National Court of Papua New Guinea

Mayur Renewables Ltd v Mirisim [2024] PGNC 7; N10649 (22 January 2024)

N10649

PAPUA NEW GUINEA
[IN THE NATIONAL COURT OF JUSTICE]

OS (JR) 81 OF 2022

MAYUR RENEWABLES LIMITED
Plaintiff

V

THE HONOURABLE SOLAN MIRISIM (MP), MINISTER FOR FORESTS
First Defendant

AND:
FAITH BARTON, CHAIRPERSON – NATIONAL FOREST BOARD
Second Defendant

AND
PAPUA NEW GUINEA FOREST AUTHORITY
Third Defendant

Waigani: Kandakasi DCJ
2023: 16th November
2024: 22nd January

JUDICIAL REVIEW – Decision cancelling timber permits for development of carbon offset project – Enabling legislation - Forestry Act - Lacking specific provision – Objectives of Act include conservation and preservation of forests – Broad enough to cover carbon offsetting projects – Climate Change Emergency – usual approach to any other emergency applicable - Parties deciding in favour of project and agreeing to backfill the legislative void – Change in political leadership – Minister pro logging - Wrong provision used to cancel – Prescribed process not used– Plaintiff not accorded opportunity to be heard and heard before decision – Decision failing to consider Climate Change Emergency factors underpinning grant of Permits – No evidence of policy shift in favour of logging – No reasons given – Failure to take into account principles of environmental rule of law - Decision unreasonable – Review granted – Decision quashed and restraining orders issued.

ENVIRONMENT LAW – Climate Change Emergency - Urgent and immediate actions in mitigation and adaptation required – Measures often taken in an emergency applicable whether prescribed by law or not - International treaties, conventions, protocols and agreements – Environmental Rule of Law – Relevant Principles – World Declaration - Obligation to protect nature - Right to conservation, protection, and restoration of health and integrity of ecosystems - Inherent right of nature to exist, thrive, and evolve - Right of each human, present and future, to a safe, clean, healthy, and sustainable environment - Taking legal and other measures to protect and restore ecosystem integrity and to sustain and enhance the resilience of social-ecological systems - Principle of in dubio pro natura, that is to say, in cases of doubt, all matters before courts, administrative agencies, and other decision makers shall be resolved in a way most likely to favour the protection and conservation of the environment, with preference to be given to alternatives that are least harmful to the environment.

LAWYERS – Duty of Lawyers – Lawyer not to purport to represent a party without instructions – Effect of – Possible fraudulent misrepresentation - Duty to be honest and candid with clients, advise and assist clients to resolve matters promptly and avoid unnecessary litigation – Duty not to take up a position that is not support by statutory or case law and take up a position that is against relevant law - Not to purport to represent a party from whom they have no instructions – Effect of – Possible fraudulent misrepresentation.

Facts

Compelled by **Climate Change** related risks and the need to take urgent mitigation and adaptation measures, PNG through the then Minister for Forests and the PNG Forest Authority (PNGFA) granted three timber permits (Permits) to the plaintiff (Mayur). Mayur and the Defendants as well as the **Climate Change** Development Authority (CCDA) and the Conservation and Environment Protection Authority (CEPA) signed a Heads of Agreement (HOA) which included an undertaking to procure and provide all authorisation necessary for Mayur to develop the Carbon Offset Project or REDD+ Scheme and a similar undertaking was also given in a Operator's Tri-Partite Deed (OTPD) which included registration as a Forest Industry Participant (FIP). Based on those agreements, Mayur received a request by the then Chairman and Minister for Forests, whereupon it immediately paid for and applied to be registered as a FIP prior to the HOA being executed.

A former Minister of State who was pro logging on becoming Minister again, unilaterally, independently and without the involvement of the PNGFA and National Forest Board (NFB) cancelled the Permits (Decision) using wrong provisions of the *Forestry Act* (*Act)*. He did so without first giving Mayur notice, it's right to be heard, and hearing Mayur. The Minister also purported to give directions under s. 97 of the *Act*. The Decision was allegedly based on Mayur not being a FIP and the *Act* not expressly providing for the kinds of permits issued to Mayur. The Minister and the Defendants did not produce any evidence of the Minister before making the Decision, taking into account the **Climate Change** Emergency and the need for REDD+ Schemes and the full background leading to the grant of the Permits at the first

place. The Minister and the Defendants also failed to disclose what caused the Minister to arrive at his Decision unilaterally and summarily. Mayur claimed the Minister acted ultra vires the provisions of s.86 of the *Act,* failed to comply with the statutorily prescribed process, failed to give notice of intention to cancel the Permits, accord it the right to be heard and hear it before making the Decision. Also, Mayur submitted that, the Minister's decision was unreasonable and was tainted with bias. The Minister did not appear and did not instruct any lawyer to appear for him and his instructions in response to Mayur's claims. The lawyer was therefore excluded from further participating at the hearing. The 2nd Defendant (NFB) and the 3rd Defendant (PNGFA) argued that since Mayur was not a FIP and the Permits had no specific provision for them in the Act, they were illegal. That gave the Minister the power to make the Decision in the way the Decision was arrived at.

Held

1. A lawyer can only appear in Court and make representations on behalf of a party with the party concern's instructions. The absence of any instructions could amount to a lawyer acting fraudulently and misrepresenting the party concerned. In the present case, since counsel for the Minister did not seek and secure specific instructions to represent the Minister, he was precluded from appearing for and making any submissions on behalf of the Minister.
2. The Minister acted *ultra vires* his powers and failed to comply with the relevant process and procedures provided for under s. 86 of the *Act* when he purported to exercise powers under s. 97 also of the *Act* which applies to licenses issued under s. 91 and not permits under s. 73 of the *Act*. Section 86 being the correct and directly applicable provision, expressly sets out the process for a cancellation of the Permits. There was no evidence of following that prescribed process or anything close to it to arrive at the Decision.
3. The failure to follow the process deprived the Minister of duly considering: (1) the serious **Climate Change** Emergency related challenges the world is facing globally; (2) PNG's international and domestic obligations; (3) the relevant government policy related discussions; (4) and responses including: (i) the enactment of the *Environment Act 2000* (*EA2000*) as amended, the ***Climate Change*** *(Management) Act 2015* (*CC(M)A*; (ii) and the decision to take real and meaningful steps under the REDD+ Scheme.
4. The Defendants argument that Mayur was not a FIP was rejected because:
   (a) It was based on a wrong and outdated *Companies Act* provision and, in any case, Mayur was duly registered as a company under the *Companies Act 1997* (*CA1997*) and, as a foreign owned company in PNG for the purposes of conducting business lawfully in PNG.
   (b) The PNGFA and other relevant authorities undertook through the HOA and the OTPD to help procure and provide all necessary authorisation for Mayur to develop the Project which included registration as a FIP, following which Mayur received a request by the then Chairman and Minister for Forests and it immediately paid for and applied to be registered as a FIP.
   (c) By letter dated 6 January 2022, the managing director of PNGFA advised the then Minister that "all processes under the Act have been fully completed and the grant of the first ever timber permits relating to carbon trading over the Kamula Doso FMA Blocks are all in order now for your grant as attached".
   (d) The claim of Mayur not being a FIP was given belatedly after the Minister cancelled the Permits pursuant to s. 97 of the *Act* which was contrary to the legal requirement to give reasons at the time of making a decision even in cases where there is no statutory requirement to do so. Adopted and applied: *Amet v. Yama* (2010) SC1064 and *Michael Wapi v. Dr. Eric Kwa & Ors* (2022) N10362.
5. The Defendants' claim of illegality was also rejected because the decision leading to and the eventual grant of the Permits was a deliberate and well considered decision compelled by the **Climate Change** Emergency and the need for urgent actions which includes, prevention of further deforestation and preservation of what is remaining and at the same time, gain economically from taking such steps. The rejection was also based on no evidence of the Minister having considered the following:

(1) The *EA2000* and several amendments to that Act with the latest one being the *Environment (Amendment) Act 2012* were passed to domesticate international conventions, treaties, or protocols and agreements and have a comprehensive environment legislation that is more current and more modern.

(2) Successive governments and Ministers have stressed the need to preserve the nation's forest resources and to introduce carbon offset projects, comply with the REDD+ Scheme, which is for the forests to be saved from clearing and credits are issued for the carbon stored in the forests left standing.

(3) PNGFA announced in the Draft 2012 National Forest Plan that four REDD+ Scheme pilot programs were underway and one, the April Salumei Project in East Sepik was launched despite there being no specific legislative provision providing for it.

(4) The significance of the passing of the *CC(M)A* with detailed regulations yet to be promulgated.

(5) A deliberate and considered decision was made by the then Minister Schnaubelt to issue Directions for the development of an appropriate policy document, to actualize carbon offsetting projects with a legislative framework for it.

(6) The Defendants accepted and agreed with the process employed by the former occupiers of the authorities as did the Office of **Climate Change**, the relevant Provincial Governor, and the landowners.

(7) The Minister for **Climate Change** has endorsed and approved the Project and has indicated how the Project should proceed. He also specifically supported Mayur's "carbon offset" proposals.

(8) The detailed process employed by the former Minister and the holders and or occupiers of the relevant offices of the Second and Third Defendants needed to be followed.

(9) A timber permit howsoever granted can only be cancelled using the process provided for by the *Act* and employed to grant the Permits at the first place. Section 86 is the relevant prescribed process for cancellation of Timber Permits issued under s. 73, which the Minister did not use and instead used an incorrect provision, s. 97 of the *Act* which is the prescribe process for the cancellation of Licenses issued under s. 91.

(10) The objectives under s. 6 (a) and functions under s. 7 (1) (j) and (k) of the *Forestry Act* prioritised "the management, development and protection of the Nation's forest resources and environment in such a way as to conserve and renew them as an asset for succeeding generations" which was broad enough to cover the Permits issue in absence of any express exclusion of granting such permits and restricting timber permits only to logging and or cutting of trees.

6. No provision is made under s. 86 or 97 for the Minister to issue any directions but the Minister has power to issue directions under s. 47 (2) (c) (i) and s. 7 (2) of the *Act* for carrying out of the objectives of the *Act* provided for in s. 6 which amongst others, are aimed as a matter of priority at a wise use, management, development, and protection of the nation's forest resources and environment as a renewable asset in ways that will conserve and renew them as an asset for present and succeeding generations.
7. The principles of natural justice as enshrined in s. 59 of the *Constitution*, have been incorporated into the provisions of ss. 86 and 97 of the *Forestry Act* which require the Minister to give notice of an intention to cancel the Permits with the reasons, accord Mayur an opportunity to be heard, hear it and then come to a decision, which the Minister failed to do. Additionally, the process adopted was against the prescribed process and procedure under the *Act* which amounted to an unauthorized summary determination. Adopted and applied *Premdas v. The State* [1979] PNGLR 329, *Nilkare v. Ombudsman Commission of Papua New Guinea* [1999] PNGLR 333 and *Pruaitch v. Manek* (2019) SC1884.
8. The Decision was unreasonable in the Wednesbury sense because the decision maker, the Minister:

(a) acted *ultra vires* his powers and failed to comply with the prescribed process and procedure, meet the requirements of the general principles of natural justice, give notice of his intention to cancel the Permits, accord Mayur an opportunity to be heard and hear it before arriving at the Decision;

(b) failed to give any consideration to the issue of **Climate Change** Emergency, the need to conserve and or preserve the remaining rainforests of the country and encourage and allow for more REDD+ schemes or projects;

(c) failed to give any consideration to the matters that underpinned the grant of the Permits and the backfilling of the void in the legislation to allow for permits for REDD+ schemes or projects;

(d) failed to give full reasons for his Decision at the time of making the Decision;

(e) failed to disclose what trigger the summary Decision, and disclose if there has been a shift in government policy on the **Climate Change** Emergency and the need for mitigation and adaptation steps to be urgently taken;

(f) failed to take into account the interest of the land-owning groups who stood to be adversely affected by the Minister's Decision; and

(g) failed to note that there are current National Court orders prohibiting the grant of any logging permits or forest clearing licenses until the PNGFA, CCDA and CEPA appropriately and sufficiently account to the satisfaction of the Court that all such permit holders and licensees have operated and are operating within their respective environmental permits with minimal or no serious harm or damage to the environment.

9. The decision was tainted by bias which was inferred from the Minister failing to rebut claims of him being pro logging and was against any REDD+ Scheme or project, the earlier findings on the grounds of ultra vires, the way Minister went about unilaterally, non-compliance of prescribed process, failing to observe the principles of natural justice as incorporated into s. 86 and 97 of the Act and arriving a decision which no fair-minded and reasonable decision maker could have made.
10. Counsel for the Defendants failed to discharge their duty to the Court and their clients and his failure to appropriately advise the Defendants to have the matter resolved in view of the findings in each of the grounds of the review application.
11. For these reasons, the review application was granted with the Decision, the subject of the proceeding quashed, and the interim restraining orders made permanent with costs to the Plaintiff.

Cases Cited:

Church of Jesus Christ of Latter-Day Saints Inc v. Kimas (2022) SC2280
Ken Norae Mondiai & PNG Eco Forestry Forum and John Danaiya v. Wawoi Guavi Timber Company Limited and PNGFA (2007) N3120.
Saonu v. Mori (2021) N9170
Kula Oil Palm Ltd v. Tieba (2021) N9559
Morua v. China Harbour Engineering Co (PNG) Ltd (2020) N8188
Church of Jesus Christ of Latter-Day Saints Inc v. Kimas (2022) SC2280
Rose Kekedo v. Burns Philp (PNG) Ltd [1988-89] PNGLR 122
Dusava v. Justice Doherty [1999] PNGLR 419
Ombudsman Commission v. Yama [2004] SC747
Tapale v. Secretary, Department of Southern Highlands & Southern Highlands Provincial Government [1995] PNGLR 22
Port Services PNG Pty Ltd v. Gioctau Tanabi [1995] PNGLR 391
Amet v. Yama (2010) SC1064
Ombudsman Commission v. Peter Yama (2004) SC747
Mission Asiki v. Manasupe Zurenuoc & Ors (2005) SC797

William Hagahuno v. Johnson Tuke (2020) SC2018
Michael Wapi v. Dr. Eric Kwa & Ors (2022) N10362
William Hagahuno v. Johnson Tuke (2020) SC2018
Electoral Commission v. Kaku (2019) SC1866
Lee & Song Timber (PNG) Co. Ltd v. Burua [2003] PNGLR 21
Premdas v. The State [1979] PNGLR 329
Nilkare v. Ombudsman Commission of Papua New Guinea [1999] PNGLR 333
Pruaitch v. Manek (2019) SC1884
Application by Herman Joseph Leahy (2006) SC981

Other Sources Cited:

D. Smith *Judicial Review of Administrative Action (3rd Edn) 1977.*
Asian Development Bank, ***Climate Change***, *Coming Soon to a Court Near You, International* ***Climate Change*** *Legal Frameworks, December 2020 at* **https://www.adb.org/sites/default/files/publication/660321/international-climate-change-legal-frameworks**.
https://www.unep.org/climate-emergency.
Scientific American, "*Deforestation and Its Extreme Effect on Global Warming"*found at https://www.scientificamerican.com/article/deforestation-and-global-warming.
ADB, "***Climate Change***, *Coming to a Court Near You, International Legal Frameworks*", December 2020 at p. 115, found at: **https://www.adb.org/sites/default/files/publication/660321/international-climate-change-legal-frameworks.pdf**.

