

“X”

MALAYSIA
IN THE HIGH COURT OF SABAH AND SARAWAK AT MIRI

CIVIL SUIT NO_ MR -21-07-2010_____

BETWEEN

- 1. LIJA AGANG (WN KP:500614-13-5921)**
- 2. HOSSEIN GANG (WN KP:580501-13-5485)**
- 3. JERRY TELANG (WN KP:500316-13-5309)**
- 4. JONDRECK GANG (WN KP: 550614-13-6049)**

(Suing on behalf of themselves and all other families of the village communities of Ba Jawi and all residents, proprietors, occupiers, holders and claimants of Native Customary Rights (NCR) land at and around the Penan village settlement of Ba Jawi, Upper Baram, Sarawak)

.....Plaintiffs

AND

- 1. SAMLING PLYWOOD (MIRI) SDN BHD**
(Co. No. 113217–A)
Wisma Samling, Lot 296,
Jalan Temenggong Datuk Oyong Lawai Jau,
98000 Miri, Sarawak

- 2. DIRECTOR OF FORESTS, SARAWAK**
Forest Department, Tingkat 14,
Wisma Sumber Alam, Jalan Stadium,
Petra Jaya, 93660 Kuching

- 3. STATE GOVERNMENT OF SARAWAK**

.....Defendants

STATEMENT OF CLAIM

Parties

- 1 (a) The Plaintiffs are Penans by race and are therefore, natives of Sarawak.
 - (b) The Plaintiffs bring this action on behalf of themselves and all other residents of the Penan village communities of Ba Jawi as occupiers, proprietors, holders, beneficiaries and claimants of native customary rights (NCR) land at and around Ba Jawi, Upper Baram, Sarawak.
- 2.1 The 1st Defendant is a company incorporated in Malaysia under the Companies Act 1965 with a registered address at Wisma Samling, Lot 296, Jalan Temenggong Datuk Oyong Lawai Jau, 98000 Miri, Sarawak and a principal nature of business in the manufacture and/or sale of plywood, and/or the extraction and/or sale of timber. A Re-Entry Hill Logging Timber Licence No. T/0413 (*hereinafter, 'the said timber licence'*) was issued to it by the 2nd Defendant to harvest merchantable timber over a licenced area in the Upper Baram district. The timber licence was issued in September 1993 and will expire in August 2018.
 - 2.2 The 2nd Defendant is at all material times and for all purposes, the servant and/or agent of the 3rd Defendant whose official address is at 14th Floor, Wisma Sumber Alam, Jalan Stadium, Petra Jaya, 93660 Kuching, Sarawak and of whose official duty and responsibility includes *inter alia*, the grant and/or issuance of timber licences.
 - 2.3 The 3rd Defendant is the sovereign government of Sarawak state within the Federation of Malaysia, and is at all material times and for all purposes, the employer and/or principal of the 2nd Defendant.

The Penan community of Ba Jawi

3. The Plaintiffs share the same ancestry as the Penans of settlements in Long Lamai, Ba Lai and Long Beruang.
 - 3.1 About 200 years ago, or as far back as the Penans can recall of their oral history, the ancestors of the Plaintiffs and the Penans of settlements in Ba Jawi, Long Lamai, Ba Lai and Long Beruang and generally the Penans who are now settled in the Upper Baram, were living in and around *Ba Jawi*, practicing the native customary

rights over the land in *Ba Jawi* and the vicinity. They hunted and gathered food from the forests and lived on sago (*uvut*) as their staple food. The plaintiffs are presently practicing these rights over the same land.

- 3.2 As far as the Plaintiffs can recall, the earlier leaders of their nomadic Penan tribe were *Opo Munyai*, *Opo Peniyiban*, *Opo Jaleng*, *Opo Muai*, *Opo Sawen*, *Opo Tevu*, *Opo Luti*, and *Opo Nuhun*.
- 3.3 By and through their customary practice most characterized by *molong*, tribal groups of the nomadic Penan lived in and within distinct territories. Traditional dwelling huts called *lamin toro* were left behind as distinct marks of earlier settlements.
- 3.4 When the Penans developed the system of setting up satellite sago harvesting camps, they started to be semi-nomadic, about 100 years ago.

