

4. From that time thereon, various consultative meetings were held between the Appellant, the Ministry, the Choiseul Provincial Government and representatives of landowners. From 2015 to 2016, various Memorandum of Understanding were executed by all stakeholders to try and resolve the issue. To this day, the issue still remains unresolved.
5. On the 16th December 2016 and despite the surrounding circumstances and uncertainties, the Solomon Islands Government through the 1st Respondent executed a Mining Agreement with the Appellant. On the same date, a Mining Lease (ML) was issued by the 1st Respondent to the Appellant. The ML was described as No: ML: 01/2016. It was so issued to the Appellant with conditions.
6. Subsequent to the issuance of the ML, the Appellant has made various attempts to fulfill the conditions that were attached to it. They were faced with many challenges during the process. Their Development Consent was revoked by the Environment Advisory Committee (EAC) on the 26th March 2019. An appeal to the Minister of Environment, Climate Change, Disaster Management and Meteorology was unsuccessful. The Appellant's appeal was dismissed by the Minister on the 26th October 2020.
7. Further to the above, the Appellant's ML which was registered on the 7th May 2018 by way of a Grant of Profit was cancelled by this court in Civil Case No. 204 of 2018 by judgement dated 18th November 2021. It is also important to note that the country was in a State of Public Emergency from March 2020. By letter dated 28th February 2020, the Appellant through counsel gave notice to the 1st Respondent under s. 71 of the Act on a Force Majeure due to the COVID-19 pandemic. There was no response from the 1st Respondent.
8. Having stated the above circumstances, the 1st Respondent upon advice from the 2nd Respondent issued to the Claimant a show cause letter as to why their rights under the ML should not be suspended. The letter was dated 21st April 2021 and the Claimant was given 14 days to respond. At the material time the Claimant's Development Consent has been revoked. They also had not been able to secure access into the ML area with settlers and original landowners.
9. The Appellant responded to the show cause letter on the 10th May 2021. There was no response from the 1st Respondent on the contents of the letter. The 1st Respondent had nonetheless issued a second show cause letter to the Appellant on the 28th October 2022. The Appellant was also given 14 days to respond otherwise their ML would be suspended. A response by the Appellant was dated 17th November. There was no response to the letter from the 1st Respondent.
10. By further letter dated the 15th December 2022, the 1st Respondent informed the Appellant that their ML No. 01/2016 was cancelled pursuant to section 71 (1) of the Act. It was also in that letter that he stated that he took into account the Appellant's responses and other correspondences in relation to the issue. There were a number of reasons for the cancellation.

11. The reasons included alleged breaches of section 36 (b) of the Act, alleged breaches of the ML as well as alleged breaches of the Mining Agreement with SIG. The cancellation letter was served on the Appellant on the 29th June 2023. It was upon receipt of the cancellation letter, that this proceeding was commenced by the Appellant.

The Appeal

12. The Appellant had advanced ten (10) points of appeal. I have perused the appeal points and I could see that most, if not all of the points, hinge on the Appellant's right to be heard as per the audi alteram partem rule. The appeal points are very lengthy and I do not intend to recite them in this ruling. I have also noted that all the points of appeal are inter-related and I do not need to address them separately.
13. Upon having perused the Appellant's appeal, I have also perused the 1st and 2nd Respondent's response as well as the various sworn statements attaching the relevant documentations. I have noted that the 1st and 2nd Respondents filed a sworn statement annexing the three letters that were issued by the 1st Respondent.
14. No other evidence was adduced by them in order to assist the court to make a balanced determination in this appeal. It is further noted that there is absolutely no rebuttal by the 1st and 2nd Respondents on the state of the Appellant's evidence that was produced before the court. The sworn statement of Lilian Danitofea filed in support of their position, did not address the issues raised in the appeal. There was also no cross-examination by the Attorney General in court. The Appellant's evidence is therefore left unchallenged. I am therefore of the view that the Appellant's appeal is admitted by the inaction on the part of the Attorney General.
15. It is also upon that basis that I do not intend to address the appeal points separately. I will deal with them together. As earlier stated, the crux of the appeal is based on the Appellant's right to be heard.
16. The 1st Respondent derives his powers to suspend and cancel mining leases pursuant to section 71 (1) of the Mines and Minerals Act (Cap 42) (Act). Subsection (2) provides for an aggrieved party's rights to answer to show cause letters.
17. Upon the above basis, it is therefore pertinent in this appeal to discuss the use of section 71 (1) (2) of the Act by the 1st Respondent in the respective show cause letters dated the 27th April 2021 and the 28th October 2022 (the letters). It is evident from the letters that the provision was used as the basis for the issuances of the letters. It is also evident that having quoted the provision, there is no allegation of breaches of s. 71 (1) (a), (b) and (c) contained therein.
18. Under s. 71 (1) of the Act, there are three grounds under which the 1st Respondent is empowered and entitled to issue show cause letters. The three grounds are the following:-
- a) Contravention of any provisions of the Act and Regulations made thereunder;
 - b) Commits a material breach of, or fails to comply with or observe, any provision of his permit, license or mining lease unless such breach is due to an event beyond his reasonable control which could not have been reasonably foreseen or avoided; and

