

TRANSCRIPT OF PROCEEDINGS

Commission of Inquiry into SABL
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COMMISSION OF INQUIRY INTO SABL

MR JOHN NUMAPO

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COMMISSIONER

MR ALOIS JEREWAI

COMMISSIONER

MR NICHOLAS MIROU

COMMISSIONER

TOP FLOOR, GOVERNMENT PRINTING OFFICE, WAIGANI, WEDNESDAY
24 AUGUST AT 10.56 A.M.
(Continued from Tuesday 23 August 2011)

THE CHAIRMAN: Mr Tusais, I understand that you are standing in for Mr Ketan?

MR TUSAIS: That is correct, Chief Commissioner.

THE CHAIRMAN: Counsel, we completed Henry Wasa's affidavit yesterday and also the questionings, some of the questions that you raised with him yesterday and we are done with him. I understand today you have got two affidavits to submit. So I now invite you to address the Commission on that, Counsel.

MR TUSAIS: Commissioners, we have two witnesses who have sworn affidavit; Mr Andie Malo, who is the Director for Customary Leases and Mr Rogakila, who is in charge of the ILG, he is the Registrar, ILG. I note concerns raised by Commissioners in yesterday's proceedings about, I think basically the repetition of procedural aspects of each department. These two witnesses, a lot of what they intend to say has been covered already by previous witnesses, including the Secretary Mr Kila Pat and the Deputy Secretary, Mr Adrian Abby. Having said that, I have gone through the affidavit sworn by Mr Malo, to start off with his affidavit, he has stated what he does in his section, the section he is in charge of what he does in some detail. I propose that the witness's affidavit is tendered through him and the Commissioners could go through it and advise about what the best course of action is, whether the witness should read the entire document for purposes of record and for it to enter the transcript or questions generally be asked without the witness going through that process and questions be asked based on his affidavit. For all intents and purposes his affidavit is before the Commission and the Commission can use it in the way it sees fit for the purpose of this Inquiry.

1.00 am] That is my preliminary suggestion. I say this because I am suggesting we break from the practice we have adopted which is to read every affidavit into the record.

THE CHAIRMAN: Counsel, sorry, I – did you say the reason you want to break away from the practice is because - you want to repeat that again?

MR TUSAIS: Yes. A lot of what this witness intends or has deposed to in his affidavit has been covered, but in general terms, in general terms by his superior.

THE CHAIRMAN: So it might be a repetition?

MR TUSAIS: It very well might be but that is subject to confirmation by the Commissioners. Perhaps the Commissioners can just peruse it briefly can make a decision on that aspect?

THE CHAIRMAN: Okay, let me consult with the Commissioners first. Counsel, I have consulted with the Commissioners. We are generally agreeing to your request to have the affidavits tendered without having to have the deponents going through the affidavits like what we have done in the last two or three days with the other witnesses. So we will accept the two affidavits that you would like to tender in this morning and we will call – you can have the affidavits tendered through the deponents in the usual way and then they can be excused. If and when we require them to come back on any specific matters or issues in relation to their affidavits, then we will call them to appear again through yourself. So we are agreeing to your request to have the affidavits submitted without having to go through it for today. Thank you.

MR TUSAIS: Could I indicate, sorry, thank you, Commissioners. Could I indicate now that I have a few questions based on the affidavits, if it is all right, sorry, if it is – I suggest we resume after lunch if it fits in with your schedules and just - not get rid but deal with these witnesses whilst they are here today?

1.05 am] THE CHAIRMAN: Yes, that is a good approach. We are agreeing with you Counsel. We have not had an opportunity to go through the affidavit until you have them tendered in and also it will give us ---

MR TUSAIS: That will give you an opportunity to ---

THE CHAIRMAN: Give us the time to go through the affidavit and then we can probably resume again at half past one, and you will ask the questions that you wish to ask and also the Commissioners will be in a position to ask any questions they wish to ask after going through the affidavits.

MR TUSAIS: As the Commission pleases.

THE CHAIRMAN: Thank you.

MR TUSAIS: I wish to call MrAndieMalo, he is the first.

ANDIE MALO, Sworn:

XN: MR TUSAIS

Q: Good morning MrMalo. Your full name is Andie, it is spelt A-N-D-I-E and your surname is Malo, M-A-L-O?

A: That is right.

Q: Sorry, you will have to speak up so we get it recorded.

A: That is right.

Q: You are currently the Director for the Customary Leases Division within the Department of Lands and Physical Planning?

A: That is right.

