

TRANSCRIPT OF PROCEEDINGS

Commission of Inquiry into SABL
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COMMISSION OF INQUIRY INTO SABL

MR ALOIS JEREWAI

COMMISSIONER

MURUK HAUS FIRST FLOOR, MONDAY 12 DECEMBER 2011 AT 10:17
AM.

(Continued from Friday 9 December 2011)

[10:17am] COMMISSIONER JEREWAI: Thank you. Yes counsel we adjourned last week to exam the sub-leases. I have had the opportunity of examining the sub-leases in relation to Wowobo Oil Palm, East Waii Oil Palm and Aiowa Oil Palm. I understand you have been able to do the same.

MR BOI: Yes.

COMMISSIONER JEREWAI: So we can be able to deal with it and see if we can conclude these matters today so that the venue can become available for the Chief Commissioner to return with the remaining SABLs in the Central Province. Yes, Mr Boi?

MR BOI: Thank you Commissioner. If you can recall we stood the witness Goie Ebori down to afford us the opportunity to go through these. I will recall the witness Goie Ebori to continue his evidence.

COMMISSIONER JEREWAI: Yes, have him return to the witness chair. Before you commence with him because of the exact replication of the sub-lease to the respective developer in each one of these three SABLs, any general questions addressed at the contents of the sub-lease be applied as if the question relates to every one of these SABLs that will shorten the process.

MR BOI: Yes.

COMMISSIONER JEREWAI: I read it and the terms or rather provisions of the sub-leases are in exact replication of each other commencing with Wowobo, sub-lease in relation to Wowobo to Reko Limited.

MR BOI: Yes, that is so, Commissioner. I think the only exception being the rental.

COMMISSIONER JEREWAI: Correct, the rental is still the same, it is K6 per hectare.

MR BOI: Yes, it depends on the size.

COMMISSIONER JEREWAI: Yes, the total amount will be multiplied by the number of hectares and that will be the only difference otherwise it is also the same, it is K6 per hectare.

GOIE EBORI, recalled:

XN: MR BOI

[10.20a.m] Q: Alright Mr Ebori, we will continue from where we left on Friday. As you are aware we adjourned to accord us time to have a look at the sub-lease documents. Just some few questions in relation to the sub-lease. You are a signatory to the sub – sublease? The sub - sublease for Wowobo Oil Palm of which you are chairman to Reko (PNG) Limited?

A: I am the Deputy Chairman of Wowobo Oil Palm Limited.

Q: Deputy Chairman?

A: Yes.

Q: And you are a signatory to the sublease, sub - sublease of the SABL from Wowobo Oil Palm to Reko; this sublease document you are a signatory? Is that correct?

A: Yes.

Q: You read the content of the sublease before you signed it?

A: Yes, I read it.

Q: The sub - sublease was signed on 18 January 2008, is that correct? I will show you a copy of the sub – sublease.

[10:23am] You look at the second last page, all the signatures have been signed at the top of it says, dated at this day of and it is written and stamped there 18th January 2008. Is that the date you signed this sub - sublease?

A: Yes, that is correct.

Q: Where was this document signed?

A: This was signed in the village.

Q: This was signed in the village, what village, what is the name of the village?

A: Wowobo.

Q: Wowobo village?

A: Wowobo village.

Q: So the other directors who signed the sub - sublease on behalf of Wowobo Oil Palm Limited, Teim Akuki, Tugi Peter, yourself, Aiukemp Abure and Amos Muip, all these people were in the village at the same time when they signed it?

A: Yes, they were in the village.

Q: What about the company? Did they sign there or the representatives of the company who signed? Did they go to the village too?

A: Yes.

Q: You are familiar with the terms of the---

COMMISSIONER JEREWAI: Before you go to that, what about honourable Mark Maipakai, was he in the village too?

A: Yes, he was in the village.

Q: He has signed as a director on the left hand side directly under the common seal of Wowobo Oil Palm.

MR BOI: Yes, I see that Commissioner he signed as witness. Mr Ebori I have to remind you that you are under oath so you have to tell the truth, you do not have to try to cover up anything.

A: Yes, commissioner.

Q: Alright, there are directors who signed other than yourself, were they altered or made familiar with the terms of the sub-lease?

Tape #4 SABL60 – 12/12/2011 – AP

[10:26am]A: They were alert and they understood.

Q: Alerted meaning did they understand what they were signing?

A: They understood what was there and they signed.

Q: Did somebody explained to them or did they read the documents themselves.

A: Commissioner, the document was read to us with explanation and we also read it and we understood and signed.

COMMISSIONER JEREWAI: Who explained the document to you?

A: Commissioner, the document was explained to us by the developer.

Q: Who?

A: Reko PNG.

Q: No, who is the person?

A: David Sing.

Q: What is the name?

A: David Sing Rea.

Q: David Sing Rea? Is that right David Sing Rea?

A: Yes.

Q: Representative of Reko?

A: Yes.

Q: And you also read the document?

A: Yes, I also read.

MR BOI: You understood and you agreed to the terms of the sub/sub-lease?

A: Commissioner, I understood the terms and condition of the document.

COMMISSIONER JEREWAI: Alright if you did, counsel I want to take him through a number of questions.

MR BOI: Yes, commissioner.

Tape# 5 SABL60 – 12/12/2011 – AP

[10:29am]Q: If you did understand the contents of the sub-lease at that time you signed. Look at clause 4.3 of the sub-lease, now you read it for the Records, clause 4.3 of the sub-lease agreement sub-lease? Has he got a copy?

MR BOI: Yes he was given a copy.

COMMISSIONER JEREWAI: You look at the sub-lease agreement, you are looking at the wrong document you look at the sub-lease agreement. Now, you look at clause 4.3 I want you to read it out?

A: Transfer of ownership of trees. On the commencing date the ownership of the trees already planted on the premises by the tenant shall be legally transferred from the landlord to the tenant so that those trees shall become the property of the tenant and all the trees to be planted by the tenant on the premises after the commencing date shall be legally owned by and shall be the property of the tenant.

