

*A: No.*

*MR GERORO: You confirm that?*

*A: Confirm, yes."*

17. Fourth, the Chairman, Ralph Guise (dec'd) was not the Secretary for Lands & Physical Planning and therefore the purported gazettal notice G9 dated 28 January 2000 publishing the successful grant of leases, including Andrew Maid's grant, is null and void: Section 74 of the *Land Act 1996*.
18. Whilst Peter Pena generally assisted the Commission with evidence, he was quite evasive in giving a full and frank disclosure of his knowledge and issues concerning the purported grant of the lease to Andrew Maid in the illegal Land Board Meeting No. 2017.

**(g) Lack of pleading in Statement & Amended Statement of Claim**

19. The pleadings filed in WS No. 1534 of 2001 by Peter Pena & Associates for Andrew Maid do not sufficiently plead the alleged breaches committed by the State parties. There are no specific references to the relevant clauses of the lease or the provisions of any legislation alleged to have been breached. The only reference made is to Section 58 of the Constitution based on an alleged breach of Andrew Maid's proprietary rights. The legal basis of the proprietary rights asserted is not disclosed. In the ordinary course, Andrew Maid would not have been at liberty to lead evidence and claim damages for want of particulars had the State objected to these anomalies.

**II. Assessment of damages**

20. As the matter was settled out of Court, the Court did not make findings on the amount of damages to award Andrew Maid.

21. There is no record in the Solicitor General file indicating the bases for approving and settling Andrew Maid's damages at K4,000,000 plus cost of Id00,000 as stated in the Deed of Release dated 11 October 2002. Further, the reinstatement of tide to Andrew Maid could not possibly have entitled him to damages of K4 million. At best, Andrew Maid would only be entitled to any damages incurred as a result of the cancellation of the title up to the point of return of the title.
22. Peter Pena & Associates lodged with the Solicitor General on behalf of Andrew Maid a Without Quantum Prejudice Submission dated 21 May 2002. A summary extract of the Quantum Submission by main headings is outlined below:

	<b>Damages</b>	<b>Assessment(K)</b>	<b>Supporting Document</b>
a)	Damages for breach of Constitutional Rights (Sect. 58)	1,500,000	Quote of Constitution- Section 58
b)	Damages for loss of land and improvements	1,346,500	Valuation from Tack Realty (Unknown to IPA)
c)	Damages for loss of business and profits	5,901,189	Cashflow from Ram Business Consultants
d)	Loss of funds expended to secure and hold title	27,280	License fees, land rental fees and Architectural fees
e)	Costs	57,240	Legal fees, Accountant fees & Valuation fees
f)	Interest	0	
g)	Aggravated Damages	200,000	Quote of Common Law
h)	Exemplary Damages	200,000	Quote of Common Law
	<b>Total</b>	<b>9,232,209</b>	

23. The quantum submission was attached with relevant supporting attachments including alleged breaches related to the Constitution. Some of the monetary damages assessed were quite excessive. Also the quantum submission included damages for loss of land and improvements only (b) and yet the said land was re-instated.
24. The Cash-flow projection prepared by Ram Business Consultants which was part of the Quantum Submission had serious flaws. The following are worth noting;
  - (a) The cash-flow is flawed and unacceptable to be regarded as an accurate Cash flow especially in terms of operating a supermarket in a city environment. The following relevant costs associate with operating a supermarket were not factored into the cash flow -
    - (i) Cost of goods sold (COGS)
    - (ii) Staff remuneration
    - (iii) Costs of utilities
    - (iv) Security costs
    - (v) Capital expenditure
25. The above list is not exhaustive but to show that the cash flow projection prepared by Ram Business Consultants completely ignored obvious /relevant costs associated with such investment.
26. The cash-flow did not consider the loss for year 1, especially during construction period where most start-up business at inception would incur loss. The cash-flow projection prepared by Ram Business Consultants projected a net profit after tax of K1.12 million in year one. There are no I compelling factors to believe that such a projection was realistic as many relevant costs were not factored into this projection.

There is no basis on the revenue of K2.0million projected in year one and thereafter increased by 7.5%.

The Net Present Value (NPV) calculated using 12% with 10 years' income was K5,901,189. This figure is completely inaccurate when compared to our calculation based on the same assumption Ram Business Consultants used. According to our calculation, the NPV is K1,241.539. Ram Business Consultants deliberately inflated the NPV by K4,659,650 for reasons known only to themselves. Further, we do not understand the basis of using a 10 year period in the NPV calculation.

A non-cash item in respect of depreciation of K300,000 was also added back to the cash flow to inflate the profit by IC300,000.

There is also the issue whether the bank would loan them the K3 million as there was no evidence to show that the bank would have approved the K3 million loan stated in the cash-flow. Further, Andrew Maid and his company, Piu Mauwin Trading, did not own any tangible assets which would be mortgaged to obtain that significant loan. In commercial terms, no bank or financial institution would have loaned such an amount without any known security to cover the loan in case of default.

The interest rate of 22% on a loan of K3 million does not have any basis. There is no correspondence from the lender or a general rate prevailing at the time from any commercial lender to support this rate.

From the review of the cash flow projection prepared by Ram Business Consultants we conclude that the Cash-flow projection was specifically engineered in a way to inflate the yearly income projection including NPV so that damages claim would be high. The Ram Consultants Report was based on mere trading assumptions supplied by Andrew Maid, not on proper business records and tax returns.