Q: You have held the job since 16 February 2010, making this your 18 months in that role?

A: That is correct.

Q: You joined the Department, that is Lands Department, on 17 January 1997, 14 years ago?

A: That is right.

Q: You joined the Department after had acquired a Diploma in Land Administration. Is this from the University of Technology?

A: That is correct.

Q: You later went on to complete a Bachelor of Business Management in Public Policy Management?

A: That is correct.

Q: Would you just say which institution and in what year you acquired that qualification?

A: University of PNG, 2008.

Q: In the Lands Department you have acted in various position starting off as the Land Allocation Officer?

A: That is true.

Q: You then became the Senior Project Officer?

A: That is correct.

Q: From there to Senior Conveyance and Lease Officer?

A: That is correct.

Q: You got elevated to being the Acting Executive Officer to who?

A: PNG Land Board, sorry.

Q: PNG Land Board. You finally – just before you became director, you were Senior State Leases Officer?

A: That is correct.

Q: You are also a member of the executive management committee of the Department of Lands and Physical Planning.

A: That is correct.

Q: You are a member of the PNG Institute of Valuers and Land Administrators?

A: That is correct.

Q: Excellent. You have sworn an affidavit dated 3 August this year. So you have a copy of that in front of you?

A: Yes.

Q: All right, would you just show the Commissioners where you signed it so they can see it. Just indicate to the Commissioners where you signed it. Would you object in anyway if I sought to have your document tendered to the Commission of Inquiry as your evidence?

1.10 am] A: That is correct.

Q: I seek to tender affidavit of AndieMalo.

THE CHAIRMAN: Counsel, how do we mark the exhibit? You have got any ---

MR TUSAIS: Yes, the previous method has been to identify the document by the witness's initial and then to give it the next number in line or in sequence.

THE CHAIRMAN: Yes, so that will be---

MR TUSAIS: I am not sure what we are up to now. I think MrWasa's was exhibit 3 or 4.

THE CHAIRMAN: The third one?

MR TUSAIS: Yes, 3.

COMMISSIONER JEREWAI: This was Exhibit HW3.

MR TUSAIS: HW3.

THE CHAIRMAN: 3.

MR TUSAIS: So this one will be AM4.

THE CHAIRMAN: AM4, okay. All right, exhibit is marked AM4 for record purposes.

[EXHIBIT AM4 – AFFIDAVIT OF ANDIE MALO]

THE CHAIRMAN: Counsel, we have accepted the affidavit and as previously stated, we will go through the affidavit. For purposes of questioning, we will do that after lunch. So I think at this stage, MrMalo can be excused.

MR TUSAIS: Excused to return at 1.30?

THE CHAIRMAN: Then come back. Yes, you step down because you are still on oath. So when you come back at half past 1, we will continue with the questionings if any. Thank you for coming.

THE WITNESS WITHDREW

MR TUSAIS: Yes, the next witness is MrIrunaRogakila. He is also present and available to give evidence; if he could be sworn.

IRUNA ROGAKILA, sworn:

XN: MR TUSAIS

Q: Good morning, sir. Your name is MrIrunaRogakila?

A: Yes.

Q: Okay, speak to the microphone, thank you. You are a Valuer by training and a Land Economics – sorry – you are a Valuer and what is your profession?

A: Trained Land Economics and Management.

Q: Okay, thank you. At present you hold a position of Director and Registrar for ILG, Incorporated Land Group?

A: Yes.

Q: You joined the Department of Lands in January 2001?

A: Yes.

Q: This will be your tenth year with the DLPP?

A: Yes.

Q: You joined DLPP after you completed a Bachelor of Lands Studies at Unitech and a Diploma in Economic Policy Analysis in NRA?

A: Yes.

Q: Previously, you were senior project officer when you first joined the DLPP?

A: Yes.

Q: Then in 2005, you were the policy officer; and finally in 2010, you were made director for ILG?

A: Yes.

Q: You also sit on the executive management committee of the department, and you are a member of the PNG Institute of Valuation Administrators?

A: Yes.

Q: MrRogakila, do you have an affidavit that you would show to – dated today 24 August 2011?

A: Yes.

Q: Would you show the Commissioners that document? Would you show them where you signed?

A: That is it.

Q: Is that a true – does the affidavit contain what you – there is nountruth---

A: Yes.

Q: Do you wish to change it in any way?

.1.15 am] A: No, that is the truth.

Q: I know, but do you wish to change it in any way?

A: No, no.

Q: Would you be happy if I had this document tendered to the Commission as evidence?

