL will jointly manage the project through the JV Company. So NEWIL is in the drive-seat of this development.

Rights to use of customary lands for customary land use protected.
Customary practices and uses of their land was always protected,

customary landowners are forever free to conduct their gardening, hunting, fishing and carry out other customary practices on their land.
Thank you Commissioner.

COMMISSIONER MIROU: Mr Bokomi, do you require to ask questions or we will adjourn until tomorrow morning?

MR BOKOMI: I will just ask him certain questions and ---

COMMISSIONER MIROU: Until five o'clock?

MR BOKOMI: Until five o'clock and then we can adjourn from there.

COMMISSIONER MIROU: I will allow you to ask some general questions.

10 MR BOKOMI: Mr Asobi, you have made some – you have been very blunt in your statements here and very very affirmative so I will have to ask you certain questions to determine whether what you have said is basically based on your understanding or is it basically a document that has been prepared for you to sign. Mr Asobi, you are the company secretary, right?

A: Yes, that is right.

Q: You should have and maintain, as far as my understanding goes, as part of your functions as the company secretary, all records including any legal documents such as State leases, et cetera belonging to your company, including minutes of the meetings of your company, both
20 shareholders and the board of directors within, right? Yes? Please, do not nod your head. You say yes or no to the microphone.

A: Commissioner, yes.

Q: Can you provide to the Commission a copy of or at least the owners copy of the Special Agriculture and Business Lease that your company has over these two portions of land?

A: Commissioner, at this point in time, I do not have a copy of SABL is not with me.

Q: The title deeds?

A: The title deeds are not with me at the moment.

30 Q: Where are they?

A: Commissioner, they are held up at the company office.

Q: Which company?

A: IT&S office, 10th Floor, Port Moresby.

Q: Why did they not release the document to you? Have you requested the document, the title deeds over portions 1C and 27C to be given to you or to your company?

A: We requested, the company did not give us the copies.

Q: Why?

A: Commissioner, with respect, I do not know.

10 Q: I will make reference to your paragraph 4 of your affidavit wherein you seem to assertively say that customary practices and usages of their land was always protected, customary landowners are forever free to conduct their gardening, hunting and fishing and carrying out other customary practices on their land. How sure can you be in respect of that statement, whether is there any legal basis for you to say that?

A: Commissioner, I especially say this because during our awareness we told the people that your gardening, your whatever will still remain as yours not on the understanding that it is one of the SABL requirement. Commissioner, thank you.

20 Q: Sorry, what did you say?

A: The SABL requirements is that the landowner will give their rights like fishing, hunting, all that but during our awareness, we did not read through the content or we did not – we said fishing, gardening is for people. That is on behalf of people, that is how we give awareness to the people.

Q: That was the awareness?

A: Yes.

Q: How about the land investigations? Were you part of the land investigations to gauge the opinion and consent or otherwise of the

landowners of both portions 27C and 1C? Where you part of that land investigations conducted?

A: Land investigation conducted, Commissioner, we were let known and village people and NEWIL directors as soon as I---

Q: Were you part of the land investigations conducted? Wherein you conducted your awareness at the same time or something. Can you tell the Commission basically how all these basically went?

A: Okay, Commissioner, the awareness went for especially around the road corridor only.

10 Q: Sorry?

A: The road corridor, around the road corridor within 21C, 1C.

Q: Not for the entire area which is now covered by the---

A: Not for the entire which is covered by SABL today.

Q: Entire areas - Portions 27C and 1C?

A: Yes, Commissioner.

Q: So in other words what you are basically saying is you confirm the evidence that has come before this Commission that says that landowners basically gave their consent for the land that is within the ---

A: The road corridor, Commissioner.

20 Q: And not SABL portion 27C and portion 1C, right?

A: Commissioner, the awareness went to the people to build a road from Gre Dringas all the way up to Nomad. Okay, our cry was answered by Independent Timbers and Stevedoring to assist financially to build that road. Okay, when we came in to build that road, you cannot build a road without timber permits, without Forestry's authorisation. So to run a TA, they said, the Forestry Department said, 12kg, they only allow, they call TA's, Timber TA's. So we asked the developer if you can provide us or buy or assist us get TA's for this road in order to construct this road from Gre to Dringas, Dringas and then to Diabi, Diabi-Tegena, that is Awin Pari land.

