

PAPUA NEW GUINEA  
[IN THE NATIONAL COURT OF JUSTICE]

WS NO 429 OF 2011

MANUEL GRAMGARI  
*Plaintiff*

V

STEVE CRAWFORD, GENERAL MANAGER  
*First Defendant*

PNG TROPICAL WOOD PRODUCTS  
*Second Defendant*

Madang: Cannings J  
2012: 22 November, 7 December,  
2013: 30 January

***ENVIRONMENTAL LAW – forestry – customary land – liability of person engaged in forest industry activities for alleged unlawful logging – Forestry Act – Environment Act – trespass***

The plaintiff, a customary landowner, alleged that the defendants entered his land and without authority harvested timber, built a sawmill and engaged in other forest industry activities, causing environmental harm. He commenced proceedings against them, seeking damages in respect of three causes of action: breach of the *Forestry Act* 1991, breach of the *Environment Act* 2000 and the tort of trespass to land. The defendants argued that breaches of the two statutes relied on did not give rise to a cause of action in favour of an affected landowner and in any event were unproven, and as to trespass it was not a cause of action pleaded in the statement of claim and could not be relied on and was unproven.

***Held:***

- (1) Breach of the *Forestry Act* was proven but did not give rise to a cause of action.
- (2) Breach of the *Environment Act* was proven but did not give rise to a cause of action.
- (3) Though the tort of trespass was not expressly pleaded in the statement of claim its elements were pleaded and the defendants could not reasonably say they were caught by surprise by its prosecution as a cause of action. The plaintiff proved the existence of its elements and established liability against the second defendant.

**Cases cited**

The following cases are cited in the judgment:

*Cresseri and Korowi v Halla Resources Corporation* [1985] PNGLR 294  
*Francis Mavu v Mathias Moto* (2005) N2879  
*Gesring Gabing Bob v Stettin Bay Lumber Company Ltd* (2008) N3440  
*Ibi Enei v Rimbunan Hijau Ltd* (2011) N4402  
*Kuberi Epi v Turama Forest Industries Ltd* (1998) N1761  
*Louis Medaing v Ramu Nico Management (MCC) Ltd* (2011) N4340  
*Mussau Timber Development Pty Ltd v Mangis* [1994] PNGLR 1  
*Rabaul Shipping Limited v Peter Aisi* (2006) N3173  
*Rafflin v Richard Gault Industries Pty Ltd* [1998] PNGLR 394  
*Re Fisherman's Island* [1979] PNGLR 202  
*Roderick Tovo Bibilo v Gerard Balbagara* (2008) N3291  
*Ronny Wabia v BP Exploration Co Ltd* [1998] PNGLR 8  
*The State v Lohia Sisia* [1987] PNGLR 102  
*Tigam Malewo v Keith Faulkner* (2009) SC960

## TRIAL

This was a trial on the question of liability for alleged unlawful forest industry activities on customary land and trespass on that land.

## Counsel

*W Akuani*, for the plaintiff  
*N Y Tenige*, for the defendants

## 30 January, 2013

1. **CANNINGS J:** The plaintiff Manuel Gramgari is a customary landowner in the Lower Ramu area of the Bogia District, Madang Province. He has brought a civil action claiming damages of K50 million against the defendants, PNG Tropical Wood Products and its general manager Steve Crawford, for what he says is their unlawful harvesting of timber and environmental damage on his clan's land. A trial has been conducted to determine the question of liability. The plaintiff relies on three causes of action:

- 1 Breach of the *Forestry Act* 1991;
- 2 Breach of the *Environment Act* 2000; and
- 3 The tort of trespass.

2. There are two peculiar features of the case requiring comment at the outset. First, the second defendant PNG Tropical Wood Products has been joined as a party without the word "Limited" appearing after its name. The statement of claim pleads that it is a company incorporated in Papua New Guinea and the defendants in their defence admit this, so the word "Limited" should have appeared. Its absence appears to be an oversight, which needs to be corrected, but as none of the parties have raised it as an issue I will let the matter pass for now.

3. Secondly, while the plaintiff appeared at the trial and gave oral evidence and was cross-examined and other affidavit evidence was presented to support his case, the

defendants presented no evidence. A number of people associated with the defendants swore affidavits that were filed and served but none of them attended the trial and as the plaintiffs' lawyers had given notice under the *Evidence Act* that the deponents were required for cross-examination an objection to their affidavits being admitted into evidence was upheld. This meant that challenges to the facts alleged by the plaintiff were unsupported by evidence. This did not relieve the plaintiff of the burden of proving his case but it certainly made the task less difficult.

