

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

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COMMISSION OF INQUIRY INTO SABL

MR NICHOLAS MIROU

COMMISSIONER

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TOP FLOOR, MURUK HAUS, WAIGANI, WEDNESDAY 28 SEPTEMBER
2011 AT 10.20 A.M.
(Continued from Tuesday 27 September 2011)

COMMISSIONER MIROU: Good morning, Mr Tusais.

MR TUSAIS: Good morning, Commissioner. We have got several matters listed for this morning, as well as one which was stood over from last week Friday, Rakubana Development.

COMMISSIONER MIROU: Okay, yes.

10 MR TUSAIS: I will be asking, unfortunately, for adjournment in most of them for various reasons which I will mention as we go down the list. First is Brilliant Investment. It is a matter from East Sepik. Ms Peipul is handling that matter. She has had quite a few other files starting from last week and she has not quite gotten there yet with this file. She has asked that this matter be stood down to 6 October, that is, next week Thursday, I believe, is it? Yes, 6th.

COMMISSIONER MIROU: Okay, thank you, Counsel. Any persons?

20 MR TUSAIS: Yes, Commissioner, there is a Counsel appearing for Brilliant, at least one of the parties in Brilliant Investment is Mr Kuman has indicated his interest.

COMMISSIONER MIROU: I note Mr Kuman's presence.

MR KUMAN: Thank you, Commissioner. Commissioner, I formally enter my appearance for Brilliant Investment in this matter.

COMMISSIONER MIROU: Thank you, I note your appearance and I think you have been granted leave to appear in the other matters.

30 MR KUMAN: Yes, that is correct. There are also a number of matters for tomorrow as well as Friday which either myself or one of my lawyers from my office will appear in those matters.

COMMISSIONER MIROU: Yes.

40 MR KUMAN: For a matter this morning, Mr Commissioner, we have a letter from the landowner company, Chairman; and perhaps I can get some directions from yourself as to how we can have that furnished to the Commission whether we can give it to the lawyer having that particular file.

COMMISSIONER MIROU: Yes, I think Mr Kuman, the best way of dealing with this is for the letter to be delivered to Counsel Assisting the team.

MR KUMAN: Whatever documents that we have may have.

COMMISSIONER MIROU: Yes, and any conference or any matters that you raise will be dealt with and then appropriately submitted to the Commission in the trial proper.

MR KUMAN: Thank you.

COMMISSIONER MIROU: Sorry, hearing proper.

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MR TUSAIS: If I could assist Commissioner. Perhaps, my friend could lodge it in the usual way at the front, it gets registered and gets passed on to the appropriate person which is the Counsel Assisting, Mr Ketan.

COMMISSIONER MIROU: Yes. So if those documents and materials could be presented through the secretariat.

MR KUMAN: Yes.

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COMMISSIONER MIROU: Registered and then appropriately referred to the Counsel that has carriage of the file.

MR KUMAN: Thank you.

COMMISSIONER MIROU: Thank you for your attendance this morning. Any other matters that you have for this morning?

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MR KUMAN: Commissioner, as I intimated, we do have a number of matters but they are listed for tomorrow and Friday so we will make appearance appropriately tomorrow and Friday.

COMMISSIONER MIROU: In that regard, you may be excused from---

MR KUMAN: Thank you.

COMMISSIONER: As Counsel has noted, this matter now, Brilliant Investment Limited is adjourned to 6 October 2011 at 9.30 for mention.

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MR TUSAIS: The next matter is that of Zifasing Cattle Ranch in the Morobe Province. This matter is dealt with by Mr Ketan. He also is not quite ready to deal with this matter. They are contrary to what he thought; they are bulky documents attached to this particular SABL and he needs to peruse them all

before he is ready. We ask that this matter be stood over to 5 October. It is on a Wednesday.

COMMISSIONER MIROU: Thank you, Counsel.

MR TUSAIS: At 9.30.

COMMISSIONER MIROU: The matter number 54 Zifasing Cattle Ranch?

10 MR TUSAIS: Yes, object, there are no lawyers or persons of interest appearing this morning.

COMMISSIONER MIROU: Okay. So this matter is returnable on 5 October 2011 at 9.30 am. Thank you, Counsel.

MR TUSAIS: Below next to Zifasing is matter number 55, Baina Agro-Forest Limited.

COMMISSIONER MIROU: Yes.

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MR TUSAIS: There are several members of the public who have appeared. I think they appeared for other matters on the list previously. This matter is also dealt with by Mr Ketan. He has had certain new documentation which he also needs to peruse before he is ready with this opening. He also asked that this matter be stood over to the 5th.

10.25 am] COMMISSIONER MIROU: Thank you. Are there any interested persons in this room that has interest in a matter called Baina Agro-Forest Limited? If you can come forward and – you can come forward to the table and introduce yourself and tell us your interest so we can note your appearance this morning. Just take a seat there and talk into the mic. Yes, thank you. What is your name?

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MR BAGORO: Commissioner, my name is Joe Bagoro.

COMMISSIONER MIROU: Yes, Mr Bagoro?

MR BAGORO: Yes.

40 COMMISSIONER MIROU: Okay.

MR BAGORO: I am the Chairman of Baina Agro-Forest Limited.

COMMISSIONER MIROU: Okay, yes. When you saw the ad, have you made any submissions to the---

MR BAGORO: That is correct.

COMMISSIONER MIROU: Okay.

MR BAGORO: I did a submission already.

10 COMMISSIONER MIROU: Mr Bagoro, in this matter as you have heard Counsel, the Commissioner has received additional information and they are pretty bulky, so they need time to look at it and prepare the opening submissions. So this matter will be stood over to 5 October 2011 where proper opening addresses will be made with regard to that particular project. So we will have this matter adjourned to 5 October when you can come in, like you did today, and listen to Counsel when they make the opening addresses. Any issues that you have raised will be properly canvassed in the opening addresses.

