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ISSUANCE OF STATE LEASES IN PAPUA NEW GUINEA MUST FOLLOW PROPER PROCEDURES:

EVIDENCE FROM A NATIONAL COURT
OF JUSTICE DECISION

Thomas Wangi
Eugene Ezebilo

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Key Points

- Issuance of state leases without following proper procedures might result in land grabbing in Papua New Guinea.
- The Department of Lands and Physical Planning transferred a state lease that belongs to Port Moresby Gun Club to Our Real Estate following improper procedures.
- The National Court of Justice ruled in this case in favour of Port Moresby Gun Club.
- For the Department of Lands and Physical Planning to effectively manage state leases, it is necessary to establish a lease database and promote public awareness of state leases.
- It is also necessary to improve monitoring of state leases and introduce penalties for illegal lease transactions.

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ISSUANCE OF STATE LEASES IN PAPUA NEW GUINEA MUST FOLLOW PROPER PROCEDURES: EVIDENCE FROM A NATIONAL COURT OF JUSTICE DECISION

By Thomas Wangi and Eugene Ezebilo

The issuance of more than one state lease for the same piece of land is common in Papua New Guinea (PNG). This often results in legal disputes and conflict of interest between all parties that are involved in the lease. In a lawsuit brought by Port Moresby Gun Club (PMGC) against the Minister for Lands and Physical Planning and Our Real Estate (ORE), the National Court of Justice found that the Department of Lands and Physical Planning (DLPP) had rezoned and leased out a segment of the land leased by PMGC to ORE (National Court of Justice, 2016) in contravention of the Land Act 1996, Land Registration Act 1981 and Physical Planning Act 1989. The National Court of Justice ruled in favour of PMGC, the original lease holder.

This highlights the need for DLPP to adhere to rules and regulations in its administration of state leases and to avoid issuing multiple leases for the same piece of land. It is in the best interest of potential lessees to thoroughly research the land they are interested in before applying for a lease from the DLPP. In order to promote effectiveness in the issuance and management of state land leases, it is important to establish a database of information on state leases, improve monitoring of activities related to the leases and promote public awareness on procedures involved in state leases. It is also important to introduce penalties for land grabbing; that is, acquisition of land illegally or unfairly for economic reasons.

What Do Land Act, Land Registration Act and Physical Planning Act Say?

The Land Act 1996 and Land Registration Act 1981 stipulate that the current lessee must forfeit, surrender or cancel a state lease before it can be offered to a new applicant. However, there was no documentary evidence that PMGC had done so. ORE claimed to have a genuine lease for a segment of land that DLPP had leased to PMGC, but could not present application and approval documents for the land.

The state lease issued to ORE by DLPP was also in breach of Sections 71 and 77 of the Physical Planning Act 1989, which stipulates that only the lessee or an agent of the lessee can apply for rezoning. As DLPP was not the lessee, its rezoning of the land was illegal. This raises questions regarding the guidelines that DLPP have been using to issue state leases.

Lease associated with Allotment 1, Section 201, Hohola, in the National Capital District

DLPP issued a special business lease to PMGC in 1976 for the land at Allotment 1, Section 201, Hohola, in the National Capital District. Later, the DLPP rezoned a segment of the land for residential lease without informing PMGC. In June 2014, DLPP issued the lease to ORE for use of the land without following due process. This resulted in two state leases being issued for the same land.

According to the Land Act 1996 and Land Registration Act 1981, a segment of a leased land can be rezoned by DLPP and leased to another individual only when the original lessee has not put that segment to use. Furthermore, the DLPP is required to inform the original lessee about its intention to rezone and lease the land, but DLPP did not do so in this case.

National Court of Justice's Decision

In reaching a decision on the case, the officiating judge found that:

1. DLPP breached all procedures prescribed by the Land Act 1996, Land Registration Act 1981 and Physical Planning Act 1989.
2. Although DLPP administers all the Acts related to land use in PNG it disregarded these Acts in the issuance of state lease to ORE.
 - The judge declared the state lease issued to ORE by DLPP in June 2014 null and void and the lease cancelled.
 - The lease for the land in question was fully restored to PMGC, the original lessee.

Lessons Learnt from the Court Decision

This case highlights several issues regarding DLPP issuance of state leases:

- Improper issuance of state leases by DLPP could occur at the expense of the original lessee. As this provides some people with the opportunity to encroach on other people's land, it results in land grabbing.
- DLPP does not appear to have complete information on state leases that have been issued, cancelled and rezoned. This may be why DLPP rezoned a segment of land leased by PMGC without following the proper procedures.
- The public is ill informed about the procedures for issuing, cancelling and rezoning state leases and the laws governing this process.
- Individuals and corporate bodies who acquire a state lease without following proper procedures risk losing it. To avoid losing money and reputation, it is important to get complete information about a land parcel before applying to lease it—including whether the land has been leased before, and if so, who the original lessee was, whether the lease has been cancelled or rezoned, and whether proper procedures were followed.
- PNG law discourages land grabbing. People involved in land grabbing activities do so at risk of wasting their resources and being penalised.
- DLPP carries out little or no monitoring of activities associated with the issuance, cancellation and rezoning of state leases. This makes it difficult to detect abnormalities in the state lease system.

Policy Interventions

- The DLPP needs a well-functioning database of state leases. This will help DLPP access the details of each lease, such as the type of lease, its length and whether it has been rezoned or cancelled. This could help reduce the potential for multiple leases on the same land parcel.
- There is a need for more public awareness on state leases. This includes how to apply for a lease, how a lessee could cancel or lose a lease, procedures involved in rezoning and the risks of not following proper procedures

in acquiring a lease. This would help reduce people's risk of acquiring a lease on land that others have already leased.

- Activities related to state leases must be monitored effectively. For this to occur, DLPP must have an effective monitoring team with responsibility for ensuring that state leases are properly issued, cancelled and zoned. This would help reduce the tendency to issue multiple leases for the same piece of land.
- Penalties for land grabbing should be introduced. Currently, penalties for land grabbing are not clear. It is important to introduce penalties such as fines and make them known to the public. This might deter potential land grabbers.

Concluding Remarks

This paper highlights the need to follow established procedures in the issuance of state leases in order to avoid land grabbing in PNG. It is important for all the people who are involved in state leases to be cautious so that they do not promote land grabbing. The events leading to the court case described above are an example of a DLPP attempt to issue state lease without following proper procedures.

To promote effectiveness and efficiency in the administration of state leases, it is necessary to establish a database with information on all state leases and to improve the monitoring of lease-related activities. It is also necessary to promote public awareness of procedures involved in issuing state leasing, and people who are involved in land grabbing should be penalised to serve as a lesson for other potential land grabbers.

This paper contributes to effective land administration and the current debates on ways to reduce land grabbing in PNG.

References

National Court of Justice, 2016. OS (JR) No. 646 OF 2014 between Port Moresby Gun Club Inc. (Plaintiff) and Hon. Benny Allan, Minister for Lands and Physical Planning (first defendant), National Land Board (second defendant), Romilly Kila Pat for Secretary of Lands and Physical Planning (third defendant), the Independent State of Papua New Guinea (fourth defendant) and Our Real Estate Limited (fifth defendant), 19th to 20th October 2016, Waigani, Port Moresby.