Ba Jawi

4. The present headman of the Ba Jawi Penans, Lija Agang, is a direct descendant of *Opo Munyai* and *Opo Peniyiban*. He succeeded his father, Agang Ngiung when the latter passed away. In turn, his father succeeded Bangau as the headman. Since the time of *Opo Munyai*, the Ba Jawi Penans have settled in the watersheds of Baram River, mostly along Sungai Jawi. *Opo Munyai* was succeeded by *Opo Peniyiban* as headman of the Ba Jawi Penans.

Headman Agang Ngiung was born on the Kara River, a sub-tributary of the Jawi River where he raised his family with his wife, Julan Upa. Sago palm trees on the right side of the river mouth of Kara River were used to produce *uvut*, a sago starch staple of the Ba Jawi Penans. These sago palm trees are still found today at Kara River.

The Ba Jawi Penans bury their dead in their ancestral land, along the confluence of streams or small rivers and identified to be at Upper Nyoke, Ma'ut, Lamah and Likam, all being sub-tributaries of the Jawi and Buang Rivers.

The Selaba and Buang River areas were the location where the Plaintiffs and their ancestors roamed to hunt and collect and harvest jungle produce. In addition, the Plaintiffs' ancestors had roamed the forests to as far as the Moh, Pelutan and Selungo Rivers. In their sojourns, they met and befriended the Kayans and Kenyahs.

Movements in and around Ba Jawi and to locations outside it is by a series of trekking pass, naturally identified and named as Sawa Anau, Sawa l'ot Ba Penan Silat and Sawa Lakat Nebak.

The *tamu* meetings often attended by the Ba Jawi Penans were at Lio Mato, Upper Baram where goods brought by the Penans were traded with necessities and other goods brought by other indigenous tribes.

After the Second World War, the Ba Jawi Penans embraced Christianity by the effort of White man missionaries. The Ba Jawi Penans do not know the names of these missionaries and they were given and known by their Penan names as Pendita Panai and Pendita Lalung.

Before the Ba Jawi Penans were settled in villages by the British Colonial Administration, the Penans were roaming the jungles of the Upper Baram in search of wild sago, jungle produce, wild animals, rubber and other wild products for sustenance and sale. They enjoyed good relations with the British administration, that regularly invited them to the *tamu* at Lio Mato, Baram, Sarawak.

When settled in their original land, the Ba Jawi Penans were able to plant various food and cash crops and raise livestock for community use and sale. However, to-date, the Ba Jawi Penans still practices their ancestors' lifestyle such as hunting in the jungles of Upper Baram for weeks or months in search of forests produce.

Native Customary Rights over Land

5. At all material times, the Plaintiffs have acquired and claimed native customary rights (“**NCR**”) and/or native title and/or usufructuary right and/or territorial domain locally referred to and known as “**Tana Pengurip**” over an area of land bordered by the following boundary with physical ground markings referred and known to the Plaintiffs and their neighbouring village communities as their ancestral or NCR land (“**NCR Land**”) of Ba Jawi, Upper Baram, Sarawak.

Particulars

“Tana Pengurip” of Ba Jawi

The boundary of Ba Jawi begins at the river Ba Buang, right after the confluence of a small stream called Ba Nyivung. From there the boundary ascends and follows a small mountain ridge called Tokong Lesuan to the top of a mountain called Berusu Batang Kapon. From there it continues up on the same mountain ridge and stretches further up to a mountain called Berusu Bateu.

Following the mountain ridge, the boundary leads up to a mountain peak called Berusu Payah. It then descends on Berusu Payah, and crosses the Ba Ulang river right after the confluence of (Long) Ba Lamin Telang and ascends the mountain ridge until it reaches a pass called Sawa l'ot Ba Pejanan.

Then the boundary follows a mountain ridge along the watersheds of Ba Ulang and Ba Pejanan rivers until the summit of Berusu Lamin Kerotong. Then it follows the mountain ridge to a pass called Sawa Tupi. Further away is another mountain ridge called Berusu Bua Kung, and then, following this mountain to Sawa Batang Kapon, until it reaches Berusu Alim. In passing through Berusu Alim, the boundary line will reach Berusu Teva'un.

Next, following a mountain called Tokong Patah Ja'au, it will reach Sawa Lakat Alim, before passing through Berusu Melete to Sawa Asa Bila'. It then extends up to the next mountain called Tokong Bolo Aput to pass through Sawa Lakat Nebak and then onto Berusu Uvut. From there, it will pass through Sawa Lamin Tetong to eventually reach a mountain ridge between Indonesia and Malaysia, known as Tokong Toto.