20 MR BAGORO: Commissioner, if I am not available, Linus Aia, who is also the adviser---

COMMISSIONER MIROU: Mr Aia?

MR BAGORO: Mr Aia.

COMMISSIONER MIROU: Okay.

MR BAGORO: Adviser Coordinator to the project will be present.

30 COMMISSIONER MIROU: Okay, we note your appearance this morning. These are preliminary matters where we are making opening addresses. As soon as we complete the opening addresses, then we will go into the hearing proper where we will take evidence from people associated – affected by the project and other matters that is of interest. So we have noted your appearance this morning and the matter is now adjourned 5 October at 9.30 am.

MR BAGORO: Thank you. Commissioner, also for your information, one of our companion, Cliff Boutau, representing Central Provincial Government, for the Baina project.

40 COMMISSIONER MIROU: Okay, thank you. I mean, this matter is now adjourned.

MR BAGORO: Thank you very much.

COMMISSIONER MIROU: To 5 October. You are excused. Thank you, Mr Tusais. Yes, this matter – just for confirmation again – 5 October 2011, 9.30 am.

MR TUSAIS: Yes. The other matter is Tabut Limited. That is my matter. Tabut Limited is connected to Umbukul Limited which is also related to Central New Hanover Limited. Commissioner will note that these are three of the
10 SABLs which gained public interest and raised issues in the Press regarding SABLs and they all originated from New Hanover Island. They all involve the same developer, Tutuman Development Corporation. I would rather deal with all three of them together rather than piece meal; Tabut and then Umbukul in the afternoon and Central New Hanover on Friday. If Tabut in the meantime can be stood down to Friday 30th at 9.30?

[0.30 a.m.]COMMISSIONER MIROU: Yes. Would that also ---

MR TUSAIS: It will apply to Umbukul but I am not sure if persons interested in Umbukul are present in the Inquiry room.

20 COMMISSIONER MIROU: So we will just generally---

MR TUSAIS: Generally adjourn both matters and perhaps mention Umbukul later on in the afternoon.

COMMISSIONER MIROU: Okay, alright. In that regard – any persons interested in the matter relating to Tabut Limited? Alright, in relation to Tabul Limited, the application for adjournment is granted to the next date of hearing will be on 30 September 2011 at 9.30 a.m., that is on Friday. Thank you Counsel.

MR TUSAIS: Aiowa Oil Palm Limited from the Gulf Province. This matter is handled by Mr Boi and Mr Ketan, Counsel Assisting the Commission. I wish to
30 have this matter mentioned later on today in the afternoon.

COMMISSIONER MIROU: Yes, okay. So this matter is adjourned generally to 1.30 this afternoon?

MR BOI: Yes, sir.

COMMISSIONER MIROU: Thank you Counsel. Any other matters that---

MR TUSAIS: Yes, Commissioner. I am ready to open the matter of Rakubana. This was stood down from last week.

COMMISSIONER MIROU: That is okay, we can proceed with the opening of Rakubana.

MR TUSAIS: I have reduced what I need to say. Associate?

COMMISSIONER MIROU: Thank you Mr Tusais, when you are ready, you can proceed.

MR TUSAIS: Yes, I am ready. Commissioner, this SABL is a mixed-bag. There are good sides to it, also aspects which are concerning – the company in
10 this matter, the developer anyway which is Tutuman i.e. From information that the Commission has so far has tried its best to meet its development obligations, the agricultural plan that it submitted but to a large extent, has not been overwhelmingly successful in implementing what it proposed or set out to do. There are other encouraging aspects in this SABL insofar as one of the government agencies responsible for implementing and oversight of SABLs.

As been seen by evidence found in the files to have been vigilant, diligent in the implementation or administration of the tasks that it is supposed to do and that is the National Forest Service of PNG based in the New Guinea islands.

Commissioner, just having said those introductory remarks, this SABL is a 99
20 year lease granted to a corporation called Rakubana Development Corporation Limited. Where is this SABL located? It is found in the Namatanai District of New Ireland Province. Commissioner, just where the fat part of New Ireland begins after the skinny bit or the long thin strip that runs down continuously from Kavieng town which is at the other end, located 300 kilometres to the North West. The lease is located within the expired Danfu Timber Rights Purchase area.

[0.35 a.m] Under this TRP, timber was logged by a corporation called Gaisho Limited of Japan at the invitation of a local company called Tasukolak Pty Limited. It is a old company formed prior to the new Companies Act.

30 Commissioner, a direct grant under section 102 of the Lands Act was made on 16 October 2007 by Pepi Kimas, as delegate of the minister. Notice of that was published the next day on 17 October 2007 in the National Gazette No G161. The lease was granted to Rakubana, as I have mentioned, and it was over land

described as Danfu Extension, Portion 871C, Milinch of Dolomokas in the Fourmil of Namatanai, New Ireland Province. Just to give you an idea of the size of this SABL, it is quite large. Its boundary starts at the mouth of the Numbai River which is on the eastern border of the Danfu TRp running in a Southerly direction along the river for 8 and a half kilometres and then in a South Easterly direction for another 20 kilometres until the river terminates at its mouth with the sea. So roughly it is about 9 kilometres by 20 in dimension. Commissioner, there is a slight variation or difference in the area as found under the lease. According to the grant published in the National Gazette, the lease
10 contains land of 24,581 hectares. In the schedule of the owners copy which was applied to the Registrar of Titles, after that the office could not locate his file. That area is increased by 300 hectares to 24,851 hectares. I am not sure what the difference is, whether it is a typographical error or otherwise.

Commissioner, Rakubana is a nationally owned company. According to IPA extracts, it was formed and incorporated and registered on 25 April 1997. It has 22 shareholders and the same number of directors. Mainly the shareholders have also made up the directors. Annual returns have been filled consistently from the year 1998 up to 2009.