## **1 BREACH OF THE FORESTRY ACT**

### **The plaintiff claims that:**

- (a) His clan, Agurai Eringpa, of which he is the leader, is the owner of a tract of customary land called "Asau", an area of several thousand hectares near Asau village. He represents the clan in all land matters concerning Asau, including forestry activities and a recent land mediation has settled this issue.
- (b) PNG Tropical Wood Products entered Asau in 2008 and set up a forestry camp and sawmill and then harvested and milled timber and engaged in other forest industry activities on the land until January 2011.
- (c) This was done without his consent and in accordance with an agreement between the defendants and unauthorised persons from his area including Richard Agai, Elias Kauri, Joe Ajamba and Moses Orumai.
- (d) In the course of conducting their activities PNG Tropical Wood Products damaged the environment and livelihood of the local people, in that:
  - fuel and lubricant waste and sewerage were not disposed of properly and sewerage runoff entered the river and pond, resulting in marine life disappearing;
  - soil erosion was widespread due to construction of roads (which have become waterways) and clearing of land for logging camps;
  - immature logs have been left abandoned;
  - felling of trees left gaps in the forest, resulting in shrubs growing in clearings;
  - ground plants were destroyed;
  - good quality timber has been removed;
  - B and C grade timber was burned or abandoned;
  - fish stocks in swamps have been depleted;
  - quality of food crops has dropped, eg bananas no longer bearing good fruit;

- some birds and animals have disappeared; and
- hunting grounds have been damaged.

(e) PNG Tropical Wood Products paid timber royalties of K96,884.00 in respect of logging on Asau land but of that only K18,878.00 was paid to the plaintiff, the rest was paid to unauthorised persons including Timothy Ajamba.

(f) PNG Tropical Wood Products did not have a timber permit or timber authority in respect of Asau approved or granted by the Provincial Forest Management Committee or the National Forest Board under Section 89 of the *Forestry Act*.

(g) All activities of PNG Tropical Wood Products on Asau were unlawful.

(h) PNG Tropical Wood Products is therefore liable in damages to the plaintiff.

**The defendants contest most of the above propositions and argue:**

(a) There is no evidence that the plaintiff is a clan leader or that the clan that he claims to represent is the owner of the customary land called Asau. These matters were not pleaded in the statement of claim so it is unclear if the plaintiff has commenced the proceedings on behalf of a clan or only on his own behalf. He lacks standing to bring the proceedings. There is no Local Land Court order declaring that the plaintiff or his clan is the legitimate owner of any land on which PNG Tropical Wood Products is operating. Ownership of the land is disputed and the National Court has no jurisdiction to determine ownership of customary land.

(b) PNG Tropical Wood Products commenced harvesting timber and engaged in other forest industry activities in the Akamkus Timber Area in March 2009 (not 2008), which continued until January 2011.

(c) PNG Tropical Wood Products had the consent and authority of the customary landowners to conduct forest industry activities in the Akamkus Timber Area.

(d) PNG Tropical Wood Products did not cause any unauthorised environmental damage and conducted their activities in accordance with international forest operation standards and regulations and subject to inspection by Madang-based PNG Forest Authority officers.

(e) Royalties were paid to persons the defendants reasonably believed to be authorised to receive royalties on behalf of the customary landowners.

(f) PNG Tropical Wood Products at all times operated in accordance with a timber authority granted on 27 August 2008 by the National Forest Board under the *Forestry Act*.

- (g) All activities of PNG Tropical Wood Products on the land were lawful.
- (h) PNG Tropical Wood Products is therefore not liable in damages to the plaintiff; and even if it were proven that its activities were unlawful or that unauthorised environmental damage had been caused to land belonging to the plaintiff there is no cause of action under the *Forestry Act*.

**I make the following findings in regard to the above contentious matters:**

- (a) I reject the defendants' contention that the plaintiff lacks standing. The statement of claim adequately pleads that Agurai Eringpa clan is the owner of customary land called Asau and that the plaintiff is the leader of the clan. He has properly commenced the proceedings in that capacity. It is not unclear whether the proceedings have been brought on behalf of the clan: the statement of claim has not been cast in those terms, so the plaintiff is not acting in a representative capacity and it was not necessary for the members of the clan to authorise his commencement of the proceedings (*Tigam Malewo v Keith Faulkner* (2009) SC960).

