

MALAYSIA
WRIT OF SUMMONS
IN THE HIGH COURT IN SABAH AND SARAWAK AT MIRI
IN THE STATE OF SARAWAK
SUIT NO. 22 – 46 – 98 (MR)

BETWEEN

KELASA UNAAN
JAWA NYIPA
PELUTAN TIUN
BILONG OYOI

(Suing on behalf of themselves and
all other proprietors, occupiers,
holders and claimants of native customary
rights land at Long Kerong, Long Sepigen, Long Sait
and Long Ajeng Upper Baram, Miri Division, Sarawak.)
C/o Long Kerong, Upper Baram, Miri Division, Sarawak.

1st Plaintiff
2nd Plaintiff
3rd Plaintiff
4th Plaintiff

1. GOVERNMENT OF SARAWAK

1st Defendant

2. SAMLING PLYWOOD (BARAMAS) SDN. BHD.
Lot 296, Wisma Samling,
Jalan Temenggong Datuk Oyong Lawai Jau,
98007 Miri, Sarawak.

2nd Defendant

3. SYALRIKAT SAMLING TIMBER SDN. BHD.
Lot 296, Wisma Samling
Jalan Temenggong Datuk Oyong Lawai Jau,
98007 Miri, Sarawak.

3rd Defendant

**YANG AMAT ARIF DATUK CHONG SLEW FAI, P.N.B.S., CHIEF JUDGE OF THE
HIGH COURT IN SABAB AND SARAWAK IN THE NAME AND ON BEHALF OF
SERI PADUKA BAGINDA YANG DI-PERTUAN AGONG.**

To: 1. GOVERNMENT OF SARAWAK

2. SAMLING PLYWOOD (BARAMAS) SDN. BHD.
Lot 296, Wisma Samling, Jalan Temenggong Datuk Oyong Lawai Jau, 98007 Miri,
Sarawak

3. SYARIKAT SAMLING TIMBER SDN. BHD.
Lot 296, Wisma Samling, Jalan Temenggong Datuk Oyong Lawai Jau, 98007 Miri,
Sarawak.

WE COMMAND you that within 20 days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in a cause at the suit of the abovenamed Plaintiffs.

TAKE NOTICE that in default of your so doing the Plaintiffs may proceed therein in judgement and execution.

WITNESS, MR GABRIEL GUMIS HUMEN, Registrar of the High Court of Sabah and Sarawak the 8th day of May 1998.

(signed)
Baru Bian Advocates & Solicitors
Advocates for the Plaintiff

(signed)
Senior Assistant Registrar
High Court, Miri

N.B

This writ may not be served more than twelve calendar months after the above date unless renewed by order of court.

The defendant (or Defendants) may appear hereto by entering an appearance (or appearances) either personally or by a solicitor at the Registry of High Court.

A Defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for RM5.00 with an addressed envelop to the Registrar, High Court at Miri.

STATEMENT OF CLAIM

Parties

1. (a) The Plaintiffs bring this action on their own behalf as well as on behalf of the residents of the following Penan Longhouses and/or settlements known as Long Kerong, Long Sepigen, Long Sait and Long Ajeng Upper Baram, Miri Division, Sarawak.

(b) The Plaintiffs are Penans by race and natives of Sarawak.
2. The 2nd Defendant is a company incorporated in Malaysia under the Companies Act 1965 having its registered office at Lot 296, Wisma Samling, Jalan Temenggong Datuk Oyong Lawai Jau, 98007 Miri, Sarawak.
3. The 3rd Defendant is a Company incorporated in Malaysia having its registered office at Lot 296, Wisma Samling, Jalan Temenggong Datuk Oyong Lawai Jau, 98007 Miri, Sarawak.

Native Customary Rights over Land

4. (a) The Plaintiffs aver that at all materials times they have acquired native customary rights over all the lands in the areas the boundaries of which are more particularly set out in the map annexed hereto marked "A" and edged in red. The Plaintiffs claim the said rights over all the said land areas (hereinafter referred to as "the said native customary lands").

(b) The Plaintiffs native customary rights over the said native customary lands is recognised by the Land Code Cap. 81.

(c) From the said native customary lands, the Plaintiffs derive food, valuable medicine, wildlife and other forest produce for their livelihood and sustenance. They also cultivate padi, fruits trees and other crops and essential trees on the said lands.