Q: Now, how did you understand this clause to mean explain in your own words now?

A: Commissioner, just allow me one minute to go through again and I will explain in my own words.

Q: Please do. Alright, it is not a long clause in your own words how did you understand that clause to mean? In your own words do not read anymore, you said you understood the content of the agreement. I want you now to tell me how you understood that clause to mean?

Tape # 6 SABL 60-12/12/2011

[10:34am] A: Commissioner clause on the document, what I understood was that the trees

will be planted by the tenant which by the tenant which will be owned by us.

Q: Sorry?

A: The trees which will be planted by the tenant will be owned by the landowners us.

Q: Well, I am afraid that clause does not say that. And I will read it to you again, it says on the commencing date the ownership of the trees already planted by the tenant shall be legally transferred from the landlord who is you to the tenant who is Reko so that those trees shall become the property of the tenant which is Reko and all trees to be planted by the tenant that is Reko on the on the premises after the commencing date shall be legally owned by and shall be the property of the tenant that is Reko. That is not you at all. You do not own these trees, whatever kind of commercial trees they are. Now I would like you to look at, open that sub-lease agreement to clause 11 which should be found on page 7. Now read both clause 11.1, and 11.2?

A: Clause 11.1 tenant to the yield up, the tenant upon the expiry or earlier termination of this lease must yield up the premises pursuant to the provision stipulate in this lease.

Q: Now, read 11.2?

A: Tenants right to remove fittings.

Q: Go on?

A: While the lease is terminated at any time including prior to or at the termination date, the tenant shall within 180 days of the above date remove all its property including plant equipment fittings stock from the premises.

Tape#7 SABL 60 – 12/12/11 – AP

[10:37am] Q: Now clause 11.1 first how did you understand in your own words what that clause mean? Counsel where are the company representatives?

MR BOI: Is it Wowobo Oil Palm or the developer?

COMMISSIONER JEREWAI: Probably developers in relation to all of the sub-lease but I believe they are the same people.

MR BOI: Yes, the developer is the same person in different names.

COMMISSIONER JEREWAI: Okay, dispatch someone and I see Lucas sitting there to have them in here. I want them present when this questions are being directed to this witness. Yes, are you able to now tell me in your own words what clause 11.1 means witness?

A: Commissioner, just allow me one minute to just go through.

Q: You have already had one minute. You have had almost three minutes. I will read it to you again and see if you get it. 11.1 says that tenant upon expiry or earlier termination of this lease must yield up yield means give up must give up the premises pursuant to the provision stipulated in this lease does it not mean that the tenant gives the property up gives it back to you. In simple terms in simple words. Does it not mean that? That means Reko will give the property back to you at the expiry of the lease or earlier termination of the lease is that right?

A: Yes, Commissioner.

Q: You agree?

A: Yes.

Q: Now clause 11.2 tenants right to remove fittings, that is Reko's right to remove fittings. How do you understand and I want you because you said you understood the agreement before you signed. Do not waste my time taking too long when you know what it means, you explain to me in your own words.

Tape #8 – SABL 60-12/12/2011 – AP

[10:40am]A: Okay, Commissioner when we leave our land to.

Q: What does this clause say, in your own words?

A: When we give our land to the developer which means that we own the land when we hold the land title.

Q: This clause talks about the developers right to remove what he has put, it had put on your land. You do not deviate from this you tell me in your own words what you understood this clause to mean when you signed you said you understood everything before you signed, is that understood you do not take me around. You explain to me in your own words what it means?

A: Commissioner, when our land was given to the developer then developer will use the land according to the agreement we made and it will always come back to us because we have got the land title.

Q: That is understood, what happens to what the developer put on your land agreement at the end of this agreement. That is what this clause is talking about now you tell me what does it say there?

A: Commissioner, what I understood all the properties will come back to the landowners.

Q: Well, it will not, you look at that clause carefully. You said you understood and counsel already reminded you – you are on oath and you will not lie. If you do I will have you charge under section 10 (A) of the Commission of Inquiry Act which carries a term of 14 years imprisonment no other penalty 14 years imprisonment at the maximum you might a bit less. You do not lie on oath. You tell me what that provision says?

A: Commissioner in relation to this question like I said the developer has to explain to us and that is how we came to understand and ends here.

Q: You said the agreement explained to you by Mr Sing and then you read it you and your fellow directors read the contents of the agreement and you understood. You agreed to the at the terms, clause 11.2 does not say what you are telling me now.

Tape #9 –SABL60 – 12/12/11 – AP

[10:43am]A: Commissioner, like I said it was read to me.

Q: You read that you read the clause. You read it you can speak good English you read it now again?

A: 11.2 tenants right to remove fittings. Where the lease is terminated at any time including prior to or at the termination date. The tenant shall within 180 days of the above date remove all property, all rather remove all property including plants equipment fittings stock from the premises.

Q: All its properties, now that is very clear and you want to give me a another explanation, does it not simply says the tenant Reko has the right to remove all its improvements in other words that covers all of these thing, it names in there. Where does that leave you and your landowner company, anything does it leave after they remove all your properties, does it leave you anything you answer?

A: No, Commissioner.

Q: Absolutely. And yet you tell me you were on oath and you sat and you just told me and told us that read and understood this agreement before you signed it. Now, let me take you to clause 9 – go back to clause 9. Now, you read clause 9 to me?

A: Assignment or notice, restriction on assignment the tenant may at its sole discretion assign or sub-lease or mortgage, part of or the whole of this lease Without the prior written consent of the landlord.

Q: Did you understand that provision, when you signed the agreement?

