

TRANSCRIPT OF PROCEEDINGS

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

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

10



COMMISSION OF INQUIRY INTO SABL

MR JOHN NUMAPO

CHIEF COMMISSIONER
& CHAIRMAN

20

TOP FLOOR, MURUK HAUS, WAIGANI, TUESDAY 27 SEPTEMBER
2011 AT 2.02 P.M.
(Continued from Monday 26 September 2011)

[2.02 pm] THE CHAIRMAN: Yes, Counsel?

MR TUSAIS: Good afternoon, Chief Commissioner, we have got five matters listed for this afternoon and in four of them we will be making short applications, three of them, sorry. We start off with Umu Resources Limited. It is a Central Province matter; matter 48. Ms Koisen was ready with her opening address as mentioned this afternoon, except that just before lunch she received substantial or bulky documentation from Environment and Conservation. She would like to go through that and make opening remarks later. Just to put this in some context, Commissioner, there is information contained in Environment and Conservation file which are lacking in other files, for example from DLPP. So we might be making statements which are not quite correct. If this matter could be stood over to 5 October, that is next week Wednesday, at which time – there is no lawyer making appearance in this matter but there may be interested parties, if the matter could be stood over till the 5th?

THE CHAIRMAN: At 9.30?

MR TUSAIS: 1.30. There are other matters that are listed for 9.30.

THE CHAIRMAN: That is on 5 October?

MR TUSAIS: 5 October, next week.

THE CHAIRMAN: Alright, that is fine.

MR TUSAIS: Matters number 48 and 49 Akami Oil Palm, it is not Akima, it is Akami. They are ready to be mentioned this afternoon. If I could perhaps mention number 51, Wammy Limited, Mr Pupaka has carriage of this matter. He is ready, mostly ready but there are some aspects of this matter he wishes to look into, verify before we make mention of it. This is mainly from IPA and few other agencies. What the Commission can be advised of now is that on paper this Wammy does look to be – looks good on paper. We are not making any serious or negative assertions and sorry, we are not making any negative assertions to be verified. It is just that there are certain aspects that need to be ascertained. So if this could be stood down to Friday afternoon, Friday that is 30 September, by which time we will be ready. We do apologize to members of the public who turned up for these matters. But we say that we do not wish to rush through and make statements which may not quite be true and contain falsehood.

THE CHAIRMAN: So what did you say, Counsel, you want to ---

MR TUSAIS: Friday ---

THE CHAIRMAN: Yes, but, what did you say, you want to further check with IPA to get some more information?

MR TUSAIS: Yes, there are certain – something that we just need to verify and that cannot be done today.

THE CHAIRMAN: Okay, what is the time on Friday again, did you say?

MR TUSAIS: 1.30.

10 THE CHAIRMAN: 1.30. So it is just from IPA that you need to verify this information, not the other agencies of government?

MR TUSAIS: Yes, mainly from IPA, this company details and stuff.

THE CHAIRMAN: All right, that is fine with me.

MR TUSAIS: The other matter I wish to mention is the last one listed for today, Ainbai-Elis Holding Limited. That is similar, well, will apply similarly to Wammy Limited, which is handled by Mr Pupaka. We are not quite ready. He has prepared the stuff but we just need to confirm, verify various aspects of our opening. There are lawyers who have expressed interest in this, Mr Michael Wagambie, he appears for a certain party from Ainbai-Elis and Mr Roger Otto, he appears for the chairman of Ainbai Holdings.

[2.07 pm] So these are different factions of their company. We have spoken to them and I think both of them also need to verify certain papers that they have received. If this matter could also be stood down to Friday 30th at half past 1?

THE CHAIRMAN: Okay, that is fine. We will have it stood over to Friday 30th at half past 1. Sorry, Counsel, if I may, it will be also on the same reason that you need to verify some information from IPA?

MR TUSAIS: Yes, Chief. For this one, just generally, yes.

30 THE CHAIRMAN: Just generally, yes. Okay, that is fine. We will have it adjourned to Friday 30 September at 1.30.

MR TUSAIS: Yes, thank you. I come back to the matters. There are two of them; Akami Oil Palm Limited. Chief Commissioner, if I could address you on this as the first statement opening of this matter?

THE CHAIRMAN: Counsel, I was just trying to work out, they are both under the same name.

MR TUSAIS: Yes, I will explain as we go through.

