

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

- | | | |
|----|--------------|---------------------------------|
| 1. | KELASAU NAAN | 1st Plaintiff |
| 2. | JAWA NYIPA | 2nd Plaintiff |
| 3. | PELUTAN TIUN | 3rd Plaintiff |
| 4. | BILONG OYOI | 4th Plaintiff |

(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, Miii Division, Sarawak.

AND

- | | | |
|----|--|---------------------------------|
| 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. | SYARIKAT SAMLING TIMBER SDN. BHD.
Lot 296, Wisma Samling,
Jalan Temenggong Datuk Oyong Lawal Jau,
98007 Miii, Sarawak. | 3rd Defendant |

DEFENCE OF 1ST DEFENDANT

1. With regard to paragraph 1 of the Statement of Claim, save that the Plaintiffs are presently in occupation of the areas referred to in paragraph 1(a) thereof and are Penans by race, all other allegations therein contained are hereby denied. Until and unless the Plaintiffs and those whom they represent, prove that they are born in Sarawak and are Malaysian citizens, the 1st Defendant do not admit that they are natives of Sarawak.
2. Paragraphs 2 and 3 of the Statement of Claim are not denied
3. With regard to paragraph 4 of the Statement of Claim, the 1st Defendant will -
 - (a) deny that the Plaintiffs or those whom they represent have acquired native customary rights over the land ("the said land") shown in the map attached to the Statement of Claim which the 1st Defendant noted was drawn or produced by a foreign source as it has the endorsement that it was "Produced in 1994 from Directorate of Overseas Surveys, 1968 and 1977" and "Updated in 1997 with local informants".

- (b) object to the production of the said map in evidence herein, having regard to the provisions of Sections 83 and 87 of the Evidence Act, 1950.
- (c) aver that any rights (which is denied) over the said land were not created in accordance with sections 5(1) and 5(2) of the Land Code of Sarawak, and hence not recognised thereunder;
- (d) aver that the said land is Interior Area Land and no native customary rights may be created over the same, save and except in accordance with the provisions of the Land Code.

4. (1) The 1st Defendant admits that two (2) Forest Timber Licences viz: Timber Licence Nos. T/0411 and T/0412 were issued to the 2nd Defendant to fell, extract and remove merchantable timber from timber areas described therein, which include, inter alia, the said land.

(2) The said Forest Licences covered areas (including the said land) which were previously licensed under the following timber licences, viz:

<u>Timber Licence No.</u>	<u>Date of Issue</u>	<u>Licensee</u>
T/0291	30.11.1984	Pelutan Sdn Bhd
T/0292	30.11.1984	Kelesa Sdn Bhd

(3) No objections were raised by the Plaintiffs or those whom they purportedly represent to the felling of timber from the said land by the abovenamed former licensees.

(4) The 3rd Defendant is an approved contractor for the 2nd Defendant.

(5) Save where hereto before expressly admitted, the 1st Defendant denies each and every allegation in paragraph 5 of the Statement of Claim and puts the Plaintiffs to strict proof thereof.

5. If (which is denied) the Plaintiffs had any rights or privileges over the said land, such rights or privileges had been extinguished for reasons set forth hereunder -

(a) Pursuant to section 26 of the Forests Ordinance, the 1st Defendant caused to be published vide a Gazette Notification (“the notification”), a proposal to constitute a “protected forests” over an area of forests described therein, including those over the said land. The said notification was published in the Sarawak Government Gazette dated 11.9.1997. The 1st Defendant will refer at the trial of this action to Gazette Notification No. 2642 dated 11.9.1997. Copies of the proposal (as gazetted) were published in a local newspaper on 27.4.1998 and displayed at the District Office, Marudi on 18.5.1998 and at the sub-District Office at Long Lama, Miri Division, on 20.5.1998.

(b) The said notification stipulates, inter alia, -

- (I) any person claiming any right or privilege in or over the said land must within 60 days from the date of publication of the said notification,

submit to the Regional Forests Officer for Miri Division his claim with evidence in support thereof;

- (ii) upon expiry of the said period, all rights and privileges in or over the said land where the intended protected forest is to be constituted, shall be deemed extinguished, and that compensation shall be paid to any person whose rights and privileges have been so extinguished in accordance with Part III of the Forests Ordinance.

(c) Pursuant to the said notification, the Regional Forest Officer, Miri, received 274 claims relating to rights and privileges over the area to be covered by the proposed protected forests. The claimants according to racial breakdown are as follows:

Kenyah	-	259
Kayan	-	9
Kelabit	-	2
Penans	-	4

(d) The names of the 4 Penans who submitted claims to the Regional Forests Officer, Miri Division are:

- (i) T.R. Abeng Jak
- (ii) T.R. Riman Abo
- (iii) T.R. Luyang Nyugun
- (iv) T.R. Bujau Akek

(e) None of the Plaintiffs herein submitted any claim to the Regional Forests Officer for rights and privileges extinguished pursuant to the said Notification. The Plaintiffs are therefore estopped from making any claim for rights or privileges in or over the said land.