A: Yes.

Q: I seek to tender affidavit of MrRogakila dated today.

THE CHAIRMAN: How do you intend to mark it, Counsel, the affidavit?

MR TUSAIS: Exhibit IR5.

THE CHAIRMAN: Why can we not put it IRK because that is his full name. Is that correct?

A: IR.

Q: IrunaRogakila, that is the full name.

MR TUSAIS: Rogakila is just one name.

A: Is one name.

THE CHAIRMAN: Is it one name?

A: Yes, it is.

MR TUSAIS: Two syllables, yes.

THE CHAIRMAN: All right, sorry about that. So that is 5, is it?

[EXHIBIT IR5 – AFFIDAVIT OF IRUNA ROGAKILA – 24 AUGUST 2011]

THE CHAIRMAN: Thank you, Counsel. We have accepted your affidavit, MrRogakila. The witness may now be stood down until 1.30. I want to remind you again, MrRogakila, that you are still on oath; and you will be required to answer some questions on the affidavit that you deposed that has now been tendered into the Inquiry when we resume at 1.30 this afternoon. Thank you for coming.

MR TUSAIS: Commissioners, I advise on other matters.

THE CHAIRMAN: Yes.

MR TUSAIS: We will be receiving draft affidavit from the Forestry Department, from the Managing Director this afternoon after lunch. We propose to have the Managing Director give evidence tomorrow morning at 9.30.

THE CHAIRMAN: Sorry, what is the name again?

MR TUSAIS: MrKanawiPouru.

THE CHAIRMAN: So he will give evidence tomorrow morning?

MR TUSAIS: We hope so, yes.

THE CHAIRMAN: Are you able to indicate to the Inquiry how many of them are giving evidence tomorrow morning?

MR TUSAIS: Just MrPouru.

THE CHAIRMAN: Just MrPouru, okay, thank you.

MR TUSAIS: Commissioners, the next department is the Department of Environment and Conservation. We had three draft affidavits – unsigned affidavits provided yesterday afternoon by the deponents – two of them, anyway, overseas – including the Secretary DrWariIamo. They will be back at the weekend, and they should be able to give evidence next Tuesday. Commissioners, I note concerns raised about involvement of this Department. But having sighted material provided, this Department is a key player in the overall process of SABLs, not particularly directed at SABLs from their perspective but as far as issuance of permits are concerned. They have a much more stringent set of guidelines and procedures in place for oversight for enforcement of environment guidelines. I would submit that it is a Department that we need to hear from in the immediate future if possible.

THE CHAIRMAN: Okay.

COMMISSIONER JEREWAI: Particularly – Counsel, particularly in respect of associated activities.

MR TUSAIS: Yes.

COMMISSIONER JEREWAI: On each of these SABLs.

1.20 am] MR TUSAIS: Yes. The law and regulations administered by the Department of Environment and Conservation specifically states section 90 Forestry Act (A) – (D) and they work in tandem, the Forestry provisions and the Environment provisions as far as concerns about permits have been concerned; that is SABL, large scale clearance of forest. There are other SABLs which the Department will also be producing files on, not related to Forestry but for other businesses. So they have had a large or significant input into the subject that this Commission is inquiring into.

COMMISSIONER JEREWAI: Counsel, what was expressed yesterday was that activities and the effect of these activities be established in relation to these SABLs and the requirement the environmental regulatory requirements associated with these activities would be more orderly way of or rather, would be a more orderly approach so that as you said, the Inquiry can look at them in tandem. So calling of Forestry Managing Director first would be the way to go in my view.

MR TUSAIS: Yes, sir, that makes sense, yes, Commissioners.

THE CHAIRMAN: Sorry, the other thing obviously adding onto what Commissioner Jerewai is concerned, has stated, sorry, pardon me is, we still got the Terms of References that we are guided by and if it is in any way, shape or form connected directly to the SABL, understanding that departments also do other things as well other than SABL. It is just one of the activities that they are involved in. So long as we stay focus on SABL then that is fine with us. Thank you.

MR TUSAIS: Environment's approach is that they deal with permits. SABL, sorry, it is not a disrespect to the subject we are inquiring, but to them SABL is just one of those operations out of many.

THE CHAIRMAN: Okay.

MR TUSAIS: But it is just that how they go about is quite vigorous and ---

THE CHAIRMAN: That is fine. What I am simply raising is that we will be interested in the permits that are issued for SABL purposes. Because they issue all manner of permits, SML, special minings ---

MR TUSAIS: Sorry, I think we are on the same phase. What the department is saying is that they just issue permits. They do not issue an SABL permit.

