



State's case against PNGSDP in tatters in Singapore court

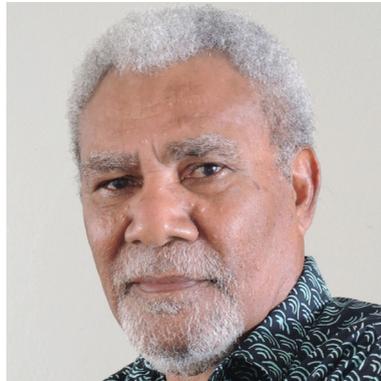
The chairman of PNG Sustainable Development Program Ltd, Rt Hon Sir Mekere Morauta, said today that the State has had a major setback in its three-year effort to gain control of PNGSDP and the Long Term Fund.

Over the past week, the Singapore Supreme Court has heard various legal arguments that highlighted the basic weakness in the State's case and the inconsistencies in how it has been argued.

People will recall that in September 2013 the Prime Minister introduced the Ok Tedi Mining Tenth Supplemental Act which expropriated PNGSDP's 63.4% shareholding in OTML; purportedly gave the State the power to restructure the Board and management of PNGSDP as a way of attempting to take control of the Long Term Fund; and – incredibly – purported to give the Prime Minister the sole power of determining whether compensation for the shares was payable and if so, how much and on what terms (no such determination has been made to date). This is the background to the current court case in Singapore.

Recent hearings in Singapore have put the spotlight on the disarray in the State's attack. Because the State is on the back foot, it has now resorted to contrived twists and turns to delay the inevitable. I am increasingly confident that our lawyers will deliver the "knock-out" blow that will lead to a favorable court decision. This means PNGSDP will then be able to get on with its core role of delivering sustainable development projects in the Western Province and PNG generally.

On 6 September 2016- about a month before the trial was to begin, Singapore's highest Court, the Court of Appeal set aside the Judgment dated 12 February 2016 which the State had earlier obtained, allowing PNGSDP's appeal on the Judgment on its foremost



objection, that the matters in dispute had to be resolved by a trial. The State had itself, earlier appealed against portions of that Judgment that were not in its favour, and at the hearing on 6 September, withdrew their appeal. During the course of the hearing, the State was also pressed on the glaring inconsistencies between the case that it was running in the main Suit and in those related proceedings in which it had earlier obtained Judgment.

It was only in late September that the State then sought to amend its case in the main suit, purportedly in an attempt to resolve the inconsistencies. However, its piecemeal and inadequate attempt to resolve fundamental contradictions between its respective cases, was dismissed by the Court on 30 September 2016.

The day before the trial was due to begin on October 4th, the State again attempted to change its pleadings - how it presents its case. The State's case rests on the existence of some fictitious verbal agreement that is supposed to give the State control over PNGSDP. Now some 2 years on, the State has decided to abandon their original case. The State now claims that there is instead, a different supposed verbal agreement that it wants to pin its case to. Their lawyer's arguments in relation to this new case that it wants to run,

were however confusing and contradictory.

Instead of clarifying their proposed amendments as requested by the judge, the State insisted on sticking to their application in its original form. After due consideration, the judge dismissed that application and awarded costs to PNGSDP. The awarding of costs provides a good indication of the winner.

The State then sought permission to appeal the judge's decision, a course of action that would inevitably lead to further delays. The judge refused to grant the permission and again ordered that the State pay PNGSDP's costs of that application. Because of these self-inflicted delays, the State then applied to defer the trial. Because of the crowded court schedule this fait accompli probably means a substantial delay to next year. Again the judge ordered that the State compensate PNGSDP for the costs wasted by the deferment.

During the course of these legal skirmishes, it has become abundantly clear that the State's tactics in mounting their inherently weak case are based on creating confusion in order to delay a judgment and outcome.

This will not get the State very far. If the State's further attempts to amend their pleadings fails, our lawyers will seek to have the case dismissed. Even if the case goes to a much delayed trial, events over the past week lead me to be quietly confident that PNGSDP will prevail.

While I have never doubted the legitimacy of our position, these recent developments have given me further confidence in a favourable outcome for PNGSDP. That would be a victory for those who uphold the law and good governance.

Mekere Morauta KCMG
Chairman