- c) Dissolves, liquidates, becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of creditors, petitions or applies to any tribunal for the appointment of any trustee or receiver for himself, or commences any proceedings relating to himself under any law pertaining to bankruptcy, arrangement, insolvency or readjustment of debt.
19. In the 1st Respondent's letters, the specified reasons for the issuance of both show cause letters were different. The two reasons given in the letters are the same. The first being the cancellation of the Appellant's Development Consent by the Minister of Environment, Climate Change, Disaster Management and Meteorology on the 26th October 2020. The second was due to the fact that the Appellant was unable to secure access into the mining lease area with the settlers and original landowners.
20. It is the court's view that the two stated reasons in the letters do not conform with the grounds specified in s.71 (1) (a), (b) and (c) of the Act. Also of relevance in this discussion is the Appellant was given 14 days to show cause why their rights under the ML should not be suspended. The end result of the letters would then be the suspension of the Appellant's ML.
21. In the 1st Respondent's letter of the 15th December 2022, the Appellant was advised that their ML was cancelled. That letter does not conform with the contents of the show cause letters. In the said letters, non-compliance would result in the suspension of the ML. There was no mention that the Appellant's ML would be cancelled if no acceptable response was made to him.
22. It is further noted that the cancellation letter was the only letter that stipulated alleged breaches of s. 71 (1) (a), (b) and (c) of the Act. The reasons given could basically be seen to be in compliance with the reasons articulated under s. 71 (1). In any event, what is worth noting is that the letter of the 15th December was the first letter that the Appellant was given which stipulated and outlined the reasons for cancellation.
23. It is further worth noting that the 1st Respondent has made a final decision that had deprived the Appellant of any relief or recourse pursuant to their rights under s. 71 (2) of the Act.
24. I have perused the evidence of the Appellant in relation to the show cause letters. They have adequately addressed the reasons specified in those letters. The Appellant's letter of the 5th May 2021 was in response to the first show cause letter. That letter was not even responded to by the 1st Respondent. It was briefly mentioned in paragraph 5 of the cancellation letter. Nothing further was done by the 1st and 2nd Respondents for a period of about 1 and half year, before the second show cause letter was done on the 28th October 2022.

25. I have also noted that the Appellant had always been in communication with the 1st and 2nd Respondents but there was very minimal or no assistance and responses from the respective offices. In any case, the Appellant has been trying its utmost best to continue to progress their intention and interests under their ML. They have faced continuous obstacles and challenges and they have always updated the respective offices of their challenges as well as their achievements. I need not mention them as the evidence they produced before the court is not disputed in any way by the 1st and 2nd Respondents.
26. I have further noted that the 1st Respondent's letter of the 28th October 2022 was not immediately served on the Appellant. That had led to a subsequent letter by the 1st Respondent dated 10th November that gave the Appellant further time until the 17th November to respond. The Appellant responded by that date. There was no response by the 1st Respondent to that letter.
27. The cancellation letter from the 1st Respondent upon advice from the 2nd Respondent was also not immediately served on the Appellant. It was merely served on the Appellant on the 23rd of June 2023 some 6 months later. That had led to the filing of this appeal on the 5th September 2023.
28. Outlined in the above paragraphs is the 1st and 2nd Respondents' attitude in dealing with the Appellant's grievances. The court views their attitude as unbecoming of such a high esteemed government office. They have a very lay-back attitude that do not show that they take into heart the intention and spirit of the Act that they are required to use and implement in the country's best interest.
29. It is obvious that the 1st Respondent has abused his powers under s. 71 (1) and (2) of the Act in dealing with the Appellant's ML. The two show letters do not conform with the requirements of the provision.
30. The cancellation letter was the first letter that he has issued to the Appellant that complies with the provision. Nonetheless, it contained a final decision. The Appellant was not given any opportunity to respond to the stated reasons because of its finality. The only avenue or remedy available to the Appellant upon receipt of the cancellation letter on the 23rd June 2023 was to exercise their right of appeal to this court pursuant to section 71 (5) of the Act.
31. In passing, I have perused and noted the comment by the 1st Respondent in relation to the Development Consent that was revoked by the Minister responsible. I do not intend to dwell on the issue because that is an issue that should rightfully be addressed if the Appellant was afforded with their right to be heard.
32. In light of the above discussions, I am of the considered view that the 1st Respondent has acted ultra vires his powers under section 71 (1) and (2) of the Mines and Minerals Act. Consequently, the 1st Respondent's letter of cancellation of the Appellant's Mining Lease No: ML: 01/2016 dated 15th December 2022 upon advice from the 2nd Respondent is hereby set aside and revoked. The Appellant's ML is to be re-instated.

33. The orders of the court are as follows:
- i) The 1st Respondent has acted ultra vires his powers under section 71 (1) and (2) of the Mines and Minerals Act (Cap 42).
 - ii) Consequently, the 1st Respondent's letter of cancellation of the Appellant's Mining Lease No: ML: 01/2016 dated 15th December 2022 upon advice from the 2nd Respondent is hereby set aside and revoked.
 - iii) The Appellant's ML is to be re-instated.
 - iv) Cost against the 1st and 2nd Respondents.



Justice Maelyn Bird

Puisne Judge