COMMISSIONER JEREWAI: No, they issue permits in relation to activities ---

MR TUSAIS: They issues permits for projects that are carried out in SABL leases.

COMMISSIONER JEREWAI: Activities, projects, absolutely.

MR TUSAIS: Yes. Sorry, I am not trying to be ---

COMMISSIONER JEREWAI: No, that is fine, that is all right.

THE CHAIRMAN: That is fine.

COMMISSIONER JEREWAI: That is what I – when I addressed this issue I said their function is very imperative to this Inquiry in relation to their activities that are conducted on each of these SABLs.

MR TUSAIS: As the Commissioner pleases. The final department of interest or of relevance and who should participate in this Commission is the Department of Agriculture. That has been – we have faced difficulties. We need to compel this department and its principals to appear. There is no other option. We have tried to be nice and we have tried to urge them politely but to no avail.

THE CHAIRMAN: All right, Counsel, that is fine. We still got our powers under the Commission of Inquiry Act. If you have exhausted all the avenues in trying to bring them before the Inquiry then we can resort to the powers that is available to us under the Commission of Inquiry Act which will mean that they will have to be summoned to appear before the Inquiry.

1.25 am] MR TUSAIS: Yes.

COMMISSIONER JEREWAI: For that purpose, Counsel, if I may be a bit instructive here. When we return after lunch and proceed with the witnesses who we have stood down to 1.30, at the conclusion of that, if you could have particularly the list of officials and the kind of information we are seeking from them, present it to us so that we can consider exercise of the appropriate powers under the Commission of Inquiry Act to compel them to come and give evidence.

MR TUSAIS: Commissioner, I will admit here that that will not be possible. We were attempting to get that information through the Secretary. We do not know for certain which office divisions---

COMMISSIONER JEREWAI: Well then, Counsel, let us start with the Secretary as the departmental head.

MR TUSAIS: Yes.

COMMISSIONER JEREWAI: Let us compel him and the rest can follow.

MR TUSAIS: Yes, he will bring his line managers up.

COMMISSIONER JEREWAI: We will deal with that---

MR TUSAIS: After lunch.

COMMISSIONER JEREWAI: After lunch at the conclusion of the witnesses who have been stood down.

MR TUSAIS: Thank you.

THE CHAIRMAN: Counsel, if there is no further business for this morning, then I will adjourn until half past 1. We will resume again at half past 1 to complete the two witnesses who have stood down. Then if there are any other things that you need to also raise after that, then you may do so after lunch. So we will adjourn until half past 1 this afternoon. Thank you.

LUNCHEON ADJOURNMENT

[2.06 pm] THE CHAIRMAN: Counsel, we adjourned for lunch and we had two other affidavits tendered before lunch and the purpose of our sitting again this afternoon is really to ask any questions if any -

MR TUSAIS: Yes -

THE CHAIRMAN: of the two affidavits that have been submitted this morning.

MR TUSAIS: Sorry for the late start. Both witnesses are present. We will proceed in the order in which they both tendered their affidavits so we commence with MrAndieMalo.

MR ANDIE MALO (continuing):

XN: MR TUSAIS

MR TUSAIS: MrMalo, I have a handful of questions for you just based on your affidavit and one or two may depart from your affidavit but it is relevant to the subject that you have raised. MrMalo, you have been in your present position, as I said, for about 18 months now. Do you know, just roughly, about how many SABLs have been granted during your tenure?

A: During my – since after my appointment I think, I have only cleared less than 10, less than 10 SABLs.

Q: Ok. But are you saying that there have been a lot more applications but you only approved 10?

A: That is right.

Q: Ok. Alright, just going through your affidavit, at paragraph 3.5.4, is that paragraph is – am I correct in assuming that your division is primarily responsible – is the main division responsible for the carrying out of the Land Investigations Reports,LIRs?

A: That is correct.

Q: So, what I would like you to explain to the Commission is, there was evidence in the past that in the provinces, it is the Lands Officer who carries out the lands – LIRs, but are you saying from – is my understanding correct that it is your division that sends out personnel to undertake these investigations?

A: Where there is a lack of personnel in the province, yes. We do send Headquarter Customary Lands Officers out to the provinces to conduct LIRs together with the District Lands Officers or the Kiaps.

Q: Just going to paragraph 3.2 in your affidavit, it is the paragraph dealing with the lodgment of the application. I am sorry I am jumping from - but these are issues that have not been set out in any particular order.