(d) The said native customary lands, which is comprised of cultivated land and forests, is not just a source of livelihood but also constitutes life itself as the said land and the resources 'therein are fundamental to the Plaintiffs' social, cultural and spiritual life as native people.

Forest Timber licence.

5. (a) At a date unknown to the Plaintiffs the 1st Defendant issued two purported Forest Timber Licences namely No. T/0411 and No. T/0412 (hereinafter referred to as "the said licences") to the 2nd Defendant to fell, extract and sell timbers from the areas covered by the said licences (hereinafter referred to as "the licenced areas").

(b) The said licences were issued subject to various conditions endorsed thereon. (The Plaintiffs shall refer to the said licences and conditions for their full terms and effects at the trial.)

(c) The 2nd Defendant had since then assigned and/or transferred its rights under the said licences to the 3rd Defendant.

Forest Timber licence issued in disregard of Plaintiffs' rights.

6. The Plaintiffs aver that the 1st Defendant had issued the said Forest Timber Licences wrongfully and in disregard of the Plaintiffs acquired and/or accrued rights over the said native customary lands and is therefore bad and/or void.

PARTICULARS

- a) The area covered by the said licences cover and/or include the Plaintiffs' said native customary lands.
- b) There has been no prior extinction or extinguishment of the said native customary rights according to the law or at all.
- c) There has been no provision for compensation to the Plaintiffs.
- d) There has been no payment for compensation to the Plaintiffs.
- e) The said licences are uncertain in its scope, extent and purport.

Plaintiffs; Rights impaired: Unconstitutional

7. The granting of the said Forest Timber Licences by the 1st Defendant to the 2nd Defendant' on the ostensible authority of legislation such as the Forest Ordinance Cap.126 is unconstitutional and/or wrongful, in so far as they abridge or impair the Plaintiffs' rights over their said native customary lands.

PARTICULARS

- (a) Since time immemorial the said Plaintiffs have established and maintained a comprehensive scheme by which, through their laws, custom, tradition and practices they determined questions concerning the ownership, use, occupation of land, forest and rivers.
- (b) By the said laws, customs, tradition and practices, they were entitled to the rights of ownership and/or use and/or occupation over the land and access to the forest as well as to the fishing waters. The Plaintiffs exercised the aforesaid rights over the said native customary lands.
- (c) Therefore, the Plaintiffs, had prior to the enactment of such legislation accrued and vested native customary rights over the said lands.

(d) For the reasons aforesaid, the said accrued rights and/or native customary lands could not be, and were never, lawfully vested in the 1st Defendant, under Article 47 of the Constitution of the State of Sarawak or howsoever otherwise.

(e) No Forest Timber Licence or permit or otherwise, could therefore be issued over the Plaintiffs' said native customary lands.

8. Alternatively, the granting of the said licences amounts to an extinguishment of the Plaintiffs' rights which extinguishment is bad as, inter alia, it was not, and had not been done, by legislation designed specifically and clearly for that purpose.

Legitimate Expectation and Natural Justice

9. a) The Plaintiffs have a legitimate expectation based on matters set out in paragraphs 5 and/or 8 herein, to be issued a document of title in respect of the said native customary lands.
- b) The Plaintiffs' rights were impaired without a right to be heard.
- c) In the premises, the said Forest Timber Licences are void ab initio.

Relevant Considerations Not Taken into Account

10. The 3rd Defendant had also acted unreasonably and had failed to take relevant matters into consideration when it granted the said licences to the 2nd Defendant.

PARTICULARS

(i) Although the 1st Defendant knew or ought to have known about the prior and/or the existence of the native customary rights of the Plaintiffs over their said native customary lands from all the records in its possession yet the 1st Defendant issued the said licences over the Plaintiffs said native customary lands.

(ii) That the activities of the 2nd and/or 3rd Defendants or their agents or servants over the said native customary lands would cause irreparable damage to the land, forest and/or the environment and eco-system of the Plaintiffs' said native customary lands thereby adversely affecting the lives and lifestyles of the Plaintiffs who are entirely dependant on their lands and rivers for their food, medicine, well-being and the very survival of themselves, their children and their community.