4. The plaintiff has given un-contradicted evidence that he is the leader of Agurai Eringpa clan and that it is the owner of the customary land called Asau. He has adduced evidence of a mediation conducted on 26 January 2011 by land mediators Augustine Bassi and Philip Adani of a dispute over interests in land known as "Andumar" (which I am satisfied is another name for the land known as Asau) which resulted in an agreement in the following terms:

**Agurai Eringpa clan is the legitimate owner of all portions of land under Asau Community which includes the area PNG Tropical Wood Products is harvesting and milling timber at. Manuel Gramgari is the next of kin to Erungpa Aimop and takes the traditional rights of land ownership and clan leadership of Agurai Eringpa and not Timothy Ajamba. Manuel Gramgari will be the leading negotiator and signatory to all documents relating to dealings with PNG Tropical Wood Products Ltd on behalf of Agurai Eringpa clan from now and onwards, this includes getting royalty payments from the company. The land boundary of Agurai Eringpa clan and Asau Community extends from Asau to Muni (Logging Camp). Communities of Akurai, Igamkun and Gwaia are within these land boundaries.**

5. There is documentary evidence that on 26 January 2011 the above agreement was registered with the Provincial Lands Office by District Lands Officer Steven Atusa Gari and approved by the Local Land Court Magistrate and became an order of the Local Land Court at Madang. This process was carried out under the *Land Disputes Settlement Act* Chapter 45. The correctness of the order is supported by the evidence of other local landowners – Daniel Assi, Ward Councillor of Bangapela village, Ruben Gazam of Akurai village and David Wara, Chief of Bangapela village – who have deposed in affidavits that the plaintiff is the "true landowner". There is no evidence of any challenge to the order.

6. I reject the defendants' contention that the National Court lacks jurisdiction. It is a well-established principle of land law in Papua New Guinea that the National Court has

no jurisdiction to determine disputes about ownership of customary land (*The State v Lohia Sisia* [1987] PNGLR 102, *Ronny Wabia v BP Exploration Co Ltd* [1998] PNGLR 8). However the Court in the present case is not in danger of offending against it as although the issue of who owns Asau might still be a controversial issue in the local community, the issue has for legal purposes been determined already by the order of the Madang Local Land Court of 26 January 2011. It involves no excess of jurisdiction by the National Court to give effect to orders of a Local Land Court, which is a different thing to determining disputes about ownership (*Francis Mavu v Mathias Moto* (2005) N2879, *Roderick Tovo Bibilo v Gerard Balbagara* (2008) N3291).

7. I am satisfied that the plaintiff is the leader of Agurai Eringpa clan, which is the owner of Asau land, including Andumar. He is authorised to represent the clan in all land matters concerning Asau, including forestry activities.

(b) I accept the plaintiff's evidence that PNG Tropical Wood Products commenced harvesting timber and engaging in other forest industry activities in 2008, which continued until January 2011. The critical question is: where did these activities take place? Unfortunately none of the evidence before the court included a map showing the boundaries of Asau land and how those boundaries relate to those of the Akamkus Timber Area. It is a matter of drawing reasonable inferences from the available evidence. Taking into account my assessment that the plaintiff is genuinely concerned that the defendants have entered his land without his consent and the order of the Local Land Court of 26 January 2011 which gave effect to an agreement that presupposes that PNG Tropical Wood Products was harvesting and milling timber at Asau, I conclude that PNG Tropical Wood Products was harvesting timber and engaging in other forest industry activities from 2008 to January 2011 *on Asau land*.

(c) I accept the plaintiff's evidence that he did not consent to any forest industry activities by PNG Tropical Wood Products on Asau land. PNG Tropical Wood Products appears to have negotiated with other local people when in 2008 they were planning on logging in the Lower Ramu area. They gained consent, which may have been given properly in so far as it related to land other than Asau or improperly in so far as it related to Asau land. Be that as it may I conclude that PNG Tropical Wood Products entered Asau and engaged in forest industry activities without the consent of the legitimate customary landowner representative, the plaintiff.