No files have been furnished by the Lands Department. This is one of many
20 that the system has either lost or simply cannot locate because of the chaotic and disastrous system it maintains. Consequently, the Commission does not have original copies of the lease, the land investigation report including certificate or recommendation for alienability y by the Provincial Administrator.

What the Commission does have are files provided by the Department of Environment and Conservation, the Department of Agriculture and Livestock, the PNG Forest Authority and Investment Promotion Authority. We are able to say from perusal of these files that Rakubana subleased to developer, Tutuman Development Limited of P O Box 167, Kavieng, New Ireland Province. It is subleased for a period of 40 years.

30 Perusal of the IPA extracts show Tutuman to be a company incorporated in PNG. Files from PNG Forest Authority and also from Department of Environment and Conservation show that Tutuman is a company made up of the following: Regina Hii, spelt H-i-i, who appears to be a Malaysian citizen who is resident in PNG. This person owns 49 per cent of the total shares. Secondly, a Deodatus Hii, again spelt H-i-i also a Malaysian citizen with PNG residency,

that person holds 12.5 per cent of the shares. The rest of the shares are split between a Pedi Anis, Janet Rauveve and Degon Logo, each of these are PNG citizens hold 12.75 percent shares each.

[0.40a.m] It would appear from the record therefore that the majority share of 61 per cent in the company is held by persons of foreign origin. The company Tutuman Limited is a registered forest industry participant given registration number F101156 by the PNG Forest Board. Its main activities seem to be forestry related but it also claims in its – what it submitted to the Environment Department and Forestry Authority that it is the first company in New Ireland to
10 be granted a cocoa export licence.

Under the sublease granted to Tutuman by Rakubana, agreement was made specifically for Tutuman to enter into agricultural project to grow cocoa, coconut and oil palm after clear felling remaining stands of forest. At page 2 of the Agriculture Development plan found in the DAL files, the project areas estimated at a gross of 24,851 hectares, out of that a net area of 9,267 hectares with an inaccessible area of 15,584 hectares. Commissioner, the report does not say why it is not inaccessible. The main reason for this is that the report is not complete. There were 25 pages of that report but the Agriculture Department only submitted five pages. The other 20 pages is missing.

20 Commissioner, Forest Clearance Authority number 16-01 was granted to Tutuman on 24 August 2010. Status report done by PNGFA dated May 11, 2011 indicates that currently there are no logging operations in the Danfu FCA, Forest Clearance Area. Other correspondence reveal ongoing concern raised by the regional office of the PNG Forest Service about Tutuman's compliance or more specifically lack of compliance with section 90 requirement under the Forestry Act. According to a status report filed after filed checks done by the PNGFA regional office of NGI in 2010, last year, only one block out of three blocks approved by PNGFA had been harvested while the other three were not
30 touched due to landowner disputes. Commissioner, we do not have any correspondence or what from the landowners. This is our first indication that things do not seem to be all that well in the SABL, and that there may be issues relating to customary owners' disputes. This same report, status report, noted that satellite images provided by the University of Papua New Guinea which showed that Tutuman had operated beyond its approved areas.

Commissioner, on 15 December 2010, Managing Director of PNGFA, Mr Kanawi Pouru, wrote to Mr Pedi Anis, Chairman of Tutuman and bluntly told him that Tutuman had failed in its implementation of agriculture and tree plantation development component of the project. The PNGFA conditionally approved Tutuman's 2010-2011 annual logging plan but only for three months, commencing from 1 January 2011. Within those three months, the Forestry Service field officers would monitor progress and make a final report after checking on 31 March 2011. PNGFA warned Tutuman to improve on its poor performance.

[0.45a1m] Commissioner, further, in the PNGFA files, is a letter dated 18 April 2011, written by Mr Peter Lat, it is spelt L-a-t. The PNG Forest officer wrote again to the Chairman of Tutuman and said, "though the company did a number of improvements in forest clearances and cocoa planting for agriculture, it is not sufficient to necessitate a favourable consideration from PNGFA. I would advise that TDL" - that is Tutuman - "put in more effort to completely plant the 150 hectares identified in block 1 as arable land suitable for cocoa farming." He says, "You have planted 17 hectares and cleared over 23 hectares of forest therefore you are to continue further or increase the rate of your work in the field because the results we have only shows an 11 percent success in your performance." The letter goes on to point out concerns over landowner issues.

20 Commissioner, once again, there have been no submissions by landowners so far. One reason, we assume, we do not say for sure, but we assume could be the remoteness of the SABL which is found in Namatanai from the township of Kavieng, the provincial capital. Further hearings conducted in Kavieng will shed more light on the setting up and operation of planned activities under this SABL. All the matters listed under the Terms of Reference will then be investigated and findings made accordingly.

However, Commissioner, at this stage, we say that the following tentative or initial findings can be made from the perusal of the files that we have:

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- (1) The developer has been slow in the implementation of its planned agriculture projects;
 - (2) From correspondence also Tutuman may have conducted logging operations outside of the SABL/FAC boundaries;
 - (3) The PNG Forest Service has been diligent in its monitoring of operations under section 90 of the Forestry Act;

(4) There has been no active participation of the Department of Agriculture and Livestock after its initial “blowing” – if I may put it that way – approval of the project. And Commissioner, if I could go further, I suggest that this is reflected in most or a lot of other files provided by the Department of Agriculture that after initially giving the green light, it seems to have disappeared from the scene, and does not seem to have any more input and participation with SABLs most of which are agricultural in nature;

10 COMMISSIONER MIROU: These are in relation to those ministerial approvals; approvals in principle or?

MR TUSAIS: The Department of Agriculture is required under the Forestry Act Section 90A and B to approve quite a few things including agriculture development plan to check that the developer or the proponent has the means to implement that agriculture development plan. They are all specifically listed under section 90A and B. It seems, Commissioner, that all of that has been left entirely up to the Forest Service. The Forest Service, as was stated in evidence, their primary activity is concerned with the harvesting of forest product in timber concession areas. SABLs are just part of what the legislation has imposed on them. But they seem to be taking a more active role in overseeing
20 of these projects or proposed projects.

