

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

**Civil Appeal**  
**Case No. 16/919 CoA/CIVA**

**BETWEEN: JIMMY VIRA**  
Appellant

**AND: JAMES ARU**  
Respondent

**Coram:** *Hon. Chief Justice Vincent Lunabek*  
*Hon. Justice Bruce Robertson*  
*Hon. Justice Daniel Fatiaki*  
*Hon. Justice John Mansfield*  
*Hon. Justice Dudley Aru*  
*Hon. Justice David Chetwynd*  
*Hon. Justice Paul Geoghegan*

**Counsel:** *Mr. G. Boar for the Appellant*  
*Mrs. M. Vire for the Respondent*

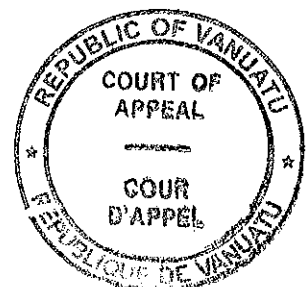
**Date of Hearing:** 12 July 2016

**Date of Judgment:** 22 July 2016

**JUDGMENT**

Introduction

1. This matter has a long standing history that arises from a dispute over custom ownership of Belbura land on the island of Santo between James Aru and Jimmy Vira.
2. When the matter first came before this court on appeal by James Aru in Civil Appeal Case No 21 of 2014 (CAC 21 of 2014), the appeal was upheld on the basis that there was finality on the issue of custom ownership of Belbura land as the Area Land Tribunal (ALT) decision of 7 October 2013 declared James Aru and his family as custom owners of the land. That declaration was never challenged by an appeal or otherwise. This court then said:-



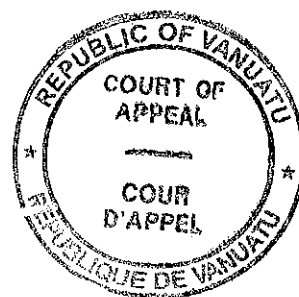
*"19. Finally, we urge these parties, who are members of the same family and who both have a legitimate and strong interest in the Belbura custom land to put aside their longstanding and entrenched differences. It is in the interests of all family members that some agreement is reached as soon as possible about their respective roles in relation to the land and as to how the funds held by the Republic may be divided.*

*20. We have real concern that if there are any more applications or Court proceedings the funds will become so depleted that the primary beneficiaries will be the lawyers and not the family whose money it is. In long-running disputes there is a tendency for parties to prefer to pay their lawyers rather than to see the other side receive funds. That kind of thinking needs to be abandoned and recognition given to the reality that these parties and all family members need to live and deal with each other amicably, both now and in succeeding generations. If the parties are unable to resolve matters themselves, we suggest they might agree on the appointment of a mutually-respected person as a form of mediator. "*

3. It now appears that no sensible approach was undertaken by the parties to resolve their differences amicably, resulting in the matter being agitated again before the Courts.

The Claim - Jimmy Vira v Republic of Vanuatu & Ors - Civil Case No 36 of 2013

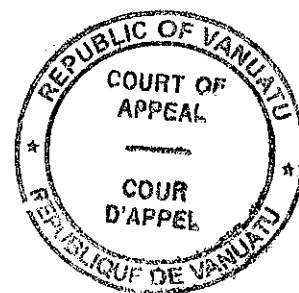
4. The claim was filed by Jimmy Vira and amended on 20 February 2015, some three months after judgment was delivered by this Court in CAC 21 of 2014. The relief sought by Jimmy Vira in his amended claim was for the following orders:-
  - (1) An order preventing the defendant and the second interested party from surrendering leasehold title 04/3013/003 and subdividing and or creating separate leasehold titles pending determination of the matter.
  - (2) An order directing the defendant to release VT 13,302,756 to the claimant and first interested party as follows:-
    - a) VT 7,302,756 – Jimmy Vira
    - b) VT 6,000,000 – James Aru
  - (3). A declaration that in the event that 04/3013/003 lease is surrendered warranting creation of different titles for different pieces of land, that a new title for Belbura land shall be 1,320 hectares as recognized by the Mavunlep Village Land Tribunal on 21 September 2012 and 26 August 2013 and surveyed by Sandra Andrew the registered surveyor.