(f) The period for the submission of such claim has expired. The Plaintiffs' rights or privileges over the said land, if any, which is (not admitted) have been extinguished and that by not submitting their claims within the period mentioned in the said notification, the Plaintiffs have lost their rights to compensation for the extinguishment of whatever rights or privileges (if any) they may have (which is denied) over the said land.

- 6. In the premises, the 1st Defendant will say that at the time of the institution of this Suit, the Plaintiffs or those whom they purportedly represent, do not have any native customary rights or any other rights or privilege in or over the said land or any part thereof.
- 7. Paragraphs 6, 7, 8 and 9 of the Statement of Claim are denied and the Plaintiffs are put to strict proof thereof.
- 8. (a) With regard to paragraph 10 of the Statement of Claim, the 1st Defendant says that the said Forest Timber Licences Nos. T/0411 and T/0412 were validly issued pursuant to the provisions of the Forests Ordinance and they are issued over State land and/or Interior Area Land over which no native customary rights have been created by or in favour of the Plaintiffs in accordance with section 5 of the Land Code.

- (b) The 1st Defendant says that the Plaintiffs being Penans, a migrant community, do not occupy land or have occupation of State land either with or under a permit from the District Officer, Bararn or have continued occupation thereof prior to 1st January 1958 to form the legal basis Of any claim to native customary rights over State land and/or Interior Area Land. The claim of the Plaintiffs (as a community on the move) to native customary rights is unprecedented, unsupported by their adat or culture and/or not in accordance with section 5 of the Land Code or Section 28 of the Forests Ordinance.
9. (1) With regard to paragraph 11 of the Statement of Claim, the 1st Defendant denies that the provisions of the Forests Ordinance under which it has acted to issue the said forest licences, or in relation to dealing with the rights and privileges of natives in any area proposed to be constituted as protected forest was discriminatory of the natives. The 1st Defendant denies that there has been any breach or violation of Article 8 of the Federal Constitution.
- (2) In the alternative, the 1st Defendant denies that the relevant provisions of the Forests Ordinance and Land Code pertaining to the issue of the said Forests Timber Licences, creation, recognition and extinguishment of native customary rights or rights and privileges over the said land are discriminatory against the Plaintiffs who are allegedly natives of Sarawak.
10. With regard to paragraph 12 of the Statement of Claim, the 1st Defendant denies that it has acted in contravention of Article 13 of the Federal Constitution. The 1st Defendant reiterates that the Plaintiffs do not have any rights in or over the said land and/or alternatively, their claim to such rights was contrary to Section 5 of the Land Code.
11. With regard to paragraph 13 of the Statement of Claim, the 1st Defendant denies that there was any deprivation of life of the Plaintiffs by the issue of the said forest licences to the 2nd Defendant. The 1st Defendant pays that forest licences over the said land has been issued since 1984 and the natives have been able to survive and continue to live their own way of life in accordance with their economic, cultural and social system, despite the fact that logging activities in or near the area described in paragraph 1(a) of the Statement of Claim, since the mid 1 980s.
12. Paragraphs 14, 15 and 16 of the Statement of Claim are denied and the Plaintiffs are put to strict proof thereof.
13. Paragraph 17 of the Statement of Claim is not admitted by the 1st Defendant who are unaware of any alleged trespassing by the 2nd and 3rd Defendants on any land belonging to the Plaintiffs.
14. Damages or loss as alleged in paragraph 18 of the Statement of Claim or at all, are hereby denied and the Plaintiff is put to strict proof thereof.
15. Paragraph 19 of the Statement of Claim is disputed and the Plaintiffs are put to strict proof thereof.
16. (1) The 1st Defendant further adds the Plaintiffs instituted this action with improper motives and/or to articulate the agenda or interests of some foreign parties who assisted them in the preparation of the map attached to the Statement of Claim. The 1st

Defendant will plead that the Plaintiffs whose thumb prints are affixed to the said map are incapable of preparing the said map or make any representation thereon.

(2) For the above reasons, the 1st Defendant prays that this Honorable Court should not exercise its discretion to grant the Plaintiffs the declaratory reliefs sought herein.

17. Wherefore, the Plaintiffs' claims herein are misconceived and ought to be dismissed with costs.

18. Save where hereto before expressly admitted, the 1st Defendant denies each and every allegation contained in the Statement of Claim as if the same were herein set forth in seriatim and traversed specifically.

Dated this 15th day of October, 1998.

(signed)
(SABWATI BTE BALIA)
State Legal Officer
for and on behalf of the 1st Defendant

To: (1) The abovenamed Plaintiff through their advocates
Messrs. Baru Bian Advocates whose address for service is Lot 136, 1st Floor,
Jalan Petanak, 93100 Kuching Sarawak

(2) The abovenamed 2nd and 3rd Defendants through their advocates
M/s Reddi & Co, whose address for service is Lane Building, 29, Kai Joo
Lane, Kuching.

This Defence is filed by the State Legal Officer for and on behalf of the 1st Defendant whose address for service is the State Attorney-General's Chambers, Tingkat 16, Wisma Bapa Malaysia, Petra Jaya, 93502 Kuching.