[10.50a.m] That is just something that I flagged which the Commission may look into and perhaps investigate further insofar as the Department of Agriculture contribution is concerned.

(5) Commissioner, just finally, the Lands Department has been once again negligent in its management of its files so no records are available to show the processes followed in the granting of the SABL.

Lastly, we ask that this matter be stood over generally until the Commission travels to New Ireland or witnesses are called to give evidence here in Waigani.

30 COMMISSIONER MIROU: Yes. I thank you Counsel for your submission and the readiness to also make findings which will assist the Commission to determine the issues and some will definitely be findings that will make, in particular, Lands Department who has failed to provide each file where we can look at the land investigation report which is very important part of either granting or not granting any SABL leases on application. And I thank you that

the preliminary or the tentative findings will assist the Commission when we eventually hold the sittings in Kavieng and probably a lot of these things will be answered in Kavieng.

Before I make a announcement, is there any person who has a interest in relation to Rakubana Limited? Nobody, okay. Okay, this matter will be adjourned generally to a date to be fixed for hearing in Kavieng. And thank you Counsel for that submission.

Mr Tusais, any other matters that you wish ---

MR TUSAIS: No. That seems to be the mornings matters.

10 COMMISSIONER MIROU: Okay, thank you. We will stand matters generally to 1.30 p.m. this afternoon for mention of other matters as well. Thank you.

LUNCHEON ADJOURNMENT

[2.22 pm] COMMISSIONER MIROU: Yes, good afternoon, Counsel and team. What do we have for this afternoon?

20 MR KETAN: Commissioner, this afternoon, we have about five matters. They are matters that, if I can mention first, which we would like adjourned to next week.

COMMISSIONER MIROU: Yes, if those matters can be mentioned and we will deal with them first.

30 MR KETAN: Yes. The first matter is the matter of Lolokoru Estates Limited which is matter number 59 on the list of matters that was published in the newspapers. We ask that that matter be adjourned to 4 October which is next Tuesday.

COMMISSIONER MIROU: Time; morning or afternoon?

MR KETAN: At 9.30 a.m.

COMMISSIONER MIROU: All right.

MR KETAN: The other matter, Commissioner, is the matter of Roselaw Limited, matter number 60.

COMMISSIONER MIROU: Yes.

MR KETAN: We ask that that matter be adjourned to 7 October at 9.30 am which is next Friday.

COMMISSIONER MIROU: Okay.

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MR KETAN: Both those matters are – there are a lot of material that have come in lately and there are other information that we need to consider properly and take it into consideration in our opening addresses. So on that basis, we ask that those two matters be adjourned to 4 and 7 October 2011 at 9.30 am, respectively.

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The next matter I mention, Commissioner, is matter number 61, Umbukul Limited. That matter, I understand, Senior Counsel Assisting, Mr Paul Tusais in dealing with other matters in the morning, mentioned that matter, and had it adjourned to this Friday, 30 September 2011 at 9.30 am. I mention that matter again because it is a matter that was scheduled for mention this afternoon and therefore it has been mentioned for the benefit of any interested persons that might be in the hearing room that that matter has been mentioned in the morning and adjourned to this Friday 30 September 2011 at 9.30 a.m.

If I can return now to the matter of Kemend Kelba Kei Investments, which is matter number 58 on the list of matters.

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COMMISSIONER MIROU: Counsel, if for the benefit of those who are seated at the back of the room, they may have interest in the three other matters that you have sought adjournment of. Maybe you may sit down and I will just have a general comment.

MR KETAN: Yes.

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COMMISSIONER MIROU: For those who are present in the room, the matter of Lolokoru Estates Limited, West New Britain Province, any interested persons? Yes, if you can come forward. Just state your name for the records. Please be seated over there. You state your name for the records and the interest that you have in relation to this matter. You can speak up.

MR MANE: It is Ben Mane, Managing Director of Lolokoru Estates Limited.

COMMISSIONER MIROU: Mr Mane, you have heard that Counsel has sought an adjournment to this matter.

MR MANE: Yes.

COMMISSIONER MIROU: To 4 October 2011 for the purpose of going through the materials that have been submitted to the Commission. They need to fully appraise themselves of the information so that on 4 October, they should be prepared to make submissions to the Commission on the full background to this particular matter.

[2.27 pm] The issues that you have raised, if you have submitted your expressions of interest to the Commission, we will be canvassing those opening addresses and the issues, and on 4 October, this matter will be mentioned again. So that matter will be adjourned to 4 October.

MR MANE: That is fine, Commissioner.

COMMISSIONER MIROU: Unless there are other matters that you wish to raise?

MR MANE: It is okay, we can wait until the 04th, we will make submissions.

COMMISSIONER MIROU: Okay, you may be excused.

MR MANE: Thank you.

COMMISSIONER MIROU: Roselaw Limited, NCD, Central. Madam, you may come forward. Your name and your interest in this matter.

MS HARAGA: Good afternoon, your Honour. My name is Rose Haraga. I am from Tatana village and I am the titleholder of Roselaw Limited.

COMMISSIONER MIROU: You are the Managing Director or the owner?

MS HARAGRA: Yes.

COMMISSIONER MIROU: Ms or Mrs Haraga.

MS HARAGA: I am Ms, sir.