Tape #10 – SABL60-12/12/2011 – AP

[10:46am] Q: And I am not going to have you waste my time so I will tell you what it means because I am now convinced you did not understand a single thing about the most vital clauses of this sub-lease agreement. This clause says REKO the tenant may at its sole discretion without involving you without involving anyone else at its sole discretion assign or sub-lease or mortgage, mortgage which is a more serious arrangement that can result in complete loss of your land. REKO at its sole discretion can assign or sub-lease or mortgage the whole of this lease without the prior written consent of the landlord without you giving, without them seeking from you and you giving your okay, your consent. Do you understand that now? And if it is

mortgage to anyone and if REKO should default on the mortgage do you know what will happen to your land? The person holding the mortgage will take over your land. You lose your land that, do you understand that now?

A: Yes, Commissioner.

Q: And did you understand prior to signing this sub-lease?

A: Commissioner, like I said earlier on...

Q: You do not become a robot and you repeat the same thing, did you understand this particular provision. You did? You could not explain the earlier two provisions I read to you namely clause 4 and clause 11 and I have just read clause 9 and explain to you and you say you understand. You have absolutely no idea what you were signing, you are just like a robot and you signing your people's land away. And at the opening of your evidence you stated yourself as Chairman of this and that and all and that you have an hands on hundred percent understanding of what your responsibilities are. Now let me take you clause 17, you go to clause 17.

Tape #11SABL60 – 12/12/11 – AP

[10:49am] You read clause 17 to me?

A Review; this lease will be renewed by the parties.

Q: Clause 17?

A: Sorry Commissioner, Revenue sharing the tenant undertakes to pay one and in the following manner to the landlord fifty percent the remainder to the incorporated land groups who are shareholders of the landlord.

Q: Do you understand what the word net revenue means, did you understand that when you signed the sub-lease? Just that word, net revenue do you understand the meaning of net revenue? Alright, let me assist you it means of all the income generated by the business activities on your land after all cost have been taken away, cost of producing that income what is left after deducting the cost is net revenue. The other terminology used is gross profits before tax that is before tax gross profit. Okay I will repeat it because

obviously you do not understand and you have been lying on oath that you understood before you signed that agreement. Net revenue means out of all the income generated by the business carried on – on your land all the cost of creating that revenue is deducted and the remainder after cost is what you take as 1 percent.

Tape #12 SABL60 – 12/12/11 – AP

[10:53am] All right you understand now?

A: Yes Commissioner.

Q: Then the government will tax you on your one percent and tax the tenant REKO on their ninety-nine percent of the gross profit, do you understand now? Was that explain to you?

A: Yes Commissioner.

Q: Was that explain to you?

A: Yes.

Q: You do not lie to me, who explain that to you. I am about to have you charged, do you want to go to jail for 14 years, you do not lie to me, who explain this to you.

A: The developer REKO PNG David Sing.

COMMISSIONER JEREWAI: Counsel I am contemplating charging this man for lying on oath.

MR BOI: Commissioner, that is inherent for the...

COMMISSIONER JEREWAI: I will consider it all during the lunch break and alert the police officer assigned to the inquiry to be on stand by. What happens when all the cost all the revenue and there is no gross profit, will you receive one percent at all? Will you receive one percent there is nothing left after all the cost of generating that revenue. It is simply enough a question. Counsel is this man's burden, take him through other questions that you may have in mind.

MR BOI: Mr Ebori, you said you understood clause 9 of the sub-lease agreement, this is the one which it says that the tenant may at its sole discretion assigned or sub-lease or mortgage part of or all of the lease without the prior written consent of the landlord. You said you understood that, is that correct you understood that clause when you signed this. I just repeating what the commissioner...

A: Commissioner it read to us and we signed.

Q: It was read to you, what I am saying you confirm that you understood what it meant?

A: Like I said,

Q: Did you understand or you did not understand?

A: Commissioner it was read to us and we signed.

Q: Reading to you is different from understanding, did you understand it when it was read to you or when you read it for yourself did you understand what it meant? Did you understand it?

A: Yes.

Tape #13-SABL60 – 12/12/11 – AP

[10:59am] Q: Did you understand what it meant, you understood everything?

A: Yes, when he explain to me I understood.

Q: So you understood that you could potentially lose your people's land, you would have given those mortgage then the developer defaulted on the mortgage, you also understood that?

COMMISSIONER JEREWAI: Did you or did you not?

A: Yes.

Q: And yet you signed it?

A: Yes, commissioner.

Q: Did your people agree that they should lose their land in that kind of approaches, did they? Did they or did they not, did you consult with them? Why were you not afford separate lawyer for yourself instead of Mr Sing explain this things to you? What is wrong with you – you cannot speak anymore, is that question so difficult?

A: No, commissioner.

Q: Well, answer me, you going to keep me waiting all day?

A: Commissioner, can you repeat it again.

Q: Why can you not have a lawyer separately explain this things to you independently before you signed the agreement?

A: Commissioner that depends on when we do a discussion with the developer then

Q: It is only about the process, I am talking about the agreement you singed that potentially can lose your people's land, forget you because you do not seem to care but your people will be protected by the laws of this country. The question why could you not have had the benefit of a lawyer independently to explain the content of the sub-lease agreement prior to signing it?

A: Commissioner, because the documents were held by the development. They were holding it.

Q: Before signing it is there with you, if you did not have the benefit of a lawyer and you do not understand do not sign it. Get an explanation independently it is not from Mr Sing? This commission of inquiry is about protecting the unsuspecting ordinary Papua New Guinean villages who owned a lot of customary land. Not for up stach like you who claim to everything but nothing.

Tape #14 SABL60 – 12/12/11 – AP

[11:02am] MR BOI: Mr Ebori, I must go back you have not answered my question prior to the Commissioner's last question about you being afforded a lawyer. We asked

whether you understood and you said you understood, that you could potentially lose the land if the mortgage as a different from the mortgage. And the Commissioner asked whether your people the landowners you represent agreed to this clause, did they give you the consent to sign away their land in that manner. Did you obtain their consent?

A: The people knew about it.

COMMISSIONER JEREWAI: How did they know about it, the sub-lease? Stretch him on that I want to know how the people knew about the sub-lease.