Before reaching Tokong Toto, the boundary crosses a summit called Berusu l'ot Ba Jawi, and then to Berusu l'ot Ba Buang, and finally to Berusu Tokong Ja'au, in order to reach Sawa Anau and Berusu Anau. The boundary line then goes on to Berusu l'ot Ba Tabo, after passing through

Sawa l'ot Ba Tabo. From Tokong Toto, the boundary continues to Berusu Iliu and Sawa Bateu Mengot. It continues on until it eventually reaches Sawa l'ot Ba Peresek, before it proceeds to Sawa l'ot Ba Batang Maha, to reach Berusu Uvut Ja'au. Then it continues down to Berusu Buang, and thereon to a mountain called Tokong Uvut until it reaches the peak, known as Berusu Datee Tivang. It will then stretch upwards to another mountain ridge called Berusu Anak Buang, before descending the ridge to end at the point of origin at Ba Nyivung.

The boundary or extent of the said ancestral or NCR Land of Ba Jawi is as reflected on the map marked "M" and annexed hereto.

6. The Plaintiffs' ancestors had roamed and/or occupied all the areas within the said *Tana Pengurip* and/or NCR Land since time immemorial until the 1950s, when they decided to settle at the present location of their village settlement of Ba Jawi. The Plaintiffs claim NCR over the said *Tana Pengurip as the home for the Penans* or NCR Land by virtue of their adat or customs and/or adat or customs of the Penans of Sarawak. The Plaintiffs have never abandoned their NCR over the said NCR Land and they have lived and/or settled within the said *Tana Pengurip* or NCR Land since their ancestors prior to the installation of the 1st Rajah as the Rajah of Sarawak, in the year 1841.
 - 6.1. In accordance with the Plaintiffs' customs and practice, their ancestors and themselves prior to their decision to have a settled lifestyle in the 1950s, the Plaintiffs roam the areas of their said NCR Land along a distinct route and within a distinct territorial confine in search for jungle produce and games. The areas often and frequently visited were the areas named in paragraph 5, hereinabove. The Plaintiffs lived in the same locality in the present settlement and it has become their home from which they made trips to the surrounding forests, in search for daily foods, in the said *Tana Pengurip* and/or NCR Land.
 - 6.2. During the later years of the Rajahs (1841-1942), the Plaintiffs' ancestors were already in contact with other indigenous groups from other villages and settlements in the Upper Baram. The contact between the Plaintiffs' ancestors and the Rajahs and the British Empire were conveyed through native officials appointed by the Rajahs' government.

- 6.3. The Plaintiffs' ancestors and/or themselves had barter traded with other indigenous groups from other villages and settlements with goods such as *Nyateng* (resins to obtain fire), stones extracted from the stomachs of wild animals, *Kapon* (latex of Kapor trees) and handicrafts (mats, baskets, etc.); in exchange for shotguns, clothes for *avet* (dressing), cooking pots, axes, hatchets and others. The Japanese War of 1941-1945 hampered this barter trade. After the said Japanese War, the Plaintiffs and/or their ancestors resume the barter trade. The Plaintiffs and/or their ancestors have befriended the British officers whom they have met and known to them as Tuan Gelat, Tuan Akat, Tuan Beripin, Tuan Lidam, Tuan Adinand, Tuan Tana and Tuan Rick.
- 6.4. That the Plaintiffs have various significant landmarks related to certain historical incidents within the said *Tana Pengurip* and or NCR Land that are now evidence of their occupation of the said *Tana Pengurip* and or NCR Land as claimed herein. The names of the localities as enumerated in paragraph 5 hereinabove, and the historical incidents connected or related to these landmarks shall be disclosed at the trial of this action.
7. Further and in the alternative, the Plaintiffs shall claim that they have acquired and/or inherited their rights, interests and/or title over the said *Tana Pengurip* or NCR Land by virtue of and under the principle of the common law.
8. The Plaintiffs' NCR over the said *Tana Pengurip* and or NCR Land is recognized by the Sarawak Land Code (Cap.81) and/or its predecessors and the said NCR was created and/or acquired prior to the 1st day of January 1958, and still subsist as such.
9. From the said *Tana Pengurip* and/or NCR Land, that comprises of farmland and forests, the Plaintiffs obtain food, valuable medicines, wildlife and other forest produce, for their livelihood and subsistence. They also farm and cultivate padi, various fruit trees, and other essential food crops on the said *Tana Pengurip* and/or NCR Land.
10. The said *Tana Pengurip* and or NCR Land is not merely a source of livelihood but constitute life itself as the said *Tana Pengurip* and/or NCR Land is fundamental to the Plaintiffs' social, cultural and spiritual identity as the native Penan peoples of Sarawak.