COMMISSIONER MIROU: Ms Haraga, for the benefit of yourself and those who are present here in this room, this matter is adjourned to 7 October 2011 at 9.30, because Counsel and the team are still going through the information that

have been submitted to them. So they need time to cover all the issues that were raised and when they are ready on 7 October at 9.30, they will make a presentation to the Commission on the background to this SABL, which is your company is the titleholder of that particular lease.

MS HARAGA: Yes.

COMMISSIONER MIROU: So for the benefit of yourself and those who are present in this room, this matter is now adjourned to 9.30 on 7 October 2011. We thank you for your appearance in this matter.

MS HARAGA: Thank you Commissioner.

10 COMMISSIONER MIROU: Yes, sir, if you can come forward. State your name and your interest in this matter.

MR HENI: Mr Commissioner, my name is Ray Heni.

COMMISSIONER MIROU: Yes, Mr Heni.

MR HENI: I am a disputing party to the titleholder on behalf of my clan members which are the Tubumaga No 1 clan of Tatana village. I have already filed my affidavits and so forth and I have been given ample time to file the other affidavits as I hold on hand.

COMMISSIONER MIROU: You have some new affidavits to submit?

MR HENI: Yes, I have already filed them on the 18th of this month.

20 COMMISSIONER MIROU: Okay.

MR HENI: I need ample time to file further affidavits regarding the subject matter. Thank you.

COMMISSIONER MIROU: Okay, thank you. If any of you who have not submitted any statements or information to the Commission, you have time between now and the 6th October, because this hearing comes on the 7th, to file any documents or information with the Inquiry at the reception or through members of the team so that your grievances or your - the issues that you need to raise with the Commission is properly canvassed. When they make their opening addresses those issues will be also be covered for the benefit of the
30 Commission. So on 7 October 2011, this matter will be mentioned again and if they are ready they will make opening addresses.

MR HENI: May it please your Commissioner, thank you.

COMMISSIONER MIROU: Thank you, Mr Heni. Umbukul Limited, New Ireland Province. If there are no other persons or parties involved in Umbukul Limited, this matter is being adjourned to Friday, 13 September 2011 at 9.30. Mr Ketan, if you are ready then we proceed to the next two matters.

[2.32 pm] MR KETAN: Thank you Commissioner. If I can now return to the matter of Kemend Kelba Kei Investment. If I can hand up a copy of the opening statement.

COMMISSIONER MIROU: Counsel is ready to make an opening address.

10 MR KETAN: Yes, in that matter, yes.

COMMISSIONER MIROU: You may proceed when you are ready.

MR KETAN: This matter, the file on this matter which is being opened is Commission of Inquiry file number 63, matter in the list is number 58 titled Kemend Kelba Kei Investment Limited, Portion 155C, Milinch Baiyer, Fourmil Ramu in the Baiyer District of Western Highlands, land commonly known as Kamut, comprising an area size of 41.30 hectares shown on survey plan catalogue number 11/609.

20 A notice published in National Gazette number G170 dated 5 August 2010, P S Kimas, that should be Pepi Kimas, the former Secretary for Lands as delegate of the Minister for Lands granted a 99 year SABL to Kemend Kelba Kei Investments over the abovementioned land pursuant to section 102 of the Land Act which land is located in the Baiyer District of the Western Highlands Province. The Notice of Direct Grant is dated 20 April 2010.

From information received from the Investment Promotion Authority or IPA for short, Kemend Kelba Kei Investments Limited was incorporated on 22 November 2006 and has its registered office at section 41, allotment 104, Warakum, Mt Hagen, Western Highlands Province. Its postal address is P O Box 347 Mt Hagen, Western Highlands Province. A Certificate of Incorporation was issued on 22 November 2006.

30 Of the 100 ordinary shares issued by the company, Peter Kali, K-a-l-i of section 41, allotment 104, Western Highlands Province has five; Justin Kingal of the same address has 8; Jacob Peng has 8; Jollen, that is spelt J-o-l-l-e-n, Jollen

Peng has 5; Joshua Peng has 8; Paul Peng has 8; Jackson Plak has 50; and Elan, that is spelt E-l-a-n Pulgum, P-u-l-g-u-m has 8. Except for Justin Kingal, who is the Secretary, the rest of the shareholders referred to above are also Directors of the company. There is no other information, let alone, returns as to the affairs of the company on the IPA file, except the application for Incorporation documents which were submitted by Justin Kingal on 18 October 2006.

There are no other information on files on this particular matter. We have not received any information whatsoever from the key and relevant government agencies of Lands, Agriculture and Livestock and Environment and Conservation nor have we received any submissions or evidence from any interested persons, let alone the company Kemend Kelba Kei Investments Limited.

Of significance is the non-production of a copy of the SABL title by either the Lands Department or the Registrar of Titles either voluntarily or when summoned. The Commission has given them more time to produce one so hopefully they will come up with one.

In the circumstances, the Commission of Inquiry cannot, in our submission at this stage, make any useful findings either way until further investigations and enquiries are conducted and completed.

I however note from the survey plan or cadastral map on file provided by the Surveyor General and from my own personal local knowledge of the area being from Baiyer River, that the SABL has been issued over an existing well developed coffee plantation.

[2.37 pm] Accordingly, the application and issuing of the SABL may have been a matter of formality to give commercial efficacy and legalization of the plantation and a situation similar to the SABL issue to Porom Coffee Limited, matter number 47, over portion 302C, Milinch Baiyer, Fourmil Ramu, Western Highlands Province, which matter as you will recall, Mr Commissioner, was mentioned yesterday with an opening statement or address.