30

[4.55 pm]Q: Mr Asobi, evidence before the Commission given by your chairman is that you never talked to Forestry people. All these kind of representation was made by Mr Hudson Ape after having spoken with officers of the Lands Department. Is that correct?

A: Commissioner, that is correct.

10 Q: So this advice did not come from the relevant officers of the PNG Forest Authority. That is what you are basically confirming now. Is that correct?

A: Yes, Commissioner, thank you.

20 Q: Did you ever, out of your own volition as the Company Secretary, go back to verify or at least test the veracity of that particular statement or advice given to you by Mr Hudson Ape by confirming with relevant PNG Forest Authority officers as to whether or not in the circumstances, an FCA would be the most appropriate or Forest Clearance Authority would be the most appropriate – a mode of licensing to be given to your company or to the developer for purposes of enabling the road construction project to go ahead. Did you go? No? Did you see any Forestry officers? No? To get their second opinion? Mr Asobi, no?

A: The second opinion, I mean, we did not go through but we had a – when we did a forestry inventory, there were officers from the Forestry who came in.

Q: Who are those officers? What are their names?

30 A: Auditor Inventory for Gre Dringas Tegana road, I know some of them but I do not know some of them.

Q: Yes, call their names.

A: We have Mai who is here, we have---

40 Q: Mai Digaba, let me tell you, witness, is not an officer of the PNG Authority. He is an employee, he works as a Forester of IT&S. I am asking you a simple question. Which officers of the PNG Forest Authority did you come to know and deal with insofar as all these things were concerned? Can you name them?

A: Commissioner, with that, nobody came in, nor from the Provincial office – Forestry office.

Q: But why did you not consult them? Why did you not consult them?

A: Maybe because what they told us was correct.

10 Q: Road Line Timber Authority, Road Line TA may have been appropriate in the circumstances of this particular – your particular project, not necessarily an FCA. I am telling you this from my own experience, having dealt with a Road line TA, I argued the matter in the National Court at Waigani in relation to the Road line TA from a place called Crocodile Camp at Savalu all the way up to where the Savalu base camp is now. That is more than 12.5 kilometres for the Sakaralam Timber Company Road line TA project for this Rutok Bay operations in the West New Britain Province.

20 If you were consulted, appropriate and relevant officers of the PNG Forest Authority, they would have told you, no, Road line TA is sufficient because it only allows for you to cut standing timber trees within the road corridor for purposes of clearing forest for road construction. It does not allow the company to go either way on either side of the road, so long as the road boundary or corridor is defined. Then that is what it is. And I believe from the evidence that has transpired, is that not what your people actually consented for, yes?

A: Commissioner, that is true.

30 Q: So whose fault is it then now that your people have actually given up all their land under this thing called SABL? Whose fault is it? Your fault or the developer's fault? You are the Secretary of this landowner company. Whose fault is it? You answer my question. Whose fault is it?

A: Commissioner, I think the fault is that we did not get the correct information and we did not ask for information. But our purpose was to build a road and have agriculture projects along the road, that is all. Agriculture, now we call it SABL here. But during our awareness, these are agriculture projects along the road corridor, Commissioner.

40 Q: To this date, if you signed a sub sublease agreement with IT&S or even the Joint Venture Company to be known as – I mean, which is called Awin Pari Nomad American Lumber Joint Venture Company Limited, you have alluded to that in paragraph 3 of your statement on page 2.

From the top down, that is the third paragraph – or second paragraph, rather.

A: Yes, Commissioner, I think that one, we were to form a landowner company and then to ask to form the JV company between the developer and the landowners so that was just signed and left there – not signed, but formed and left there.

10 Q: Is there a sub sublease between NEWIL – North East West Investment and Awin Pari, Nomad American Lumber Joint Venture Company Limited?

A: Commissioner, I think there must be one but I am not aware.

Q: You are not aware?

20 THE COMMISSIONER: But you are the Secretary. I mean, this is your affidavit. You are telling us that that there exists a sub sublease. Do you have any documents in relation to this proposed engagement of this new company that you want to bring in as a new developer?

A: Commissioner, you mean the---

Q: This is in your affidavit.

A: Awin Pari?

30 Q: Yes, Awin Pari, Nomad, American Lumber Joint Venture Company Limited.

A: Commissioner, with respect, we just formed that and we have not done anything. We have not even had a meeting yet.