MR BOI: Yes, how did they get to know about this, the fact that they can potentially lose their land if the developer sequence on a mortgage?

A: Commissioner for us to know this the developer has to bring all the directors, everyone of us and they read this to us.

COMMISSIONER JEREWAI: The question is about your people, not your director. The directors are not landowner, you people who own the land. Do not beat around the bush I am a Papua New Guinea, I own land just like you. I do not rely on directors to make decision about whether or not I lose customary land, is that understood?

A: Yes, Commissioner.

Q: You better answer truthfully.

MR BOI: The landowners commissioner is referring to the people in the village, the actual people who own the land whom you claim to represent. Was this man know to them?

A: No, only the directors and the executive of the Wowobo oil palm.

COMMISSIONER JEREWAI: That answer probably save you from my charge on lying on oath. That is the first time you told the truth.

MR BOI: The landowners or the people in the village were never told about this they did not know is that true?

A: When it was explained to us and when it was presented to us we as the directors representing them we already told them.

Q: Yes, but I am talking about the people in the village. They never knew this you did just said you did not explain to them, you are now backtracking?

A: We were told then when we represented them we...

Q: Yes, I am talking about the people, they did not tell them did you?

A: No.

Q: So you never obtained their consent, you never got their agreement on this clause?

A: Sorry counsel come again?

COMMISSIONER JEREWAI: I will assist counsel and explain to you. The fact that the Special Agriculture and Business Lease title had been granted to the landowner company Wowobo Oil Palm Limited does not mean Wowobo is entitle to now give away that land without further consent from the landowners.

Tape #15 SABL60 -12/12/11 – AP

[11:05am] By that I mean directors themselves do not involved in agreement of this nature when you are bound to loose the land in event that there a default on the mortgage under clause 9. If you want to enter into such provision in the sub-lease agreement you have to go back and get the consents of the landowners. Go back to Mr Iva and have him paddle the sub-lease agreement right through again through all the villages get their complete understanding and if they agree then you can enter into this sub-lease agreement. Did you go back to Mr Iva before the sub-lease was signed?

A: Commissioner the sub-lease was signed in the village.

Q: Did you go back to Mr Iva to carry out the awareness on the sub-lease before it was signed?

A: Yes.

Q: We will have Mr Iva back here and if he says no you are in trouble my friend. Get him to understand completely the implications of his answer on this one counsel.

MR BOI: Mr Ebori, Commissioner just asked you whether before signing the sub-lease between yourself or the Wowobo Oil Palm and Reko did you go back Mr Alex Iva the provincial lands officer to conduct another investigation awareness and obtained the consent of the landowners before you signed this and you are saying yes, you confirm that?

A: Commissioner, what I am saying is the lease agreement was signed in the village in front of everybody.

COMMISSIONER JEREWAI: That is not the answer to the question. Did you or did you not seek the assistance of Mr Iva to make the people aware of the sub-lease agreement before you signed it as a director?

A: Commissioner what I am...

Q: Yes or no, did you seek Mr Iva's assistance? If you did not with regard to the sub-lease you better answer honestly. Did you or did you not?

A: Commissioner, may I understand the question properly.

Q: It requires a simple yes or no, did you engaged the assistance of Mr Iva to take the sub-lease agreement and explained to your people before you signed it. Did you or did you not?

MR BOI: The Rekord will reflect that you have been very evasive and I might make an application to be charged. You have to answer this questions do not be evasive. So did you or did you not seek Mr Iva's assistance or awareness and another investigation before you signed the sub-lease.

COMMISSIONER JEREWAI: To explain the content of the sub-lease, whatever is said in the sub-lease?

Tape #16 SABL60 – 12/12/11 –AP

[11:10am] If you did not ask Mr Iva to assist you in that regard all you have to say is no. If you did all you have to say is no.

A: Commissioner, like I said.

MR BOI: This is a yes or no answer, it is a yes or no question you do not have to explain anything.

COMMISSIONER JEREWAI: Did you ask Mr Iva to assist or not?

A: Commissioner, like I said I cannot say no or yes when I do not understand.

Q: Did you ask Mr Iva to assist or not? Did you ask Mr Iva to assist or not?

A: No.

Q: And if you did not, did you yourself take the sub-lease agreement and go to your people. Village by village and explain it to them did you or did you not?

A: Sorry come again commissioner?

Q: You just said you did not asked Mr Iva to assist. Now I am asking you did you yourself or other directors not take the agreement to the villages and explain to everybody before you sign?

A: Commissioner, the...

Q: Did you take the agreement to the villages and explained to them before you signed or not? You did not asked Mr Iva to assist now I am asking did you and your directors do it or not?

A: The agreement.

Q: Did you and your directors take the agreement and explain to your people or not?

A: We did take the what down to the people and explained.

Q: When and where? You may have to make this application. When and where did you explained it, you give me the date and time and the places where you met with various village people and various villages in this lease and you explain the content of the sub-lease agreement?

A: Commissioner, the agreement was brought down to us by the development to explain.

Q: I have heard that hunted times, I do not want hear about that anymore. I am asking you if you and your directors took to your people and explained the contents to them. You already said yes. My next question is when and where?

A: Commissioner, for the previous question I do not understand the previous one that you gave it to me to be...

Q: You understood alright? You want to apply for this man to be immediately arrested. Have him arrested and charged.

MR BOI: Commissioner, the Rekord will indicate and I submit to you that this person is lying under oath. I apply for him to be charged under Section 10A of the Commission of Inquiry Act.

COMMISSIONER JEREWAI: Alright, what we will do is before we do that, I receive your application orally. He will be given until 1:30pm this afternoon to engage services of a lawyer and assist him. Are you hearing me, assist you to tell me why you should not be charged for lying on oath. I think the sub-lease agreement, well this particular one which is a replication of the other two cannot be – there is no sensible answer we can obtain from this witness. I formed a view that he had been not only evasive but he had been lying on oath and it is up to explain together with his legal representation at 1:30pm as to why he should not be arrested and charged. So decision on your application will be differed to 1:30pm this afternoon.