Whilst in view of the fact that no one has shown any interest in the matter so far, the Commission could conclude that the SABL is in order. We suggest however that for completeness sake, if not for anything else, further investigations and inquiries be made for which purpose the following persons need to be called or summoned to give evidence:

(1) Mr John Ngants of JN Customary Land Survey and Registration Consultancy Services, the consultant engaged by Porom Coffee Limited who facilitated the process of the SABL in relation to that matter and as we note on that particular file that this particular person was facilitating for other 16 SABLs in the Western Highlands Province including this particular matter that I now mention, the matter of Kelba Kei Investments Limited;

10 (2) Mr Henry Wasa, the Registrar of Titles of the Department of Lands and Physical Planning; and

(3) The directors and shareholders of Kemend Kelba Kei Investment Limited.

Mr Commissioner, this then concludes my opening statement on this SABL and I ask that the matter be adjourned generally.

20 COMMISSIONER MIROU: Yes, thank you, Counsel. With Mr Wasa, is there any possibility that you may consider calling the Deputy Secretary, Customary Leases for the---

MR KETAN: Yes, I think he will also be called in relation to the Porom Coffee matter. Thank you.

COMMISSIONER MIROU: Yes, and this matter will be adjourned generally?

MR KETAN: Generally, yes.

30 COMMISSIONER MIROU: To a time to be fixed?

MR KETAN: Yes.

COMMISSIONER MIROU: Thank you, Counsel.

MR KETAN: The next matter we mention this afternoon, Mr Commissioner, is the matter of Aiowa Oil Palm Limited. It is matters numbers 46 and ---

COMMISSIONER MIROU: 57?

40 MR KETAN: Yes, 46 and 57. 46 was mentioned yesterday and adjourned to this afternoon, sorry to this morning and those two matters were adjourned to this afternoon.

[2.42 pm]COMMISSIONER MIROU: Yes. So what is the status now? Are you ready to proceed on those two ---

MR KETAN: Yes. If I can start with matter number 46? Associate? Mr Commissioner, I will hand up a copy of the opening statement.

COMMISSIONER MIROU: Yes, thank you, Counsel.

MR KETAN: The Commission of Inquiry file on that matter is number – Mr Commissioner, we will clarify that at a later stage, maybe during the course of the opening, but if I can proceed with the opening?

COMMISSIONER MIROU: Yes, we will follow as per the listing on the ---

10 MR KETAN: Grant of the SABL. This is a direct grant of an SABL by again, the former secretary of Lands, Mr Pepi Kimas, exercising powers as delegate of the Minister for Lands and Physical Planning by Notice in the National Gazette No 31 dated Wednesday, 18 February 2009 to Aiowa Oil Palm Limited over land described as Portion 6C, Milinch of Vaira and Huri, H-u-r-i, Fourmil of Kikori, Gulf Province for a period of 99 years. The lease area is 12,341 hectares.

In relation to the SABL process, the Department of Lands and Physical Planning has submitted a copy of its file from which we note the following matters. The land investigation report was done by a Mr Alex Iva, I-v-a, the
20 provincial lands officer for Gulf Province and the report is dated 3 February 2008. The land is described to be a large flat area of forest covered land with sago, nipper palms and mangroves.

With a small population of .5 people per square kilometre and it is noted that in 60 years time the density of the population would increase to 5 or 6 people per square kilometre.

The land investigation report or LIR also indicates that the owners are not willing to sell the land but are willing to lease their land for 99 years under a Lease-Lease Back arrangement.

The regulation by the land investigation team is that the land be leased to the
30 landowner company, being Aiowa Oil Palm Limited. The LIR also has a list of all the representatives and agents appointed by landowners to sign that particular agreement and to carry out other functions and obligations in relation

to this process on their behalf. The land is situated approximately 130 kilometres North-East of Kikori District administration centre.

[2.47 pm] The LIR also contains a certificate in relation to boundaries in which the land investigation officer, Mr Iva states that he has walked the boundaries of land in the company of five named landowners. A recommendation as to alienability was signed by the Provincial Administrator, Mr Simon Peter, from 3 December 2008. Mr Peter by the way is now deceased. That recommendation is attached to the land investigation report.

10 There is however, no copy of a Certificate of Alienability signed by the Custodian of Trust Land on file. So at this stage, we do not know whether one was issued prior to the granting of the SABL.

Following the land investigation report, the instrument of lease for customary land was signed on 13 February 2009, a copy of which is on file. From that we note that the appropriate appointed landowner representatives and the agents in the land investigation report have signed and Mr Alex Iva and a Jacob Wafinduo, W-a-f-i-n-d-u-o, Manager for Customary Lands with the Department of Lands and Physical Planning, signed as witnesses. Mr Wafinduo is deceased as well, according to the information that the team has.

COMMISSIONER MIROU: Yes, that will be right.

20 MR KETAN: Mr Pepi Kimas, the then Secretary for Lands signed on behalf of the State exercising powers as a delegate of the Minister for Lands and Physical Planning. The customary landowners nominated Aiowa Oil Palm Limited as the preferred SABL grantee, and following on from there, Mr Kimas as the delegate of the Minister for Lands and Physical Planning granted the SABL by Notice published in the National Gazette as mentioned earlier and the grant SABL was issued on 28 February 2009.

30 As there is no other file from any of the other relevant government agencies, being Department of Agriculture and Livestock and PNG Forest Authority and Department of Environment and Conservation, we are unable to ascertain the status of the agriculture forestry development aspect of the SABL, which is really the project that was intended. So further submissions on that will be made in the process of the Inquiry.

The SABL appears to be one of those SABLs where the lease is granted prior to any development proposals and the securing of appropriate approvals from the

respective government agencies; Department of Agriculture and Livestock, PNG Forest Authority and Department of Environment and Conservation. But in saying that, Mr Commissioner, we do acknowledge that is not necessarily a legal requirement at the moment, although we have heard evidence from officers from those departments as to the process that should be in place in an ideal situation.

In relation to the grantee, Aiowa Oil Palm Limited is registered as a company and company number 1-64438, having been incorporated on 3 August 2008. Its registered office is at unit 41, First Heritage Centre, Waigani Drive, Hohola,
10 National Capital District.

