



Papua New Guinea

[In the National Court of Justice]

WS 14 OF 2014

BETWEEN:

PASTOR STEVEN BAGARI & SIX OTHERS WHOSE NAMES APPEAR IN THE  
SCHEDULE 'A' TO THIS WRIT

*First Plaintiffs*

AND:

GEDI DABU - PRESIDENT OF KIWAI LOCAL LEVEL GOVERNMENT

*Second Plaintiff*

AND:

BENZES KUDI ALUSI - PRESIDENT OF ORIOMU - BITURI LOCAL LEVEL  
GOVERNMENT

*Third Plaintiff*

AND:

HON. JAMES MARAPE - MINISTER FOR FINANCE

*First Defendant*

AND:

**SADRACH HIMATA – SECRETARY for MINING**

*Second Defendant*

AND:

**INDEPENDENT STATE OF PNG**

*Third Defendant*

AND:

**OK TEDI MINING LIMITED**

*Fourth Defendant*

AND:

**PNG SUSTAINABLE DEVELOPMENT PROGRAM LTD**

*Fifth Defendant*

AND:

**OK TEDI DEVELOPMENT FOUNDATION LIMITED**

*Sixth Defendant*

AND:

**BANK SOUTH PACIFIC LIMITED**

*Seventh Defendant*

AND:

AUSTRALIA & NEW ZEALAND BANKING GROUP (PNG) LIMITED

*Eighth Defendant*

Waigani : Salika, DCJ

2014 : 23, 24 January

## RULING

*Mr S Jubi & Mr A Baniyamai* for the Plaintiffs

24<sup>th</sup> January, 2014

1. This matter was brought before the court as an urgent application for the reasons that continued dumping of mine waste and tailings into the Ok Tedi , Ok Mani and the Fly river and al its tributaries was and has been affecting the lives of people living along the said river system adversely and that the lives of the people living along the river systems were further adversely affected.
2. The second reason why this application was considered to be urgent is that funds held in the trust by a number of trust funds established for the benefit of the people of Western Province were being depleted at a fast rate and that the court intervene to stop the peoples' money being spent without their consent.
3. Upon hearing counsel for the plaintiffs the court granted the application for the application to be heard ex-parte as the court did agree the matters raised were arguable and that serious legal and constitutional issues were raised. Those issues need not be recorded in this ruling because this is a preliminary hearing and it is exparte.

4. The Notice of Motion seeks the following orders.
- i. Pursuant to O.1 r.7 of the National Court Rules, the requirements for service be dispensed with and this application be forthwith.
  - ii. Pursuant to O.4 r.45(a) of the National Court Rules, the matter be heard ex-parte.
  - iii. Pursuant to O.12 r.1 of the National Court Rules and the inherent powers of the court and s.155(4) of the Constitution, the Fourth Defendant, Ok Tedi Mining Limited (OTML) and its agents and employees be restrained from dumping anymore mine waste and tailings into the OK Mani, Ok Tedi and Fly River and all its tributaries collectively the "Ok Tedi Fly River Systems" pending the substantive hearing or until further Orders of this Court.
  - iv. Pursuant to O.9 r.7 and 12(1), O.12 r.1 of the National Court Rules, and s.155(4) of the Constitution, pending the substantive hearing or further orders of the Court, OTML and the State be ordered to:-
    - (a) Disclose to the plaintiffs and the court records of all dividends it declared and paid to shareholders from 2001 to 2013.
    - (b) Provide details and records of how it spent the Dividends it received from OTML from operations from the Ok Tedi Mine, from 2001 to 2013.
  - v. Pursuant to O.0 r.7 and 12(1), O.12 r1 of the National Court Rules, and s.155(4) of the Constitution pending the substantive hearing or further orders of the Court, OTML and the State be ordered to provide copies of all financial records transactions, Bank statements, contracts and other relevant documents pertaining to commitments made or pertaining to the use of all funds or profits or dividends declared or noted by the OTML Board in its meeting on 26<sup>th</sup> February, 2013, for the financial year 2012.

vi. Pursuant to O.9 r.7 and 12(1) O.,12 r.1 of the National Court Rules, and s.155(2) of the Constitution, pending the substantive hearing or further orders of the Court , OTML, the State, PNG Sustainable Development Program (PNGSDP) and Ok Tedi Development Foundation (OTDF) be ordered to disclose and provide copies of all financial records, transactions, Bank Statements, records of contract, list of service providers, assets, and properties pertaining to, or purchased from the use of all funds.

(a) Derived from the 2001 CMCA Agreements, and 2007 CMCA Review Agreement.

(b) Paid into, and out of the following Accounts/Funds.

No	Description of Account/Fund
1	Suki Fly Gogo BSP A/C # 1000752596
2	Suki Fly Gogo BSP A/C # 1000752596
3	Manawate Investment Fund BSP A/C # 1000752594
4	Manawate Development Fund BSP A/C # 1000752595
5	Kiwaba Development Trust BSP A/C # 1000752598
6	Kiwaba Investment Trust BSP A/C # 1000752599
7	Dudi Development Trust BSP A/C # 1999752599
8	WPPDTA 10% BSP Account No 1001093970
9	HEDURU TRUST LIMITED BANK ACCOUNTS
10	PNGSDP BANK ACCOUNTS

vii. Pursuant to Order 14, Rules 10(1) and 3) and O.12 r.1 of the National Court Rules, the inherent powers of the Court and s.155(4) of the Constitution, pending the substantive hearing or further orders of the Court, 'all funds/monies' held in the following Bank Accounts be paid by the Seventh and Eighth defendants into the National Court Registrar's Trust Account forthwith.