Counsel:

Mr. I. Shepherd, for the Plaintiff
Mr. J. Unua, for the First and Second Defendants

DECISION ON SUBSTANTIVE REVIEW

22nd January 2024

1. **KANDAKASI DCJ**: With leave granted on 14th December 2022, the Plaintiff, Mayur Renewables limited (Mayur) is seeking a reviewal of the 1st Defendant (Minister's) decision made on 27th May 2022 (Decision). That Decision decided to cancel Forest Carbon Concession and Trading Permits numbered FCCTP-01, FCCTP-02 and FCCTP-03 granted to Mayur over Kamula Doso FMA Blocks 1, 2 & 3 in Western Province of PNG (the Permits).
2. Mayur argues that the Decision of the Minister was *ultra vires* his powers under the *Forestry Act 1991* (*Forestry Act* or the *Act*), it was unreasonable and tainted with bias. Further, Mayur argues the Decision failed to comply with the relevant provisions of the *Act*, meet the requirements of natural justice and failed to consider relevant facts and circumstances. The National Forest Board (NFB) and the Papua New Guinea Forest Authority (PNGFA) are arguing to the contrary.
3. As for the Minister, Mr. Bua announced appearance for him but when questions of what the current Minister's position on this matter is, Counsel indicated he has no instructions at all from the

Minister in respect of the entire proceedings. Upon that revelation, the Court asked, Counsel by what authority or right was he appearing. He responded, he could assist the Court with submissions only on questions of law. That submission reminded me of another senior lawyer with the Solicitor General's office, Ms B. Kulumbu appearing in the matter of *Church of Jesus Christ of Latter-Day Saints Inc v. Kimas* (2022) SC2280, per Kandakasi DCJ, Polume-Kiele & Dowa JJ.

4. In the above case, at the commencement of the hearing of an appeal, Ms Kulumbu who appeared for the first to the fifth respondents, did not inform the Court of her seeking and failing to receive instructions from those parties for the purposes of the trial and later the appeal. Only during the hearing and after the Court raised the issue of what was her clients' instructions specifically on the issues of due compliance of the relevant provisions of the *Lands Act 1996* as amended, she disclosed her lack of any instructions from those parties. Speaking against that conduct, I said at [49]:

"What counsel has done here is contrary to the decision of this Court in The State v. Zacchary Gelu & Manorburn Earthmoving Limited (2003) SC716, per Amet CJ, Kapi DCJ, and Los J. There, the Court held the Solicitor General (SG) has no power to act on his or her own. Instead, the SG must act only on the specific instructions of the Attorney General (AG) in all matters where the State is a party, or a matter concerns the State."

5. As it was too late in that case to preclude Ms Kulumbu, the Court allowed her to continue to represent the parties she appeared for. In doing so I said at [55]:

For now, the decision of this Court in Manorburn precluded Ms Kulumbu or indeed anyone for and on behalf of the first to the fifth respondents appearing in Court without the specific instructions of the AG. We nevertheless allowed counsel to continue to assist with submissions on the substantive issues presented before us. This cannot and will not be repeated. In future, unless the decision in Manorburn is expressly reversed, the SG or anyone from his office cannot and will not appear as of right. They shall instead do so with evidence of being instructed in each case by the AG. Without such instructions the SG has no right of audience before any Court in purported representation of the State or any State entity."

6. Polume-Kiele J, addressed the specific issue of Counsel not receiving the instructions of her client at [58] in these terms:

"In the hearing of the appeal, Ms. Kulumbu did enter an appearance for the first to the fifth respondent. Ms. Kulumbu did not give any indication that she did in fact had received no specific instructions from the first to the fifth respondents to either oppose or defend the National Court proceedings or this Appeal."

7. The decision in the above case was delivered on 19th August 2022, well before this matter came up for hearing before me on 16th November 2023. Hence, counsel for the Minister ought to know that, without the specific instructions from that defendant, he had no legal or factual basis to appear for that party or at all. A lawyer's ticket or license to appear on behalf of a party in any Court and represent a party, is the party concern's specific instructions for the lawyer to do so in any proceedings. A lawyer to appear in Court and purport to represent a party from whom the lawyer has no instructions, would be most unprofessional and could amount to fraudulent misrepresentation.
8. Bearing the above judgment in mind, I precluded Mr. Bua from making any further representation and submissions for or on behalf of the Minister in this case.

Issues for Determination

9. Based on the submissions of the parties, the issues for this Court to consider and determine are, was the Decision of the Minister dated 27th May 2022:
   (a) ultra vires his powers under the *Forestry Act*? or
   (b) non-compliant with the relevant provisions of the *Act*? or
   (c) unreasonable in the Wednesbury sense or failed to consider relevant facts and the circumstances? or
   (d) arrived at in breach of the principles of natural justice? and or
   (e) tainted with bias or there was a reasonable apprehension of bias?

Relevant facts

10. The facts giving rise to these issues and this proceeding are not in any serious contest. For Mayur, they are in the following affidavits:
    (a) Affidavit of Paul Mulder filed 28th July 2022;
    (b) Affidavit of Paul Mulder filed 8th March 2023;
    (c) Affidavit of Paul Mulder filed 9th October 2023; and
    (d) Affidavit of Thomas Charlton filed 2nd November 2023.
11. For the NFB and the PNGFA are in the following affidavits:
    (a) Affidavit of John Mosoro filed on 22nd August 2022 in *OS 46 of 2022 (IECMS) PNGA v. Mayur Renewables PNG Ltd;*
    (b) Affidavit of Debbie Akane filed on 25th August 2022;
    (c) Affidavit of Tobias Dalid filed on 28th October 2022;
    (d) Affidavit of Rabbie Lalo filed on 18th October 2023;
    (e) Affidavit of Tobias Dalid filed on 18th October 2023; and
    (f) Affidavit of John Mosoro filed on 31st January 2023.
12. The Permits, the subject of the Decision and this proceeding, had been granted to Mayur by the then Minister, Honourable Walter Schnaubelt on 7th January 2022. That was on the recommendation of the NFB dated 6th January 2022. The Permits were for 35 years commencing on 5th January 2022 pursuant to and were issued under s. 73 of the *Forestry Act*.
13. By his letter dated 6th January 2022, to the then Minister, the Managing Director of PNGFA, described the Permits as the "first ever Timber Permits pertaining to Carbon Trading over the Kamula Doso FMA Blocks"[1] (Kamula Doso). The Managing Director also confirmed in the same letter that "All processes under the Act have been duly completed."
14. Kamula Doso comprises of 3 blocks totalling approximately 791,400 hectares in the Western Province. It has been the subject of much controversy and litigation. The area was first identified in the Provincial Forest Management Plan prepared in 1995 to 1996.[2] The area adjoins Wawoi Guavi Blocks 1, 2 & 3 TRP operated by a Rimbunan Hijau subsidiary since 1981 being Wawoi Guavi Timber Company Limited (WGTC). In about 1996 WGTC applied to PNGFA for an "Extension" of its existing TRP areas pursuant to Sections 137 and 143 of the *Forestry Act*, thereby avoiding the requirement for compliance with the extensive provisions applicable to Forest Management Areas introduced by the Act. The manner in which the extension was granted was controversial enough to attract an "own initiative" investigation by the Ombudsman Commission of Papua New Guinea (OC) in 2002 and its report is available in the OC's Annual Report of 2002.[3] The Report was extremely critical of the NFB, the Managing Director of PNGFA, the Minister for Forests and Dr Iamo who at that time was the representative of the Office of Environment and Conservation on the NFB. Amongst the recommendations of the OC were that:
    (a) That the NFB make a formal determination to revoke its decision of 4th February 1999 to award Kamula Doso as an extension to the existing Wawoi Guavi Timber rights permit and to declare that the decision is a nullity and to deal with all future project proposals relating to Kamula Doso strictly in accordance with the Act.

(b) That the NFB and the Department of Environment and Conservation ensure that the provisions of the *Environmental Planning Act 1978* are complied with the allocation and implementation of all forest development projects in the country.
(c) That all provincial forest management committees ensure that their duties under the *Act* are fully understood and strictly and diligently complied with.
(d) That Section 7 (2) of the *Act* be amended so that it expressly states that the Minister for Forests may only direct the Board on matters of policy and not on operational matters.
(e) That the NFB make clear policy guidelines on the size of the forest management area to be advertised as a stand-alone project or as an extension and publish those guidelines in the National Gazette.
(f) That the NFB undertake annual reviews of logging operations in the country to ensure that all developers are complying with their obligations under each forest management agreement and that the Board rejects future applications from those who have failed to meet their statutory, contractual, or fiduciary obligations.

15. The OC also observed that the Project had not commenced, by 2002 because of non-compliance with the *Forestry Act* and delays in preparing proper Forest Management Agreements and undertaking a proper allocation process under the *Act.*
16. Despite the OC's findings, Forest Marketing Agreements (FMAs) were executed in 1997. These are referred to in a decision of the Late Justice Lay in proceedings *Ken Norae Mondiai & PNG Eco Forestry Forum and John Danaiya v. Wawoi Guavi Timber Company Limited and PNGFA* (2007) N3120 (the *Mondiai Proceedings*). Wawoi Guavi Timber Company Limited had attempted by another proceeding to obtain an order for mandamus to force PNGFA to grant it a timber permit over Kamula Doso. It entered a Deed of Settlement with PNGFA pursuant to which the proceedings were discontinued in exchange for an undertaking by PNGFA to award a timber permit over the Kamula Doso areas to WGTC. Those proceedings ended with a deed of settlement. That settlement became the subject of the *Mondiai Proceedings* which continued to approximately 2014. Several parties were subsequently added to the proceedings including, a landowner company, namely, Tumu Timbers Development Limited, the Office of **Climate Change** and Carbon Trade as it was then named. The proceedings were seemingly abandoned and discontinued when WGTC withdrew its interest in the Kamula Doso Projects.
17. Notwithstanding the foregoing, the defendants in these proceedings rely on FMA's executed on 18th November 2020 and assert that the Kamula Doso Projects were endorsed by the NEC in 2008. This assertion is also made without any mention of this project in the relevant NEC decision, which is annexure "A2" to the Affidavit of Mr. Mosoro which is annexed to the Affidavit of Mr Akane.
18. According to the Defendants, nothing happened in the Kamula Dosso Project Area until 18th November 2020, and in March 2022. At this time, following pressure from the then Minister Solan Mirisim, PNGFA began preparing option studies for Kamula Doso Blocks 1, 2 and 3. Under these FMA's (which are the subject of OS No. 192 of 2020) about 10.5 million metric tons of logs will be removed from the Area.

Government Policy

19. From the Affidavits filed by the 1st and 2nd Defendants, Minister Mirisim who was Minister for Forests from 13th June 2019 until 24th December 2020 and again after 10th January 2022. He was pro-logging in Kamula Doso. On the other hand, Minister Schnaubelt who was Minister for Forests from 24th December 2020 to 10th January 2022 was pro carbon offset projects such as those proposed by Mayur.
20. Critically, long before international or global focus turned to preservation of the limited forest resources to mitigate against the onset of **Climate Change** related challenges globally, concerns over the exploitation of forestry landowners led to the Barnett Inquiry into the forest industry in 1987. This was followed by the intervention of the World Bank and others concerned with the depletion of the forest resources as well as corruption in the industry. That resulted in the implementation of the 1991 *Forestry Act* and the 1991 National Forest Policy.
21. The 1991 *Forestry Act* and Regulations which were introduced in 1998 attempted to address the deficiencies identified by the World Bank and others in the forest industry. For example, to obtain a

forest management agreement (FMA) (which replaced Timber Rights Purchase Agreements TRPA), a complex 34 step process was introduced and needed to be met. That included a requirement which involved the customary landowners, the Provincial Forest Management Committees, and the National Government. It also introduced transparency, project guidelines for development, the requirement for an environmental permit, a project agreement, compliance with a logging code of practice, the National Forest Plan and the Policy. It also required the FMA project to be fully sustainable.

22. The 1996 National Forest Plan contained the following mission statement:

"To promote the management and wise utilisation of the forest resources of Papua New Guinea as a renewable asset for the well-being of present and future generations."

23. To achieve that mission statement, the Forest Plan was to consider various principles which included "manage, develop and protect the Nation's Forest resources and environment in such a way as to conserve and renew them as an asset for succeeding generations." In that context, one specific objective was to collaborate with "the Department of Environment and Conservation and other agencies [to] identify priority areas that have significant environmental and ecological values which need to be protected". That Plan was to be revised in 2013. It was however abandoned.
24. In The State of the Forests of Papua New Guinea published in 2008 the authors noted:

"The longer the current forest management regime continues, the more difficult it will become to introduce changes towards ecological sustainability and to avert local and more widespread collapse".

25. Also, the authors estimated that, the volume of timber exported from PNG is only a small fraction of the tree volume that is damaged or killed by logging and that "in reality, logging kills the majority of merchantable trees, most of which are harvested, and also kills a substantial proportion of non-merchantable trees". It is well known that the reduction in carbon available from these forests is therefore reduced much more by the removal of the trees than by the logging process itself.
26. The common criticism of forest policy in PNG, which is raised by the same authors, is the lack of investment in sustainable forest management and reforestation. Very few major projects whether they be TRPA's or FMAs maintain any level of sustainability and reforestation is practically non-existent. Further, there is no investment of the revenue collected by the State in landowners' future generation funds such as those seen in the mining sector. There has also been minimal commitment to the "wise utilisation of the forest resources of Papua New Guinea as a renewable asset for the well-being of present and future generations and protect the Nation's forest resources and environment in such a way as to conserve and renew them as an asset for succeeding generations", even though recent publicly documented statements made in the media by the Prime Minister, current Forestry Minister and the PNGFA Managing Director outline a commitment for PNGFA to do so.
27. The PNGFA in October 2009, published the National Forest Development Guidelines (Forest Guidelines). In the foreword, the then Minister for Forests, Hon. Belden Namah MP stated inter alia:

"It is now time to apply provisions of the Forestry Act and National Forest Policy and improve the structure, re-shape past practices, and improve funding arrangements to successfully move the forestry sector into a new era.

With the support and endorsement of my colleague Ministers we can achieve improved management and direction in the strategic utilization of forest resources in the country.

Domestic and international focus has identified the benefits of the forest sector, highlighting a greater appreciation of their social, economic, environmental and development value. The imperative of ***climate change*** *means Papua New Guinea must prepare for the establishment of carbon trading initiatives and the sustainable utilization of the forest resources in this country.*

In this Ministerial Review of the National Forestry Development Guidelines, I commend the efforts of the PNG Forest Authority to date, who have achieved a great deal, often under difficult circumstances and with limited resources. It is my intention as Minister for Forests to establish greater in-house capacity to meet the current planning and performance demands, and the increasing and expanding roles expected in future.

I recommend to Government those provisions in the Forestry Act, for full autonomy of the PNG Forest Authority, must now be implemented. The forest sector is strategic and economically important and to meet the pending challenges and achieve improved returns to the nation, this action must now be taken.

Significant increases in resources in technology, management and administrative infrastructure are required to achieve the objectives of the Forestry and the Medium-Term Development Strategy (MTDS) of the Government.

The forest sector is a rural based activity and as such can provide opportunities to improve employment opportunities, provide service infrastructure and assist in stemming the increase in urban drift, and the social problems that are a result.

These Guidelines attempt to direct efforts towards strengthening our future economy, through better planning and utilization of the forest resources. Improved direction, management, technical support, and improved utilization level will generate better economic returns. Clear Guidelines, adequate quality staff, and adequate financial resources will enable us to fulfill the obligations and responsibilities set out in the Forestry Act and the National Forestry Policy.

