

**N8201**

PAPUA NEW GUINEA  
[IN THE NATIONAL COURT OF JUSTICE]

**OS (JR) NO. 403 OF 2004**

**JAMES HARIVA LOHORO**

*First Plaintiff*

And

**ERE KILAVI INCORPORATED LAND GROUP Within the Vailala TRP  
area**

*Second Plaintiff*

And

**KORE EVERE**

*Third Plaintiff*

And

**LAULA MEAHU INCORPORATED LAND GROUP Within the Vailala TRP  
area**

*Fourth Plaintiff*

And

**KILALA KARIKARA**

*Fifth Plaintiff*

And

**AVOILA CLAN INCORPORATED LAND GROUP Within the Vailala TRP  
area**

*Sixth Plaintiff*

And

**JOE MERE**

*Seventh Plaintiff*

And

**KAO HARUIPI NO.02 INCORPORATED LAND GROUP Within the Vailala  
TRP**

*Eighth Plaintiff*

And

**MORGAN MUKARI**

*Ninth Plaintiff*

And

**MIARO CLAN INCORPORATED LAND GROUP Within the Vailala TRP**

*Tenth Plaintiff*

And

**EVAN EVARAPO**

*Eleventh Plaintiff*

And

**LULU CLAN INCORPORATED LAND GROUP Within the Vailala TRP**

*Twelfth Plaintiff*

And

**IVAN KEO URUMA**

*Thirteen Plaintiff*

And

**MIHIRE OUKA INCORPORATED LAND GROUP Within the Vailala TRP**

*Fourteenth Plaintiff*

And

**MORGAN SARE**

*Fifteen Plaintiff*

And

**ALUVE INCORPORATED LAND GROUP Within the Vailala TRP**

*Sixteenth Plaintiff*

And

**ANDREW MUKARI**

*Seventeenth Plaintiff*

And

**WEE -4 INCORPORATED LAND GROUP Within the Vailala TRP**

*Eighteenth Plaintiff*

**V**

**PAPUA NEW GUINEA FOREST AUTHORITY**

*First Defendant*

And

**MICHAEL OGIO, MINISTER FOR FOREST**

*Second Defendant*

And

**FRONTIER HOLDINGS LIMITED**

*Third Defendant*

Waigani: Miviri J

2019: 25<sup>th</sup> October

***PRACTISE & PROCEEDURE – Judicial Review & appeals – Substantive notice of Motion – Forestry Act 1991– Sections 73, 75, and 77 Timber Permit – Entitlement to Premium payments – Payment by permit holder whether compliance of agreements with landowner companies – Premium payments owing – Land owner companies deregistered – ILG paid in place of – No error in process – Judicial review granted.***

**Cases Cited:**

*Asiki v Zurenuoc , Provincial Administrator* [2005] PGSC 27; SC797

**Counsel:**

*A.M. Ona*, for First to Sixteenth Plaintiffs

*B. Francis*, for Seventeenth & Eighteenth Plaintiffs

*S. Mitige*, for First & Second Defendant

*B. Frizzell*, for Third Defendant

**RULING**

**21<sup>st</sup> February, 2020**

1. **MIVIRI, J:** This is the ruling on the substantive Notice of Motion of the parties after mediation on the 3<sup>rd</sup> June 2015 which referred the following issues.

- (i) Whether the plaintiffs are entitled to any premium payments made by the third Defendant to the Landowner companies pursuant to Timber Permit TP 2-16 up until 2008,
- (ii) Whether premium payments made by Frontier Holdings Limited to the Landowner companies were in compliance with the agreements between the third defendant and those landowner companies,
- (iii) Whether the Plaintiffs are to pursue the relief sought in these proceedings and
- (iv) Whether they have standing to maintain the proceedings

(v) Whether other parties are to join in these proceedings

2. The plaintiffs are entitled to the premium payments made by Frontier Holdings Limited the third defendant. They are not Landowner companies described by the timber permit TP 2-16 issued on the 24<sup>th</sup> June 1992 clause 4.4.5 recounted that, *“The permit holder shall pay to the Landowner companies, seven (7) days after each log shipment, the rate of 5% of the FOB price of logs exported”*. But the permit has been amended so that in the absence of landowner companies Incorporated land Groups from that area Vailala block 2 and 3 can receive the landowner’s premium on behalf of the landowners. Which is consistent with section 46 of the Forestry Act 1991 that fully recognizes and respects the customary rights of the owners of the forest resources. And which is substantiated by section 57 as to obtaining consent of the customary owners to forest. Here it is settled that title of the customary owners to the subject land for forestry shall be vested in a land group or land group incorporated under the land Groups Incorporation Act 1974 or registration of title by law. Read together with the Land Groups Act section 3 powers of Incorporated Land Groups this is complete as to the management of land its use and related matters because custom is underpinning with a Constitution of the land Group. And clearly by section 11 of that law status of recognized land group as a corporation with perpetual succession can be sued in its name by its Constitution. It is a legal person so to pay to it what is due from and under the timber permit 2-16 is not wrong in law. Because the land groups that have signed the Forest Management Agreement have standing to maintain this proceeding. Here Laula Meahu, Kao Haruipi No.2, Aluce, Miaro, Lulu and the others who have signed this agreement parties named in this proceeding fall into that category. And the law discussed above allows for the payment of this premium benefits to them on behalf of the landowners of that timber permit area. They are incorporated land groups of the Timber Permit 2-16 of Vailala block 2 and 3. They are entitled to receive a total sum of K 4, 751, 553. 90 as Landowner premium benefit on behalf of the landowners.