MR BOI: Very well, Commissioner.

COMMISSIONER JEREWAI: But I do not believe we are going to get any sense out of this witness with further questioning and the matters in the sub-lease agreement speaks for itself. Only thing I need to know is has it been tendered formerly.

MR BOI: It has not been tendered yet Commissioner. That is why at this point I will tender this, I tender the sub-lease.

COMMISSIONER JEREWAI: You need not go through the witness you can tender it from the bar table I will receive it from the bar table.

MR BOI: Very well, I formerly tender the sub-lease which this witness has been question about between Wowobo Oil Palm Limited and Reko PNG Limited dated 18th January 2008 form part of the Rekords of the inquiry into this SABL.

Tape #17 SABL60 – 12/12/11 - AP

[11:15am]COMMISSIONER JEREWAI: That will be?

MR BOI: Exhibit G

COMMISSIONER JEREWAI: That will be exhibit G, Wowobo Oil Palm portion 4C is it not?

MR BOI: Portion 4C.

COMMISSIONER JEREWAI: Milinch of Auri.

MR BOI: Milinch of Auri, Fourmil of Kikori.

COMMISSIONER JEREWAI: Fourmil of Kikori, Gulf Province.

MR BOI: Commissioner, we are off the fact the other two sub-leases for Eastwaii and Aiowa Oil Palm are very similar and since it has been all dealt with together I also formerly tender the one – sub-lease between East Waii Oil Palm Limited and River Estates Plantation Limited.

COMMISSIONER JEREWAI: Alright w e will take East Waii first I accep0t into evidence as exhibit H East Waii Oil Palm portion 5C, Milinch of Auri, fourmil of Kikori, Gulf Province.

MR BOI: The other one is for Aiowa Oil Palm Riverside Plantation Limited.

COMMISSIONER JEREWAI: Alright, that will be received as exhibit I, Aiowa Oil Palm Limited portion 6C Milinch of Auri, Fourmil Kikori Gulf Province.

Tape #18 SABL60 – 12/12/11 – AP

[11:20am] COMMISSIONER JEREWAI: Now, in relation the other two they have separate board of directors off course.

MR BOI: Yes, they have separate board of directors and we will be calling the directors. Do you wish us to call the directors for this..

COMMISSIONER JEREWAI: Alright before we proceed to them we just complete Mr Ebori. Mr Ebori, alright Mr Ebori you listen carefully counsel has made application and I have formed the view and I verily believe that you may have been lying on oath and it is on Rekord on the transcripts. And that the application is for you to be charged under section 10A of the Commission of Inquiry Act which is an offence for lying on oath before a Commission of Inquiry. You are given until 1:30pm to return with a lawyer who should represent you and who shall guide you in perhaps making an application to show why I should grant the counsels application and have you charged accordingly. You understand?

A: Yes Commissioner.

COMMISSIONER JEREWAI: Alright in the meantime he can be excuse now and he can go and look for a lawyer?

MR BOI: Yes, if the witness can be excused.

COMMISSIONER JEREWAI: Alright you are now excused and I suggest you have step down you look for a lawyer to make the submission on your behalf. And you are expected to return at 1:30pm, if you fail to return at 1:30pm in your absence we will proceed to issue direction for your arrest charge. Charge has to be laid without any further consideration, is that understood?

A: Yes, commissioner.

COMMISSIONER JEREWAI: If you return at 1:30p m it maybe then you can convince as to why convince me especially as to why I should not proceed to have you charged under that provision of the Commission of Inquiry Act. Alright you are excused. Alright, counsel?

MR BOI: Commissioner, I will call the Secretary of Wowobo Oil Palm Limited has to set some light into the issues we have been trying to address in relation to..

COMMISSIONER JEREWAI: Yes correct, it might even assist Mr Ebori.

MR BOI: Yes.

COMMISSIONER JEREWAI: Call the secretary.

MR BOI: Yes, he is on summons Mr Luke Damu.

COMMISSIONER JEREWAI: That will be witness number four in relation Wowobo. Anywhere, have him sworn.

Tape #19 SABL 60 – 12/12/11 – AP

WITNESS sworn;

XN: MR BOI

[11:25am] Q: Witness, can you for the Rekord merely say your name and your occupation.

A: My name is Luke Damu, I am the secretary to Wowobo Oil Palm.

Q: You were secretary for Wowobo Oil Palm Limited?

A: Yes.

Q: Are you a landowner as well?

A: Yes.

Q: Can you state your tribe clan and village?

A: My tribe is Gaiabodai Wowobo village.

Q: Epotai?

A: Gaiabodai.

Q: Gaiabodai?

A: Yes, G a i a b o d a i

COMMISSIONER JEREWAI: And your clan?

A: Commissioner, Gaiabodai.

Q: That is the tribe, what about your clan?

A: That is the clan, commissioner.

Q: That is the clan, Gaiabodai clan?

A: Wowobo tribe.

Q: Of the Wowobo tribe?

A: Yes.

MR BOI: Are you member of a ILG?

A: Yes,

Q: Yes, What ILG?

A: Wowobo ILG.

Q: Wowobo, alright Wowobo ILG is the shareholder of this company?

A: Yes.

Q: In your official capacity as the secretary you are very familiar with the operation of the Wowobo Oil Palm Limited?

A: Yes.

Q: This is the owner of the SABL on portion 4C Milinch Auri, Fourmil Kikori, is that so?

A: Yes.

Q: Is the company operating, operational – I mean does it have offices, employees, assets?

A: No.

Q: It is not operational?

A: It is not on operation but it is commencing of starting a business with the developer company.

Tape #20 SABL60 – 12/12/11 – AP

[11:29am] Q: Company is not operation but operating?

A: Yes.

Q: It does not any offices or anything like that?

A: Not at the moment, commissioner.