Forest Timber Licence

11. In and around September 1993, without consultation with the Plaintiffs and unknown to them, the 2nd Defendant issued the said timber licence to the 1st Defendant, of which the licensed areas within the said timber licence, in whole or in part, encroaches on the said *Tana Pengurip* or NCR Land of the Plaintiffs. Since the issuance of the said timber licence, the 1st Defendant and/or its contractors, subcontractors, employees, servants and/or agents have been and are working, trespassing and destroying the said *Tana Pengurip* or NCR Land and its constituents, depriving the Plaintiffs of their main source of livelihood.

Timber Licence No. T/0413

12. Samling Plywood Sdn Bhd's Re-Entry Hill Logging Timber Licence No. T/0413 was issued by the 2nd Defendant to the 1st Defendant to harvest merchantable timber over a Licenced area measuring about hectares.
 - 12.1 The Forest Timber Licence No. T/0413 was issued in September 1993 and will expire in August 2018.
13. The boundary or extent of the said timber licence in the vicinity of the *Tana Pengurip* or NCR Land of Kampung Ba Jawi overlaps with the *Tana Pengurip* or NCR Land of Kampung Ba Jawi as reflected on the map marked "L" and annexed hereto.
14. The said timber licence was granted without the permission of the Plaintiffs, who are the rightful owners and/or proprietors and/or Licensees and/or claimants to/of the said NCR Land.
15. The said timber licence was granted for the areas of land which includes and comprised of farmlands and forest reserves used by the Plaintiffs.
16. It is an express provision and/or requirement of the said timber licence that it is granted subject to and/or without prejudice to the Plaintiffs' rights including the exercise of native customary rights over the licensed area.
17. Neither the 1st Defendant nor the logging contractors had conducted ground surveys to identify and establish the boundary of the said NCR land or land claimed by the Plaintiffs that include burial grounds, historical sites, sacred sites and/or other significant sites in the licensed area.

Plaintiffs' rights impaired

18. The grant and/or issuance and/or registration of the said timber licence by the 2nd Defendant on the ostensible authority of legislation such as the Forest Ordinance is unconstitutional and/or wrongful in so far as it

abridges or impairs the Plaintiffs' rights and/or title in or over the said *Tana Pengurip* or ancestral or NCR Land for being the source of the Plaintiffs' livelihood and for their generations to come.

- 18.1 Since time immemorial the ancestors of the Plaintiffs had established and maintained a comprehensive scheme by which through their laws, customs, tradition and practices, have determined the questions of ownership, land use management and occupation of land, forests and rivers within their said *Tana Pengurip* or ancestral or NCR Land.
- 18.2 By their laws, customs, tradition and practices, they were entitled to the rights of ownership and/or use and/or occupation of the said *Tana Pengurip* or ancestral or NCR Land and access to all the products therein, as well as to the hunting grounds and fishing waters. The Plaintiffs have exercised the aforesaid rights over the said *Tana Pengurip* or ancestral or NCR Land since time immemorial until to this day.
- 18.3 Therefore, the Plaintiffs had prior to the enactment of the said legislation, accrued and acquired vested native customary rights over the said *Tana Pengurip* or ancestral or NCR Land.
- 18.4 For the reasons aforesaid, the said accrued rights could not be, and were never lawfully vested in the state government under article 47 of the constitution of the state of Sarawak or howsoever, otherwise.
- 18.5 No timber licence, temporary or otherwise, could therefore be issued over the Plaintiffs' said *Tana Pengurip* or ancestral or NCR Land.