Constitutional issues

Article 8

11. Further and in the alternative, the Plaintiffs aver that the provisions of the aforesaid legislation, impair 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 they affect the Plaintiffs' rights over their native customary lands is unconstitutional and invalid for violating Article 8 of the Federal Constitution (equality before the law).

Article 13

12. Further and in the alternative, the issuance of the said licences was unconstitutional as it was issued in violation of Article 13' of the Federal Constitution.

PARTICULARS

The granting of the said Licences by the 1st Defendant to the 2nd Defendant amounted to the compulsory acquisition of the Plaintiffs' said native customary lands and all the timbers thereon by the 1st Defendant on behalf and for the benefit of the 2nd Defendant and/or its servants or agents but no provision for compensation in accordance with law has been made nor have the Plaintiffs been paid any compensation.

Articles 5

13. (a) Further and in the alternative, the acts as aforesaid of the 1st Defendant or its servants or agents and/or the provisions of the law which impair the rights of the Plaintiffs to their native customary lands as hereinbefore 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 law).

PARTICULARS

- (i) The Plaintiffs have been deprived of their sources of food, fish, medicine, wildlife and other forest produce which the Plaintiffs need and are dependant upon for their daily sustenance.
- (ii) The Plaintiffs have also been deprived of their sources of income from their fruits trees timbers and other essential trees or produce and crops.

(b) 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.

(c) The Plaintiffs' further aver that the impairing of their right to livelihood by the aforesaid acts and the provisions of the said law is unjust, unfair and unreasonable, destructive of their economic, cultural and social system for their existence and survival and therefore not in accordance with the law.

14. Further and/or alternatively, the 1st Defendant acted unlawfully and/or exceeded their powers by issuing the aforesaid licences in that:

- a) They wrongfully included the Plaintiffs said native customary lands in the licensed areas covered by the said licences when the Forest Ordinance Cap. 126 does not empower them to issue such licences over the Plaintiffs' native customary lands;
- b) The 1st Defendant acted and/or exercised their powers in a capricious, arbitrary or improper manner.
15. Alternatively, if the issuance of the said licences was valid (but which is denied) the said licences had become illegal, null and void by reason of the breaches of the Forest Ordinance Cap. 126.
16. Further and/or in the alternative, if the issuance of the said licences were valid (which is denied) they were issued subject to the prior rights of the Plaintiffs which are still subsisting over their said native customary lands and does not confer any right to the 2nd Defendant or their servants or agents to enter or encroach on the Plaintiffs' said lands to fell, extract and sell any timbers therefrom and/or to construct any roads, bridges, culverts and whatever thereon for the said purposes.
17. (a) Since the issuance of the said licences the 2nd and 3rd Defendants and/or their agents or servants had and still continue to wrongfully trespassed onto the Plaintiffs said native customary lands and with the aid of bulldozers, excavators and lorries constructed logging roads, felled, extracted and/or removed timbers from the Plaintiffs' said native customary lands.
- (b) The said activities of the 2nd and 3rd Defendants or their servants or agents have 'caused extensive destruction of the Plaintiffs' native customary lands and damages to and loss of their timbers and other essential resources thereon.
- (c) They also caused extensive pollution and silting of the rivers on which the Plaintiffs are dependent for their water supply and their source of fish.
- (d) The 2nd and 3rd Defendant and/or their agents or servants continued, and still continue to trespass on the Plaintiffs' native customary lands despite the numerous and continued objections and protests by the Plaintiffs.
- (e) The 2nd and 3rd Defendants and/or their agents or servants wrongfully claimed that they have the right to enter, utilise and occupy the Plaintiffs' native customary lands and construct logging roads and build their camps thereon and fell, extract, remove and sell timbers therefrom.

Damage and Loss

- 18.1 By reason of the matters aforesaid, the Plaintiffs' source of and right to their livelihood is seriously threatened and they have also suffered loss and damage.

PARTICULARS OF LOSS AND DAMAGE

- a) Destruction of the Plaintiffs' sources of income and livelihood including timbers, crops, valuable medicines, wildlife and other forest produce which the Plaintiffs need and are dependent upon.
- b) Extensive erosion and damage to the Plaintiffs' said native customary lands;
- c) Extensive pollution and silting of the rivers and streams which the Plaintiffs and the members of their community tire dependent on for water supply and for their source of fish,
- d) Damage to burial grounds;
- e) Damage to fruits and other essential trees.