10 THE CHAIRMAN: Okay.

MR TUSAIS: This is just so that you – sorry, chief Commissioner, you will follow me. Sometimes I may not pronounce stuff properly so we just reduced it into writing.

THE CHAIRMAN: All right, that is fine. You take me through.

MR TUSAIS: Thank you. As Chief Commissioner, you pointed out correctly, these are two separate SABLs but they appear to be the same, by the same
20 company and on land that is close together in the same operation.

At first glance, Commissioner, the Akami Oil Palm would, we submit, appear to be a model SABL reflecting aspirations and objectives for which SABLs were originally created or came into existence by legislation. The Lessee, Akami Oil Palm Limited is a local, at least West New Britain based and PNG owned company. It acquired land through the Land Tenure Conversion process and later on went on to register lease under section 102 of the Lands Act.

Chief Commissioner, unlike perhaps other SABLs in which agricultural projects
30 are planned for the projects, for this one, actual work has already been undertaken. It has commenced and some hectares of oil palm were previously planted and are now ready or it is already – first harvest has already commenced.

Chief Commissioner, the only matter of concern under the Terms of Reference for which this Commission was established is that there are now landowner disputes which have cropped up this year.

Chief Commissioner, there are two separate SABLs granted to Akami under
40 two differently named companies, although that may not be the situation. The first was to a company called Akami Oil Palm Estate Limited; and the second one to Akami Oil Palm Limited.

[2.12 pm] Search of the IPA files revealed that there is only one company called Akami Oil Palm limited registered with IPA. Akami Oil Palm Estate does not show on the database of registered company. This maybe a typographical error, we do not know. But I will come to that later on a bit. Akami Oil Palm Estates is mentioned in one of the gazettes of showing the Notice of Grant. According to project proposal documents compiled on behalf of Akami Oil Palm Limited, the company belongs to a Mr Albert Camillus and his family. Mr Camillus appears to be a long time settler in West New Britain Province, that is the settlement in the Oil Palm Scheme through which persons from other provinces were brought
10 in, largely from Morobe, the two Sepik provinces and Simbu.

Originally from Nuku, the land investigation report says that he is from Nuku in the Sandaun Province. Mr Camillus already owned an Oil Palm block at Buvusi block 1236 operated by New Britain Palm Oil Limited, that is NBP Oil. He married a local woman from Lavege village, who owned land named as Roka, situated near the Mt Pago volcano, I think it is still active, on which the Oil Palm projects are situated. The family then developed other small Oil Palm blocks on customary land under the Village Oil Palm Scheme before deciding to venture into larger – bigger scale Oil Palm Estate. They say a total of 80 hectares was planted and is now being harvested. We are unable to say whether
20 the two pieces of land are contiguous. But they are located about 32 kilometers outside of Kimbe town and two appear to be close together; within proximity of each other.

The land had previously been logged under a TRP, Timber Rights Purchase granted to Stettin Bay Lumber Company or SBLC. Chief Commissioner, there is currently, as indicated land owner dispute in – sorry, a writ of summons number 673 of 2011 was filed in the Kimbe National Court on 28 June 2011. The pleadings allege fraud on the part of Albert Camillus. The plaintiffs who are original landowners say that they only agreed to give 40 hectares of their land on which or land known as Roka No 2, which is now being converted into
30 portion 104C. Commissioner, with a much larger land area of 231.2 hectares, they say this is an increase of 191 hectares from the original agreement.

The plaintiffs also allege that the land known as Roka No 3 now making up SABL number 2. That is portion 2628, with a land area of 345.75 hectares. They say it was never part of the agreement which was reached on 15 March 2000. The plaintiffs seek declaratory orders that Akami Oil Palm be allowed

only 40 hectares in portion 104C and that portion 2628C be declared null and void and the land to be returned to them.

Chief Commissioner, whether the exact boundaries were agreed to between the landowners and Akami is an issue that remains to be determined by the National Court. Once again, this Commission has not been assisted by the Lands Department. That department has failed to provide original land investigation report from which the Commission can make findings or initial findings, anyway on the processes involved prior to the granting of the SABL.

[2.17 pm] The COI, for example, would be greatly assisted if there was a report stating
10 that the land boundary was traversed or covered usually by food; and that there were two separate portions of land and the specific hectares and boundaries involved.