2.10 pm]

You say that one of the documents that must be submitted with the application is the development plan. Could you describe what that is? How much detail must be set out? Just explain to the Commission.

A: Since me taking up the office – I mean prior to my appointment, the requirement for that development proposal was not a requirement. But After I took up the office and after the establishment of the Commission of Inquiry and the amended process, we have identified that development proposal is a requirement that should be accompany the application.

Q: That is good but what – now it is a requirement. Do you go beyond that? Do you specify what that development plan must include? Let me ask you this. Is it sufficient for the applicant just to say, oh, once you grant me title, I might go and plant a couple of cocoa sticks here, and some coconuts there and – does it have to have specific---

A: Yes, we need a development proposal because if there is an agriculture project, we want to ensure that the land or the soil is fertile for the subject agriculture project. We might give a title to a land that is not suitable for that particular cash crop or something.

Q: I am moving on to another paragraph in your affidavit. At paragraph 3.3.2, you say you have to verify whether the applicant is an individual and incorporated or a landowner company. Could you just let the Commission know what steps you take to do that?

A: On receipt of the application, we verify the applicant's name. If it is an individual, then we request for a consent letter from the landowner chiefs or ward president-councilor to confirm that this individual is part of the clan who has consented for the land to be – the title to be issued under the individual's name. That is for the case of an individual. If it is an incorporated land group, then we require an Incorporated Land Group

Certificate to be attached together with the application; likewise, the landowner company.

Q: MrMalo, just on that topic, just further down at 3.3.5, I think, you say that if a landowner company applies, a copy of Certificate of Company has to be attached with the company extract from IPA. Just so that we are all clear about what we are talking about, I have just from – at random, this is not to do with this particular file. I am not suggesting anything but – I am showing you a Certificate of Incorporation. Like I said, it is not about that company; just as an example. That is the Certificate of Incorporation. The next document I will show you is, I think, an extract taken from IPA relating to that company.

2.15 pm] MR TUSAIS: MrMalo, are these the documents that you would want to be given or---

A: That is correct.

Q: Yes, handed up. Again, MrMalo, I am not asking you in any adversarial way to imply anything negative about your job, but from the files we have examined so far from the Lands Department, we found this, this single lot and not this. Only this is found in the Lands files that we have copied so far. What is your explanation about that?

A: As I have said the amended process on the requirements, we have identified that the extract will also be attached together with the IPA Certificate. But in the past before I took up the office, that was not the case.

Q: So this has been included in your more recent files?

A: Yes, that is right in the reviewed one.

Q: So it was not a requirement - sorry, I am probably repeating myself – it was not a requirement previously? Or was it a requirement but not for this to be included?

A: They should have come together but I do not know why the officer who was – who held the position before I took up the office did not, I mean, request for the attachments together with the IPA Certificate.

Q: Okay, yes. MrMalo, this is significant because just from this one page of Certificate of Incorporation, you cannot really tell who the shareholders, the directors and the individuals behind the companies. I am just saying it. It is important because that is what a lot of people are complaining about that from the LPP, you cannot really tell whether the company you are granting an SABL to is PNG owned or a foreigner posing as a landowner company.

A: That is correct.

Q: My final question from what I have shown to you in your experience, that is, in your 14 years, I think, in the department and quite a few of which has been in the Customary Land section, has any notice of direct grant of this Special Agriculture Lease been granted to any foreign-owned companies?

A: Right now, I would not have any idea. But I think that is a case where there is a joint venture – a local and a foreign company, that is, the Vanimo-Jaya case,

Q: In Aitape?

A: Aitape.

Q: Okay.

COMMISSIONER JEREWAI: Sorry, can you repeat that, Vanimo-Jaya?

A: The one held jointly by Vanimo-Jaya and Hone Huni.

Q: Yes. They hold the title jointly?

A: Jointly, yes.

Q: Are you able to specify the particular SABL that they hold jointly; they hold the title, that is, jointly?

A: I think it is over portion 248C MilinchTadji.

THE CHAIRMAN: What did you say, 248C, is it?

A: That is correct.

THE CHAIRMAN: Thank you, Counsel, I have just got one question from your affidavit, MrMalo, and that is that is it true to say that the titles – SABL titles – can be given under three scenarios, so to speak, one is application by an individual but he must have the support of the chiefs of the village – a written consent of some sort – which must be lodged with his application; that is one. Second is the Incorporated Land Group; and third is the landowner company, and as you have answered to the Counsel that with the landowner company and the Incorporated Land Group, you will have to bring the Certificate of Incorporation and others to support the application.

