

**IN THE COURT OF APPEAL OF  
THE REPUBLIC OF VANUATU**  
*(Civil Appellate Jurisdiction)*

Civil Appeal Case No. 20 of 2015

**BETWEEN:** SOLOMON TAVUE  
*Appellant*

**AND:** JOINT VILLAGE LAND TRIBUNAL COURT,  
MOLITAMATA LAND TRIBUNAL COURT,  
NOKA LAND TRIBUNAL COURT MEREY LAND  
TRIBUNAL COURT  
*First Respondents*

**AND:** GABRIEL WOILOLO AND BAID RAVUL  
*Second Respondents*

**AND:** JERRY VOIYASUSU  
*Third Respondent*

**Coram:** *Hon. Chief Justice Vincent Lunabek*  
*Hon. Justice John von Doussa*  
*Hon. Justice Raynor Asher*  
*Hon. Daniel Fatiaki*  
*Hon. Justice Dudley Aru*  
*Hon. Justice Stephen Harrop*  
*Hon. Justice David Chetwynd*

**Counsel:** *Mrs. M.N. Patterson for the Appellant*  
*Mrs. F. Williams for the First Respondents*  
*Mr. G. Boar for the Second Respondents*  
*Mr. K. Loughman for the Third Respondent*

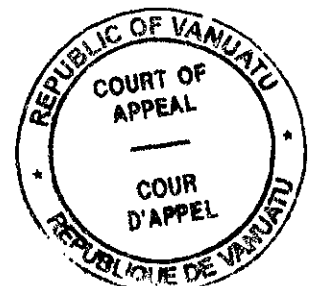
**Date of Hearing:** 18 November 2015

**Date of Judgment:** 20 November 2015

**JUDGMENT**

Introduction

1. This is an appeal against a decision of Saksak J on 27 May 2015. More specifically the Appellant seeks to set aside orders for payment of costs on an indemnity basis as set out in paragraphs 8, 9 and 10 of the decision.



2. As the issue only concerns the Appellant and the Second Respondent. When the hearing commenced, Ms. Williams and Mr. Loughman who were representing the First and Third Respondents respectively were excused from the proceedings.

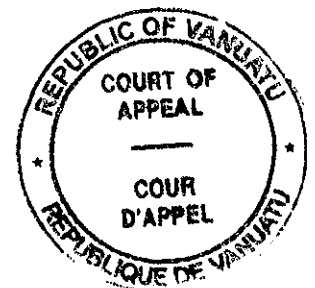
#### Background

3. This is the second time these parties are before this court. The chronology of events as set out by the Judge in his decision is helpful and we adopt some of that below to give some perspective to this appeal.

- 1 August 2012 - A claim for judicial review was filed by Solomon Tavue to challenge the decision of the Joint Village Land Tribunal after having been granted leave to do so;
- 4 October 2012 – The judicial review claim was dismissed and costs were awarded in favour of Gabriel Woilolo on a standard basis.
- 22 November 2013 – Solomon Tavue then appealed the decision to this Court. The appeal was allowed and the matter was remitted to the Court below.
- 28 July 2014 – Solomon Tavue through counsel informed the court that he intended to discontinue the proceedings and by then Mr. Boar indicated that he would be seeking costs on an indemnity basis. The other parties did not seek costs.
- 31 July 2015 – Mr. Boar filed his application seeking costs on an indemnity basis;
- 27 May 2015 – Mr. Boar’s application for costs to be paid on an indemnity basis was granted.

#### Appeal

4. The appeal raises a number of grounds which are essentially that there was no basis for the court to order payment of costs by the Appellant on an indemnity basis.
5. The Order for payment of indemnity costs is in respect of the short period from when the claim was filed being 1 August 2012 to 4 October 2012 when it was dismissed. The amount ordered as indemnity costs was VT 435, 000 to be paid within 28 days. The Appellant submits that when the claim was dismissed by the Court below, costs were ordered in favour of the Second Respondent (Gabriel Woilolo) on a standard basis. This order was never appealed. It was further submitted that this then puts into question the

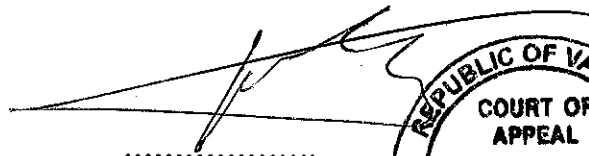


basis upon which indemnity costs were ordered for the same attendances after the matter was remitted to the Court below and later discontinued by Solomon Tavue.

6. Indemnity costs can only be awarded by the court as specified under rule 15.5 (4) and (5) of the Civil Procedure Rules. The Second Respondent relies on these rules in support of his submissions. We are however not persuaded by those submissions as we are of the view that the starting point for consideration must be the fact that the Second Respondents by not appealing the costs orders made on 4 October 2012 when the claim was dismissed accepted the award of costs on a standard basis.
7. The Second Respondent cannot later seek those same costs on an indemnity basis. Having drawn this to the attention of Mr. Boar, he conceded that his client would accept the costs as earlier awarded on a standard basis.
8. The appeal is therefore allowed and the Appellant is entitled to costs on a standard basis to be taxed failing agreement. It was also drawn to the attention of counsel that it may be that each party owes the other roughly the same amount of costs, hence the issue of costs could easily have been resolved without putting the parties to further cost.

**DATED at Port Vila this 20 day of November, 2015.**

**BY THE COURT**

  
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**Hon Vincent Lunabek**  
**Chief Justice**