18.2 The Plaintiffs had inquired, objected, complained, appealed and/or protested to the 1st Defendants on the issue of the said licences and on the problems caused by the logging activities of the 2nd and/or 3rd Defendants and/or their servants or agents within their said native customary lands but the 1st Defendant failed and continue to fail to reply to the Plaintiffs and/or to take any action on the Plaintiffs' said inquires, complaints, objections, appeals and/or protests.

19. The Plaintiffs in addition to the matters alleged in paragraphs 17 and 18 above further claim exemplary and/or aggravated damages by reason of the conduct of the Defendants as set out hereinafter.

PARTICULARS OF CONDUCT RELIED ON

- (a) The 2nd and/or 3rd Defendants and/or their servants or agents, despite continued complaints, objections or protests made by the Plaintiffs to them have persisted in continuing to trespass on the Plaintiffs' said native customary lands.
- (b) The Plaintiffs had also repeatedly written to the 1st Defendant inquiring, or complaining about and/or objecting against the issue of the said licences and on the aforesaid trespass, mischiefs and nuisance caused by the 2nd and/or 3rd Defendants and/or their agents or servants within the Plaintiffs' said native customary lands but were continually ignored.
- (c) Such conducts of the Defendants, are oppressive, arbitrary, high-handed and unconstitutional.
- (d) Such conduct are also calculated to result in a profit for the 2nd and/or 3rd Defendants and/or their servants or agents.

Reliefs

And the Plaintiffs claim for:

1. A Declaration that the Plaintiffs have native customary rights over the said native customary lands.
2. A Declaration that this right precludes the 1st Defendant from impairing or abridging the Plaintiffs' said rights;
3. A Declaration that the issue of the Forest Timber Licences No. T/0411 and No. T/0412 to the 2nd Defendant by the 1st Defendant, in so far as they impair the Plaintiffs' native customary rights over the said native customary lands, is bad.
4. A Declaration that the 1st Defendant is precluded from issuing any Forest Timber Licence or permit which affects the Plaintiffs' said rights;
5. A Declaration that the act of the 1st Defendant in issuing the said licences is wrongful for reasons set out in paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 above, and therefore the said licences are null and void ab initio.
6. A Declaration that the impairing of the Plaintiffs right over their said native customary lands constitute a violation of Article 8 of the Federal Constitution (equality before the law);
7. A Declaration that the issuance of the said licences constitute a violation of Article 13 of the Federal Constitution (No confiscation of property without adequate compensation);
8. A Declaration that the issuance of the said licences constitute a violation of Article 5 of the Federal Constitution (No person shall be deprived of his life except in accordance with law);/
9. Alternatively, a Declaration that the issue of the said licences were ultra vires the Sarawak Forest Ordinance Cap. 126 and the said licences are null and void ab initio;
10. Further, and/or~ in the alternative a Declaration that the said licences were issued subject to the native customary rights of the Plaintiffs over the said native customary lands;
11. Alternatively, a Declaration that the said licences, if validly issued, (but which is denied) had become illegal, null and void by reason of the breaches of provisions of the Sarawak Forest Ordinance Cap. 126;
12. A Declaration that the 2nd and/or 3rd Defendants by themselves or their servants or agents or contractors or sub-contractors or assignees are trespassing within the Plaintiffs' said native customary lands and/or otherwise unlawfully interfering with the Plaintiffs rights over the said native customary lands;
13. An order directing the 1st Defendant to give effect to the aforesaid declarations and to cancel the said licences forthwith;
14. An order that the Plaintiffs be given forthwith vacant possession of the said native customary lands;

15. A Prohibitory injunction restraining the 2nd and/or 3rd Defendants by themselves or their servants or agents or contractors or sub-contractors or assignees from trespassing, occupying or using the Plaintiffs said native customary lands;
16. A mandatory injunction against the 2nd and/or 3rd Defendants by themselves and/or their servants or agents or contractors or sub-contractors or assignees to cease operations and remove all their structures, machineries or equipment from the Plaintiffs' said native customary lands;
17. Under paragraph 19, exemplary; alternatively aggravated damages;
18. Damages;
19. Costs, and
20. Such further or other relief as this Honourable Court deems fit and proper.

Dated this 15th day of April 1998.

(Signed)
Baru Bian Advocates & Solicitors
Advocates for the Plaintiffs