[2.52 pm] According to the IPA records, the company has seven issued shares and the shareholders are;

- (i) Avae Era Maipua ILG of Era Maipua village, Baimuru, Gulf Province, one share;
- (ii) One share was issued to Seni-Sotau ILG of Sotau village, Baimuru, Gulf Province;
- (iii) Another was issued to Bivoro-Era Maipua ILG of Era Maipua village, Baimuru, Gulf Province;
- (iv) One share was issued to Waiamusai, Era Mapuia ILG of Era Mapuia village, Baimuru, Gulf Province;
20
- (v) Another share was issued to Ubu Aurai ILG of Aurai village, Baimuru, Gulf Province; and
- (vi) One share was issued to Wariharou, Era Mapuia ILG of Era Mapuia Village, Baimuru, Gulf Province.

The IPA records also indicate that the directors are;

- (i) Tobi Konau from Sotau village, Baimuru, Gulf Province;
- (ii) Kauri Mahua from Era Mapuia village;
- (iii) Stanley Pirika from Era Mapuia village;
- (iv) Dickson Kaua'a from Era Mapuia;
- (v) Emati Eie from Sotau village;
30
- (vi) Wesley Keni from Sotau village. All of those villages are in the Baimuru District of the Gulf Province.

The secretary is noted to be Moses Naivei, N-a-i-v-e-i of Era Mapuia village, Baimuru, Gulf Province.

Aiowa Oil Palm Limited is therefore, as we know it, a landowner company, whose shareholders are the landowner ILGs and its directors being executives of the respective ILGs.

In relation to submissions from interested persons there has been only one from a Peter Baigiri, B-a-i-g-i-r-i, who is the Chairman of the Wowobo ILG. His stating concerns covering the whole three SABLs being in relation to Wowobo Oil Palm Limited, East Waii Oil Palm Limited and Aiowa Oil Palm Limited which SABLs are three are related. Two of which we are mentioning this afternoon. The first one which is the one that I am mentioning now granted to Aiowa Oil Palm Limited.

Mr Baigiri's concern, Commissioner, that name there should be "Baigiri", not "Benjamin". Mr Baigiri's concerns are on the sublease apparently referred or issued from Wowobo Oil Palm Limited to Reko PNG Limited, the developer or development partner on this project.

Apart from this, there are no other submissions on file from which we can draw either inferences or conclusions or make any interim findings.

In view of the absence of the agro-forest forestry plans and environmental plans and approvals, the assumption is or rather, the conclusion is that this SABL has not been developed and we make that conclusion is a temporary conclusion which is an assumption rather than a conclusion based on the information we have in hand. Of course this will be varied upon the completion of further inquiries and investigations.

In relation to the issues that are indicated in this statement, we think that the following witnesses should be called;

- (i) Mr Alex Iva, the Gulf provincial lands officer to give evidence on compliance aspects of the granting of the SABL including the land investigation report and the manner and procedure.
- (ii) The Manager, Customary Land, Department of Lands and Physical Planning to give evidence on compliance aspects as well of the SABL including aspects of the Lease – lease back instrument and the execution of it.

- [2.57 pm] (iii) The directors of the grantee company in order for them to give evidence amongst others as to the status of the project; and
- (iv) Peter Baigiri, in relation to his concern that is raised.

Those are our submissions or rather opening statement on this particular matter and again, Mr Commissioner, I ask that this matter be adjourned generally to a date to be set for further hearing either in the area nearest to the project or in Waigani as the case may be.

10 COMMISSIONER MIROU: Just one aspect to that. The land investigation report reflects that the landowners were willing to lease their land for commercial purposes.

MR KETAN: Yes.

 COMMISSIONER MIROU: Maybe one, one of the issue is to ensure that those landowners or people living, actually living in that affected area, if there was any agreement or public meetings held to gauge the view of the landowners in leasing that thing, that would be one aspect to – if there was an agreement then and that maybe the case with this particular oil palm project. Another issue would be, I am of the view that maybe we can get some view from the Agriculture people about the suitability of the land for oil palm projects. These
20 are just some suggestions that I wish to make.

MR KETAN: Yes, we will note those suggestions and comments Mr Commissioner, and take it up in our further inquiry.

COMMISSIONER MIROU: Okay. Thank you. Definitely we will have this matter stood down until we fix a time for hearing on this particular SABL either in Kikori or at Waigani.

MR KETAN: Yes.

 COMMISSIONER MIROU: Depending on logistics and other administrative arrangements that you consider that is necessary to progress the Inquiry. This matter is adjourned generally and I thank you and your team for the preparation
30 of this opening address. Thank you.

MR KETAN: Mr Commissioner, the next up and that is the final matter for the day.

COMMISSIONER MIROU: 57?

MR KETAN: Yes, matter number 57. It is Commission of Inquiry file number 45, East Wai Oil Palm Limited. Mr Commissioner, just pardon me for a while while we ---

COMMISSIONER MIROU: Yes, I will ---

MR KETAN: There is a ---

COMMISSIONER MIROU: You may confer with technical people.

[3.02 pm] MR KETAN: Thank you, Mr Commissioner. This is a direct grant of an SABL by the delegate for Minister for Lands Mr Pepi Kimas exercising powers as delegate for Minister for Lands. The notes of which grants was published in National Gazette No 31 dated Wednesday, 18 February 2009 to East Wai Oil Palm Limited over Portion 5C Millinch of Baira and Auri, Fourmil of Kikori, Gulf Province for a period of 99 years. The area that the SABL covers is 21,108 hectares.