No Extinguishment Of The Plaintiffs' NCR

19. There was no extinguishment of the Plaintiffs' NCR within the land covered by the said timber licence before the same were issued and/or granted to the 1st Defendant; whereas compensation in accordance with the Land Code of Sarawak and the Federal Constitution is required to be made or paid to the Plaintiffs to effect such extinguishment. The issuance of the said timber licence in such circumstance is therefore unlawful, unconstitutional, and improper and henceforth, their issuance and grant were null and void.
 - 19.1 The said timber licence was issued without the consent of the Plaintiffs, who are the rightful owners and/or proprietors and/or

Licensees and/ or claimants of the said *Tana Pengurip* or ancestral or NCR Land.

- 19.2 There was no extinguishment exercise being carried out under the provisions of the Land Code (Cap.81) Sarawak, 1958, by the 2nd and/or 3rd Defendants, which is a legal and mandatory requirement before the alienation of State Land to any person, group, corporation and/or institution and that such issuance of timber licence is and amount to alienation of State Land.
- 19.3 The mandatory provisions of the Sarawak Land Code and/or the Federal Constitution on compensation were not followed by the 2nd and/or 3rd Defendants.
- 19.4 Further and/or in the alternative, there was a breach of Article 13 of the Federal Constitution, in that there was deprivation of the Plaintiffs' properties without adequate compensation.
20. Alternatively, the granting and issuance of the said timber licence amounts to an extinguishment and/or termination of the Plaintiffs' right in or over the said *Tana Pengurip* or ancestral or NCR Land of which the extinguishment and/or termination are bad as, *inter alia*, they were not, and had not been done, by legislation designed specifically and clearly for that purpose.
21. Further and/or in the alternative, the Plaintiffs state that the granting and/or issuance of the said timber licence by the 2nd and 3rd Defendants is unconstitutional, as it contradicts the articles, provisions and/or spirit of the Federal Constitution.
22. Further and/or in the alternative, the Plaintiffs state that the provisions of the Forest Ordinance (Cap.126) in as far as they allow the issuance of the said timber licence over the said *Tana Pengurip* or ancestral or NCR Land is unconstitutional.
23. Further and/or in the alternative, the Plaintiffs state that the terms of the said timber licence are subjected to the Plaintiffs' NCR over the said *Tana Pengurip* or ancestral or NCR Land.

Trespass

24. Since September 1993, the 1st Defendant, its contractors, subcontractors employees, servants and/or workers have wrongfully trespassed onto the Plaintiffs' said *Tana Pengurip* or ancestral or NCR Land, and destroyed and damaged a very substantial area of the said NCR Land, including fruit trees and crops thereon, and causing streams running through the

affected land to be earth-filled through the use of bulldozers, excavators, shovels, trucks and lorries.

25. The 1st Defendant, its contractors, subcontractors, employees, servants and/or workers also felled the trees and clear vegetations and thereby destroying and damaging the communal forests of the Plaintiffs.
26. In spite of the numerous and continued objections and protests by the Plaintiffs, the 2nd and/or the 3rd Defendant had given assurance to resolve the dispute and stop the trespass but had not acted on their assurance, thereby permitting the 1st Defendant's trespass to continue on the Plaintiffs' said *Tana Pengurip* or ancestral or NCR Land.
27. With the said timber licence issued by the 2nd Defendant, the 1st Defendant have entered through their contractors, subcontractors, employees, servants and/or workers wrongfully claiming that they have the right to enter, clear, use and occupy the Plaintiffs' said *Tana Pengurip* or ancestral or NCR Land.

Damages

28. By reason of the matters aforesaid, the Plaintiffs' sources of and, any right to their, livelihood is seriously threatened and they have suffered loss and damage.
 - 28.1 The farmland, rivers and the communal forests are damaged and destroyed by the 1st Defendant, its contractors, subcontractors, employees, servants and/or workers.

Particulars Of Damage

- (a) Irreparable damage to vegetations, food, water, valuable medicines, wildlife and other forest produce which the Plaintiffs need and are dependent upon with the destruction of the communal forests and thereby seriously impairing the Plaintiffs' sources of livelihood.
- (b) Extensive damages to the Plaintiffs' said *Tana Pengurip* or ancestral or NCR Land.
- (c) Destruction of fruit trees and other essential trees such as "*Tajem*" (poison trees) and "*Kayeu Keleput*" (blowpipe trees), and crops.