1.20 pm] A: That is right.

Q: There is one more question I intend to ask but I think it is probably not on your affidavit, it could be under MrKila's affidavit. But they said ILGs since the amendment to the ILG Act it has now been made compulsory. Is that correct?

A: For the SABL title ---

Q: For the application; SABL application.

A: That is right.

Q: The new amendment.

A: Yes.

Q: All right, I am done Commissioners. You got any questions?

COMMISSIONER JEREWAI: I may have several questions. MrMalo, the most vital requirement under section 102 of the Land Act when considering issuing a title to a SABL to any person or any group is under subsection (2) of section 102, which is the requirement that the person to whom such a title is issued or entity to whom such a title is issued must have the agreement of the landowners; the customary landowners of the land over which constitutes, rather, which constitutes the Special Agriculture Business Lease. Now, I know you have read in or rather you have incorporated other requirements including also the developmental or business plans for the particular proposed SABLs. Do you stringently ensure that

there is agreement by the customary landowners before title is issued to any entity nominated to hold the title over any of these SABLs?

A: Yes, we do.

Q: And this stringent requirement pursuant to subsection (2) of section 102, I imagine is for the purposes of ensuring that title is not issued to anyone else, particularly any individual or entity who have no customary claim to the land involved in the particular SABL. Would that be a correct position just stated?

A: That is right.

Q: From our preliminary information at hand, it had become apparent that several titles maybe wholly in the hands of foreigners, foreign entities. Are you aware of that?

A: I am only aware of those cases where they entered the foreigner, I mean, foreigners entered into some kind of sublease agreement with the title holders.

Q: I am not talking about the sublease. I am talking about the actual title. Do not diverge from the question, MrMalo. I am talking about the actual title not subleases.

A: I am not aware of ---

Q: Now, let me mention one for instance, Marienberg in Angoram. That is a company by the name of Brilliant. Are you aware of that?

A: No, sir.

Q: And there may be a few others. In the course of the Inquiry, we may require you to return to verify the issue of titles to these entities which are totally foreign. Is that understood?

1.25 pm] A: Yes, sir.

Q: Thank you.

THE CHAIRMAN: All right, Counsel, I think that is the only question we had for MrMalo unless you got any other questions. He can be excused.

MR TUSAIS: Just one last one. Just a related question to Commissioner Jerewai. After SABLs have been issued there have been suggestions of title being transferred to another entity, PNG or foreign, does not matter but it is transferred. Do you keep track of that?

A: No.

Q: I do not have any further questions.

THE CHAIRMAN: MrMalo, thank you for coming. We will at some later stage call you to come back if there are any specific matters we would like to raise with you. But in the meantime I thank you for coming.

A: Thank you.

Q: You may be excused.

COMMISSIONER MIROU: Thank you MrMalo.

THE WITNESS WITHDREW

THE CHAIRMAN: Okay, Counsels.

MR TUSAIS: Sorry, MrIrunaRogakila.

IRUNA ROGAKILA (Continuing)

XN: MR TUSAIS

Q: MrRogakila, would you - since you are probably in a better position to know - would you tell the Commission if the new amendment - this is the final paragraph in your affidavit, paragraph 8, just the amendments to the Land Registration, Customary, ILD (Amendment) Act 2009, is that in force right

now? Do you know, paragraph 8. Sorry, can I retract that. I think I am confusing everybody here. There is a Bill that is supposed to have been passed and – it has been passed and is awaiting - just from your area of expertise, it is the Land Groups Incorporation (Amendment) Act 2009. Does that ring any bell? Is it – are you administering that Act right now or it is still in the pipeline?

A: The Act still lies with the of Legislative Council. Once it was put to the Speaker of Parliament, Speaker of Parliament referred it back to – because there was some technical errors, may be. So they put it back to Legislative Council to have a look at. So I am not aware that it is already back in the Parliament or not.

Q: Okay. I think you also refer to that in paragraph six, thank you. If we go up one step to paragraph five, I just want to ask you a general question in relation to that. The last part of your paragraph it reads “registering incorporated land groups in the Land Group Incorporation Act (1974) is an option to granting title for SABLs and whereby we only process applications when submitted by the landowners.” Could you just explain that a bit?