Q: Alright, if you were sitting in the hearing room and you are already familiar with what has transpired in relation to the first witness Mr Ebori. We will take you through some questions on the sub-lease you might set some light on to the situation. You confirm that there was a SABL held by your company Wowobo Oil Palm Limited over portion 4C has been sub-leased to a company called REKO PNG Limited, you confirm that?

A: Yes.

Q: Are you a signatory to the sub-lease?

A: No, commissioner.

Q: But in your capacity as secretary you were fully aware of the sub-lease?

A: Yes.

Q: You are familiar with the terms of the sub-lease?

A: Commissioner, I have not read that sub-lease because I was in Solomon Islands during that time.

COMMISSIONER JEREWAI: Sorry I did not quite get your answer, sorry Mr Domu?

A: Regarding the sub-lease I was in Solomon Islands during the signing.

Q: But you are now aware of the peculiar contents that we have drawn to Mr Ebori's attention?

A: Yes, commissioner.

Q: Counsel, sorry I will just take him through a few questions, you may sit down. And particularly clauses 4, 9, 11 and 17. Now clause 4 relates to ownership of all the tree crops planted and I take it from item 11 in the schedule that the tree crops particularly to be planted will be reforestation as well as oil palm to be developed. And clause 4 say, sorry first of all before I lead you through clause 4. Did you have an opportunity to read the sub-lease?

A: No. Commissioner.

Q: Well, you should as secretary of the landowner company you should read it.

A: Yes, I should.

MR BOI: Commissioner, I seek leave to hand the copy of the...

COMMISSIONER JEREWAI: Give him a copy.

A: That is okay I have a copy.

COMMISSIONER JEREWAI: He indicates he has a copy there.

MR BOI: You have a copy. If he does have a copy then the Commissioner should take him through. You do have a copy?

A: Yes.

COMMISSIONER JEREWAI: Yes, clause 4 says that all the tree crops planted will be owned by the tenant which is Reko PNG Limited. Now, you sat in the inquiry and you heard Mr Ebori answered to that, that he understood when explained of the contents of the sub-lease agreement by Mr Sing before signing he understood that all the tree crops planted will own to the landowners. Now, obviously he did not understand either that or he was lying?

A: Commissioner, as a villager he may not been aware the terminology used but that is why they might explained to them but they did not fully understand.

Q: What do you think about the clause, something planted on your land remains the property of the development, the tenant?

Tape #21SABL60 – 12/12/11-AP

11:34am] A: Yes, it will be affect landowners.

Q: If you say to the developer, it should be the case when they are conducting the business of oil palm, they should own the oil palm, should they not?

A: May be about fifty fifty if we were to agree, not all because we do not have the capacity financing to do ourselves. We can buy ourselves from the other places, but because they came with their capital so it was like if we were given ten percent then we should have given some sort number of plant for us to share with them.

Q: Yes, alright but again I want to oppose this. To be fair to the developer while they are conducting that business ownership of those trees should not be in question, otherwise they will not have their oil palm barns of fruits to be collected to put through their mills?

A: I agree with that.

Q: Right. The crucial the critical point however is when the lease is termited, you follow me?

A: Yes, commissioner.

Q: Either at the normal termination at the laps of the term or earlier termination because of breaches of the sub-lease agreement. That is the critical point,

now that is point when should you as the landowner not required that everything that developed on your land remain intact and be delivered to you as landowners?

A: Should normally be the case.

Q: Should normally be the case. And in fact if Mr Ebori understood the line of questioning he would not have been evasive. We have to approach this things with some level of understanding of the commercial nature of this arrangement. And clause 4 as it is it is probably fair but inadequate because when you read clause 4 against the termination clause which is clause 11 then it becomes a problem does it not?

A: Yes.

Q: So let me take you to clause 11. It say tenant's right to remove fittings; where the lease is terminated at any time, I am reading clause 11.2 Mr Damu. Where the lease terminated at any time including prior to or at the termination date the tenant shall within 180 days of above date remove all its property including plant, equipment, fitting, stock, from the premises. Now that may or may not include the removal planted trees, so this clause is very, very uncertain. It does not specify they will remove only the equipments and other properties including building and as we know in land law, buildings remain part of land and should remain when the tenant vacates land. So my question to you will be should this clause not be a little bit more detailed and carry a lot more clarity?

A: Yes, commissioner there should be a clarity on this clause.

Tape #22 SABL60 -12/12/11-AP

[11:38am]Q: Alright, now let me take you to clause 9. If you can look at clause 9 which is single clause under the heading of assignment for mortgage; and it says that tenant may had its sole discretion assign or sub-lease or mortgage part of or the whole of this lease without the prior even concern of the landlord. Now that is clause that can cause your customary land to be lost forever, you understand that. In fact I will go to the extent of stating to you that anyone properly representing the landowner should not enter into such clauses in sub-lease agreements. Do you agree Mr Kamu?

A: Yes Commissioner.

Q: In relation Wowobo Oil Palm and portion 4C, we have seen from Mr Iva the provincial lands officer that it was probably one of those far more well conducted land investigation leading to the grant of the special agriculture and business leases to your company as the landowner company. But the consent seems now to come down what your company did after he grant in terms of this sub-lease. And do you recognize what I have in my term, provision of the sub-lease which ordinarily if a person properly advised independently would not have agreed to.

A: Yes Commissioner.

Q: You agree with that?

A: I agree with that.

Q: Now I want to take you to clause 17 of the sub-lease agreement. Clause 17 is revenue sharing and it reads, the tenant undertakes to pay one percent of the net revenue generated by the tenant from the permitted use of the land in the following manner; to the landlord fifty percent – landlord is Wowobo Oil Palm Limited and the remainder to the incorporated land group who are shareholders of the landlord. That goes to the other fifty percent is divided equally among all the ILGs representing all the clans who are shareholders of the landowner company which you are secretary of. Now you understand the meaning one percent net revenue, do you not?

A: Yes.