Q: Can you provide us documents of your proposal to set up this company, any documents in relation to this company to the Commission tomorrow morning at 9 o'clock?

A: Commissioner---

40 Q: This is a document that you raised in your affidavit. So we will require you to – I will direct you to provide that document, all the document with the formation and any documents relating to this company.

A: Commissioner, thank you.

Q: I will also direct you to ensure that the title – the lease title in the name of your company be provided to the Commission tomorrow as well. This is in relation to portion 27C, 14C---

MR BOKOMI: Yes, 14C.

THE COMMISSIONER: And 1C.

10

MR BOKOMI: No, portion 27C and portion 1C.

THE COMMISSIONER: Portion 1C and portion 14C.

MR BOKOMI: 27.

THE COMMISSIONER: 27C that is in the name of North East West Investment Limited. We want to see a copy of that tomorrow at 9 o'clock.

20 MR BOKOMI: I refer you back to your affidavit, Mr Asobi, paragraph 4, you say that the customary practices and usages including the right to gardening, hunting and fishing, and carrying on other practices on their land will be preserved, or is still or will be preserved to the customary landowners. In other words, you say that that has been – all these rights have been reserved. How true is your statement when you have not even sighted a copy of the title deed in relation to the subject SABL portion 27C and portion 1C? How truthful is your statement? Can you explain to the Commission?

30 A: Commissioner, thank you. I started that by saying ILG forms so that those ILG forms are not basing on the SABL. I am basing on the ILG forms where landowner has to register its ILG and use its customary land, fishing and hunting for its purpose.

40 Q: If I put to you that would it have been better if you had at least had a look first at the title deeds over these two portions – title deeds – before you make that statement because at law, that is not the correct position. The SABL titles essentially take away all the land rights if there have been no reservations, and that is the effect of the land investigation reports that have been submitted to the Lands Department forming the basis of the grant of these two portions. You understand, Mr Asobi?

A: Commissioner, yes.

Q: That that statement that you had said is untruthful and totally erroneous. Who advised you to make this kind of statement here?

A: I wrote it because of – on the understanding that ILGs will have their own but not looking through the SABL agreement - condition.

Q: No, that is not the correct legal proposition.

A: That is right.

10

Q: Two things are quite evident in an SABL where no reservations are made as have been signed off by your good District Administrator, Mr DMonai, that no reservations of any customary land rights have been made insofar as alienability of your people's customary lands are concerned, as well as rent. By section 82 of the Land Act, rent is not applicable in relation to SABLs. So your people have no right to claim rent from either your company or from whatever preferred developer that you have engaged. Do you understand that? That really is the enormity of the situation here.

20

Now, I will take you back to this statement again. At paragraph 3, where you say in your affidavit that, "There is a misunderstanding. The 99 years was a standard term granted by the Lands Department as we understand it, and it was explained to the landowners from the beginning and always the intention of North East West Timber Investment Limited, NEWIL, that the title it held could only last until individual ILG and clan customary lands were surveyed; and that good title held by NEWIL would be surrendered and individual titles granted to each ILG."

[5.09 pm]

30

How sure are you in making these statements. Have you ever seen the Land Investigation Reports? Have you ever sighted, as the company secretary, the Land Investigation Reports conducted presumably by your company, because it was your company who eventually was granted the titles over Portions 1C and 14C? How sure can you be when you say this that 99 years is a standard term? There is no provision in the Land Act that says that 99 years is a standard term. How did you make this up? How simply can you say this?

40

A: Commissioner, the time I was advised by Mr Hudson in Port Moresby saying that we will give – NEWIL will hold until certain time when ILG boundaries have been surveyed during the project period and ILGs will be given back to the ILGs. That is why I wrote that up on the understanding that this will happen during the development period.

Q: For the record as I have stated, there is no clear cut definitive legal provision that says that all leases in Papua New Guinea will be for 99 years. If the landowners want 25 years, then they ought to be granted or their company ought to be granted a 25 year lease subject to, of course, certain conditions or cognizance in the lease. Not for a blatant 99 years when you have signed in the – if you sighted the instrument of lease that you and your landowners purportedly signed, do you have a copy of the lease, the lease instrument?

10 A: Commissioner, I said the lease instrument we have sighted it but it is not with me now at the moment.

Q: Who has that?