(d) It is difficult to make precise findings on whether PNG Tropical Wood Products caused environmental damage to Asau land and if damage was caused its nature and extent. On the one hand the plaintiff's evidence is rather general and unscientific in nature, consisting of:

- assertions in his affidavit supplemented by oral testimony and a bundle of photographs annexed to his affidavit;
- corroborative statements in the affidavits of Messrs Assi, Gazam and Wara (referred to above); and
- an affidavit by Joel Azamba of Gwaia village who deposes that he

was a signatory to the original agreement between the defendants and persons who held themselves out as authorised landowner representatives and that he worked for the defendants at one stage and observed that they breached that agreement by harvesting immature kwila trees and abusing the environment.

8. However there is no scientific evidence such as baseline studies or an objective environmental assessment of what the effects of the forestry industry activities have been. On the other hand there was no evidence to rebut the plaintiff's evidence or to support the defendants' assertion that their activities were conducted in accordance with international forest operation standards and regulations and subject to inspection by Madang-based PNG Forest Authority officers.

9. In this situation it is helpful to invoke the fact finding principle that if one side of a case presents evidence on a disputed fact and the opposing side presents no evidence to contradict it the court is obliged to make a finding of fact that is supported by that evidence unless the evidence is so incredible that it would not be reasonable to accept it (*Re Fisherman's Island* [1979] PNGLR 202, *Rabaul Shipping Limited v Peter Aisi* (2006) N3173). I consider that the plaintiff was a credible witness and I don't think his description of what has happened which is corroborated by the evidence of other witnesses is so incredible that it ought to be rejected. I find that there has been environmental damage to Asau land in that:

- fuel and lubricant waste and sewerage were not disposed of properly and sewerage runoff entered the river and pond, resulting in marine life disappearing;
  - soil erosion was widespread due to construction of roads (which have become waterways) and clearing of land for logging camps;
  - immature logs have been left abandoned;
  - felling of trees left gaps in the forest, resulting in shrubs growing in clearings;
  - ground plants were destroyed;
  - good quality timber has been removed;
  - B and C grade timber was burned or abandoned;
  - fish stocks in swamps have been depleted;
  - quality of food crops has dropped, eg bananas no longer bearing good fruit;
  - some birds and animals have disappeared; and
  - hunting grounds have been damaged.
- (e) There is no reason to reject the plaintiff's evidence about the royalties that were

paid by PNG Tropical Wood Products and to whom they were paid, and the defendants did not actually contest that part of the evidence. I find that in the period from 2008 to 2011 K96,884.00 was paid in respect of logging on Asau land but of that only K18,878.00 was paid to the plaintiff, the rest was paid to unauthorised persons.

(f) I find that PNG Tropical Wood Products did not have a timber authority granted under the *Forestry Act* that permitted entry to or harvesting timber or conducting other forest industry activities on Asau land. It appears that they were granted an authority in 2008 covering the Akamkus Timber Area but that authority did not cover Asau land.

(g) All forest industry activities undertaken by PNG Tropical Wood Products on Asau land were unauthorised and unlawful in that they were contrary to the *Forestry Act*. On the basis of the evidence presented in these proceedings (which I reiterate was uncontradicted due to the defendants' failure to produce their witnesses for cross-examination) the unlawful activities appear to have given rise to commission of offences under Sections 122(1) and 122(2)(j) of the *Forestry Act*, which are in the following terms:

**Section 122(1): A forest industry participant, and any person acting in the capacity of an employee, servant or agent of a forest industry participant, who engages in forest industry activities except under or in accordance with a timber permit, timber authority, licence, or forest clearing authority under Sections 90B or 90D held by the forest industry participant is guilty of an offence.**

**Penalty: A fine not exceeding K1,000,000.00 or imprisonment for a term not exceeding five years or both. Default penalty: A fine not exceeding K10,000.00.**

**Section 122(2)(j): A person who ... unlawfully occupies land for the purpose of carrying out forest industry operations ... is guilty of an offence.**

**Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding three years, or both.**

(h) The finding that the forest industry activities undertaken by PNG Tropical Wood Products on Asau land were unauthorised and unlawful does not force the conclusion that civil liability for damages has been established. I uphold the submission of Mr Tenige for the defendants that the *Forestry Act* does not create a cause of action that could result in an award of damages in favour of a customary landowner who establishes that his interests in land have been adversely affected. The sanctions provided by the *Forestry Act* for unlawful forestry industry activities are administrative in nature (eg suspension or cancellation of a timber permit under Sections 85 or 86) or criminal (such as the offences created by Section 122). Proof that forestry activities are unlawful would provide good grounds for an injunction to restrain the unlawful activities (*Mussau Timber Development Pty Ltd v Mangis* [1994] PNGLR 1) but that is a different thing to proving unlawfulness as the ground on which to obtain a remedy in the form of damages. The only provision of the *Forestry Act* that provides for relief of the type sought by the plaintiff is Section 127 (*award of damages*), which states:

**A person who commits an offence against this Act is, on conviction, in addition to the penalty for the offence, liable for any loss or damage caused by the offence, and the amount of such loss or damage may be—**

- (a) awarded by the court in fixing the penalty; and
- (b) recovered in the same manner as a pecuniary penalty.