1.30 pm] A:

In this instance, in the inception of the Act prior to – sorry, 1974 Act, the intention was to have land registration across the country under the land groups. So in my opinion that was the intention of the Act that, for registering all the customary land in the name of land groups. Because of the communal customs that we have communal land holding groups rather than individuals. So when the SABL under 1996 Land Act, ILGs became one of the options for registering those customary leases SABL and then in the event that when they register them it becomes a title to the ILG groups. But they also in the turn of events, there were ILGs became subsidiary when they registered companies, companies and ILGs become the holders of those companies if may be with the foreign partners or whichever that potential developers. So if you may see it, almost all the SABL titles were under companies. I think I could remember there is only one that is under ILG.

Q: Mr Iruna, can I ask if you, after you register the ILGs, do you keep track of what happens afterwards?

A: I do not keep track of them or what happens to them. It is the, onus is on the land groups. They either go into business partners with the developers or whatever they want to do with their land. It is all up to them. What I only do is that recognize the groups as a legitimate groups, entities that become legal groups.

Q: Thank you. I do not have any questions.

COMMISSIONER MIROU: MrRogakila, this is particularly of importance. I think you made reference to it, I make reference to it in your paragraph 3.3 of your which is on page 4. And the heading is ‘Publication of Notice of Intention to Incorporate ILG.’ I think this is a very important matter for you as a registrar of ILGs in cases where it involves publication. Once you receive an application for an incorporation from a person or a group of people, clan, lineage and after you have gone through satisfying yourself then you provide or you grant a recognition to the ILG. Now, under paragraph 3.3.2, you say you make note – you refer to five modes notices that you provide. One we know is the national gazette. How often do you use the other four modes or the other five modes; that is the local level government office, the magistrate in charge, the National Broadcasting Commission, district service authority and the district administrator?

1.35 pm] A: Prior to me taking office, there were only two officers. It was a section under the Land Administration Division before the restructure, that is 2008. By 2010, the structured positions were filled. So prior to that, there were only two officers who were doing the job of the ILGs. There was influx of applications and people can walk in at any time and pick up the application form and drop it in – fill it out and drop it in – and there was so much of influx of that. The two officers decided in their term that because of the influx of it and the resources that were involved – the paperwork and all that stuff – they only did gazettals. They only did gazettal until they stopped somewhere around 2006, and after 2006 to June 2010, that was only what was happening; only gazettals was happening. By 2010 when the few positions were filled and the officer of the Registrar was made as a division and I was empowered to sign, I took it up on myself that the publication in the wider circulation in the media should be also instituted. So we took out those advertisements in the newspapers which in the absence of those letters going out - and also the addresses, if you like, the addresses of those local level governments were not consistent to send out the letters – local level

governments and the magistrate in charge. The period that was reaching them was taking a very long time. So I took it upon myself that the media is either another way to publish the ILGs, the applications. So we took it on media publication and from there, we received more of objections and some more of restraining process of any Tom, Dick and Harry coming in and just doing applications. So it gives us a little bit of – enlightens us on our workload right now.

COMMISSIONER MIROU: Yes, Mr Rogakila, that explanation may not be sufficient. It is a serious concern when the matter itself is a requirement under law under section 33, as you referred to in your affidavit, where you are required. It is mandatory for you to make sure that the applications, ILG and anything that you are going to register, is disseminated right down to those in the villages; and these particular SABLs are not in the cities, the major urban centres of Papua New Guinea. They are right down there in the rural and right down to the village.

And so it is a very serious concern since 2006 for...

COMMISSIONER JEREWAI: Who may not have access – if I may just add on.

COMMISSIONER MIROU: Yes.

COMMISSIONER JEREWAI: It is still Commissioner Mirou's question or statement posed to you, who may – these villagers may not have access to daily newspapers, for instance or for that matter, radios. Go on, please, Commissioner Mirou.

COMMISSIONER MIROU: Yes.

COMMISSIONER JEREWAI: Go on. You go on with your question. I am just adding that, sorry.

COMMISSIONER MIROU: Yes. So in a way if any objections were to be raised, it will be virtually nil in terms of the applications. Is that a continuing trend in the department?

A: We are having a lot of objections out of the newspapers since 2010 when I took office just to host publicly and circulate. There have been a lot of objections on that. But, only they were doing gazettals, prior to that, there were not much objections there because you stated

correctly that they, the people down in the village never have access to that medium term of communication facilities to at least see or hear that the particular ILG is on for registration.