A: It is in the IT&S Office.

Q: Why did they not give you a copy of the lease?

20 A: I have stated already, we requested and they said they will give us, they never gave us.

COMMISISONER MIROU: Did you make a sub sublease agreement with them?

A: With IT&S, that I do not know. The lease was handed to NEWIL.

Q: So why do they have the title. It should be with you as the Secretary to that company, not IT&S.

30 A: That is right but they are holding the copies.

Q: COMMISSIONER MIROU: That is why I directed you to produce to the Commission tomorrow original or the copy of the actual title because that entitles your company, North East West Investment Limited to have title over these two portions of land, mainly Portion 27C and Portion 1C; two titles, actually two titles. Because the Lands Department has not given to this Commission a copy of that title.

40 Q: Can you briefly tell the Commission about the Land Investigations that were conducted and the awareness that you were carrying out? Did you actually talk to the people and tell them that, “look, you free up your land, it is for this purpose. We are going to acquire the entire customary land

and then we will put it under NEWIL and we will sublease that to IT&S.”
What did you actually tell the people?

10 A: Okay, Commissioner, in 2003, we started this awareness in the interest of
landowners willing to build a road, wanting a road from Gre Drimgas to
all the way to Nomad. Independent Timbers was interested. The North
East West Investment came in as a landowner company for the road
corridor all the way up to Tegen, Strickland, purposely to build a road
and harvest logs along the road corridor. So we asked for developer to
assist us with TAs. At that point of time there was no TAs so we asked
for TAs in order to get that diwai. Nothing. Okay, for the road corridor
from here, you can see from here to Gre Drimgas and all that way to
Tegen, that is thick forest and you need a Forestry or you need FCA to
be granted so that you can do that harvesting in the bush. That is why
Independent Timbers went in, we did surveys, landowners, also
Independent Timbers it has got some foresters under its name, IT&S,
went through, did the forestry and found out that the vast land in order to
construct this road, you need to have the FCA Licence. Okay, therefore
that came in as - you cannot run or bulldoze the forest. You have to
20 harvest that forest in order to bulldoze the land.

Q: And did you get a Forest Industry Participant License? Did you register
your company with the Forest Authority as a participant?

A: I think North East West Investment, yes, was a participant – had a
Forestry Participant ---

30 Q: And if they were registered as a participant, it would have been easier to
get an FCA to build that roadline, that roadline.

A: When we get that TA, they said your TA only acquires 12 kg---

MR BOKOMI: Sorry, 12?

A: 12 kilometers.

Q: 12.5 kilometers.

40 A: Under 5,000, yes.

COMMISSIONER MIROU: That is from the Gre village to Drimgas on the
Fly.

A: That is all. You cannot further up. Therefore FCA---

Q: So that mean that roadline was for something else. Was it to facilitate the – I have seen the rubber trees planted on the sides. Is that to allow the people to harvest the rubber and then they can use that road to bring the rubber to Kiunga? Is that for that purpose?

10 A: That purpose for acquiring the TAs, we acquired about five in order to build a road, so we have about five TAs in order to participate to let the road going.

COMMISSIONER MIROU: Yes, we have seen the road leading up to Drimgas. That is enough to allow people to use that road to bring their market produce or things like that and have access to Kiunga's - so what else do you want, beyond the Fly river from Grimgas?

A: We want beyond the Fly river too.

20 Q: So what is it that you want now beyond that? Once you cross over Fly River, what else do you want? That whole virgin forest right up to Nomad, is that what you want.

A: Yes, we want that road to be built to Nomad but on the understanding that we have got logs there to harvest and the distance so we need to have a ---

COMMISSIONER MIROU: What about that electronic bridge that electronic bridge that the IT&S was talking about?

30 A: What I know about the electronic is not an electronic. IT&S, Independent Timbers and Stevedoring Limited CEO told us that he will build a bridge across Fly River and Strickland. Electronic Bridge, I would not know. But he just said overhead bridge. But maybe he was speaking in the public and he said it, somebody heard it, plenty people were there so, it was a cloud of about may be 700-1,000 people around that area. So Neville was speaking so all the people were there.

40 MR BOKOMI: You know what that electronic bridge is? It is the bridge that will, it is a haul bridge; as the ships go through, before the ship come it will open up, and then it will close and link again and goes down. That is what an electronic bridge is.