This review of the NFDG has been developed by looking at the problems experienced in the past and the expected future challenges, and as Minister, I intend to review these Guidelines again in three years so that we respond to the increasing challenges in the future. The NFDG addresses new initiatives developed by this Government, in respect of ***climate change*** *and the anticipated carbon trading scheme."*

28. Specifically on **climate change**, Section F of the Forest Guidelines contains a "Change Initiatives Guideline" which identifies PNGFA as the "Key Agency" to establish "in-house programmes of forestry and **climate change** framework for action" in which private enterprise would be encouraged to participate. The long-term goals were for the "[s]uccessful development of effective forest-based strategies to contribute to the global response to current and future environmental maintenance."
29. Given this background and policy, the PNGFA in 2021 to 2022 through its Board and Minister, resolved to support projects which would encourage the sale of carbon credits to approved markets including the European Union Emissions Trading Scheme. That was 12 years after the Forest Guidelines. This approach was evidenced by the execution of the HOA, the Permits and the OTPD

which are annexed to the Affidavit of Paul Mulder sworn on 28th July 2022. Relevantly, the immediate background to the grant of the Permits in the present case is set out in the Statement and in the first Affidavit of Paul Mulder from paragraphs 1 – 9. These can be summarised as follows:

(1) As a result of the negotiations referred to by Paul Mulder, the Plaintiff entered the HOA with the PNGFA as represented by Minister Schnaubelt for the establishment of the carbon offset project in the Kamula Doso areas and other areas. The HOA is Annexure "D" to Paul Mulder's Affidavit.

(2) By clause 3.1 of the HOA, Minister Schnaubelt undertook to provide or procure the provision of any authorisation from all relevant and necessary authorities such as the **Climate Change** Development Authority (CCDA) and all necessary permits to allow Mayur to develop and implement the projects referred to in the HOA being the carbon offset projects.

(3) On the 23rd of December 2021 the Plaintiff entered the OTPD with a landowner company and PNGFA.

(4) On the 23rd of December 2021 the Plaintiff received a letter from the Managing Director of PNGFA stating "We look forward to the successful development of the Kamula Doso FMA Project" that is the carbon offset project.

(5) By Clause 3 of the OTPD the PNGFA agreed to ensure that the Plaintiff was granted all authorisations necessary to carry out the Project.

(6) Pursuant to Section 7 (2) of the *Forestry Act*, the Minister issued ministerial directions to the 2nd Defendant noting that these directions concern primarily Forest Policy and were provided to fill the void in the legislation noting the following:

(a) Both National Forest Service (NFS) and NFB are established by the *Forestry Act* and are part of the PNGFA.

(b) The objectives of PNGFA include:

(i) the management, development and protection of the Nation's forest resources and environment in such a way as to conserve and renew them as an asset for succeeding generations; and

(ii) the maximization of PNG participation in the wise use and development of the forest resources as a renewable asset.

(c) The functions of PNGFA amongst others, are to:

(i) provide advice to the Minister on forest policies and legislation pertaining to forestry matters; and

(ii) prepare and review the National Forest Plan (Forest Plan) and recommend it to the National Executive Council (NEC)for approval; and

(iii) select operators and negotiate conditions on which timber permits, timber authorities, large scale agricultural or other land use and road forest clearing authorities and licences may be granted in accordance with the provisions of the *Forestry Act*.

(d) The NFB includes the respective Departmental Heads responsible for planning and implementation and environmental matters or their nominees (who are to be not lesser than the level of an Assistant Secretary in the Public Service) appointed by the NEC.

(e) Pursuant to Division 3 of the *Forestry Act*, Forest Management Committees (PFMC) are established in each Province, and they include members of the NFS, local community leaders and Provincial Government representatives.

(f) Whilst the *Act* contemplates responsible management, sustainable standards, and acknowledgement of **climate change** related and or implied responsibilities, it does not outline prescriptively carbon projects which necessitated a Direction has been adopted as a transitional measure pending legislative change to invoke the Forest Plans ongoing stated intention to "address reforestation and, establishment of permanent forest estate, carbon trading, downstream processing, research and others". The Direction sets out a process by which the parties to the HOA can achieve what is contemplated by the HOA. The provisions of the *Act* relating to resource allocation have been adapted and consideration given to the need for transparency and consultation with all stakeholders. The process identified in the

Direction culminates in the issuance of the Permits over the project area which is also subject to review and compliance requirements as is the case in any other timber permit issued under the *Act*.
(g) The main areas for legislative reform are related to issues of deforestation, degradation, non-compliance, carbon trading, carbon offsetting for PNG carbon intensive down-stream processing, establishment of permanent forest estates etc were identified during the preparation of the documentation for the Mayur Project.
(h) The complex 34 step process which was introduced in the 1991 legislation for Forest Management Agreement (FMA's) is inappropriate for alternate land use including carbon trading and management projects. Amendments to the *Forestry Act* are required to accommodate the processes set out in the Direction and amendments to the Regulations to include appropriate forms for applications and permits etc.
(i) The amendments should reflect the following:

(i) The NFB and NFS to identify existing surveyed logging areas suitable for carbon trading and management projects (preferably FMA areas).

(ii) All proposals shall be treated as a forest development proposal and be treated in the same manner as an application under section 87(4) of the *Act* on the basis that the annual cut will be less than 5000 m3. That is, consideration be given to the grant of a Timber Permit without a feasibility study, guidelines, advertisement, or the other procedures set out in section 61 to 65 inclusive and will be non-transferrable.

(iii) In lieu of the provisions section 66 to section 73 the following procedure for the treatment of the proposals shall apply:

1. upon receipt of a proposal the NFB shall submit the proposal to PFMC for its evaluation;
2. upon receipt of a proposal, the PFMC shall prepare a report of its evaluation including a recommendation to the NFB;
3. upon receipt of the PFMC's recommendation the NFB shall, if the proposal makes adequate provision for all aspects of the proposed Project, execute the Project Agreement on behalf of the PNGFA and recommend to the Minister to grant a Timber Permit to the applicant;
4. where the Minister accepts a recommendation from the NFB he shall execute a Timber Permit.

(j) The changes or additions to the legislation will not only enable clarity between PNGFA and CCDA but also enable any existing carbon trading and management agreements to dovetail into such arrangements.
(k) The legislative changes suggested will save, novate, grandfather, and continue to honour any existing carbon trading and management agreements on foot, initiated and implemented in full or part by the NFB through prior Ministerial Directions.

(7) On 7th January 2022, Minister Schnaubelt executed the Timber Permits.

(8) Subsequently, the Plaintiff entered into a Memorandum of Agreement (MOA) with the Minister for Conservation and **Climate Change** Authority.[4]

30. After all the above, Minister Mirisim was reappointed Minister of Forests on 10th January 2022. That caused a change of heart and agenda. The steps taken by the Minister and PNGFA at the Minister's behest are set out in detail from paragraphs 9 (h) to (i) and 10 – 25 of the Affidavit of John Mosoro which is annexed to the Affidavit of Akane. In short, the Defendants say logging has been approved by a NEC decision number 182/2008 made in 2006. Earlier in November 2020, when Minister Mirisim was Minister for Forests, he issued a directive to quickly facilitate logging operations in Kamula Doso. That changed to carbon offset or project when Minister Schnaubelt became Minister for Forests.

31. According to Mosoro, Minister Mirisim issued directions under s.7 of the *Act* to "cancel the Permits issued to the Plaintiff". He says the Direction is annexed to his Affidavit as Annexure "I". But what is annexed is the Minister's Decision to cancel purportedly under s.97 of the Act. That

document is undated. Whether the alleged direction exists and whether the direction was a government policy or was an operational matter, I will consider and determine that under the issue of *ultra vires*, and non-compliance of applicable statutory requirements.

32. Additionally, Mosoro, now asserts that Mayur was not a registered Forest Industry Participant (FIP). His reason for saying that is contained in Annexure "J" where he says, "the single shareholder listed was not registered in PNG and cannot act as a single shareholder". Neither the instrument cancelling the Permits, nor the letter from the then managing director of NFB, Ms Faith Barton,[5] comment on the matters underpinning the approval of the Permits for the first ever REDD+ Scheme and give reasons for the cancellations. The letter only mentions Mayur not being a registered FIP being the basis for the cancellation of the Permits.
33. Carbon Offset Projects require the support and approval of the Conservation and Environment Protection Authority (CEPA) and CCDA as acknowledged in the HOA. The CCDA granted approval for the Project. A copy of the approval is annexure "H" to the Affidavit of Mulder. The approvals refer to s 53, 56 and s 90 of the ***Climate Change*** *(Management) Act 2015* (*CC(M)A*). However, that *Act* has no prescribed Regulations or forms that can be used or adopted for projects such as the one proposed by the Mayur. Hence, the forms and agreements created by PNGFA and Mayur were thus approved and endorsed by CCDA.
34. Recent amendments to the *CC(M)A*, passed by Parliament on 11th October 2023, makes provision for the preparation of Regulation relating to applications for permits to trade in carbon offsets and related. The Minister for Environment, Conservation and **Climate Change**, and the Acting Managing Director of the CCDA in a letter co-signed by them on 19th September 2023[6] reaffirm their support of the Kamula Doso and two other carbon offsetting projects in the country and those project's developers, Mayur. They also reaffirm their MOA commitments and undertake to ensure "the other involved Authorities and/or Departments are aligned and support/guide the Project Proponent to navigate and achieve each activity." Finally, they stated:

"The Marape Rosso Government is committed to provide the leadership and political direction to ensure that we translate the noble intentions underpinning the ***climate change*** *situation into tangible results on the ground. The Government recognizes that sea level raise, (sic) fast deteriorating critical infrastructure, food and water insecurity, malaria and vector diseases, among other* ***climate change*** *issues, are happening in our rural and urban communities. Ultimately, our objective is to alleviate the plight of our people facing these emerging threats."*

35. Given the serious existential risk and challenges posed by the **Climate Change** Emergency caused mainly by human activity including, deforestation, both the executive and judicial arms of government in PNG have been and are continuing to address the challenges and have taken several steps. Through the executive arm of government, PNG has at the highest, signed up to several important international conventions, agreements and or protocols dealing with the environment, its sound and sustainable use, management, and preservation for future generations.
36. The key international treaties or conventions include the *United Nations Framework Convention on* ***Climate Change*** (UNFCCC), with 197 countries signing up to it, including PNG, as of October 2020. That convention entered into force on 21st March 1994. The convention is a framework treaty for intergovernmental efforts to address **Climate Change**. It aims to curb the average global temperature increase and its impacts which, by the time the treaty was adopted, were already inevitable.
37. The other key convention is the *Paris Agreement on* ***Climate Change*** reached at the UN **Climate Change** Conference (COP21) in Paris, France, on 12th December 2015. That agreement came within the UNFCCC framework. It was negotiated, adopted by consensus and went into force on 4th November 2016. As of October 2020, it had 195 signatories and 189 parties. That includes PNG and the European Union. That convention is:

"... the pinnacle of international law on ***climate change****. It orchestrates global climate action over the coming decades. Countries agreed to limit global warming to well below 2ºC above preindustrial*

times, closer to 1.5ºC."[7]

38. Some of the international treaty or convention obligations have now been domesticated in several legislations in PNG. The principle one is the *Environment Act 2000* as amended. As I noted in *Ginson Saonu v. Wera Mori & Ors* (2021) N9170:

"... these international developments influenced the legislature in PNG to enact the EA2000. It follows therefore that, as a sensible and responsible global citizen, PNG through the Minister and the MD of CEPA, should stay guided by the objects and purpose of the EA2000 and ensure that their decisions in respect of any EIS [Environment Impact Statement] or EIA [Environment Impact Assessment] or responding to any activity that has an impact on the environment, deliver on the stated objects and purposes of the EA2000 as outline in its preamble and ss. 4 - 6. This is necessitated and or dictated by the challenge that are facing our country and the world today due to ***climate change*** *and its many adverse consequences."*

39. On the judiciary's part, are its published decisions like the ones in *Kula Oil Palm Ltd v. Tieba* (2021) N9559, *Saonu v. Mori* (supra) and *Morua v. China Harbour Engineering Co (PNG) Ltd* (2020) N8188. Additionally, given the pressing need to preserve and maintain what is remaining of the country's and hence the world's rainforests, the National Court made orders restraining and prohibiting the grant of any further timber permits for logging, or clearing of any forest areas and other permits or licenses until the PNGFA properly accounts for the operation of the current permits, authorities, or licenses meeting the requirements under the *Environment Act 2000* as amended as well as global or international requirements, based on the relevant and applicable international conventions and agreements such as the *Paris Climate Agreement.* The orders in question were first out of proceedings under reference OS No. 09 of 2020 – *Robin Kami & Ors v. Asset Meriah PNG limited, Umboi Timber Investment Limited & PNGFA & Ors* made on 07th and 08th June 2021, relevantly reads:

"4. Based on the evidence per the affidavit of Robin Kami sworn on 30th October 2020 and filed on 02nd November 2021, the Court invokes the provisions of s. 57 (1) of the Constitution and orders an immediate ban on any further logging under Umboi Timber Rights Purchase Area number 1327 which included Umboi Block 1 and all other Timber Rights Purchase Area (TRPAs) throughout the country until the Papua New Guinea (PNG) National Forest Authority (PNGFA), the Conservation and Environment Protection Authority (CEPA), the ***Climate Change*** *Development Authority (CCDA), their respective boards or superiors and the PNG Customs Services provide the following:*

(a) By the PNG National Forest Authority and its Board, a detailed report of all logging permits or forest clearance authorities or such other authorities or instruments issued to allow for logging or clearance of forest areas to date with a detailed account of the total:

(1) forest areas logged;

(2) number of trees chopped down;

(3) number of trees exported;

(4) number of trees or logs wasted;

(5) impacts of each of the logging operations on the immediate and surrounding area and communities and their respective biodiversity.

(6) number of any damage caused to the environment and what if any particular remedial actions have been taken, the result of those and if not, why not, when will the appropriate remedial action be taken and by whom;

(7) effectiveness of the remedial actions referred to in 4 (a) (6) above and their current status;

(8) number of alternative programs such as carbon trade, being developed and implemented that are environmentally friendly and allows for the customary landowners and the country to economically make use of biodiversity within the forests and the environment generally;

(9) amount of sustainable or other tangible development and the value of improvements delivered to the customary landowners in each of the TRPAs against the benefits package that may have been agreed to and provided for in the logging and marketing agreement (LMAs) or such other agreements and arrangements;

(10) gains in development and other economic benefits the customary landowners and the country stands to gain from continued logging and deforestation as opposed to developing alternative sustainable and environmentally friendly economic programs such as carbon trade that could be developed and pursued and thereby meaningfully contribute to domestic and global efforts toward mitigating ***climate change*** *related risks.*

(b) By the Conservation and Environment Protection Authority (CEPA) a detailed report of all Environmental Permits issued over each and every TRPA and or FCAs or such authorities or instruments issued to allow for logging or forest clearance areas to date with a detailed account of the total number of:

(1) Environmental impact plans approved, and permits granted with their conditions for each logging or deforestation and other activities having a significant impact on the immediate and surrounding environment, per TRPAs, all logging, deforestation areas and other such activities:

(2) Monitoring, evaluations and compliance reviews carried out by the authority or any other for each permit issued, all logging and deforestation activities to date;

(3) Breaches if any, of the conditions of any environmental permit or deforestation activity in each case with the steps that have been taken and the current position on the steps taken;

(4) Logging or deforestation activities that have impacted against the immediate and surrounding environment, communities, bio-diversities, and the steps that have been taken to mitigate or remedy any adverse impact; and

(5) Prosecutions if any, undertaken and or brought against any breaches of any environmental plans and their related permits with any of their conditions or otherwise any breaches of the Environment Act 2000 and the Environment Contaminants Act 1978, their predecessor and any other relevant and other applicable Acts of Parliament or any relevant international best industry practices.