Q: For every revenue generating business there is always a cost to it. And this terminology used here, net revenue basically means the developer will take all its costs first and what is left which in ordinary or commercial term will gross profits is then divided one percent to the landowner company to be divided as provided for again fifty percent to the landowner company and fifty percent to all the ILG shareholders. You understand that?

A: Yes.

Q: Now the danger with that kind of revenue sharing that one percent, ninety-nine percent is if you do not have complete explicit provisions stating how you first check the developer's cost of generating that revenue. And you are left in the open hand because the developer can bill in any cost in pieces, you understand that?

A: Yes Commissioner.

Q: And so there is a danger that you may never, never see in the light of that one percent, you understand that?

A: Yes.

Q: And what is your comment, now that I have pointed all of this things what is your comments with regard to this sub-lease?

Tape #23 SABL60 – 12/12/11 – AP

[11:44am]A: What I understand this was, net revenue was after all taxes that is deducted after the sales of the oil, the oil palm. Then they give us one percent that is all I understand I am not a...

Q: But I will explain, I understand this things and I will explain again. The cost generating this revenue will be taken by the developer and then you are left with what you might call gross profits. And then it is the gross profit you are going to take one percent before tax, that is before tax. Tax does not come in yet, now that is before tax. Now the same cost can be applied in determining the level of tax to be taxed on the one percent apart from the ninety-nine percent. So that is what your company is faced with the landowner are faced. And I would like to hear your comment on whether or not you consider that sufficient or not for giving up your land for nine-nine years?

A: Commissioner I think we should Reconsider that percentage as well.

Q: Yes, Mr Damu this commission of inquiry is all about the business ethic also apart from the integrity of official process in granting of the leases under this process called the special agricultural and business leases granted under section 11 of the land act. It is all about also the business ethics involving not only the landowners but the developers. That is why we need to address those things. I wish Mr Ebori understood where we were coming from when we were asking this questions. Do you understand now Mr Ebori? You need not have been evasive and got yourself into trouble. We are here to help you we are not here to knock you down. The all concept of SABLs is noble one, it is to assist you landowners to enter the market economy using your customary land. But you need to guided on it, you do not need the sings,

ches and wongs to explained this things to you. In fact you need deal with them at arm slunk and obtained independent advise that is what you should do. To avoid harsh provisions of sub-lease similar to what we are going through now. But if you come into this inquiry room and you come with a sharp mind you are not going to help yourself or your people. Mr Damu if you have the opportunity would you seriously look reviewing and amending this sub-lease agreement?

A: Yes, Commissioner.

Q: Counsel have you got any further questions from there?

MR BOI: Mr Damu just going back to the sub-lease clause 9 there which you have gone through with the Commissioner, but I am taking you there again. The tenant may at its sole discretion assign or sub-lease or mortgage out of all of this lease without the prior written concern of the landlord, you understand what it means?

Tape #24SABL60 – 12/12/11 – AP

[11:49am]Q: Clause 9 do you understand what it means?

A: Yes Commissioner.

Q: You agree that you can potentially loose the land of the SABL if this sub-I lease defaults on the mortgage, in the event it is mortgage under this clause?

A: No.

Q: What this clause means is that if the REKO Limited picks up a bank loan mortgages this lease, it allows for this happen. Now in the even that defaults on the loan the bank will take the land that is what it means, you understand that?

A: Yes.

Q: Now, you are a landowner you agree to that clause?

A: I will not agree to it.

Q: You will not agree to it. What about the clause 17 the one you ...with the commissioner on revenue sharing. Where it says the tenant will pay one percent of the net revenue, the net revenue which has been explain to you by the commissioner. Say for example there is a net revenue 100,000, the company keeps ninety-nine thousand and pays you 1,000 as a landowner do you agree to that clause?

A: No.

Q: Alright, the lease was signed on the 18th January 2008, turn to item six of the schedule, the rental is K139,80.00. Has the company been paying you the rental, has the company been paying the rent?

COMMISSIONER JEREWAI: You mean the tenant.

MR BOI: Sorry the tenant Reko, has it been paying the rent K139,80.00 payable to your company Wowobo Oil Palm?

A: Yes.

Q: It has been paid?

A: It has been paid.

Q: So you have no problem with the rent?

A: No.

Q: Now, the development clause in the sub-lease, sub, sublease.

COMMISSIONER JEREWAI: Yes, counsel just for the Rekord K6.00 per Hectare is of unimproved value, is more than reasonable because I believe the state rate is about fifty toea per Hectare.

MR BOI: Alright, item 11 of the schedule discuss the permitted use, the permitted of the sub-lease is development of the plantation crops and economic value including oil palm....purpose. How far as the developer gone to develop the lease, how far did they gone to – planting oil palm and all this is there any progress?

A: Commissioner, I just return from the environment public hearing last September, last month. The environment report has been submitted for the counsel to sit in. It was to be sit in yesterday but they adjourned to 23rd February next year. So up on the waiting of the environment counsel to give us the approval for the permit companies already – I just heard there are two activator sitting on wharf ready to be taken down.

Tape #25 SABL60 – 12/12/11 – AP

[11:52am]Q: The developer REKO is in the process of securing the approval?

A: Yes.

Q: Is there any logging going on the SABL?

A: Not in Wowobo.

Q: Not in Wowobo?

A: Not in Wowobo, it is logged out area.

COMMISSIONER JEREWAI: Can I take you to clause 8 of the sub-lease and clause 8.1 says; Warrantes the landlord hereby warrants to the tenant that while the tenant observe and perform the terms and conditions of this lease. The tenant by his officers, servants, agents, and workmen shall have the right for the purpose of carrying out the item 11 and with interruption. Item 11 by the way is the development of the oil palm and other commercial tree crops, without interruption; to enter upon the premises during the term of this lease by day or night et cetera with all its equipment for the purposes of developing the oil palm, (in my own words that part) to construct all infrastructure necessary for the purpose of the development under item 11 of the schedule. To harvest and extract logs and other plantation material from the premises. To carry out clear felling on the premises. To carry out and complete all re-forestation activities.