Chief Commissioner, to be fair to Akami Oil Palm, it did provide the owner's copy, both of the title copies of agreement between the Camillus family and customary landowners and Land Investigation Report dated 13 September 2007, compiled by Kaseng Dumui - I am not sure of sex of this person -but it is of Kimbe Lands office. Included is a certificate also dated 13 September 2007. That indicates that the Lands officer traversed the boundaries as far as possible
20 with a person called Adi Lelei. She appears to be Albert Camillus's wife and Mr Albert Camillus himself. There is no mention of other landowners or other parties. The only matter of concern as far as these documents are concerned is the veracity of these documents since they do not come from the files of DLPP. It is something the Commission will make findings on after hearing evidence from all persons concerned.

Chief Commissioner, just to give details of the two oil palm projects, Akami Oil Estate Limited is the first in time. A 99 year Special Agriculture Business Lease was granted to the company mentioned on 18 March 2008. Notice of
30 Direct Grant was published in the National Gazette number G45 on Tuesday 18 March 2008, the same day. Lease is over land described as portion 104C, Milinch of Part Megigi South East and Part Dagi North East, Fourmil of Talasea, with a land area of 231.2 hectares. The name of the lessee for portion 104C is Akami Oil Palm Limited. It is at variance with the name published in the National Gazette. As I stated earlier, this may be a typographical error, but that is something that to be confirmed later through evidence taken from the Lands Department and perhaps from the owners of Akami Oil Palm.

The other matter, the only other matter I wish to mention regarding this
40 particular registration is that it was – the company Akami Oil Palm – sorry, the

company was registered on 19 March 2008. IPA records show that it has only one shareholder named as Albert Camillus. He is also the sole director. If this information is correct, then the lease which was granted on 18 March and published on 18 March pre-dates the registration of the company. In other words, the lease was granted to a person that legally did not exist until a day later. What implications this has on the validity of the lease is something the Commission is to examine and make findings on later, but it is subject to, as I say, to evidence.

- 10 The second SABL seems to be in order. It was granted – sorry, the SABL was granted to Akima Oil Palm Limited on 2 April 2008. Notice of Direct Grant was published in Gazette G54 on Monday, 7 April 2007. It is for land described as Portion 2628C, Milinch of Megigi South East, Fourmil of Talasea; area 345.75 hectares.

Commissioner, I just say this once again, the Commission must be reminded that it was not set up to find fault and to point fingers at any one person or company involved in SABL. As stated in the introduction, this particular SABL has very positive aspects which, I suggest, can be confirmed or not confirmed
20 but after confirmation, if there are existing positive aspects, it must be reported on.

[2.22 pm] Witnesses to be called include Kaseng Dumui of Lands Department in Kimbe. I believe is important to establish certain documents which have since come to Commission. Another witness is Williamson Hosea. He was Acting Provincial Administrator in 2007 and he signed the Certificate or recommendation for Alienability. These are government employees who can assist the Commission to come to whatever findings it does.

- 30 And finally an interested landowner or company representative once the Commission arrives in Kimbe town. We do not state any specific findings but obvious one I submit is that Lands Department has been negligent in the safe keeping of the two files involved in SABLs. Secondly, there are no Forestry considerations and there was no need for environment permit although an environment impact study was submitted by the company in the initial stages. Those are what I need to say in regards to these two SABLs.

THE CHAIRMAN: Thank you Counsel. I just have one or two comments to make.

40

MR TUSAIS: Sorry, I forgot to mention. There is a Mr Gerald Ninge. He is here on behalf of Akami Oil Palm. I have spoken to him earlier.

THE CHAIRMAN: Okay. Welcome, Mr Ninge. Just one or two – you did mentioned towards the end of your findings that the two SABL files were not been found on record by the Department of Lands. Is that part of the 27 files that we are still waiting to get from the Lands Department? The two for Akami?

MR TUSAIS: Sorry, just a moment. Yes, these two are files that the Lands Department put advertisement out in the newspapers asking for owners to provide copies so that they could reconstruct or whatever process they call to make up new files.

THE CHAIRMAN: Landowners have not come forward yet with those files?

MR TUSAIS: Landowners, they have come forward through their lawyer. That is why I can report to the Commission, that they have since filed correction in Kimbe challenging or – well against the creation of these two SABLs.

THE CHAIRMAN: I was just thinking that to assist this Commission of Inquiry, that may be the lawyers can, through their clients, try and help the Lands Department to get these files sorted out and be presented to us.