(c) By the ***Climate Change*** *Development Authority (CCDA) a detailed report of all climate changing or adversely impacting activity in the logging and deforestation activities area and elsewhere carried out in each and every TRPA and or FCAs areas and other activities such as mining and other constructions throughout the country to date with a detailed account of the total number of:*

(1) Recorded and investigated human activity including logging and deforestation throughout PNG that is being carried out by corporations, individuals and public authorities that are having an adverse impact on the environment and adversely contributing to ***climate change****;*

(2) Environmental plans approved, and permits granted with their conditions for each logging or deforestation, mining construction or other activities having an impact on the immediate and surrounding environment, per TRPAs and all logging and deforestation areas, mining, construction and others;

(3) Any monitoring, evaluations and compliance reviews carried out by the authority or any other for each logging and deforestation, mining, and other construction activities to date:

(4) Breaches if any of the conditions of any environmental permit or deforestation activities, any mining, constructions and other activities in each case with the steps taken and the current position on the steps

taken;

(5) Logging or deforestation, mining, constructions, and other activities that have impacted against the immediate and surround environment, communities and biodiversity and the steps that have been taken to mitigate or remedy any adverse impact;

(6) Prosecutions if any, undertaken and or brought against anyone for any breach of their conditions or otherwise any breaches of the Environment Act 2000 and Environment Contaminants Act 1978, their predecessors and any other relevant and applicable Act of Parliament or any relevant international best industry practise: and

(7) Recorded and investigated ***climate change*** *related activities such as rising sea levels and natural disasters affecting the livelihood and lives of individuals, group of persons or communities in PNG and recommended action with the actions taken and whether the risk presented has been resolved or are being addressed adequately.*

..

7. *Any logging company or any person adversely affected by any of the foregoing orders may formally apply for a variation or a set aside of these orders or a particular term of these orders on 3 clear days' notice and such an application may be filed at the Registry in Waigani.*

...

10. *Pursuant to Order 5 Rule 8(1) of the National Court Rules and Section 57 of the Constitution, each of the Authorities referred to in term 4 of these orders are ordered to be joined as parties to this proceeding as the Third, Fourth, Fifth and Sixth Defendants respectively.*
11. *The Minister for Environment an Conservation Honourable Wera Mori, the Minister for Forestry and the Independent State of Papua New Guinea are also joined as the Seventh, Eighth and Ninth Defendants respectively.*

....

14. *Upon the next return of the matter, the Plaintiff and the First and Second Defendants are required to provide evidence as to compliance or noncompliance of the foregoing orders for appropriate enforcement orders to issue against any defaulting party."*
40. On 10th March 2021, the National Court made orders in OS No.192 of 2020 - *Wisa Susapie & Tumu Timbers v. PNGFA*, effectively in terms similar to those made in OS No. 09 of 2020. Copies of the relevant orders in OS No. 192 of 2020 which concerned the Kamula Doso Project Area, are annexed as annexure "B" to the 1st Affidavit of Paul Mulder. The orders read in relevant parts:

"3. Pursuant to Section 57 (1) of the Constitution the court orders the Second Defendant [Papua New Guinea Forest Authority] to provide a detailed report of what if any steps it has taken to take note of ***climate change****, greenhouse effect, international treaties and protocols and for the country to gain from carbon trade as opposed to logging as an alternative source of income for the landowners and more so the State.*

4. *Until there is complete satisfaction of the last preceding order, the National Forest Authority is forthwith restraint from issuing any further logging permits.*
5. *If the Second Defendants oppose a continuity of the last preceding order, it shall meet the requirements for it to provide the report and appear in Court to show cause as to why that order should be lifted."*
41. When the matter next went before the Court on 14th July 2022, the proceeding was adjourned to 28th October 2022 with the following orders:

"2. The other related proceeding under reference OS. No. 09 of 2020 – Aset Meriah PNG Ltd, Umboi Timber Investments Ltd & PNG Forest Authority & Ors v. Robin Kami & Ors [parties wrongly

positioned, the Defendants were the Plaintiffs, and the Plaintiffs were the Defendants] will also come on that date together with this matter.

3. *All previous orders made in this case in so far as they remain outstanding are extended for full compliance by the parties by 01 August 2022.*
4. *All Counsels appearing in this, and the related proceedings shall carefully study any response, report and documentation that may have been filed by the original Defendants or those joined by the Court orders and come prepared to assist the Court as to the proper compliance or noncompliance of the previous orders.*
5. *The parties are required to carefully study the Environment Act, Pollution Act, or such other legislation that concerns the environment, the various international agreements or conventions concerning pollution and the environment and come prepared to inform the Court whether the relevant authorities in Papua New Guinea are taking all of the correct steps or some of the steps only and what improvements are required or none at all and what steps must be taken to ensure compliance of the Environment Act and achieve the stated objective of that legislation."*

42. All these orders were made prior to the date of the Minister's Decision. The orders were in force when that Decision was made. Those orders are still in force as confirmed by the Orders made by this Court in this proceeding on 13th July 2023, which relevantly reads:

"1. The Court reaffirms its earlier orders in a separate proceeding under OS 9 of 2020 referenced in this proceeding that the Papua New Guinea Forest Authority issues no more logging Permits or Forest Clearance Authorities (FCAs) until orders for fully accounting for all logging and operations carried out under all prior logging permits, inspection of, compliance of the various conditions and the satisfactory report that the operations have been within the permitted limits and there has been no breach.

2. *The restrain on further logging shall continue to run until the PNG Forest Authority, Department of Environment and Conservation,* ***Climate Change*** *Development Authority, Conservation and Environment Protection Authority ... and the relevant authorities are able to satisfy this Court and the Nation that further logging is permissible and that carbon offset projects are not warranted in the country.*
3. *The Department of Environment and Conservation and the two authorities referred to in term 2 of these orders shall also table before this Court on the next return date, the current position on carbon offset trading, rules and regulations surrounding that and the interplay between the PNG Forest Authority and themselves as to conservation, as to management, as to permits and discharge of PNG's domestic and international obligations on the various conventions, agreements and or protocols.*
4. *Upon the provision of the various reports referred to in the preceding orders, the Court will order all parties to meet, discuss the issues presented and come up with resolutions including what steps the Independent State of Papua New Guinea should be taking and the relevant authorities should be doing on the issues of* ***climate change****, environmental protection and preservation of whatever is remaining in the country's rainforests."*

Consideration – Principles governing judicial review

43. I now turn to a consideration and determination of the issues presented in the case present case. But before dealing specifically with each of the issues, I first remind myself of the principles governing judicial review. The starting foundation for judicial review is s.155(3) and (4) of the *Constitution* and the provisions of Order 16 of the *National Court Rules* 1984 as amended (NCR). It is now settled law that, judicial review proceedings are exclusively governed by Order 16 of the NCR: See *Church of Jesus Christ of Latter-Day Saints Inc v Kimas* (2022) SC2280, per Kandakasi DCJ, Polume-Kiele and Dowa JJ. It is also settled law that, judicial review is discretionary and is available to correct errors in the decision-making process: See *Rose Kekedo v. Burns Philp (PNG) Ltd* [1988-89] PNGLR 122. Further, it is trite law as represented by the decision in *Dusava v. Justice Doherty* [1999] PNGLR 419, per Sakora J (as he then was) that the underlying principles in judicial review proceedings are whether the decision maker has:

(1) acted in excess of jurisdiction.

(2) committed an error of law on the face of the record.

(3) failed to comply with principles of natural justice.

(4) acted unreasonably or the *Wednesbury Principle* – where power is exercised in an unreasonable manner.

Consideration and determination of the Issues

(1) (i) Ultra Vires – First Issue

44. Now turning to the specific issues in the present case, I will deal firstly with the issue of *ultra vires*. In respect of that, firstly, Mayur through its learned Counsel Mr. Shepherd, takes issue with Mosoro's claim that the Minister issued a direction for the cancellation of the Permits. But the evidence does not disclose the direction. Instead, it discloses an instrument cancelling the Permits. [8] Secondly, Mayur submits the Minister's decision dated 27th May 2022 is in "Form 182" issued pursuant to s. 97 of the *Act* and the *Forestry Regulation*, s. 184. But s. 97 relates to the cancellation of licences issued under s. 91 of the *Act* as does *Regulation* s.184. Additionally, the prescribed "Form 182" is titled "Cancellation of Licence". Thirdly, Mayur submits the documents which were issued to it by the then Minister for Forests on 7th January 2022 were titled "Timber Permits"[9] and were issued pursuant to s. 73 of the *Act* and *Regulation* s.118. The prescribed form used was "Form 115". That being the case, Mayur submits, permits issued under s. 73 of the *Act* can only be cancelled pursuant to the provisions of s. 86 of the *Act* and not s. 97 of the *Act*. Finally, Mayur submits, the Minister had no jurisdiction to purportedly cancel the Permits. He therefore acted *ultra vires* his powers. Proceeding on that basis, Mayur, submits the first ground of *ultra vires* is made out. Hence it must be upheld.
45. The Minister has not instructed any lawyer to represent him and put his side of the story to the allegations and or the claims against him. Hence, there is no response from the Minister. The 2nd and 3rd Defendants (the Defendants), through their learned Counsel, Mr Unua, in effect agree with Mayur's submission that s.86 of the *Act* deals with the cancellation of timber permits that are issued under section 73 of the *Act*. They then submit that timber permits are defined under s. 2 of the *Act* as being a timber permit issued under sections 73 and 75 of the *Act*.
46. Further, the NFB and the PNGFA argue that there is no provision under the *Forestry Act* for a grant of forest carbon concession trading permits, or the Permits in the present case. Their grants were under the precarious hand of the then Minister and a mistaken application of the provisions of the *Act*. The correct authority to issue carbon concession permits in terms of jurisdiction would be the CCDA which is governed by the *CC(M)(Amendment) Act*.
47. Additionally, the NFB and PNGFA refer to the decisions in *Ombudsman Commission v. Yama* (2004) SC747 (Injia DCJ, Sakora & Sawong JJ), *Tapale v. Secretary, Department of Southern Highlands & Southern Highlands Provincial Government* [1995] PNGLR 22, per Woods J and *Port Services PNG Pty Ltd v. Gioctau Tanabi* [1995] PNGLR 391 (per Sheehan J), to reiterate the points that:

    (1) judicial review is confined to reviewing the process by which a decision is reached and not the decision made.
    (2) as a discretionary matter, judicial review is not about interfering and or monitoring or overseeing the actions of statutory authorities or departmental heads directly empowered and responsible for their own sphere other than in exceptional circumstances.
48. Further, they submit that Mayur was not a FIP under the provisions of the *Forestry Act* from the start to even be considered and given a Permit. They then submit, Mayur, a multimillion-dollar foreign company failed to comply with the relevant laws in relation to foreign entities operating business in the country and have now also transgressed against the laws in relation to carbon permits. Finally, they submit, the then Minister pressured them into entertaining Mayur's

application and have it issued with the Permits. Furthermore, they submit that Mayur had the financial resources to properly conduct prior due diligence to ensure they entered into agreements or projects that are sanctioned by law, which Mayur failed to do.

(1) (ii) Consideration and Decision on First Issue – Ultra vires

49. The Defendants submissions centred around ss. 73, 75 and 86 of the *Forestry Act*, in fact support Mayur's arguments. The rest of their submissions with respect, fail to respond to the points being made by Mayur. In short, central to Mayur's arguments is that the Minister acted *ultra vires* the prescribed process and procedure by s. 86, when the Minister instead, employed s. 97 to cancel the Permits which were issued under s. 73 of the *Act* and not under s. 91 to render s. 97 relevant and applicable. Obviously, the Minister used the wrong provision to cancel the Permits. In any case, neither under ss. 86 (or 97) nor under any other provision of the *Ac*t, the Minister had any power to act unilaterally and independently of the NFB and the managing director of the PNGFA.
50. On the issue of Mayur not being FIP, the Permits not provided for by the *Act* and the former Minister exerting pressure, I find and accept Mayur's submissions that there are several problems attending these aspects. Firstly, the Defendants base their submissions on a refusal of an application by Mayur for FIP. That rejection was premised on "the single shareholder listed was not registered in PNG and cannot act as a single shareholder."[10] That was despite the change in the *Companies Act*. The *Companies Act Chp. 146* was repealed and replaced by the *Companies Act 1997* (*CA1997*). Section 11 of the current 1997 Act provides for a company to have a minimum of one shareholder and a minimum of one director to be registered in PNG. No corresponding change was made to the *Forestry Act* when the *CA1997* was passed. Additionally, the evidence reveals Mayur is duly registered as a company under the *CA1997* and is also registered as a foreign owned company in PNG for the purposes of conducting businesses lawfully in PNG. The reason given by Mosoro is therefore flawed.
51. Secondly, the PNGFA's undertakings in the HOA included an undertaking to procure and provide any authorisation necessary for Mayur to develop the Carbon Offset Project[11] and a similar undertaking was also given in the OTPD[12] including registration as FIP. In respect of that, Mayur received a request by the then Chairman and Minister prior to the signing of the HOA on 23rd September 2021, to apply for registration as a FIP. Mayur immediately paid for and applied to register as a FIP. Given the law as noted above, there was no impediment for a grant of the application. Hence, the reason given for a refusal of the application was flawed.
52. Thirdly, Mosoro's letter dated 6th January 2022, Annexure 'G" to the Affidavit of Mulder, advised the then Minister that, "all processes under the *Act* have been fully completed and the grant of the first ever timber permits relating to carbon trading over the Kamula Doso FMA Blocks are all in order now for your grant as attached". So, what has happened to cause the change resulting in the cancellation? Mosoro or the Minister or any of the Defendants provide no explanation for this.
53. Fourthly, the reasons now given for the cancellation, namely, the purported direction, Mayur not being registered as a FIP, the *Act* not providing for the Permits and the former Minister exerting pressure were not given in the decision cancelling the Permits. In other words, they were not provided at the time of making the Decision until after the Minister purportedly cancelled the permits pursuant to s. 97 of the *Act*. The duty to provide reasons for any decision at the time of a decision maker making his decision or its pronouncement, is well established in our jurisdiction. The decision of their Honours, Salika DCJ (as he then was) and Batari J in their joint judgment in *Amet v. Yama* (2010) SC1064[13] state that succinctly in these terms at [12]:

."

"A pronouncement by the court falling short of given reasons will inevitably lead to a conclusion that the court or a decision making authority has no good reason for the decision made

54. The obligation to give reasons for a decision by the Courts or an administrative decision maker is inherent and must be discharged at the time of pronouncing the decision, even in cases where the relevant statute is silent on it or fails to provide for it. I made that point clear in my recent decision in the matter of *Michael Wapi v. Dr. Eric Kwa & Ors* (2022) N10362, in the following terms at [33]:

"As can be seen from these provisions, there is no provision expressly requiring the Land Board and or the Head of State to give reasons. It is however trite law that every public decision maker is obliged to give reasons for their decision. The decision in Electoral Commission v Bernard Kaku (2019) SC1866 is one of the latest decisions on point. There, in the context of a review of a decision by the National Court in an election petition and sitting as a single judge of the Supreme Court, I reviewed the decisions on point. I then said:

'Obviously, as a decision maker, the learned trial Judge was obliged to give his reasons for either deciding against the Commission's Objection or his decision not to make a decision on that Objection. It is settled law that, every decision maker is obliged to give his or her reasons for their decisions.'"