- (4). An order that the claimant, Jimmy Vira and the first interested party James Aru shall be entered as lessors of lease registries created on Belbura land and to sign all lease transfers, mortgage agreements and all leases created thereon.
  - (5). Costs.
5. Following the filing of the amended claim, Jimmy Vira applied for summary judgment on 11 May 2015 and sought the following orders:-
- (1). The sum of VT 13,302,756 be released to the claimant and the first interested party's Solicitor's Trust Account as follows:-
    - a) VT 7,302,756 be paid to the claimant Solicitor's Trust Account and
    - b) VT 6,000,000 be paid to the first interested party's Solicitor's Trust Account
    - c) VT13,302,756 shall be released within 14 days.
  - (2). Belbura land boundaries is comprised of 1,320 hectares as surveyed by Sandra Andrews, the registered surveyor;
  - (3). The claimant Jimmy Vira and the first interested party James Aru shall be the custom owners representatives to be entered as lessors on Milai (Vanuatu) Limited lease title and to be joint signatories to any lease, consent and mortgage agreements including lease transfers that will occur on Belbura land.
  - (4). No order as to costs
6. This application was dismissed on 20 August 2015. On 2 March 2016 the Judge having heard the parties dismissed the claim leading to this appeal.

#### The Appeal

7. The Notice of Appeal raises a number of grounds. First that the trial judge failed to consider what this court said in CAC 21 of 2014. Secondly that the trial judge neglected to take into account various attempts taken by Jimmy Vira to try to reach agreement with James Aru. Thirdly that the trial judge erred in dismissing Jimmy Vira's application for summary judgment and finally that the trial judge erred in finding that James Aru is the sole custom owner and holding that the Minister should remain as lessor of the Milai (Vanuatu) Limited lease.



8. The relief sought is for:-

- (1). The appeal to be allowed;
- (2). An order that the appellant and the respondent be declared joint custom owners of Belbura land;
- (3). An order that the appellant and the respondent be entitled to equal division of income generated from Belbura land; and
- (4). Costs

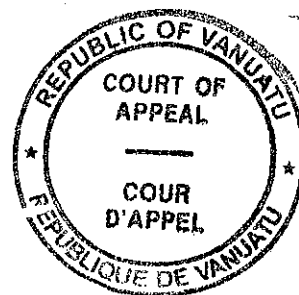
Discussion

9. The requirements for summary judgment applications are as set out in Rule 9.6 of the Civil Procedure Rules. In our view, the Judge was correct in dismissing the application for summary judgment as an abuse of process. In such an application the claimant applies for judgment to be entered on the claim or part of the claim if he believes the defendant has no real prospects of defending the claim. There is no requirement to seek additional relief. The Judge when considering the balance of the claim said:-

*"16. What remains now are the reliefs sought in the main claim. And I consider first the claimant's relief for a declaration of joint custom owners representatives. The short answer to this is that this Court lacks jurisdiction to make such a declaration therefore that is the end of this claim.*

*17. The second relief sought by the claimant is that there be an order that both the claimant and the Interested Party be entitled to equal benefits emanating from Belbura land. There are two answers to this, first the Court has no jurisdiction to decide on this aspect of sharing and second, the claimant has no standing to make such a claim. The current situation is that James Aru is the declared custom owner of the land in question and it is he who has standing to come to the Court to seek this relief. This relief is therefore declined.*

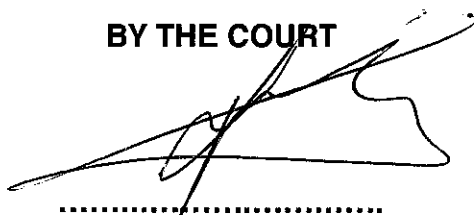
*18. Finally the relief that both the claimant and James Aru be registered as lessors of leases created on Belbura land, this relief must also be declined. For as long as these persons continue to maintain their current positions, their dispute is ongoing and as such, those leases must remain with the Minister as lessor."*



10. In our view and given what this Court said previously in CAC 21 of 2014, the Judge was correct. We again remind the parties that the starting point for consideration of the claim is that there has been a final declaration of custom ownership of Belbura land by the ALT on 7 October 2013 which has not been challenged by any appeal or otherwise. That is the final decision as to custom ownership of Belbura land and the parties must accept and live with that decision and try and move on with their lives.
11. It was conceded by Counsel on behalf of James Aru that he was declared as custom owner on behalf of his family and Jimmy Vira is part of that family. We again urge the parties that it is in their best interest that they resolve their differences amicably as soon as possible. This would provide a path as to how the funds held by the Government which is some VT 13,302,756 is to be shared to all members of the land owning group and would help in the future management of Belbura land.
12. If this cannot be achieved then the matter has to go before the Santo/Malo Island Court to clarify the sharing rights and entitlements of all members of the land owning group as a matter of custom pursuant to section 10 of the Island Courts Act [CAP 167].
13. The appeal is therefore dismissed and the respondent is entitled to costs including costs in the Court below on a standard basis to be taxed failing agreement.

**DATED at Port Vila this 22 day of July, 2016**

**BY THE COURT**



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