3. It is undisputed and established that leave for Judicial review was granted on the 6<sup>th</sup> April 2005. That mediation was on the 3<sup>rd</sup> June 2015 between the parties which settled all matters except for the referral above. The subject emanated from a timber project covered by the Forestry Act 1991. And from which the timber permit was granted for Vailala blocks 2 and 3 after an application was made to the Minister for Forests pursuant to sections 73, 75, and 77 of the *Forestry Act* 1991. Which also set out the roles and responsibilities of the parties. Timber was harvested from the Vailala Block 2 and 3 project area by the third defendant Frontier Holdings Limited. The timber permit TP 2-16 issued on the 24<sup>th</sup> June 1992 clause 4.4.5 recounted that, *“The permit holder shall pay to the Landowner companies, seven (7) days after each log shipment, the rate of 5% of the FOB price of logs exported”*. The third defendant Frontier Holdings Limited was discharged. But disputed because an agreement was entered into with the

Landowner companies on the 5<sup>th</sup> December 1998. This was without the consent of the resource owners and the Papua New Guinea Forestry Authority Board. It amended the rate of the Premium set out in the Timber Permit to K5 per cubic meter of the timber exported from the timber areas, Central Vailala, Popo and Opuma. This amount was further reduced to K3 per cubic meter. Hence the issues raised and referred.

4. The mediation has settled with the independent engagement of Public Accountant and Auditors Leslie Wungen & Co that based upon 5% FOB value of the export a total sum of K 4, 751, 553.90 is the deficit that remains unpaid to the landowners. Using that formula it would give the figure K 9, 118, 938.35 out of which incorrect payment was made based on the incorrect value of K5 per cubic meter and K 3 per cubic meter giving the figure K 4, 364, 384.45 which was paid to the landowner companies. And this is set out in the affidavit of one Andrew Tion the company operations manager of Frontier Holdings Limited.

5. Because what has happened in the amendment and variation has breached section 79 of the *Forestry Act* 1991. There has been no application made by the holder of the timber permit in this case Frontier Holdings Limited for the amendment or surrender of that timber permit. The process set out here under section 79 (1) (2) and (3) of the *Forestry Act* and the agreement by the landowner companies with the permit holder the third defendant on the 5<sup>th</sup> December 1998 was illegal and no consequences binding in law flow from it. It means any premium payments calculated therefrom will not be binding in law, hence the figure set out above due to the landowners. On the converse by section 46 Customary Resource Ownership the rights of the customary owners of forest resources shall be recognized and respected in all the transactions effecting the resource. And this is sealed further by section 57 also of the same Act, Obtaining consent of customary owners to Forest. Title to land where it is proposed to enter into a Forest Management Agreement over customary land which is vested in a land group, or land groups incorporated under the land Groups Incorporation Act.

6. The plaintiffs are entitled to the premium payments to the sum of K 4, 751, 553.90 as Landowner premium benefit on behalf of the landowners of Vailala block 2 and 3 timber permit TP 2-16. To heed the third defendant that all plaintiffs are not landowner companies nor are corporate entities would be parting company with the law and the facts and circumstances presented here. And these are pointed out above in sufficient detail. It is not necessary to join landowner companies that are no longer in existence as legal entities under the Investment promotion Authority register of the same maintained. Any issues emanating were no doubt explicitly attended to and disposed by the mediator. It need not the time of this court to venture there except to the issue here raised. Addressing representative actions are clear that here is Integrated land Groups and therefore are legal entities

to be sued and sue as here.

7. The premium payments made by Frontier Holdings Limited to the Landowner companies there and then were in compliance with the agreements between the third defendant and those landowner companies but since those landowner companies have been now deregistered and are no longer on the register of the Investment Promotion Authority, the authority for payment of all premium benefits is now the plaintiffs and registered landowner groups registered under the land Groups Incorporation Act 1974 originating from the timber permit TP 2-16 area of Vailala Blocks 2 and 3. The amount due is the difference calculated from 5% FOB and K5 per cubic meter per the agreement of the total sum of K 4, 751, 553.90.

8. It follows that the plaintiffs have standing to pursue this matter because of the reasons set out above. It is not necessary to join any further parties to the cause and costs will be in the cause.

9. It is not necessary to address separately the issue of the adjournment applied for by 17<sup>th</sup> and 18<sup>th</sup> Plaintiff as their interests have been settled in the way the facts circumstances and law has unfolded here. No prejudice has been caused to them. To allow would have procrastinated this cause of action outstanding since 2004. Justice delayed is justice denied. Adjournments must be on substantial cause underpinning and would have the propensity to deny Justice. That is not the case here by the facts, circumstances and the law. Judicial review is primed on procedure rather than substance: *Asiki v Zurenuoc, Provincial Administrator* [2005] PGSC 27; SC797 (28 October 2005).

10. Accordingly it is ordered that Judgement is entered in the sum of K 4, 751, 553.90 to be paid forthwith to the principle plaintiff with the assistance of their lawyers Ona Lawyers for disbursement or distribution in equal parts or portion or share to all the incorporated land groups of Vailala Blocks 2 and 3 Forest Management Agreement under the Timber Permit TP 2-16.

11. The costs will be in the cause.

Orders Accordingly.

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Ona Lawyers

: *Lawyer for First to Sixteenth Plaintiff/Applicant*

Warner Shand Lawyers

: *Lawyer for the Third Defendants*

PNG Forest Authority

: *Lawyer for First & Second Defendants*