55. Applying the law to the present case on the belated inclusion of purported reasons of Mayur not being a FIP, the Minister issuing a direction and the permits being illegal are, afterthoughts. They did not constitute either partially or wholly the reasons for the Decision to cancel the Permits. Given these, the belated inclusions cannot be accepted as they are afterthoughts.
56. Fifthly, the decision leading to, and the eventual grant of the Permits was deliberate and well considered given all the developments globally on the **Climate Change** Emergency and Environment front. That includes the need for urgent actions to be taken to prevent further deforestation, preserve what we have and, whilst doing that, also economically gain from taking such steps. The evidence before the Court reveals the following:
    (1) The *EA2000* and several amendments to that Act with the latest one being the Environment *(Amendment) Act 2012* were passed to domesticate international conventions, treaties, protocols, or agreements and have a comprehensive environment legislation that is more current and more modern. For more discussions on the significance of the *EA2000* as amended, see: *Saonu v. Mori & Ors* (supra).
    (2) Successive governments and Ministers have stressed the need to preserve the nation's forest resources, introduce carbon offset projects and comply with the scheme known as reducing emissions from deforestation and degradation or in short, REDD+ Scheme. The idea behind this scheme is for forests to be saved from clearing and credits are issued for the carbon stored in the forests left standing. Each credit is equal to one tonne of carbon dioxide or equivalent emissions.
    (3) In fact, PNGFA announced in the Draft 2012 National Forest Plan that four REDD+ Scheme pilot programs were underway and one, the April Salumei in East Sepik was launched despite there being no specific expressed legislative procedures.[14]
    (4) The *CC(M)A* was passed with specific and detailed regulations yet to come. Draft Regulations are on foot awaiting promulgation.
    (5) A deliberate and considered decision was made by the then Minister Schnaubelt under s. 7 (2) of the *Act* who issued directions for the development of an appropriate policy document, to actualize carbon offsetting projects with a specific legislative framework for it.
    (6) The Defendants accepted and agreed with the process employed by former occupiers of the relevant NFB positions in the PNGFA as did the Office of **Climate Change**, the relevant Provincial Governor, and the landowners.
    (7) The Minister for **Climate Change** has endorsed and approved the Project and has indicated how the Project should proceed. The Minister also specifically supports Mayur's "carbon offset" proposals.[15]
57. There is no evidence of the kinds of pressure exerted by Minister Schnaubelt as alleged by the Defendants or at all. I therefore, reject the claim of pressure being exerted by Minister Schnaubelt. There is also no evidence of Minister Mirisim, who made the Decision without the managing director of the PNGFA and the NFB playing their respective parts, taking the foregoing developments on the **Climate Change** Emergency and the Environment globally and within the country seriously into account before getting to the Decision to cancel the Permits.
58. Sixthly, the detailed process employed by the former Minister Schnaubelt and the holders and or occupiers of the relevant offices of the Defendants needed to be followed. If, however there was a lack of clarity for the Minister and the rest of the Defendants, as to the correct process to cancel a timber permit, howsoever it was granted, the answer lied and lies in the law and process provided

for by the *Act* itself which was employed to grant the Permits at the first place and was used to cancel the Permits.

59. The relevant provisions are ss. 2, 73, 75, 86, 91 – 97 and the whole of the *Act* which provides for the different kinds of licenses or permits that can be granted. These includes Burning Permits under s. 53, Timber Permits under s. 73, Timber Authorities under s. 87, Forest Clearing Authorities under s. 90D (22) and Licenses under s. 91. Each have their own prescribed processes for applications, grant of the relevant permits, authorities, and or licenses. Then specifically for timber permits, forest clearing authorities and licenses, there are prescribed suspension and or cancellations processes. This is especially clear for licenses and timber permits.
60. Section 86 is the prescribed process for cancellation of timber permits issued under s. 73 whilst s. 97 is the prescribe process for the cancellation of licenses issued under s. 91. They fall under two separate subdivisions. Subdivision C comprising of ss. 73 – 86 covers timber permits. On the other hand, Subdivision E comprising of ss. 91 – 97 provides for licenses.
61. Sections 86 and 97 are in identical terms. Section 86 reads:

86. ***Conviction of the Holder of a Timber Permit, etc.***

(1) Where the holder of a timber permit (or where the holder is a corporate person, any of the principals of the holder)–

(a) is or are convicted of an offence–

(i) against this Act; or

(ii) concerning forestry matters, against any other law; or

(b) has or have failed to comply with any of the conditions of the timber permit,

the Minister may cancel the timber permit.

(2) For the purposes of Subsection (1), "principals" includes director, manager, secretary or other similar officer or any person purporting to act in such a capacity.

(3) Where it is proposed to cancel a timber permit under Subsection (1), the Managing Director shall serve a notice on the holder–

(a) advising him of the intention to cancel the timber permit and of the reasons for the intended cancellation; and

(b) requiring him,

within 14 days from the date of service of the notice, to make representations as to why the timber permit should not be cancelled.

(4) On the request of the holder within 14 days from the date of service of the notice under Subsection (3), the Managing Director shall allow the holder an opportunity to be heard.

(5) Where the holder does not make, within the 14 day period, representations under Subsection (3)(b) or a request to be heard under Subsection (4), the Minister shall cancel the timber permit.

(6) The Minister shall consider any representations made under Subsection (3)(b), and, where appropriate, shall cancel the timber permit.

(7) Where there has been a hearing under Subsection (4)–

(a) the Managing Director shall make and forward to the Board a written report on the hearing; and

(b) the Board shall consider the report and forward it, together with its recommendations thereon, to the Minister; and

(c) the Minister shall consider the report and the recommendations from the Board and, where appropriate, shall cancel the permit."

(Underlining supplied)

62. Since s. 97 is in identical terms it is not necessary to have that reproduced. The only difference to note is the word "licence".
63. The definition of the phrased "timber permit" in s. 2 of the *Act* adds further clarity by it being specific and restricting itself to a timber permit issued under s. 73 and 75 or under the earlier repealed Act. The relevant definition reads:

"'timber permit' means a timber permit granted under Section 73 or 75 and includes–

(a) a permit or licence granted under the Forestry Act (Chapter 216) (repealed) continued by virtue of Section 137; and

(b) an agreement deemed to be a timber permit by virtue of Section 137(1A); and

(c) an extension to an existing approved timber permit operation which is consolidated under an existing approved timber permit under Section 64..."

(Underlining supplied)

64. Seventhly, I find no provision is made under s. 86 or 97 for the Minister to issue any directions. The Minister has power to issue directions, under s. 47 (2) (c) (i), which reads in relevant parts:

"47 ***National Forest Plan.***

(1) *The Authority shall cause to be drawn up a National Forest Plan to provide a detailed statement of how the National and Provincial Governments intend to manage and utilize country's forest resources.*
(2) *The National Forest Plan shall–*

(a) *be consistent with the national forest policy and relevant Government policies; and*
(b) *be based on a certified National Forest Inventory which shall include particulars as prescribed; and*
(c) *consist of–*

(i) National Forestry Development Guidelines prepared by the Minister in consultation with the Board and endorsed by the National Executive Council..."

(Underlining supplied)

65. To discharge that power, duty, or obligation, the Minister could possibly issue a direction for purposes of getting the NFB to assist in the development of a National Forestry Development Guidelines.
66. Another provision under which the Minister could issue directions is s. 7 (2) of the *Act*. The provision reads as follows:

"Subject to this Act and any other law, the Minister may give to the Authority, through the Board, any direction in regard to the carrying out of the functions of the Authority as he considers necessary for the purpose of achieving the objectives of the Authority."

(Underlining supplied)

67. In my view, this is not an open-ended authorisation. Instead, it is restricted to achieving "the objectives of the Authority". The objectives are clearly spelt out in s. 6 of the *Forestry Act* in the following terms:

"In carrying out its functions under this Act, the Authority shall pursue the following objectives:

(a) the management, development and protection of the Nation's forest resources and environment in such a way as to conserve and renew them as an asset for succeeding generations;

(b) the maximization of Papua New Guinea participation in the wise use and development of the forest resources as a renewable asset;

(c) the utilization of the Nation's forest resources to achieve economic growth, employment creation and industrial and increased "downstream" processing of the forest resources;

(d) the encouragement of scientific study and research into forest resources so as to contribute towards a sound ecological balance, consistent with the National development objectives;

(e) the increased acquisition and dissemination of skills, knowledge and information in forestry through education and training;

(f) the pursuit of effective strategies, including improved administrative and legal machinery, for managing forest resources and the management of National, provincial and local interests.

(Underlining supplied)

68. These objectives, in my view are listed in the order of priority. They are made the objectives of the *Forestry Act* going by the preamble to the *Act*. This is very important for the times we are living in and what humanity needs to do urgently. The following statement of the UN in its website[16] succinctly describes the times we are in:

*"**Climate Change** is the defining issue of our time and we are at a defining moment. From shifting weather patterns that threaten food production, to rising sea levels that increase the risk of catastrophic flooding, the impacts of **climate change** are global in scope and unprecedented in scale. Without drastic action today, adapting to these impacts in the future will be more difficult and costly."*

(Underlining supplied)

69. Given the above scenario, the priority objectives must be the first stated objective in s. 6 (a) of the *Forestry Act*. As could easily be seen, the first objective is aimed at the wise use, "*management, development, and protection of the Nation's forest resources and environment as a renewable asset in ways that will conserve and renew them as an asset for present and succeeding generations*." In my respectful view, a fulfillment of the first objective forms the foundation for the other objectives to be meaningful and achievable. It should necessarily follow therefore that, any direction the Minister gives under s. 7 (2) of the *Act*, must accommodate the first objective first and then the other objectives. Such directions must also be consistent with any relevant and prevailing government policies, or if there is a lack of any such policy, the direction must be for the purposes of developing an appropriate policy which are in turn consistent with the priority objectives of the *Act* and PNG's international obligations.
70. Finally, I turn specifically to the Defendants' argument that there are no specific provisions of the *Forestry Act* that provided for Permits or provisions that deal with carbon offset projects. Following on from the fourth point above, a close look at the preamble to the Act and the objectives and functions of the PNGFA under s. 6 and 7 are in my view, wide enough to cover an issuance of the kind of permits that were issued in this case. This is possible under s. 6 (a) of the objectives and s. 7 (1) (e) (j) (k) and (2) of the Act. I have already quoted the provisions of s. 6 (a). Section 7 (1) (e) (j) and (k) read:

Section 7 (1) (e) (j) (k) and (2)

"(e) to select operators and negotiate conditions on which timber permits, timber authorities, large scale agricultural or other land use and road forest clearing authorities and licences may be granted in accordance with the provisions of this Act; and

(j) to act as agent for the State, as required, in relation to any international agreement relating to forestry matters; and

(k) to carry out such other functions as are necessary to achieve its objectives or as are given to it under this Act or any other law.

(2) Subject to this Act and any other law, the Minister may give to the Authority, through the Board, any direction in regard to the carrying out of the functions of the Authority as he considers necessary for the purpose of achieving the objectives of the Authority.

(Underlining supplied)

71. It is settled law, that all statutory provisions must be given their fair, large and liberal interpretation to give effect to the purpose and or object of the legislation and the provision under consideration. In my decision in the 5-member Supreme Court decision in *William Hagahuno v. Johnson Tuke* (2020) SC2018, I referred to almost all the previous Supreme Court decisions on point and concluded at [57] in these terms:

"Proceeding on that basis, it is settled law that, the fair large liberal and purposive approach should be employed for the interpretation and application of a Constitutional law and other statutory provisions as opposed to the narrow and restrictive approach. The Supreme Court has been repeatedly making this point clear and have also applied the principle in many cases."

72. Going by that settled interpretation principle, I find the objectives and functions of the PNGFA and the whole Act, is not restricted only to logging or cutting of trees for commercial purposes. Instead, it most importantly includes as a priority the "*protection of the Nation's Forest resources and environment in such a way as to conserve and renew them as an asset for succeeding generations*." This is best achieved by a carbon offset project more than timber permits that allow for logging. Consistent with the broad provisions of the objectives of the Act, s. 73 under which the permits were issued does not restrict the grant of timber permits only for the purposes of logging or cutting

of trees. In other words, s. 73 under which the Permits were granted, and other provisions of the *Act,* do not in any way expressly exclude the grant of permits for carbon offset projects. To do so would be inconsistent with the first expressly stated objective or purpose of the Act.

73. Having regard to the relevant expressed provisions of the *Act*, the foregoing discussions, and the relevant evidence on point or lack thereof, I find the belated claims of Mayur not being a FIP and the Permits granted to it are illegal cannot be sustained. If, however, they could be sustained despite the foregoing findings and discussions, that did not authorise or grant any power to the Minister to act unilaterally and independently of the managing director of the PNGFA and the NFB. He was obliged to act strictly in accordance with the provisions of s. 86 of the *Act*. Consequently, I find the Minister clearly acted *ultra vires* his powers in employing the wrong provision s. 97 instead of s. 86 and or s. 7 (2) of the *Act* to issue his alleged direction and cancel the Permits. Accordingly, I uphold the first ground for review.

(2) (i) Non-Compliance – Second Issue

74. This takes us to the next issue, which is one of non-compliance of the relevant provisions of the applicable provisions of the *Act* when the Minister decided to cancel the Permits. This ground follows from the first ground. Mayur's argument is simply that, the Minister failed to follow the process and procedure provided for either under the correct provision, s. 86 or even under s. 97, the provision wrongly used by the Minister before getting to the ultimate decision to cancel the Permits.
75. I have already reproduced the provisions of s. 86 above. In my humble view, these provisions by subsections (1), (3) to (7) provide for a total of 8 steps to be followed for a proper consideration and cancellation of a timber permit. I set out the steps in the following:
    1. The holder of a timber permit is either:

(1) convicted of an offence:

(a) against the *Forestry Act*, or

(b) concerning forestry matters; or

(c) or against any other law; or

(2) has or have failed to comply with any of the conditions of the timber permit.

2. Upon any of the triggers under step 1 occurring, the second step is for the Managing Director of PNGFA to serve a notice of an intention to cancel on the holder of the permit. The notice must:

(a) advise the holder of the intention to cancel the holder's timber permit;

(b) state the reasons for the intended cancellation; and

(c) require the holder of the permit to make within 14 days from the date of service of the notice, representations as to why the permit should not be cancelled.

3. Within 14 days from the date of the service of the notice in accordance with step 2, the holder of the permit may make a representation as to why the cancellation should not take place or request an opportunity to be heard.
4. If the holder does not make a request or a representation under step 3 above, the Minister can proceed to cancel the permit as indicated in the notice.
5. If the holder makes any representation under step 3, the Minister must consider it and where appropriate, cancel the permit and that would be the end of the process. If, however, the permit holder requests an opportunity to be heard under step 3, such an opportunity must be accorded, and a hearing must take place.

6. Where a hearing takes place, the Managing Director of PNGFA must make and forward to the Board a written report on the hearing.
7. Upon receipt of the report under step 6, the Board must then consider the report under step 6 and forward it, together with its recommendations thereon, to the Minister.
8. Upon receipt of the report and recommendations under step 7, the Minister must consider the report and the recommendations of the Board and, where appropriate, cancel the permit.

76. In the present case, there is no evidence of a due compliance or a meeting of any or all these steps before the decision to cancel was arrived at. The evidence before the Court shows Mayur was not aware of the purported cancellation of its Permits until 20th July 2022, when the Defendants published the notice of cancellation in the local newspapers.
77. The Defendants submit that, the only relevant consideration that the Defendants considered were the illegality of the Permits and that Mayur being a non FIP under the *Act*. They then repeat their earlier arguments under the first issue on these points.