10. However an award of damages is contingent on a successful criminal prosecution. There is no rule of law that says that breach of a statute gives rise to a cause of action in favour of a person affected by the breach against the person who has transgressed the statute. The statute itself must by express terms or by necessary implication create the cause of action or a right to sue. Mr Akuani for the plaintiff has failed to persuade me that the *Forestry Act* creates such a right. The first leg of the plaintiff's case fails.

## 2 BREACH OF THE ENVIRONMENT ACT

### The plaintiff claims that:

- (a) PNG Tropical Wood Products was at all times subject to the "general environmental duty" imposed on all persons by Section 7(1) (*general environmental duty*) of the *Environment Act*, which states:

**A person shall not carry out an activity that causes or is likely to cause an environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise the environmental harm.**

- (b) PNG Tropical Wood Products failed to comply with their duty by failing to take all reasonable and practicable measures to prevent or minimise environmental harm.

- (c) PNG Tropical Wood Products caused environmental harm to Asau land for which it is responsible under Section 9(1) (*responsibility for environmental harm*) of the *Environment Act*, which states: ...

**... a person who causes environmental harm is responsible for the environmental harm.**

- (d) PNG Tropical Wood Products is therefore liable in damages to the plaintiff.

### The defendants contest the above propositions by arguing:

- (a) They agree that they were subject to the general environmental duty.
- (b) There is insufficient evidence of their failure to comply with the general environmental duty.
- (c) There is insufficient evidence of environmental harm.
- (d) PNG Tropical Wood Products cannot therefore be liable in damages to the plaintiff; and even if it were proven that it had failed to comply with its general environmental duty or had caused environmental harm there is no cause of action under the *Environment Act*.

**I make the following findings:**

- (a) PNG Tropical Wood Products, because they were carrying out activities that were likely to cause environmental harm, were subject to the general environmental duty imposed by Section 7(1) of the *Environment Act* and obliged to take all reasonable and practicable measures to prevent or minimise environmental harm.
- (b) I refer to the findings above regarding the unauthorised environmental damage caused to Asau land and find that PNG Tropical Wood Products failed to comply with their general environmental duty by failing to take all reasonable and practicable measures to prevent or minimise environmental harm.
- (c) PNG Tropical Wood Products caused environmental harm to Asau land for which it is "responsible" under Section 9(1) of the *Environment Act*.
- (d) The findings that PNG Tropical Wood Products failed to comply with their general environmental duty and caused environmental harm for which they are responsible do not force the conclusion that civil liability for damages has been established. I uphold the submission of Mr Tenige that the *Environment Act* does not create a cause of action that could result in an award of damages in favour of a customary landowner who establishes that his interests in land have been adversely affected. This is made clear by Section 7(3) of the Act which states:

**Failure to comply with the general environmental duty does not constitute an offence or give rise of itself to a right to civil remedy, but compliance with the duty may be enforced by—**

- (a) an Environment Protection Order; or**
- (b) a Clean-up Order; or**
- (c) an Emergency Direction.**

11. There are also criminal sanctions under Sections 11, 12 and 13 of the *Environment Act* for persons who unlawfully cause environmental harm. As I held in *Louis Medaing v Ramu Nico Management (MCC) Ltd* (2011) N4340 breach of the general environmental duty cannot be sustained as a discrete cause of action. A plaintiff cannot obtain a civil remedy by just arguing or even proving a breach of the general environmental duty. The second leg of the plaintiff's case fails.

### **3 TORT OF TRESPASS**

**The plaintiff claims that:**

- (a) Though the statement of claim emphasises the alleged breaches of the *Forestry Act* and the *Environment Act* it can be inferred that a cause of action in trespass is pleaded.
- (b) The elements of the tort of trespass have been proven by the evidence in

that the defendants entered the plaintiff's land without his consent and harvested timber and caused environmental damage.