The Department of Lands file that has been produced in relation to the matter reveals some matters, some of which we mentioned as follows: The LIR was again, as in the previous case, certified by Mr Alex Siba, the Provincial Lands Officer and dated, I think the same date as Matter No 46. I think the description of land is again same as in relation to Matter No 46. The location of the land same as in Matter No 46, except in this one, this matter is – this land is located about 120 kilometres whereas the other one is 130 kilometres North-East of Kikori Station or District Administrative Centre. They would be adjacent to each other.

There is a certificate in relation to boundaries as in the other matters as well. There is a recommendation as to alienability signed by the Provincial Administrator, the late Simon Peter, dated the 3 December 2008, and as noted in matter number 46, there is no Certificate of Alienability copy on the file and we are not sure at this stage whether one was issued. Further investigations will ascertain the status of this particular matter. That is in relation to the existence or otherwise of a Certificate of Alienability.

Following the Land Investigation Report, as in the previous case, an instrument of lease-lease back was signed on 13 February 2009 and as in the previous case, a copy of that is on file. Again the same officers who sign the instrument of lease in relation to Matter No 46, signed this particular lease agreement; and again on the 20 February 2009, Mr Pepi Kimas, exercising his powers as delegate of the Minister, issued the grant in accordance with the landowners nomination which was East Wai Oil Palm Limited.

10 There is no file from the Department of Lands and Physical Planning, PNG Forest Authority or Department of Environment and Conservation and as in the previous case, we are unable to ascertain the status of the project, the agro-forest - forestry project related to the SABL. Again, we make the same comments that this particular case is – the SABL was issued prior to all these other things being in place. But again we repeat our comment that that may – that is more administrative practice and procedure, although the requirements under the Forestry Act are legal requirements but the SABL as we heard from the Department of Lands and Physical Planning and from reading Section 11 and section 102 of the Land Act without further detail empowers the Minister for Lands to grant by way of direct grants SABLs to whoever landowners nominate in the lease-lease back instrument.

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[3.07 pm] Although the lease-lease back instrument is not mentioned as such, the Act simply says that the lease may be granted to whoever the landowners agree for the SABL to be issued to.

In relation to the grantee, East Wai Oil Palm Limited, it is a registered company with a company registration No 1-64442 and was incorporated on 3 August 2008. It says the same registered office as Aiowa Oil Palm Limited, the previous matter that was mentioned and the shareholders are, according to the IPA records, there are 10 issued ordinary shares, and all of those are issues, one share to each of the ILGs from the various villages.

- 30
- (i) One to Kemodai Ebigau of the ILG representing Ebigau Village;
 - (ii) the other Avae Era Maipua of Era Maipua Village;
 - (iii) Vaio Usai of Era Maipua Village; Tapi Sotau of Era Sotau Village;
 - (iv) Gaibo Ebigau of Ebigau Village;
 - (v) Red Forova Sotau of Sotau Village;
 - (vi) Auamio Ere Maipua ILG of Ere Maipua Village;

- (vii) Bomigeno Tetewi, ILG of Tetewi Village; and
- (viii) Hauemao of Tetewi ILG of Tetewi Village.

All of these villages are in Baimuru in the Gulf Province.

All the shareholders are incorporated land groups of the landowners and the IPA records also indicate that the Directors are to be the following:

- (i) Morris Mari from Era Maipua village;
- (ii) Obu Hoiru from Teteu Village,
- (iii) Morris Namapi from Teteu Village; and
- (iv) Osibi Petero from Ebagau Village.

10 All in Baimuru in the Gulf Province.

The other directors are:

- (i) Keni from Sotau Village;
- (ii) Ali Vagi from Era Maipua village; and
- (iii) Taita Aina of Era Maipua Village.

Again all of Baimuru in the Gulf Province.

The Secretary is Sobi Osibe of Sotau Village, Baimuru, Gulf Province.

So again, East Wai Oil Palm Limited appears on the records to be a landowner company representing all the landowners and its shareholders and directors are executives of the respective ILGs from the landowning villages.

20 In relation to submissions from interested persons, again there has been no other submissions except Mr Peter Baigiri and we have referred to that in relation to the previous matter as he is concerned, being over the sublease from Wowobo Oil Palm to the development partner, Reko PNG Limited.

[3.12 pm] The status of the project is the same as the previous matter. There is no information at the moment available to us from which we can comment or ascertain or make some findings as to the status of the project. Evidence will definitely have to be called from the developers and the landowners. So for which purpose we suggest or note that the following witnesses may need to be called;

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- (i) Alex Aiva will need to be called in relation to this matter and the previous matter;

- 10
- (ii) The Manager, Customary Land, at the moment, I think, is Mr Adrian Abby but either Mr Adrian Abby or Simon Malo or whoever is the Manager or Director Customary Lands Services will need to be called;
 - (iii) and, of course, the Deputy Secretary Customary Land Services or even the Secretary;
 - (iv) Then the directors of the company will need to be called to give evidence in relation to the process leading up to the granting of the SABL and in relation to the project; the status of the project itself; and
 - (v) Again, as in the previous matter, it is Mr Peter Baigiri and other concerned interested parties and landowners which will probably be called at the hearing on site, on circuit.

So with that, Mr Commissioner, I ask that - that is our address by way of an opening statement, and if I can ask that this matter be adjourned together with the other matter generally until a date is appointed for the hearing either on site or here in NCD.

20 COMMISSIONER MIROU: Thank you, Counsel and the team for the preparation of this opening address. Certainly, there are issues that we will need to work around to answer some of the Terms of References that this Commission has been given a responsibility to. I will have this matter stood down generally to a date and time to be fixed for hearing on the substantive, including evidence that is necessary to complete this Inquiry into this particular SABL.

We thank you so much for your time this afternoon and we will adjourn this hearing to 9.30 tomorrow morning.

30 MR KETAN: Yes.

**AT 3.17 PM, THE COMMISSION OF INQUIRY INTO SABLs
ADJOURNED TO THURSDAY 29 AUGUST 2011 AT 9.30 AM.**

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