(2) (ii) Consideration and decision on Second issue – Noncompliance

78. If Mayur was not a FIP and the Permits are not provided for in the *Act*, did that entitle the Minister to cancel the Permits in the way he did? I repeat what I said about these arguments of the Defendants under the first issue. Additionally, this brings to mind, the adage or proverb, namely "*two wrongs don't make a right*", meaning, if someone has done something wrong against another, it is not right to do something wrong in return or take wrong steps or processes to correct the earlier wrong. Instead, the correct and proper steps, or the right thing to do must be taken or done to correctly correct any earlier error.
79. In the present case, rightly or wrongly, the Permits were granted by the same Defendants except for the change in the persons occupying the respective offices at different times. The grant of the Permits was under s. 73 of the *Act*. Section 86 being the correct and directly applicable provision of the *Act*, expressly sets out the process for a cancellation of the Permits. I set out the process at [73] above. That is the process that should have been followed to correct the alleged wrongful grant of the Permits. There is no evidence of following that prescribed process or anything close to it to arrive at the Decision.
80. That failure to follow the process deprived the Minister of duly considering: (1) the serious **Climate Change** related challenges we are facing globally; (2) PNG's international and domestic obligations to her people and the global citizens given the risks; (3) the relevant government policy related discussions; (4) and responses including: (i) the enactment of the *EA2000* as amended, the *CC(M)A*; (ii) and the decision to take real and meaningful steps under the REDD+ Scheme. In these circumstances, I find the Minister failed to comply with the requirements of s. 86 or even under s. 97 of the *Forestry Act*. In this respect, I find, he failed to comply with each and every one of the prescribed steps, he acted unilaterally and independently of the NFB and the Managing Director of PNGFA. To this I add to the reasons I gave for my finding that the Minister acted ultra vires his powers. In these circumstances, I find the second ground has been made out.

(3) (i) Denial of Natural Justice – Fourth Issue

81. This conveniently takes us to the fourth issue which concerns the principles of natural justice. Mayur submits it had a right to be heard in accordance with s. 59 of the *Constitution* and s. 86 of the *Act*, being the correct provision or even s. 97 being the wrong provision used by the Minister, before the decision to cancel the Permits could be arrived at. Consequently, Mayur argues it was *denied natural justice* or it's right to be heard before its Permits were cancelled. That was in addition to not being served with any notice to show cause under the hand of the Managing Director of the PNGFA as required by both ss. 86 (correct provision) or s. 97 (wrong provision used) and the NFB deliberating on the issue before the Minister could decide to cancel the Permits.
82. In response, the Defendants acknowledge the existence and the requirements of s. 59 of the *Constitution* as providing for the *principles of natural justice* with the minimum requirement that Mayur had to be accorded the right to a representation or be heard before the cancellation decision

was arrived at. Despite that acknowledgement, they revert to their submissions under the first issue in terms of Mayur not being a FIP and the Permits granted to it being illegal. They go on to argue, the illegality deprived Mayur of any standing and right to any notice and right to be accorded the right to be heard and be heard before the decision to cancel the Permits could be arrived at. In other words, the Defendants are effectively arguing that, the illegality of the Permits entitled the Minister to arrive at his Decision unilaterally and summarily in the manner he did.

83. Further, they refer to two decisions in support of their submissions. The first is the decision in *Port Services PNG Pty Ltd v. Gioctau Tanabi* (supra) as supporting their proposition that even if the Court finds that there is sufficient evidence for breach of the principles of natural justice or excess of powers, the matter must still be referred to the administrative authority for that authority to make a lawful decision again. The second is my decision in the Supreme Court in *Electoral Commission v. Kaku* (2019) SC1866 at [21] where I had referred to my earlier decision in the matter of *Lee & Song Timber (PNG) Co. Ltd v. Burua* [2003] PNGLR 21 and discussed the principle of natural justice in the following terms:

"One of the minimum requirements of the principles of natural justice enshrined in our Constitution under s.59 (2) is the duty to act fairly, and in principle, to be seen to be acting fairly. This is in effect a codification of an old established principle represented by cases like that of R v. Sussex Justice; Ex Parte McCarthy [1942] 1 K.B. 256.

The need to provide good reasons for any decision-maker for a decision he or she makes is an important part of the principles of natural justice. For a failure to give reasons has the potential to form the foundation for a suggestion or suspicion that the decision is without good reason. Lord Denning in General Electric Co. Ltd v. Price Commission [1975] 1 C.R. 1 at 12 made that clear in these terms:

'If it (the decision maker) gives no reasons in a case when it may reasonably be expected to do so, the Courts may infer that it had no good reason for reaching its conclusion and act accordingly.'"

84. Finally, they submit that, there is no breach of the principles of natural justice because, Mayur was given reasons for the cancellation Decision which are, clearly legal grounds and not mere grounds that can be bypassed.

(3) (ii) Consideration & Decision on Denial of Natural Justice – Fourth Issue

85. The starting point is s. 59 of the *Constitution* which provides for the principles of natural justice in the following terms:

"59. Principles of natural justice.

(1) *Subject to this Constitution and to any statute, the principles of natural justice are the rules of the underlying law known by that name developed for control of judicial and administrative proceedings.*
(2) *The minimum requirement of natural justice is the duty to act fairly and, in principle, to be seen to act fairly."*

(Underlining supplied)

86. This provision has been the subject of repeated considerations by both the Supreme and National Courts. The Supreme Court first considered the provision and the principles of natural justice in the

case of *Premdas v. The State* [1979] PNGLR 329, per Prentice CJ, Raine DCJ, Saldanha, Wilson, and Andrew JJ. A Supreme Court decision that elaborates on the principles of natural justice is the decision of the Supreme Court in *Nilkare v. Ombudsman Commission of Papua New Guinea* [1999] PNGLR 333, per Amet CJ, Kapi DCJ, Los & Injia JJ. There, Amet CJ held:

"The requirements of the right to be heard could be deemed complied with if the following procedures were adopted:

1. *Notice is given of the nature and substance of the allegations made against the leader.*
2. *Reasonable opportunity is given to the leader to respond, either in writing or in person before the Commission, if the leader so elects.*
3. *Particulars and clarification of the allegations ought to be given if the leader requests the same in order that his right to be heard in respect of the allegations are to be considered adequate.*
4. *Any relevant documents are to be furnished to the leader if requested, to enable the leader to fully respond to the allegations.*

(Underlining supplied)

87. Kapi DCJ, on his part endorsed what the trial judge concluded in the same case in the following terms:

"*On this issue, the trial judge concluded:*

'There is a misapprehension here. Notice of the right to be heard and that hearing are quite different. The right in the Leader to be heard is a Constitutional statutory and natural justice requirement. The obligation on the Commission in respect of that right, both under s 20(3) and in natural justice, is to notify a leader of the fact that allegations have been made against him; setting out the substance of the charges; such that he is able to understand their nature and to inform him of his right to be heard in respect of each of them; and to accord him that right if he chooses to exercise it.'

That in my view is a correct statement of the law. The right to notify a leader and the right to be heard are set out under OLDRL, s 20 (2) and (3) respectively. My only comment is that it is not necessary to make reference to the principles of natural justice formulated as part of the underlying law. The provisions of OLDRL are sufficient in respect of natural justice matters."

(Underlining supplied)

88. Subsequent decisions of the Supreme Court have adopted and applied the principles enunciated in *Nilkare v. Ombudsman Commission* (supra) case. One such decision is the one in *Pruaitch v. Manek* (2019) SC1884, per Kandakasi DCJ, Shepherd & Berrigan JJ. There at [43] the Court held:

"The obligation on the Commission in respect of the right to be heard is well settled. The Commission is to notify a leader of the fact that allegations have been made against him; setting out the substance of the charges; such that he is able to understand their nature and to inform him of his right to be heard in respect of each of them; and to accord him that right if he chooses to exercise it: per Kapi DCJ in Nilkare v. Ombudsman Commission of Papua New Guinea [1999] PNGLR 333*..."*

(Underlining supplied)

89. Although the decisions in *Nilkare v. Ombudsman Commission* (supra) and *Pruaitch v. Ombudsman Commission* (supra), concerned s. 20 of the *Organic Law on Duties and Responsibilities of Leaders*, the *ratio decidendi* in those cases, equally apply in the context of other statutory

provisions such as ss. 86 and 97 of the *Forestry Act*. As did Kapi DCJ in *Nilkare v. Ombudsman Commission*, I find the principles of natural justice are already provided for in this case in s. 86 (correct one) or even s. 97 (wrongly used by the Minister) of the *Act*. The obligation to notify is in ss. 86 (3) and or 97 (3). Subsections (4) of both ss.86 and 97 provide for the right to make representations or give a permit holder the right to be heard and hear the holder at a hearing. After having given such opportunity to be heard and having heard a permit holder, subsection (7) of ss.86 and or 97 provides for the decision to cancel a permit to be arrived at. In both cases, there is no authorisation to proceed, unilaterally to the exclusion of the NFB and the managing director of PNGFA and without according a permit holder these rights. The only instance in which the Minister could proceed summarily is where, the permit holder fails to respond to a notice and or make any representation or request a hearing.

90. There is no evidence from the Defendants of a due compliance of the requirement to give notice and accord Mayur the right to be heard before proceeding to cancel its Permits. There is also evidence, and they make no submission on the part the NFB and the managing director as to the part they played in the cancellation. Similarly, they are making no submissions on the meeting and the existence of first triggering step under subsection (1) of both ss. 86 and 97 of the *Act*. The Defendants, including the Minister, are not claiming they have or have attempted to comply with these most basic yet fundamental requirements. Their submissions, however, seek to justify their failure to observe these important and critical procedural requirements by their claims of Mayur not being a FIP and the Permits being illegal. There is therefore no dispute that the Defendants failed to observe and meet the next important steps after the first triggering steps of giving notice, namely, according Mayur the right to be heard, hearing it out and then coming to a decision. Instead of acknowledging that failure on the part of his clients, and advising them appropriately to resolve this matter, even under directions of the Court, Counsel for the Defendants, has taken a position in total disregard of the relevant provisions of the *Forestry Act* that were referred to above, and carried on as if those provisions and generally the principles of natural justice as enshrined in s. 59 of the *Constitution* do not exist in our legal system.
91. Counsel's conduct in this respect is a clear breach in my view of his duties to the Court and to his client. His conduct in my view is a breach of the provisions of Rules 3 and 8 of the lawyers' *Professional Conduct Rules*. These provisions relevantly read:

"3. Duty of Every Lawyer

It is the duty of a lawyer -

(a) not to engage in conduct (whether in pursuit of his profession or otherwise) which–

....

(iii) is unprofessional; or

(iv) is prejudicial to the administration of justice; or

(v) may otherwise bring the legal profession into disrepute; and

(b) to observe the ethics and etiquette of the legal profession; and

(c) to be competent in all his professional activities"

and

"8. DILIGENCE.

(1) A lawyer shall treat a client fairly and in good faith, giving due regard to -

(a) the dependence by the client upon him and his special training and experience; and

(b) the high degree of trust which the client is entitled to place in him.

(2) A lawyer shall always be frank and open with his client and with all others so far as his client's interest may permit and shall at all times give his client a candid opinion on any professional matter in which he represents that client.

(3) A lawyer shall take such legal action consistent with his retainer as is necessary and reasonably available to protect and advance his client's interests.

(4) A lawyer shall at all times use his best endeavours to complete any work on behalf of his client as soon as is reasonably possible.

...

(7) A lawyer shall, when in his client's best interests, seek his client's instructions to endeavour to reach a solution by settlement out of court rather than commence or continue legal proceedings."

92. Learned Counsel for the Defendants in my view, breached these rules. Counsel has turned a blind eye to the conduct of the Minister which was not in accordance with any provisions of the *Forestry Act* but, in fact acting in breach of the provisions of s. 86 or even s. 97 of the *Act*, the Minister wrongly use. It was the professional duty of Counsel to advice his client to concede acting in breach of the principles of natural justice and the process prescribed by s. 86 or 97 of the *Act*, in view of the foregoing findings and reasons and assist his client to promptly resolve this matter without unnecessarily putting the matter to trial. The position taken by Counsel for the Defendants in my view, with respect, is demonstrative of a lack of due diligence as required and is in breach of Rule 8 (1), (2), (3), (4) and (7) of the Lawyers' *Professional Conduct Rules*.
93. The conduct of Counsel here can be contrasted with the conduct of Counsel for the Minister and decision maker in *Arran Energy (Elevala) Ltd & Ors v. Hon. Kerenga Kua & Ors* (2023) N10268. That case raised issues of noncompliance of processes prescribed under the *Oil and Gas Act 1998*. On Counsel's advice, the Minister agreed to the plaintiffs' claims, recalled, retracted his decision the subject of the proceeding, and replaced it with a new decision that duly complied with the prescribed processes under the Act. Endorsing the steps taken by the Minister in that case, I said in the context of an argument that the Minister was *functus officio* at [35]:

"There are three further foundations for holding that the doctrine of functus officio has no application independent of s. 35 of the Interpretation Act and the forgoing discussion in administrative decisions unless a subject specific legislation clearly and expressly provides for the application of that doctrine. The first of the three factors is that, modern judiciaries recognise the parties in a dispute's autonomy and or right of self-determination in the resolution of their conflicts or disputes... For any decision they make and resolution they themselves arrive at, finally and fully resolves all issues between them and they can live with that as opposed to a court decision imposed upon them... Consistent with that recognition, Parliament added Part IIA of the National Court Act in 2008 through National Court Amendment Act 2008 (Number 4 of 2008). Based on that legislative foundation and the provisions of s. 184 of the Constitution, the Judiciary on its part promulgated the ADR Rules 2010."

94. Citing from my earlier decision in *Koitaki Plantations Ltd v. Charlton Ltd* (2014) N5656, I noted the cause for that change in legislation in these terms:

"Driven by a desire to overcome the problem of backlogs and to ensure delivery on the wish to resolve conflicts expeditiously at less costs in a timely manner, ADR and in particular mediation were introduced. ... Since their inception, ADR and mediation began and continue to deliver on the desire that led to their introduction so much so that the world was persuaded to accept them."

95. I went on to discuss the decisions of the Supreme Court in *NCDC v. Yama Security Services Pty Ltd* (2003) SC707 and *Henry Torobert v. Mary Torobert (2012)* *SC1198* which spoke in support of mediation and the parties' own resolution of their disputes. I also went on to discuss my decision in *Able Construction Ltd v. W.R. Carpenter (PNG) Ltd* (2014) N5636, which provides a list of cases or issues inappropriate for mediation and hence the parties' own resolution. Thereafter, I cited my summation of the effect of the development of the law in relation to parties resolving their disputes through mediation and other forms of ADR and lawyers' duties in the following terms:

"The sum effect of all these is that a lawyer is now more duty bound than ever before to take all steps necessary to have a client's case resolved within a reasonable time and at less costs. That duty is imposed by the lawyers Professional Conduct Rules 1989 and the relevant and applicable legislation which includes the relevant provisions of the National Court Act and the ADR Rules that were enacted thereunder. Unless a case falls in the category of questions or cases inappropriate for resolution by ADR and or mediation, lawyers are bound both by their professional conduct rules as well as the relevant legislation and the various judicial pronouncements from both the Supreme and National Courts to take all steps necessary to resolve their client's cases more readily out of court. A lawyer who fails in his or her duty without good reason would be guilty of misconduct as a lawyer and undoubtedly attract unto oneself, personal liability for costs and interests unnecessarily forced on the client by their."

96. Turning specifically to judicial review proceedings, I commented at [41] and [42]:

"It should follow therefore that, unless a case, and in particular in a judicial review matter which concerns an administrative decision and not a court decision, presents an issue of the type listed in paragraph 18 of the decision in Able Construction Ltd v. W.R. Carpenter and Order 2, Rule 2 (3) (b) of the ADR Rules 2022, they are ideal for resolution by the parties through their own direct negotiations or choices and failing that, by mediation or such other forms of facilitated settlement. The lawyers should be the first in line to encourage their respective clients to have the matter resolved. Consistent with their Professional Conduct Rules [and] the ADR Rules 2022, they have a duty to assist the parties to resolve their dispute rather than insisting on litigation. This is necessitated by the fact that a Court in a judicial review proceeding can only determine whether due process and procedure has been followed by a decision maker to arrive at his or her decision but not the correctness or otherwise of the decision itself."