- (d) Deprivation of the Plaintiffs crucial source of earning with the irreversible destruction of the Plaintiffs' said *Tana Pengurip* or ancestral or NCR Land.
- (e) Destruction of graves, historical and cultural sites which are essential and imperative constituents of the cultural heritage of the Penans in the region.

Legitimate Expectation & Natural Justice

- 29.1 The Plaintiffs have a legitimate expectation that their rights, tradition, culture and livelihood will not be disrupted, extinguished, and/or restricted.
- 29.2 The Plaintiffs' rights were impaired without a right to be heard and/or a right to say "no" and/or object to the granting and/or issuance of any timber licences and/or title to the extinguishment and/or termination of their rights.

Relevant Consideration Not Taken Into Account

- 30. The 2nd and 3rd Defendants had also acted unreasonably and had failed to take relevant matters into consideration when it granted and/or issued the said timber licence.

Particulars

- 30.1 That the said timber licence affected the rights and/or interests of the Plaintiffs, their immediate family members and generations to come.
- 30.2 That any activities of the Licensees their employees servants and/or contractors subcontractors within and/or over the said NCR land would cause irreparable damage to the said NCR land, the resources, environment and eco-system of the area, thereby affecting the lives and lifestyle of the Plaintiffs, their families and descendants who are and/or would be dependent on their said NCR land resources and rivers for their food and medicine, well-being and the very survival of themselves, their children and their communities.

Constitutional Issues

31. Further and in the alternative, the Plaintiffs aver that the provisions of the aforesaid legislation impaired the Plaintiffs' rights to property in a manner which is discriminatory and unfair and based on criteria which is not made applicable to the right to property acquired and held by non-natives. In the premises, the said legislation or any process exercised pursuant to it in so far as it affects the Plaintiffs' rights, is unconstitutional and invalid as being in violation of article 8 of the Federal Constitution (Equality Before the Law).
32. Further and in the alternative, the issuance of the said timber licence was unconstitutional as it was issued in violation of Article 13 of the Federal Constitution (No Confiscation of Property Without Adequate Compensation).

Particular

- 32.1 The granting of the said timber licence by the 2nd and 3rd Defendants amounted to the compulsory acquisition of the Plaintiffs' said NCR Land but no provision for compensation in accordance with the law has been made nor have the Plaintiffs been paid any compensation.
33. Further and in the alternative, the acts as aforesaid of the 1st, 2nd and 3rd Defendants and the acts of the 1st Defendant's contractors, subcontractors, employees, servants and/or agents and/or the provisions of law that impair the rights of the Plaintiffs to their NCR over land as herein before referred to, are unconstitutional and void in that they violate, individually and/or cumulatively Article 5 of the Federal Constitution which guarantees, *inter alia*, that no person shall be deprived of his life (which includes the right to livelihood) except in accordance with the law.

Particular

- 33.1 The Plaintiffs have been deprived of their sources of food, fish, medicines; wildlife and other forest produce which the Plaintiffs need and are dependent upon for their daily sustenance.
- 33.2 The Plaintiffs have also been deprived of their sources of income from the produce of fruit trees and other cash crops.
34. The Plaintiffs aver that their right to livelihood has been, and will continue to be seriously impaired by the aforesaid acts and provisions of the law.

35. The Plaintiffs further aver that the impairing of their rights to livelihood by the aforesaid acts and provisions of the law is unjust, unfair and unreasonable and destructive of their economic, cultural and social system for their existence and therefore not in accordance with the law.
36. Further and in the alternative, the Plaintiffs aver that the said timber licence are subject to the rights of the Plaintiffs in or over the said NCR Land and therefore the Licensees cannot lawfully acquire any title or interest therein.
37. Further and in the alternative, the Plaintiffs aver that the issuance of the said timber Licence was an abuse of the fiduciary duty of the 2nd and 3rd Defendants to protect the Plaintiffs rights and/or title in and possession of their said NCR Land in that by its said act as aforesaid the 3rd Defendant had failed to act for the benefit of the Plaintiffs. The said timber licence was therefore null and void.