(c) The defendants are therefore liable in trespass and the plaintiff is entitled to damages.

**The defendants contest the above propositions by arguing:**

(a) Trespass was not pleaded and cannot be relied on to sustain a claim for damages.

(b) The elements of trespass have not been proven.

(c) As trespass was not pleaded and the elements of the tort have not been established liability has not been established and the plaintiff is not entitled to damages.

**I make the following findings:**

(a) I uphold Mr Akuani's submission that it can reasonably be inferred from the statement of claim, read as a whole, that the plaintiff is pleading a cause of action in trespass. Despite the absence of the word "trespass" the essence of the plaintiff's claim is unlawful entry by the defendants upon land that he claims is his, damage to that land and consequential pain and suffering by the plaintiff. As Bredmeyer J stated in *Cresseri and Korowi v Halla Resources Corporation* [1985] PNGLR 294 the function of pleadings is to give fair notice to a defendant of the case which has to be met and to define the issues which the court will have to decide. I agree with Mr Tenige that it would have been preferable for the statement of claim to have expressly referred to trespass and to have spelt out the elements of the cause of action more clearly but I do not think it can fairly be said that the defendants have been taken by surprise by being required to answer an allegation of trespass. The statement of claim gave fair notice of the case that the defendants had to meet and adequately defined the issues that had to be decided by the court. The defendants' defence addresses the elements of a cause of action in trespass by challenging the plaintiff's ownership of the land and the assertions that they unlawfully entered the land and interfered in the plaintiff's enjoyment of it. The claim for liability in trespass is properly before the court.

(b) As I pointed out in *Gesring Gabing Bob v Stettin Bay Lumber Company Ltd* (2008) N3440, the tort of trespass to land consists of five elements:

- the defendant entered land, either directly or indirectly;
- the defendant did so by some intentional act;
- the defendant had no lawful authority;
- the plaintiff had a right to lawful possession of the land; and
- the plaintiff's enjoyment of the land was interfered with.

12. In light of the findings of fact made above in relation to the claim for liability under the *Forestry Act* I find that the plaintiff has proven each of the elements in that:

- PNG Tropical Wood Products directly entered Asau land in the period from 2008 to 2011;
- entry on to the land was intentional as it was part of a forest industry operation aimed at harvesting timber on the land;
- PNG Tropical Wood Products lacked lawful authority to enter the land as the timber authority granted to it under the *Forestry Act* did not extend to Asau and they did not have the consent of the customary landowners, represented by the plaintiff, to enter the land;
- the plaintiff had a right to lawful possession of Asau land as his clan is the customary landowner and he is the clan representative and his rights were confirmed by the order of the Madang Local Land Court of 26 January 2011; and
- the plaintiff's enjoyment of the land was interfered with by the defendant's harvesting of timber and the consequential environmental damage done to the land.

(c) The defendants are liable in trespass and the plaintiff is entitled to damages. I point out that this is not an unprecedented decision as there have been a number of cases in which the National Court has recognised the right of customary landowners to seek damages in trespass against forest industry participants who unlawfully entered their land and harvested timber. See for example *Rafflin v Richard Gault Industries Pty Ltd* [1998] PNGLR 394, *Kuberi Epi v Turama Forest Industries Ltd* (1998) N1761 and *Ibi Enei v Rimbunan Hijau Ltd* (2011) N4402.

## CONCLUSION

13. The plaintiff has proven that breaches of the *Forestry Act* and the *Environment Act* were committed but failed to establish that such breaches gave rise to a cause of action entitling him to damages. He has, however, established a cause of action in trespass and is entitled to damages as a consequence. I will order judgment in his favour against the second defendant only as the tort of trespass has been proven to have been committed by PNG Tropical Wood Products, not by their general manager Mr Crawford. The relief granted by this judgment will be for an award of damages generally, which will be subject to an assessment of damages.

14. Costs usually follow the event but there may be an argument that that rule should not apply here as the plaintiff failed to prove two of the three causes of action relied on so I will reserve the question of costs for further argument.

## ORDER

15. The Court orders that:

(1) the plaintiff has established liability for the tort of trespass to land against the second defendant, and is entitled to damages, which shall be separately assessed;

(2) the question of costs is reserved.

*Judgment accordingly.*

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Akuani Lawyers: *Lawyers for the Plaintiff*

Warner Shand Lawyers: *Lawyers for the Defendant*