A: Commissioner, I have never been to the world so I do not know that. Thank you.

COMMISSIONER MIROU: We have no such bridge in this country.

MR BOKOMI: Yes. But if they will make some money and you decided to get a trip to Europe, I will suggest you go to St. Petersburg. I have seen a lot of it there. About 320, haul bridges connecting 42 islands in Russia, anyway.

COMMISSIONER MIROU: Yes, do we want to continue, Counsel?

10 MR BOKOMI: I think we will adjourn from here. It is already 20 past 5. This witness is still under oath. If there is any questioning to do, then I will begin with both himself and Mr Kwani tomorrow.

COMMISSIONER MIROU: Yes, okay. Mr Asobi, you are still on oath and your evidence has not being completed yet so, a word of caution is that you will never discuss your evidence with anyone until tomorrow morning when you return here. We will continue examination of you in the witness box until such time. You will not discuss this matter with anyone. We will stand you down until tomorrow morning.

20 Counsel, when do you think we will start, 8.30?

MR BOKOMI: We will start at 8.30 am.

THE COMMISSIONER: Yes, okay. So come in before 8.30 and we will commence examination of you. We will stand you down now. You can go back to your seat.

A: Thank you.
30

THE WITNESS WITHDREW

MR BOKOMI: Thank you Commissioner. I have no further matters before the Commission this afternoon. I ask that – firstly I thank the landowners and the interested persons who are here for the hearing. Thank you very much for your support and with that I ask that, and also I seek your continued support and presence tomorrow onwards for purposes of enabling the Commission to
40 complete its work here. With that I ask that this particular proceedings of the Commission of Inquiry into SABL in the Western Province be adjourned to tomorrow, Tuesday the 22nd November 2011 to commence at 8.30 am.

**AT 5.22 P.M. THE INQUIRY INTO SABL ADJOURNED UNTIL
TUESDAY 22 NOVEMBER 2011 AT 8.30 A.M.**

INDEX

PAGE NO

	DINA GABO, Sworn:.....	7
	XN: MR BOKOMI.....	7
	THE WITNESS WITHDREW.....	33
	IMEN ITE PAPA, Recalled:.....	36
	XN: MR BOKOMI	36
10	THE WITNESS WITHDREW.....	61
	RONALD MANASE DMONAI, recalled:.....	61
	XN: MR BOKOMI.....	61
	THE WITNESS WITHDREW.....	75
	IMEN ITE PAPA, Recalled:.....	75
	XN: MR BOKOMI.....	75
20	THE WITNESS WITHDREW.....	76
	WAIDI KWANI, sworn:.....	77
	XN: MR BOKOMI.....	77
	THE WITNESS WITHDREW.....	112
	IMEN ITE PAPA, Continuing:.....	113
	XN: MR BOKOMI.....	113
30	THE WITNESS WITHDREW.....	114
	STEVEN KWANI, Continuing:.....	115
	XN: MR BOKOMI.....	115
	THE WITNESS WITHDREW.....	118

MONTFORD AWETARI, Continuing:.....	119
XN: MR BOKOMI.....	119
THE WITNESS WITHDREW.....	121
FOXY ASOBI, Sworn:.....	121
XN: MR BOKOMI.....	121
THE WITNESS WITHDREW.....	135

10	<u>EXHIBIT</u>	<u>PAGE NO</u>
	Exhibit Tosigiba 7 – Statement of Mr Dina Gabo Dated..... Friday 18 November 2011 Under Letterhead of Tosigiba Timber Group Limited, Kiunga, Western Province	8
	Exhibit Tosigiba 8 – Affidavit of Mr Dina Gabo,..... Paragraphs 16 And 17	11
	Exhibit Tosigiba 9 – Instrument of Lease For Customary Land,..... Lease – Lease Back Dated 12 February 2009	16
20	Exhibit Tosigiba 10 – Historial Extracts From IPA.....	20
	Exhibit Tosigiba 11 – Certificate of Incorporation on the Change of Name – Tosigiba Timber Group Limited – 4 June 2008	29
	Exhibit Newil WK – Original Affidavit – All Signatures of..... The Various Landowners	79
	Exhibit Newil FA – Foxy Asobi’s Affidavit Statement.....	122

30