Particulars of fiduciary Duty relied on

- 37.1 Although the law granted upon the 3rd Defendant special powers and discretion to give preferential treatment to the Plaintiffs as regards the reservation or alienation of land in Sarawak, the 3rd Defendant had failed, refused and/or neglected to exercise it to protect the Plaintiffs said rights and/or title in and possession of the said NCR Land and/or to give them such preferential treatment.
 - 37.2 The 3rd Defendant and/or its predecessors, upon acquiring and/or establishing sovereignty over the State of Sarawak with the agreement and/or undertaking that the said sovereignty shall be subjected to the natives rights and/or title to and possession of their land, the 2nd and or the 3rd Defendants are entrusted and obliged to act to protect the Plaintiffs said rights and/or title to and possession of the said NCR Land.
38. The Plaintiffs, in addition to the matters pleaded in the aforesaid paragraphs, further claim exemplary damages by reason of the conduct of the Defendants.

Particulars of conduct

- 38.1 The 3rd Defendant, despite express knowledge of the Plaintiffs claim over the said NCR Land and the continued objections and protests by the Plaintiffs, have permitted the continuance and/or failed to revoke the said timber licence of the 1st Defendant.

- 38.2 Such conduct is oppressive, arbitrary, illegal and/or unconstitutional.
- 38.3 Such conduct is also calculated to result in a profit for the Defendants.
39. Further and in the alternative, the Plaintiffs aver that the issuance of the said timber licence was in breach of section 8 and/or section 13 and/or section 15 of the Land Code (Cap.81) in that the Plaintiffs' said *Tana Pengurip* or ancestral or NCR Land were alienated to others without extinguishment of the Plaintiffs' rights therein and without payment of compensation to them. In the premise, the said timber licence was illegal, unlawful and void.

Relief

Wherefore the Plaintiffs claim for:

- i. A declaration order that the Plaintiffs had acquired and/or inherited native title and /or Native Customary Rights (NCR) over the area as claimed by the Plaintiffs referred to in the locality map marked as Exhibit "M" and annexed to herein;
- ii. A declaration that this native title and/or rights preclude the 2nd and 3rd Defendants from issuing and/or granting the said timber licence thereby impairing or abridging the Plaintiffs' said right;
- iii. A declaration that the acts of the 2nd and 3rd Defendants in issuing the said timber licence, in so far as they impair the Plaintiffs NCR over the Plaintiffs' said *Tana Pengurip* or ancestral or NCR Land, is wrong illegal unlawful bad and/or void;
- iv. A Declaration order that the issuance of the said timber licence to the 1st Defendant in as far as the extent of that area under the said timber licence overlaps and/or cover the Plaintiffs' said *Tana Pengurip* or ancestral or NCR Land is unlawful, improper, unconstitutional and therefore null and void, for want of extinguishment of Plaintiffs' NCR over the said *Tana Pengurip* or ancestral or NCR Land;
- v. Alternatively, a Declaration that the issuance of the said timber licence was subject to the native title and/or native customary rights and/or usufructuary rights of the Plaintiffs in or over the said *Tana Pengurip* or ancestral or NCR Land and that the licences do not affect the Plaintiffs said title and/or rights therein;

- vi. A declaration that in issuing and granting the said timber licence as aforesaid, the Defendants are in breach of their fiduciary duty to the Plaintiffs and therefore the said Timber Licences was null and void;
- vii. A Declaration that the issuance and granting of the said timber licence was in breach of the statutory provisions of the Forests Ordinance (Cap.126);
- viii. A Declaration that the issuance and granting of the said timber licence is unlawful, improper, unconstitutional and therefore null and void;
- ix. A Declaration order that the area so included in the said timber licence as claimed by the Plaintiffs as part of their *Tana Pengurip* or ancestral or NCR Land, the same be excised out of the area of land under the said timber licence;
- x. A prohibitory injunction restraining the 1st Defendant, its contractors, subcontractors, employees, servants and/or workers from trespassing, clearing, using or occupying the Plaintiffs said *Tana Pengurip* or ancestral or NCR Land;
- xi. A mandatory injunction against the 1st Defendant, its contractors, subcontractors, employees, servants and/or workers to cease operation and remove all structures, equipment and/or machineries from the Plaintiffs said *Tana Pengurip* or ancestral or NCR Land forthwith;
- xii. Damages
- xiii. Exemplary damages, alternatively, aggravated damages;
- xiv. Alternatively, an order that the damages be assessed accordingly;
- xv. Interests;
- xvi. Cost; and
- xvii. Such further and/or other relief this Honourable Court deems fit and just.

Dated this day of

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MESSRS BARU BIAN
Advocates & Solicitors for the Plaintiffs