Under the sub-lease if you read it in conjunction with the provisions warranting tenancy without any interference from you as the landlord as clause 4.1 quite enjoyment. Under those provisions you cannot have any say as logging under sub clause 8.1 (iii) and also (iv). Those provisions read together renders that you have absolutely no say about logging as well as clear felling for the purposes of oil palm development..

A: Yes, commissioner.

Q: If commercial trees are to be harvest pursuant to this clause then if you relate it to clause 17 you will receive only one percent net revenue generated from the harvest of those trees. Apart from the ones provided by law for instances per cubic meter, specific type of species of a tree. That is the implication of this sub-lease when you link it to any possible forestry operation. That is now clear to you?

A: Yes commissioner.

Q: What is your position on that?

A: Commissioner, on the logging, I am pretty sure that the logging has been logged out, but I know there are still some log on the merit depend how may Hectares they export, it will be very less..

Q: Cubic meters were export?

A: Yes, cubic meters that the export will be less than what RH been exporting in the previous years.

Q: Under the TRP?

A: Under the TRP, commissioner.

COMMISSIONER JEREWAI: Counsel you can take it from there.

MR BOI: Thank you commissioner, I got no further question for Mr Damu.

COMMISSIONER JEREWAI: Before Mr Damu is excused, would you be any chance associated with the other two companies East Waii and Aiowa?

A: Yes, they are the subsidiary company of REKO PNG, sorry come in again.

Q: Sorry, not the developer but the other landowner companies East Waii and Aiowa oil palm?

A: Yes, I do coordination work for them as well.

Q: Alright, now you would have noted by now that the sub-lease agreements in relation to their exact replication of sub-lease we are addressing in relation to Wowobo?

A: Yes, commissioner.

Q: And as coordinator you agree that if Wowobo is to be review Wowobo sub-lease or Reko is to be reviewed, the same should take place in relation East Waii and Aiowa?

A: Yes, commissioner.

Q: Bearing in mind the comments we have made and also you attention will drawn to the problematic provisions to the sub-leases?

A: Yes, commissioner.

Tape #26 SBL60 – 12/12/11 – AP

[11:58am] MR BOI: Just for clarity, Aiowa and East Waii are you also a landowner in parts of your people's land touches all of them or just Wowobo?

A: I am not a landowner in that area.

Q: In those other areas?

A: But they are our relatives, we are sharing common boundaries.

Q: Very well, thank you commissioner. Well, commissioner that is all I do not have other questions.

COMMISSIONER JEREWAI: Alright, I will now excuse Mr Damu thank you very much for coming in. thank you for your forthright answer to the matters we have raised. We are not raising this matters just for the fun of it as Mr Ebori should understand. We have a function to carry out in this commission of inquiry and we are here to discharge it responsibly and in the interest of Papua New Guineans as well as developers if they care to raise the business ethics. So thank you very much, you may step down now Mr Damu. Counsel before we adjourn for lunch I would like to deal the application. I have somewhat made up my mind in relation to Mr Ebori? Mr Ebori could you kindly approach the witness sit. Counsel with regard to your application based on my comments relating possibility that Mr Ebori

was lying under oath, perhaps I am prepared to excuse Mr Ebori. Primarily on the basis that I think he approach the witness stand with overly deffensive position as to his own position in the landowner company and his own role in the matters that have evolved with regard to the business they wantd on their customary land. And if you will indulge with me I proposed that I will not persue to charge Mr Ebori. I think he has somewhat misguided himself and possibly with the assistance of others who did not understand the function of the commission of inquiry into this special agricultural and business leases. I will have you say what you need to say further with regard to this and then I will make my decision.

MR BOI: Very well commissioner, it is your discretion. The application was made on the basis of what has transpired in the – what has entered the Rekords. And I would be remorse not to make an application in view of what has transpired and it is the commissions call to make a decision one way or the other and that matter for the commissioner to decide.

COMMISSIONER JEREWAI: Thank you counsel. I will be as saying that I am gratefully for your application based on the comments I was beginning to draw with regard to this particular witness. However, having heard Mr Damu I am minded to excuse this witness, but I will just orally reprimand him. Mr Embori you have not been particularly truthful on oath and you got towards to getting into trouble. And I suspect it is because you did not understand what the function of this commissioner inquiry was all about. This commission of inquiry is not about stopping what you are trying to do with your people. This commissioner of inquiry is about getting some proper processes into place to ensure when you and your people engage in development of your customary land you will do so with the complete consent of your people not only on the first stage of granting the lease to your choose of the landowner company or any other entities. But there must also be fully aware and consent to any method by which they may end up loosing their land and this is what this commissioner of inquiry is concern to under its terms of reference. But I can understand how you have miss-guided yourself when you first approach this commission of inquiry.

Tape # 27 SABL60 – 12/12/11 – AP

12:05pm] COMMISSIONEER JEREWAI: But I will excuse you, but I have already reprimand you not to.....you must hold your people as blood. You understand that so we will not proceed to consider charging you, you may go about your business freely and continue to attend this commission of inquiry to its completion. You are not excused you can step down.

MR EMBORI: Thank you very much commissioner.

COMMISSINOER JEREWAI: That will leave two remaining.

MR BOI: Yes, representatives of the two remaining companies Aiowa and East Waii and the developer, we have three more witnesses to go.

COMMISSIONER JERWEWAI: Yes, we need to hear them and I think we should – are there representatives of the remaining two in inquiry room?

MR BOI: Yes, we have them.

COMMISSIONER JEREWAI: You can explain when we adjourn that we will be brief with them because the grant of the lease is apparently not a matter that is affected in anyway but we will take them through the sub-leases similar to Wowobo and complete this inquiry on all three of them.

MR BOI: Yes.

COMMISSIONER JEREWAI: So we should be shorter in the afternoon

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