MR TUSAIS: We have received stuff mainly from what the lawyers have provided, at least for Akami. But what I am saying is that it is the Lands Department who is negligent. For all these SABLs, what this Commission will always ask questions about is that; what is the Commission to make of these documents? It comes from a certain party so it is just that further work needs to be done just to confirm that, yes, this is what actually happened and these documents are correct records of what transpired leading up to the creation of the SABL.

THE CHAIRMAN: So we have not received any documentation from the Department of Lands and Physical Planning with respect to Akami Oil Palm Estate Limited and Akami Oil Palm Limited. Is that correct? That is what I am asking you.

MR TUSAIS: Yes.

THE CHAIRMAN: But we have received some documentation from their Lawyers, from the landowners themselves and their lawyers?

MR TUSAIS: Yes.

THE CHAIRMAN: Yes, I see that also towards the end of your opening statement you did respond in your findings to say that there are no forestry considerations so I want to think that there was no felling of trees. Is that correct; for purposes of oil palm planting?

[2.27 pm] MR TUSAIS: There is no secondary, that is what they say, there is secondary growth and stuff. There was no application for FCA, Forest Clearance Authority, and that is why I am saying, there are no forestry considerations.

10 THE CHAIRMAN: And also the environmental permit as you have indicated.

MR TUSAIS: Yes, this area is under a thousand hectares. Usually anything less than that the Department considers that it probably will not have much impact on the environment as anything over a thousand hectares.

THE CHAIRMAN: Counsel, can you take me back to your paragraph 4, you made reference to a writ of summons.

MR TUSAIS: Yes.

20

THE CHAIRMAN: What is the outcome of that case? Did you make mention – I may have missed it?

MR TUSAIS: It is a fresh case. It was filed in June this year. I doubt if any resolutions will be reached for a few more years. If the current civil track is anything to go by.

THE CHAIRMAN: All right, fine. Thanks Counsel, otherwise I have no further comments to make in relation to your opening statement on the Akami Oil Palm Estate and Akami Oil Palm Limited.

30

Obviously this will be in the schedule of hearing, will be put down for hearing over in Kimbe and once we have finalized the schedule of hearing dates, then parties will be informed accordingly for them to make appearances. Have you got any other matters apart from that?

MR TUSAIS: Those are the only matters listed for this afternoon, Chief Commissioner. The other ones we have adjourned already.

40 THE CHAIRMAN: Okay, thank you. I see Counsel Assisting is not here but it is probably something that you might raise with the Counsel Assisting as well as the technical team. We need to get some indications from those SABLs when we list the dates of hearing because I am just thinking about the time

involved. Some of them are – they are – if they are represented by Counsel, then obviously it will take more time and those are some of the things that we need to take into consideration. Especially for logistical arrangements for when we go out to the provinces. So if the Counsel Assisting and yourself and team are able to establish some contact with the lawyers and find exactly what information, what material, how long it will take, that will help us with the schedule of timing.

MR TUSAIS: Of course.

10

THE CHAIRMAN: So I am just simply raising it here. It is something that you can raise in one of your meetings. Alright, Counsel I think that is all for this afternoon unless you have got any other matters to raise?

20

MR TUSAIS: Yes. Sorry, could I just mention this. I forgot to say this. This matters, the two Akami Oil Palm matters, I am asking that they be stood over generally, unless we call witnesses from here, which is not likely, considering that I do not see any Lands Department Officials involved – sorry, apart from, I think Mr Pepi Kimas, if we can locate him. This matter, I ask that it be stood over generally until we go to Kimbe or witnesses called here, whichever occurs first. The visit to Kimbe will be published in the papers for the information of any landowner or representative of the lessee, especially Akami.

THE CHAIRMAN: Okay, that is fine. But you will indicate to us at some stage, Counsel, that whether you wanted the hearing to be here or over in Kimbe.

30

MR TUSAIS: Yes. I said if we call witnesses, and if they respond to the summons then we will let the Commissioners know. We will also let the Counsels involved in this matter know, but otherwise we are saying, it will be stood over until COI goes to Kimbe.

THE CHAIRMAN: Okay. That is fine with me Counsel. All right, if there is no other further business, then we will adjourn to tomorrow morning, Counsel.

40

**AT 232 P.M. THE COMMISSION OF INQUIRY INTO SABL WAS
ADJOURNED TO 28 SEPTEMBER 2011 AT 9.30 A.M.**