97. I went on to say at [43] and [44]:

"43. Hence, a successful judicial review application would see the substantive matter left to be dealt with by the decision maker in accordance with the prescribed process and procedure. That may not fully resolve the issues between the parties. If a decision maker agrees or decides at any stage of the proceeding to retract, review, or otherwise revisit his or her decision which is the subject of a judicial review application, that should be readily permitted.

44. This leads us to the second additional factor. Appropriate and timely administrative decisions by the executive arm of the government is necessary for the good order, smooth, efficient, and effective functioning of public administration by the executive arm of government. Litigation through the judicial review process puts a brake on that. It is a given fact in our jurisdiction that, such proceedings, like other matters before the courts, sometimes takes years to reach finality. Given the importance of an efficient and effective public administration, the courts when dealing with judicial review matters, must never lose sight of the principles that underpin the doctrine of separation of powers. ...

When an administrative decision maker faced with a judicial review application, concedes, and is prepared to do what is required to resolve the issue, the judiciary's duty it should be to respect such acceptance of responsibility and allow the decision maker to resolve the matter. The same goes for a

plaintiff who brings a judicial review application in which the decision maker concedes and is prepared to resolve or fix the problem presented in the judicial review application rather than insist and press on the litigation path. A plaintiff will of course, have the right to return to the Court if the decision maker's subsequent decision fails to resolve the matter in controversy and there are good grounds for judicial review. Hence, the plaintiff does not miss out on anything save only for costs which can be easily taken care of by an appropriate order. In the light of all this, a party insisting on litigation should not be permitted."

98. Returning to the case at hand, Counsel for the Defendants, without any legislative or case authority supporting his submissions, chose to advance the argument that because the Permits were granted illegally, that disentitled Mayur to any notice, the right to be heard and a hearing before the Decision to cancel was arrived at. Inherent in the argument, is effectively a submission that the Minister was entitled to proceed to summarily cancel the Permits and do so on his own and to the exclusion of the managing director of the PNGFA and the NFB. This kind of conduct and or attitude is clearly an affront and an offence against the long establish principles of law in a just and democratic society like ours which is governed by the rule of law with due process and procedures and not by dictators, or the like, who become law unto themselves. I repeat, *"two wrongs don't make a right"*. Public order, good administration and good governance dictates forewarning or notice, an according of an opportunity to be heard and hear the person who stands to be adversely affected by a proposed public authority's decision before the decision is in fact made. Exceptions to this are limited to cases in which the law expressly excludes the right to be heard for good reason.
99. In the present case, going by ss. 86 or 97 of the *Act*, Mayur was entitled to notice, opportunity given to be heard and be heard but was not given accorded those rights and opportunity before the Decision to cancel the Permits was arrived at. Accordingly, I find the ground of denial of natural justice is made out.

(4) (i) Unreasonable Decision – Third Issue

100. This takes us to the fourth issue of the Decision being unreasonable in the *Wednesbury* sense. In respect of that issue, Mayur submits firstly that, the Decision to cancel the Permits was contrary to PNGFA's own policy statements and statements by its past Ministers, such as the statements made by Former Minister, Hon. Belden Namah. Secondly, it submits, the Decision was contrary to the directions given by the former Minister Schnaubelt, which were not revoked or cancelled. Thirdly, it submits the Decision was contrary to the OTPD, the HOA, Memorandum of Agreement, and the Directions of the former Minister. Fourthly, the decision was contrary to the matters outlined at [12] to [42] of this judgment. Finally, the Decision was contrary to the wishes of the landowners as is evidenced by the OTPD.
101. The Defendants' arguments under this issue are in the same terms as those presented under the first and second issues. In short, they argue that the only relevant considerations are the illegality of the Permits based on the lack of any provision for such permits under the *Forestry Act* and Mayur not being a FIP. As already noted, the argument here effectively is that the illegality rendered Mayur lacking standing to apply for and being granted the Permits in the first place. Consequently, they submit effectively that the Minister was entitled to proceed to unilaterally and summarily cancel the Permits without the NFB and the Managing Director of the PNGFA playing their respective parts.

(4) (ii) Consideration and determination of the issue of reasonableness of Decision – Third Issue

102. The principles of law on this issue are well settled. Numerous decisions of the Supreme Court discuss and state the relevant principles. One such decision is the decision in *Ombudsman Commission v. Peter Yama* (2004) SC 747, per Injia DCJ, Sakora & Sawong JJ (as they then were). That decision states the law in these terms:

"The Wednesbury principle of 'unreasonableness' is described by Lord Green MR as a decision that is 'so absurd that no sensible person could dream that it lay within the powers of the authority - a decision that no reasonable body, could have come to.' It is embodied in the principle of 'irrationality' that we referred earlier.

We prefer a simplified break-up of this principle into six (6) categories by Doherty J in Kim Food & Sons Pty Ltd v. Minister for Finance and Planning N1464 (1996) as follows:

(a) It must be a real exercise of the discretion;

(b) The body must have regard to matters which it is expressly or by implication referred by the statute conferring the discretion;

(c) It must ignore irrelevant considerations.

(d) It must not operate on the basis of bad faith or dishonesty;

(e) It must direct itself properly in law; and

(f) It must act as any reasonable person would act and must not be so absurd in its action that no reasonable person would act in that way."

103. In my view, this means the whole of a decision makers conducts prior to, during and after the decision is made would be relevant. In the present case, I find the Minister acted unreasonably for several reasons. Firstly, going by either s. 86 (correct provision) or s. 97 (wrongly relied upon by the Minister) of the *Act*, the Minister failed to satisfy himself that one of the triggers or condition precedent namely, a conviction of an offence (a) against the *Forestry Act*, or (b) any conviction concerning forestry matters or against any other law and or (c) Mayur failing to comply with any of the conditions of the Permits existed as a matter of fact. Proceeding without any such trigger or a condition precedent being established against Mayur, suggests not only was the decision wrong and unlawful but suggests unreasonableness in the process employed and without having any valid cause established against Mayur, by way of any of the prescribed triggers.
104. Secondly, despite the lack of an existence of any of the condition precedent or triggers, the Minister decided to proceed to cancel the Permits. That he did, without first meeting the relevant and necessary process prescribed by s. 86 or s. 97 of the *Act* as I outlined at [75] and discussed above. A reasonable and fair-minded decision maker would always check and see to it that, all due process and procedures have been duly met or fulfilled and there is no impediment to proceeding to making a decision without first hearing the person standing to be affected by the proposed decision. In the instant case, the Minister failed to follow the prescribed process and meet the relevant requirements.
105. Thirdly, the discussion and findings under the grounds of *ultra vires*, non-compliance, and denial of natural justice together and separately on their own renders the Decision unreasonable and is a Decision no reasonable decision maker would have arrived at.
106. Fourthly, as already noted in the context of the grounds for review earlier discussed and determined, the Minister and the other Defendants effectively take no issue on their failure to follow due process and the procedure prescribed under s. 86 (correct provision) or s. 97 (wrongly used by the Minister). Yet, as already noted, the Defendants seek to justify their failures and protect the Decision by their claim of Mayur not being a FIP and the Permits not being provided for by any specific provisions of the *Act*. I addressed these claims of the Defendants in my consideration and determination of the issues of *ultra vires* and denial of natural justice. Also, I have already found that these claims are an affront and an offence against the rule of law with its due process and procedures in a democratic society like ours and should not be allowed to stand. To those I now add a few additional points.
107. Firstly, the submission and position of the Defendants is maintained without any response to Mayur's submissions that it applied to become a FIP which was wrongly rejected due to a wrong

position at law taken by the managing director of the PNGFA.

108. Secondly, the issue of FIP and Permits not provided for in the *Act*, are matters that the former Minister Walter Schnaubelt, the then members of the NFB, the managing director and the leaders of the PNGFA were very aware of at the time of considering Mayur's application for a grant of the Permits and the decision granting that application. A deliberate decision was made to grant the Permits. The decision put words into action on PNG's international and domestic obligations in the light of **Climate Change** and the related emergency or the pandemic that is waiting to happen unless serious, urgent, and meaningful steps are taken by all of humanity in **Climate Change** mitigation and adaptation efforts. The decision leading to the grant of the Permits at the first place were compelled or dictated by the **Climate Change** Emergency and the need for appropriate action.
109. In my decision in *Saonu v. Mori* (supra), I described the **Climate Change** related risks or threats as the next pandemic after the Covid-19 pandemic at [69] in the following terms:

*"... our global village is facing the next possible pandemic, namely **climate change** and its many associated adverse consequences caused mainly by global warming due to increased levels of greenhouse emissions, unless all countries and all persons meaningfully take mitigation and adaptation measures in earnest. Human activity since the industrial revolution in the 1770s which has and is continuing to adversely impact upon the environment is contributing substantially to greenhouse gas emissions. Serious global concern over this likely next pandemic has given rise to several international protocols such as the Kyoto Protocol which operationalises the United Nations Framework Convention on **Climate Change** by committing industrialized countries and economies in transition to limit and reduce greenhouse gases emissions in accordance with agreed individual targets. ...It follows therefore that, as a sensible and responsible global citizen, PNG through the Minister and the MD of CEPA [and everyone else], should stay guided by the objects and purpose of the EA2000 ...This is necessitated and or dictated by the challenge that are facing our country and the world today due to **climate change** and its many adverse consequences."*

110. I have already found in the present case, the conduct and attitude of the Minister, Mirisim, and the rest of the Defendants and their Counsel as an affront and offence to the rule of law. I now also find the conduct and or attitude displayed by the Defendants and their Counsel is also an affront and offence against the various global and domestic resolves and efforts made to meaningfully address humanity's existential threat posed by the **Climate Change** Emergency.
111. The United Nations Environment Programme or UNEP describes the emergency in the following terms:

"*The science is clear. The world is in a state of climate emergency, and we need to shift into emergency gear. Humanity's burning of fossil fuels has emitted enough greenhouse gases (GHGs) to significantly alter the composition of the atmosphere and average world temperature has risen between 1.1 and 1.2°C."*[17]

(Underlining supplied)

112. Standing at the core of the steps our global village has taken and needs to take is United Nations Environment Programme (UNEP) with a four-pronged approach. The UNEP describes the approaches as follows:

"1. Providing cutting-edge research to support science-based decision-making.

2. Working across sectors to support the transition to a low-carbon, more resilient future and reduce emissions while adapting to the climate impacts.
3. Ensuring a just transition to a carbon-neutral world, by empowering communities to adapt to changing conditions and increase resilience.

4. Providing sustainable mechanisms to unlock finance for mitigation and adaptation efforts."[18]

113. In my decision in *Kula Oil Palm Ltd v. Tieba* (supra) I noted in that context and commented on how much deforestation contributes to the emergency at [22] in the following terms:

"All the known science around us is pointing us to only one conclusion, namely, global warming and ***climate change*** *is real and is not a science fiction or theory anymore. The focus has shifted to what adaptation and mitigation efforts, must we urgently take not only for the sinking countries and cities, but the whole world or our global village."*

114. I went on to note at [23]:

"Global warming is attributable to greenhouse gas emissions. Greenhouse gas is a gas that absorbs and emits radiant energy within the thermal infrared range, causing the greenhouse effect... The primary greenhouse gases in the Earth's atmosphere are water vapor (H2O), carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), and ozone (O3). Without greenhouse gases, the average temperature of Earth's surface would be about −18 °C (0 °F), ...rather than the present average of 15 °C (59 °F)."

115. Finally, at [24] I noted:

"There is no debate that, human activities since the beginning of the Industrial Revolution (around 1750) have increased the atmospheric concentration of carbon dioxide by almost 50%, from 280ppm in 1750 to 419ppm[19] in 2021... The last time the atmospheric concentration of carbon dioxide was this high was over 3 million years ago... This increase has occurred despite the absorption of more than half of the emissions by various natural carbon sinks in the carbon cycle.... According to the United Nations' Intergovernmental Panel on ***Climate Change*** *(IPCC), at current greenhouse gas emission rates, the globe's temperature could increase by 2 °C (3.6 °F), which is the upper limit to avoid "dangerous" levels by 2050.... Deforestation contributes about 20% of the total greenhouse gas."*

116. Scientific American in its article headed *Deforestation and Its Extreme Effect on Global Warming*, [20] elaborates in these terms:

"By most accounts, deforestation in tropical rainforests adds more carbon dioxide to the atmosphere than the sum total of cars and trucks on the world's roads. According to the World Carfree Network (WCN), cars and trucks account for about 14 percent of global carbon emissions, while most analysts attribute upwards of 15 percent to deforestation."

117. The article goes on to explain why logging contributes more to greenhouse gas emissions in the following way:

"*The reason that logging is so bad for the climate is that when trees are felled they release the carbon they are storing into the atmosphere, where it mingles with greenhouse gases from other sources and contributes to global warming accordingly. The upshot is that we should be doing as much to prevent deforestation as we are to increase fuel efficiency and reduce automobile usage*."

118. As the article goes on to explain, one sure way to reduce greenhouse gas emissions and contribute to slowing down global warming is to reduce deforestation. Several responsible tropical governments with rainforests are already on to that measure by getting into deliberate participation in the United Nations' REDD+ Scheme. The article goes onto say, the REDD+ Scheme mainly

works to establish incentives for the people who care for the forest to manage it sustainably while still being able to benefit economically. It then reports the REDD+ Scheme "has channeled over $117 million in direct financial aid and educational support into national deforestation reduction efforts in 44 developing countries across Africa, Asia and Latin America since its 2008 inception."

119. In the light of the **Climate Change** Emergency and the global efforts and steps taken by responsible governments, the Project in the instant case was no ordinary case. It was special and important. The matter concerned a deliberate decision that was arrived at, and action taken by the former Minister Schnaubelt and the then NFB and those leading the PNGFA at the relevant time to develop and implement one of PNG's first ever REDD+ Scheme or a project. The relevant authorities or decision makers were distinctly aware of the fact that the *Act* does not expressly provide for the kinds of Permits that were issued and provided for a back filling of this appearance of a void in the legislation.
120. Repeating what I already stated, our country is part of the global village that is faced with the existential threat or the next pandemic waiting to happen. This calls for urgent and immediate steps to be taken as is usually done in any emergency or a pandemic like the recent Covid-19 Pandemic, for example. An emergency or a pandemic often sees certain laws and rights get suspended such as those we experienced under the Covid-19 Pandemic to effectively deal with the emergency or pandemic. Some of the steps may be completely new or original and unprecedented and may not already be prescribed and or provided for by existing legislation. As was done in the Covid-19 Pandemic, most sensible and responsible nations are taking unprecedented steps with the **Climate Change** Emergency. These unprecedented steps are dictating legislative reform and changes to give them their written legal foundations based on experiences. The law thus coming into existence is to guide present and future executive, judicial and all other decision makers and most importantly, guide human conduct and behaviour going into the future.
121. In the **Climate Change** related emergency, we are fortunate to have a whole body of law that is being developed and crystalized into accepted and settled principles under the broad heading of *Environmental Rule of Law* internationally and domestically by many countries. These principles are succinctly state in the *International Union for Conservation of Nature World Declaration on the Environmental Rule of Law* (World Declaration). That World Declaration was made by a group of experts from the World Commission on Environmental Law at the International Union for Conservation of Nature World Environmental Law Congress in April 2016.[21] The declaration establishes 13 principles. The first 5 principles are relevant for our purposes. They are:

"Principle 1 – the obligation of each state, public or private entity, and individual to protect nature.