(a) The Western Province Community Mine Continuation Agreement (CMCA) Region Peoples Dividend Trust Account No 12767475 with the Australia and New Zealand Banking Group (PNG) Limited (ANZ Bank).

- (b) The Western Province Non Community Mine Continuation Agreement (WPPDTA-NON CMCA) Region Peoples Dividend Trust Account No 1001310415 with the Bank of South Pacific Limited.
- viii. Pursuant to O.12 r.1 of the National Court Rules, and s.155(4) of the Constitution, and inherent powers of the Court, pending the substantive hearing, the plaintiffs shall engage:-
- (a) a reputable environmental scientist or firm to conduct extensive research into the extent of environmental pollution in the Fly River within the South Fly area of the Western Province and its Social health and economic impact on the lives of the people living within the South Fly Area and a preliminary report of such research be provided to this court within three months from the date of the orders herein.
  - (b) A reputable Health specialists and/or firm of Health specialists to conduct extensive health patrols and research into the extent of the environmental impact on the lives of people living within the South Fly Area and a preliminary report of such research be provided to this Court within three Months from the date of the orders herein.
- ix. Pursuant to O.12 r.1 of the National Court Rules, and s.155(4) of the Constitution, and inherent powers of the court, pending the substantive hearing or further orders of the court, an order that the sum of K45 million promised as a one off payment from the 2006 dividend payment held in the Western Province Peoples Trust Account or such other nominated person or entity of their choice, by the Registrar of the National Court, immediately after receipt of the funds referred to under paragraph 7(a) and (b) above, to pay the cost of the scientific and health studies referred to under paragraph 8 (a) and (b) above, and to cover reasonable legal costs.
- x. Pursuant to O.12 r.1 of the National Court Rules, and s.155(4) of the Constitution, pending further orders of the Court and pending the substantive hearing, all outstanding and/or future

compensation dividend Community Mine Continuation Agreement (CMCA) Region Peoples

- xi. Dividend Trust Account No 12767475 with ANZ Bank be paid into the National Court Registrar's Trust Account.
  - xii. Pursuant O.14 r.10 (1) and (3) and O.12 r.1 of the National Court Rules and s.155(4) of the Constitution pending further Orders of the Court and pending the substantive hearing, all outstanding and/or future compensation dividend funds payable by Ok Tedi Mining Limited and or the State to the Western Province Non Community Mine Continuation Agreement (WPPDTA-NON CMCA) Region People Dividend Trust Account No. 1001310415 with the Bank of South Pacific Limited forthwith be paid into the National Court Registrars Trust Account.
  - xiii. The Cost of this Application be costs in the cause.
  - xiv. Time be abridged to the time of settlement of these orders.
  - xv. Such other orders as the court deems fit.
5. After hearing counsel I have decided to grant interim orders on item 3 of the Notice of Motion pending further orders of the court and after inter parte hearings.
  6. Pending further orders of the court and after inter parte hearing OTML and the State disclose to the plaintiffs and the court, records of all dividends it declared and paid to shareholders for 2001 to 2013 inclusive and that the State provide details and records of how it spent the dividends it received from OTML from 2001 to 2013 inclusive.

7. Item 5 of Notice of Motion is granted pending further orders of the court.

8. Item 6 of Notice of Motion is granted pending the substantive hearing of the matter.

9. Item 7 of Notice of Motion is granted pending the substantive hearing of the matter.

10. Item 8 of Notice of Motion is granted pending the substantive hearing of the matter, and in addition that :-

(a) In the South Fly Area the extensive research be done in the Benchback River area, the Wassi Kassa and Mai kasa River Area, the Pahoturi River area, the Kura River area, the Bihaturi river area, the Oriomo river area, the Bituri river area, the Suki river area, the Dudi Area of the mouth of the Fly River and the Torres Strait from East to the West.

(b) Extensive Health patrols and research into the same areas as in (a) above.

11. All accounts listed on page 4 of Notice of Motion namely Suki Fly Gogo BSP Acc # 1000752596, Suki Fly Gogo BSP Acc # 1000752596, Manawate Investment Fund BSP Acc 1000752595, Manawate Investment Fund BSP Acc 1000752595, Kiwaba Development Trust BSP Acc # 1000752598, Kiwaba Development Trust BSP Acc # 1000752599, Dudi Develop Trust BSP Acc # 1999752599 are frozen pending further orders of the Court.

12. Item 9 of Notice of Motion is granted but that the K45 million is to be paid into the National Court Trust Account pending further orders of the Court.

13. Item 10 of Notice of Motion is granted pending further orders of this Court.



14. Item 11 of Notice of Motion is granted pending further orders of the Court.

15. Costs of this application be in the cause.

16. Time is abridged to the time of settlement of these orders.

17. The orders are returnable on the 12 February 2014.

Lawyer for the Plaintiffs: *Baniyamai Lawyers*

  
24/1/14