

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

Civil Appeal
Case No. 20/2404 CoA/CA

BETWEEN: Bruno Cevuard
Appellant

AND: Family Fabiano Warsal & Others
Respondents

Date of Hearing: 10 November 2020

Before: Chief Justice V. Lunabek
Justice R. Young
Justice J. Mansfield
Justice D. Aru
Justice G. Andree Wiltens
Justice Viran M. Trief

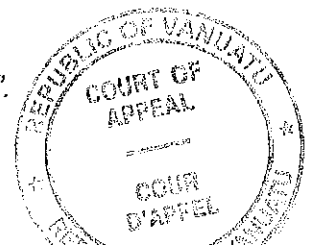
Counsel: Mr S. Kalsakau for the Appellant
Mr. John W. Taiva for the Respondents

Date of Decision: 20 November 2020

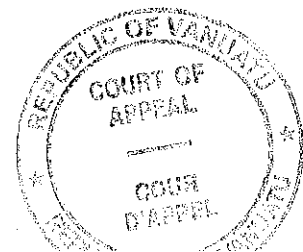
JUDGMENT

1. These proceedings began in the Magistrate's Court. The Respondents issued proceedings against the Appellant for trespass. An *ex parte* restraining order was made against Mr Cevuard. After Mr Cevuard filed his defence and counterclaim, the Magistrate set aside the *ex parte* order. After doing so, the Magistrate made an order, the effect of which was to quash the orders made in the trespass claim and issue restraining orders against Family Warsal and Others concluding that the Santo Island Land Tribunal who had declared the Respondents the customary owners of the land, had done so improperly.
2. Family Warsal and Others appealed to the Supreme Court. The Supreme Court said that the Magistrate was wrong to conclude that the decision of the Santo Island Land Tribunal was not a Tribunal properly constituted. As the Judge said:

"Whether the Tribunal was validly constituted is not the issue".



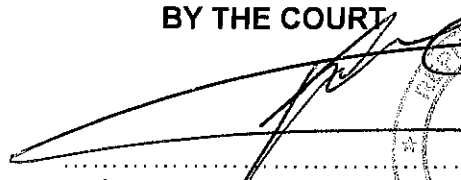
3. He therefore, allowed the appeal, quashed the orders of the Magistrate's Court and returned the case to the Magistrate's Court to have a substantive hearing as to damages and the counterclaim of the Respondents.
4. Today, Mr Cevuard, the Appellant, raised with this Court one ground of appeal. The ground of appeal was that the Judge was wrong when he concluded that whether the Tribunal was validly constituted or not, was not the issue. After discussion with the Court, the Appellant accepted that the appeal should be dismissed.
5. The Respondents sought costs to be imposed against the Appellant.
6. We have set out these matters because we wish to make an observation regarding the basis of these proceedings in the Magistrate's Court.
7. In 2011, the Santo Island Land Tribunal declared the Respondents to be the customary owners of the relevant land. No challenge to that decision had been made at the time this case came before the Magistrate's Court in 2019, some eight and a half years later. The Magistrate should have proceeded on the basis that there was an existing decision of a Tribunal which had made a declaration as to customary ownership. It was not the function of the Magistrate's Court to look behind that land tribunal's decision or to consider whether the declaration on the customary ownership on the disputed land was improperly made at all. These were proceedings for trespass. They were not proceedings that challenged in some way the decision of the Santo Island Land Tribunal declaring the Respondents to be the customary owners of the land. Trespass proceedings were not the forum for that challenge.
8. Where there is a decision of a Land Tribunal declaring ownership of customary land, the appropriate forum to challenge such decision is in proceedings that do so directly by way of appeal under the relevant statutory provisions (relevantly in this case, the Customary Land Tribunal Act of 2001). It is not appropriate for Courts to allow a challenge to findings of customary ownership in proceedings not designed for that purpose.
9. For these reasons, we therefore dismiss the appeal.



10. As to costs, in our view, the Respondents are entitled to costs. We fix them at VT20,000. There should be one set of costs only. One Counsel represented all Respondents.

DATED at Port Villa this 20th day of November 2020

BY THE COURT



Chief Justice V. Lunabek