Principle 2 – the right of each human and other living being to the conservation, protection, and restoration of the health and integrity of ecosystems; and the inherent right of nature to exist, thrive, and evolve.

Principle 3 – the right of each human, present and future, to a safe, clean, healthy, and sustainable environment.

Principle 4 – taking legal and other measures to protect and restore ecosystem integrity and to sustain and enhance the resilience of social-ecological systems.

Principle 5 – the principle of in *dubio pro natura* (i.e., in cases of doubt, all matters before courts, administrative agencies, and other decision makers shall be resolved in a way most likely to favour the protection and conservation of the environment, with preference to be given to alternatives that are least harmful to the environment)."

122. Although there is no evidence on point in the case before me now, it is possible to infer from the steps taken by the former Minister Schnaubelt and the then occupiers of NFB, the managing director and the senior management of the PNGFA, worked in accordance with the above principles and decided in favour of Mayur's application and granted the Permits.
123. Thirdly, I repeat my view under the issue of *ultra vires* that the objectives of the *Forestry Act* combined with the functions of the PNGFA are broad enough to accommodate permits of the kind

issued in this case. This is apparent from the first and priority objective of the Act in terms of "*management, development and protection of the Nation's forest resources and environment in such a way as to conserve and renew them as an asset for succeeding generations*". That broadness of the objective is complimented by the functions of the PNGFA in terms of:

"(j) to act as agent for the State, as required, in relation to any international agreement relating to forestry matters; and

(k) to carry out such other functions as are necessary to achieve its objectives or as are given to it under this Act or any other law."

124. In the context of that broadness, I also observed that the Act does not restrict timber permits to be issued only for logging or cutting down of trees. Further, I repeat my view that, the Act does not expressly exclude any consideration and grant of timber permits for carbon offsetting projects.
125. Finally, the lack of reason given at the time of the Decision, failure to follow prescribed procedure and the broad objectives and functions of the *Act* and the PNGFA, there are more questions than answers as to why the Minister decided to cancel the Permits. The questions include:
    (1) What caused Minister Mirisim to cancel the Permits?
    (2) What became of the factors that underpinned and led to the grant of the Permits at the first place?
    (3) Did anyone complain and what was the nature of the complaint?
    (4) Was the alleged illegality of the Permits and Mayur not being a FIP the only and real reasons for the Decision to summarily cancel the Permits?
    (5) Where did Minister Mirisim get his power from to cancel the Permits unilaterally and summarily without the managing director of the PNGFA and its Board playing their respective parts?
    (6) What is Minister Mirisim's personal preference if **Climate Change** related urgent and immediate action are not his priorities?
    (7) Was there any change in government policy to move away from taking the appropriate steps to protect our forest reserves and go down the path of REDD+ Schemes or projects?
    (8) If yes to question (7), what is the new policy?
    (9) Does the new policy accommodate **Climate Change** and related risks and the urgent steps that need to be taken in mitigation and adaptation?
    (10) If yes to question (7), when is a new REDD+ Scheme or project going to be delivered in place of the cancelled Permits and hence the proposal by Mayur?
    (11) Who are the proponents for any REDD+ Scheme and do they have the necessary persuasion, interest, capacity and means to successfully implement the project?
    (12) Was Mayur given notice and heard on the proposed change in government policy?
    (13) Given the long and controversial history of the Kamula Doso Area, have the landowners who stood to gain from the cancelled Permits and who now stand to be affected, duly consulted by the Minister before arriving at the Decision to cancel the Permits?
    (14) If yes to question (13), what are the landowners' views and how is that reflected in the Decision?
    (15) Was the Minister aware of the Orders the National Court made in proceedings, OS 09 of 2020 and OS 192 of 2020?
    (16) In the absence of any evidence or submissions from the current Minister of Forests, what is his and that of the executive government's position on the **Climate Change** Emergency and the urgent steps PNG as a country needs to take in adaptation and or mitigation?
126. This lack of answers to the above questions, the lack of evidence, explanation and submissions from the Defendants reveals in my view, the Minister failed to take into account relevant factors in addition to failing to follow due process and meeting the requirements of natural justice to arrive at his Decision. This lack in answers and explanations also gives rise to the suggestion that the Minister had an ulterior motive or purpose which runs contrary to the current international (including PNG) resolve on the need to take urgent **Climate Change** related actions in

adaptation and mitigation through schemes such as the REDD+ Schemes or Projects in response to the existential threat and emergency humanity is faced with today.

127. Having regard to all the foregoing, I find the Decision under review was an unreasonable Decision which was arrived at contrary to the process prescribed by s.86 or s.97 of the *Forestry Act* and generally the principles of natural justice, no reasonable and fair-minded decision maker would have arrived at. The review ground of the Decision was unreasonable, is therefore made out.

(5) (i) Decision tainted by Bias – Fifth Issue

128. This leaves us to deal with the remaining issue of the decision being tainted by bias. Relying on the Affidavit of Thomas Charlton, Mayur submits the Decision was also tainted with bias on the part of Minister Mirisim. The argument for Mayur is that the Minister has been pro logging and was in favour of logging rather than carbon offset projects. Mayur further submits on this front, that the PNGFA is still pushing for logging in the Kamula Doso Area, whilst these proceedings are on foot and there are existing Court orders against logging. The evidence through the affidavit of Thomas Charlton confirms a logging company is preparing roads and bridges in the area for logging purposes.
129. The Defendants submit there is no evidence to support the allegation that the Defendants acted with bias. They repeat and maintain their position on the issue of Mayur not being a FIP and the *Forestry Act* not providing for and regulating Permits of the type issued in favour of Mayur. They then refer to the affidavit of Rabbie Lalo who deposes that the evidence of the Plaintiff in relation to the Free Prior Informed Consent (FPIC) as being under the auspices of Forestry Project and not a carbon offset project. Proceeding on that basis, the Defendants submit Mayur has not complied with the necessity of seeking and obtaining FPIC under the *Act*.

(5) (ii) Consideration and Decision on Bias – Fifth Issue

130. Just because a person is pro something does not necessarily follow that he or she is bias when it comes to decision making. In the context of the law and judicial review, much is dependent on the relevant law, the relevant facts, and the reasons for decision.
131. None of the parties assisted with any submissions on the relevant principles of law on the question of bias and more so the test to determine if a decision is tainted by bias or not. One of the leading authors, D Smith in administrative law under which judicial review falls in his book, *Judicial Review of Administrative Action* [3rd Edn; 1977] at p. 563 states the relevant principles in the following terms:

"A more common formulation of the test is: Would a member of the public, looking at the situation as a whole, reasonably suspect that a member of the adjudicating body would be biased? Another common formulation is: Is there in fact a real likelihood of bias? There is no need, on either formulation, to prove actual bias; indeed, the courts may refuse to entertain submission designed to establish the actual bias of a member of an independent tribunal, on the ground that such an inquiry would be unseemly. In practice the tests of "reasonable suspicion" and "real likelihood" of bias will generally lead to the same result. Seldom indeed will one find a situation in which reasonable persons adequately apprised of the facts will reasonably suspect bias but a court reviewing the facts will hold that there was no real likelihood of bias. Neither formulation is concerned wholly with appearances or wholly with objective reality. In ninety-nine cases out of a hundred it is enough for the court to ask itself whether a reasonable person viewing the facts would think that there was a substantial possibility of bias."

(Underlining supplied).

132. These principles have been adopted and applied in our jurisdiction in many Supreme and National Court decisions. One of the decisions that does that, is the decision of the Supreme Court in

Application *by Herman Joseph Leahy* (2006) SC981, per Kapi CJ, Cannings & David JJ where the following his clear from the headnote to the judgment:

" ...the test to be satisfied is: would a reasonable and fair-minded person knowing all the relevant facts have a reasonable suspicion or apprehension that a fair hearing was not possible? (Boateng v The State [1990 PNGLR] 342, PNG Pipes Pty Ltd and Sankaran Venugapal v Mujo Sefa, Globes Pty Ltd and Romy Macasaet (1998) SC592 applied.

The suspicion or apprehension of bias must be based on reasonable, not fanciful, grounds."

133. With the above test in mind, I note firstly that, as a matter of fact, Mayur has alleged with the support of evidence it produced that Minister Mirisim, had a bias toward logging and not carbon offsetting projects. Given that position, the suggestion is that, when he became Minister again for Forests, he moved quickly to cancel the Permits without observing due process and without according to Mayur who stood to be directly affected adversely by his Decision, an opportunity to be heard. The Minister and the other Defendants have not produced any evidence rebutting that allegation in any way.
134. Secondly, the Defendants only response is their ready resort to Mayur not being a FIP and the *Act* not providing for Permits. This does not assist the Defendants at all for the reasons I have already given above in rejecting their reliance on those points.
135. Finally, on the issue of FPIC, whilst it is an important requirement, this was not given as one of the reasons for cancelling the Permits, when the decision was made. It is an afterthought and as such it cannot be considered for the purposes of a decision in this review.
136. Based on the forgoing facts and considerations, the relevant question to ask is, would a reasonable and fair-minded person knowing all the foregoing have a reasonable suspicion or apprehension that the Minister did not fairly consider all the relevant facts, process, and procedure before deciding to cancel the Permits. The answer to that question is a yes. The Minister's conduct which are the subject of consideration and discussions under the grounds earlier considered, in my humble view, lends support to the claim of bias. The absence of any explanation given by Minister Mirisim or the current Minister and their failure to provide reasonable reasons for the decision to cancel the Permits in the way he chose to do so, lends further support for the claim of bias. Accordingly, I uphold the ground of bias as claimed.

Decision in Summary

137. In summary I have upheld all the grounds for review. This lays the necessary foundation for a grant of the main and consequential reliefs sought by Mayur. Accordingly, I make an order in the form a certiorari to quash Minister Mirisim's Decision revoking the Permits granted to Mayur. Then in the particular circumstances of this case, I am also persuaded that I should grant Mayur's requests for the interim injunctive Orders made on 14th December 2022 (similar to Orders made in the other proceedings, namely OS 09 of 2020 and OS 192 of 2020) to be made permanent at least in so far as the Kamula Doso Blocks 1, 2, 3 Area is concerned in view of the kind of attitude shown by PNGFA and its disregard of Orders this Court has already made which are still current, PNG's international obligations and commitments under the various **Climate Change** and Environment related conventions, treaties or protocols which advocates amongst others, for REDD+ Schemes or projects as opposed to logging and the wishes of the Kamula Doso Area landowners.

138. Ultimately, and in short, I make the following orders based on the foregoing reasons:

1. The Application for a review of the Decision of the First Defendant dated 27 May 2022 is upheld.

2. An order in form of a certiorari to remove into this Court and quash the decision of the First Defendant dated 27 May 2022 to cancel the Plaintiff's Timber Permits numbered FCCTP1-O1, FCCTP1-02 and FCCTP1-03 with respect to the Kamula Doso Blocks 1, 2, and 3 Project Area.
3. Subject to term 4 of these orders, an order in the form of a permanent injunction against the Defendants from cancelling or otherwise taking any action or in action that will seriously affect the implementation of the project covered by the Plaintiffs Timber Permits numbered FCCTP1-O1, FCCTP1-02 and FCCTP1-03 with respect to the Kamula Doso, Blocks 1, 2 and 3 Project Area.
4. Term 3 of these orders do not preclude the Defendants from exercising their powers and functions strictly in accordance with the relevant provisions of the *Forestry Act* generally and specifically under Section 86 of the *Act* if there is an intention to cancel any or all three of the Permits under reference FCCTP1-O1, FCCTP1-02 and FCCTP1-03 with respect to the Kamula Doso Blocks 1, 2 and 3 Project Area.
5. The Court reiterates the restraining orders it had already made in proceedings, OS. No. 09 of 2020 – *Robin Kami & Others* v. *Aset Meriah PNG Ltd, Umboi Timber Investments Ltd & PNG Forest Authority & Ors* and OS No.192 of 2020 *Wisa Susapie and Tumu Timbers v. PNGFA*, which impose an immediate ban on any further grant of Timber Permits and logging in all Timber Rights Purchase Areas throughout the country until the Papua New Guinea National Forest Authority (PNGFA), the Conservation and Environment Protection Authority (CEPA), the **Climate Change** Development Authority (CCDA), their respective boards or superiors and the PNG Customs Services fully comply with the various orders of the Court or the orders are revisited and set aside.
6. If the Plaintiff wishes to pursue its claim for damages, it shall do so by way of a writ of summons pleading its damages clearly and succinctly for the Defendants to consider and respond and settle and or failing any settlement, determination by the Court.
7. Costs of the proceeding are ordered in favour of the Plaintiff to be agreed, if not taxed.
8. For clarity, this judgment and orders conclude this proceeding, subject only to any enforcement proceeding.
9. Time for entry of these orders be abridged to the date of settlement by the Registrar which shall take place forthwith.

Ashurst Layers: *Lawyers for the Plaintiff*

Holingu Lawyers: *Lawyers for the First Respondent*

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[1] See Affidavit of Paul Mulder sworn on 28th July 2022.
[2] See Affidavit of Paul Mulder sworn 08th March 2023.
[3] *Ibid*.
[4] (Affidavit of Paul Mulder 28th July 2022).
[5] Both in Annexure "I" to the affidavit of Paul Mulder sworn 27th July 2022.
[6] Copy of letter is annexure "B" to the affidavit of Paul Mulder sworn on 09 October 2023.
[7] Asian Development Bank, ***Climate Change***, *Coming Soon to a Court Near You, International* ***Climate Change*** *Legal Frameworks*, December 2020 at https://www.adb.org/sites/default/files/publication/660321/international-**climate-change**-legal-frameworks.
[8] Copy of which is part of Annexure "I" to the Affidavit of Paul Mulder sworn on 28th July 2022.
[9] Copy of which is Annexure "G" to the Affidavit of Paul Mulder sworn on 28th July 2022.
[10] 43. See annexure "J" to Mosoro's Affidavit annexed to Akane's Affidavit.
[11] See Clause 3.1 (a) (B) of the HOA.
[12] See Clause 3.1 (b) of the HOA.
[13] For cases on the need to give reasons and the consequence of any lack thereof see: *Ombudsman*

Commission v. Peter Yama (2004) SC747, Injia DCJ, Sakora & Sawong JJ (as they then were) and *Mission Asiki v. Manasupe Zurenuoc & Ors* (2005) SC797, Jalina, (as he then was) Cannings and Manuhu JJ.

[14] See: C. Filer, *How April Salumei Became the REDD Queen*, Canberra, ANU, 2015. Copy found at https://press-files.anu.edu.au/downloads/press/p323181/pdf/ch082.pdf.

[15] See: Affidavit of Mulder sworn 9th October 2023.

[16] Found at https://www.un.org/en/global-issues/ **climate-change**. Reproduce in *Kula Oil Palm Ltd v Tieba* (2021) N9559, per Kandakasi DCJ at [18] and also *Saonu v. Mori* (2021) N9170, per Kandakasi DCJ at [98].

[17] https://www.unep.org/climate-emergency.

[18] Ibid.

[19] A notation like this "419ppm" stands for 419 parts per million. It is a unit used to measure the concentration of a specific substance in a mixture. In the context of **climate change**, it often refers to the concentration of carbon dioxide (CO2) in the Earth's atmosphere. A measurement of 419ppm means that for every one million air particles, 419 of them are carbon dioxide molecules. This measurement is significant because it indicates the increasing levels of CO2 in the atmosphere, which is a major contributor to global warming and **climate change**.

[20] Found at https://www.scientificamerican.com/article/deforestation-and-global-warming.

[21] See ADB, "***Climate Change***, *coming to a Court Near You, International Legal Frameworks*", December 2020 at p. 115: found at https://www.adb.org/sites/default/files/publication/660321/international-**climate-change**-legal-frameworks.pdf

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