2.40 pm]

So right now, the benefit is that when somebody sees it in town, they pickup a Digicel phone and call that so and so. So they write a letter and which is timely that I receive it within the 60 days, and there are a lot of objections that I have. I can – but once we have the full staff, full staff in strength, it is under the - requirements under the Amended Act 2009 – it is a requirement in that we really need to get down and write letters to the provincial administrator and the provincial administrator makes it his business to inform the particular LLG or the ward members within that particular village. So your concerns that you raised is very much taken care of in the Amended ILG Act, and I am just waiting for it to be certified and I can operate on that and your concern will be taken care of very much.

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

COMMISSIONER JEREWAI: Just going on from Commissioner Mirou, what about churches, churches in the local communities? Could announcement system, usually after sermons or whatever – each different churches do it differently, but they usually have community announcements. Would you consider that?

A: That is one of the very good options that I will take in consideration of that.

THE CHAIRMAN: I have just only one question to ask you and I am making reference to page 5 of your affidavit. It is 3.4.1 where you say that the certificate – and that is the last line, the last sentence of that paragraph – you said, “The certificate is only granted to non-disputed ILGs.” So I take it that where there is a dispute, you will not issue the certificate, and to resolve the dispute is totally outside of your control; it is up to them to take into mediation, or the land court or other forums to resolve the disputes?

A: Yes.

Q: Okay, thank you. Counsel, you have got any---

MR TUSAIS: I have no further questions.

THE CHAIRMAN: Okay. MrRogakila, thank you for coming. You may be excused. As I said, if in the future we need to recall you, we will give you notice in good time when we require you to come back. Thank you.

THE WITNESS WITHDREW

THE CHAIRMAN: Counsel, any other matters you wish to raise at this stage?

MR TUSAIS: Yes, it slipped my mind to address the Commissioners on what I was supposed to advise the Commission about D-A-NWe have had conversations with personnel from the department after we adjourned and at this stage, we have had – not specific undertakings – but promises that secretary and his line managers – deputy and managers will come on Monday with draft affidavits; and that we have tentatively also suggested that they give evidence by Wednesday next week.

THE CHAIRMAN: Next week Monday, did you say?

MR TUSAIS: Next Monday, yes, after the holiday.

COMMISSIONER JEREWAI: Next Monday is to come to you.

MR TUSAIS: Yes, sir.

COMMISSIONER JEREWAI: To prepare for possibility giving...

MR TUSAIS: With the draft affidavit for---

COMMISSIONER JEREWAI: Yes, not to actually appear before the Commission?

MR TUSAIS: No, the Secretary is actually out of the city, yes.

COMMISSIONER JEREWAI: Sure.

MR TUSAIS: With the new minister somewhere.

COMMISSIONER JEREWAI: But we understand. I just want to be sure that they are not appearing before the Commission but they are going to be meeting with you.

MR TUSAIS: Yes, sir.

COMMISSIONER JEREWAI: With your technical team?

MR TUSAIS: I did not make that clear, yes, not before the Commission.

COMMISSIONER JEREWAI: All right, and hopefully that by Wednesday, they should appear.

MR TUSAIS: Wednesday, they should be here, in here.

THE CHAIRMAN: What about the PNG Forest Authority?

MR TUSAIS: I am going to meet with them in about 15 minutes.

COMMISSIONER JEREWAI: That will be, hopefully, for---

MR TUSAIS: Tomorrow.

COMMISSIONER JEREWAI: Tomorrow for actual appearance.

MR TUSAIS: Yes, sir.

COMMISSIONER JEREWAI: And that will be the Managing Director?

MR TUSAIS: Managing Director himself, yes.

COMMISSIONER JEREWAI: Himself.

THE CHAIRMAN: So you only got one witness tomorrow, the managing director?

MR TUSAIS: Yes. For our purposes, we will see if we need to call any other – but for our purposes, his evidence might suffice for the time being unless, as we said, it is for specific FCAs, specific files, in which case we will need to call in the top personnel down the line who dealt with particular matters.

THE CHAIRMAN: The particular officer in charge of that.

MR TUSAIS: Yes, sir.

[2.45 pm] THE CHAIRMAN: So you will not have any idea what sort of affidavit the Deputy Director will give tomorrow?

MR TUSAIS: No. We will find out this afternoon.

THE CHAIRMAN: That is right. You need to have review with him – ok, sorry about that.

MR TUSAIS: He is going through his affidavit and he will bring it with him at 3 o'clock.

THE CHAIRMAN: My apology on that. If that is the case then we adjourn until tomorrow morning at 9.30. Alright, we will adjourn.

AT 2.40 P.M. THE INQUIRY INTO SABL ADJOURNED UNTIL THURSDAY 25 AUGUST 2011 AT 9.30 AM.

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