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

Civil Appeal
Case No. 24/2734 COA/CIVA

BETWEEN: FAMILY KALMET and FAMILY KALTATAK
Appellants

AND: FAMILY KALMERMER
First Respondent

AND: JOHNSTON KALMAN TAU and RENE TAIN
Second Respondents

AND: JACK KALON
Third Respondent

AND: CHARLOT NAWEN RUTAU
Fourth Respondent

AND: CUSTOMARY LAND MANAGEMENT OFFICE
Fifth Respondent

Date of Hearing: ***8 November 2024***

Coram: ***Hon. Chief Justice V. Lunabek***
Hon. Justice M. O'Regan
Hon. Justice R. White
Hon. Justice D. Aru
Hon. Justice V. M. Trief
Hon. Justice E. P. Goldsbrough
Hon. Justice M. A. MacKenzie

Counsel: ***J. Tari for the Appellant***
S. C. Hakwa for the 1st and 2nd Respondents
C. B. Leo for the Third Respondent
K. T. Tari for the Fourth Respondent
T. Loughman for the Fifth Respondent

Date of Decision: ***15 November 2024***

JUDGMENT

Introduction

1. This is an appeal against a judgment of the Supreme Court dismissing an "appeal" from a decision of the Island Court (Land).

REPUBLIC OF VANUATU
COURT OF APPEAL
COUR D'APPEL
REPUBLIQUE DE VANUATU

2. The Island Court (Land) allowed two applications to extend time filed by applicants seeking to challenge two decisions of the Eratap Customary Land Tribunal concerning disputes over custom ownership of Eratap land. The Family Kalmet and the Family Kaltatak, who had been unsuccessful in resisting the extensions of time and who are the appellants in this Court, filed a document entitled "Notice and Ground of Appeal" in the Supreme Court. In that document, they described themselves as "Appellants" but did indicate that they were intending to rely on s.47 of the Customary Land Management Act (the CLM Act).

3. The Supreme Court Judge regarded the 'appeal' as misconceived and premature and dismissed it.

4. We consider that the appeal must be dismissed. Our reasons follow.

Background facts

5. There was no dispute about the circumstances giving rise to this appeal as set out by the Judge.

6. Family Kalmermer (the present First Respondent) filed an application in the Island Court (Land) pursuant to s.58(1), (3) and (4) of the CLM Act on about 19 February 2015. It named Chief Andrew Bakoa Kalpoilep and Chief Jack Kalon Maseimermerman as Defendants 1 and 2. Family Kalmermer sought a review of the decision of the Eratap Land Tribunal dated 18th May 2004.

7. As the application was out of time, Mr Hakwa filed, on 2nd October 2023, an application to extend the time for its filing.

8. The second application for review, also filed in the Efate Island Court (Land) on 2 October 2023, sought review in the Efate Island Court (Land) of the decision of the Eratap Customary Land Tribunal dated 25 November 2003 in Land Case No.1 of 2003.

9. The Efate Island Court (Land) delivered its decision on the two applications to extend time on 15 October 2023. It granted the extensions of time which had been sought.

10. The present appellants then filed in the Supreme Court the document to which we referred in [2] above. Mr Hakwa, representing the first and second respondents, filed a response in which he contended that the 'appeal' was misconceived and should be dismissed with costs. His short point was that s.47 of the CLM Act does not authorise an *appeal* to the Supreme Court against a decision of the Island Court (Land), only an *application* on limited grounds.

11. The Judge directed the parties to file and serve written submissions on the objection to competence and then dealt with the matter on the papers. In the judgment delivered on 9 August 2024, the Judge accepted Mr Hakwa's submission and dismissed the 'appeal'. The appellants now appeal to this Court against that judgment.

REPUBLIC OF VANUATU COURT OF APPEAL COUR D'APPEL REPUBLIQUE DE VANUATU

The appeal

12. In addition to appealing against the judgment of 9 August the appellants also purport to appeal against the decision of the Island Court (Land) on 15 October 2023 and seek an order that its judgment be set aside. That part of the appeal was plainly misconceived and we need say no more about it.

13. The appeal against the judgement of 9 August is made on a number of grounds. The appellants contend that the Judge erred in law:

    1) by failing to consider Article 78 of the Constitution;

    2) by failing to consider the decision in *Kalmet v Kalmermer* [2013] VUCA 30 which is said to be binding;

    3) by deciding that the decision of the Island Court (Land) on the application to extend time was interlocutory in nature so that leave to appeal was required;

    4) by deciding that s.47 of the Act does not include any right of appeal.

Discussion

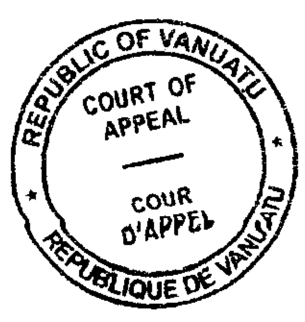
14. The role of the Courts in dealing with custom land disputes is now strictly limited by Article 78 of the Constitution. Relevantly, Article 78(3) provides that:

    > *Despite the provisions in Chapter 8 of the Constitution, the final substantive decisions reached by customary institutions or procedures in accordance with Article 74, after being recorded in writing, are binding in law and are not subject to appeal or any other form of review by any court of law.*

15. Thus, Article 78 does not assist the appellants presently as it does not bestow any right of appeal to the Supreme Court against a decision of an Island Court (Land).

16. In relation to decisions of Island Courts (Land), s.47 of the CLM Act bestows on the Supreme Court supervisory powers on limited grounds. It provides:

    > ***"47 Supervisory powers of the Supreme Court on limited grounds***
    >
    > *(1) If a person, who is not qualified to be a member of an Island Court (Land), participates in a proceeding or influences, or attempts to influence the proceedings of an Island Court (Land), a party to the dispute may apply to the Supreme Court for an Order:*
    >
    > *(a) to discontinue the proceedings; or*
    >
    > *(b) to cancel the decision of the Island Court (Land); or*



(c) to direct that an Island Court (Land) composed of different members is to determine the dispute.

(2) A party to a dispute may also apply to the Supreme Court for any of the Orders set out in subsection (1) if the Island Court (Land) fails to comply with any procedures prescribed in this Act.

(3) A decision by the Supreme Court made under subsections (1) or (2) is final.

(4) To avoid doubt, pursuant to Article 78 of the Constitution, the Supreme Court and all other Courts have no jurisdiction to determine matters related to land ownership or land disputes.

(5) All matters related to land ownership or land disputes must be referred to a nakamal or a custom area land tribunal for determination in accordance with the provisions of this Act."
(emphasis added)

17. As is apparent, s.47 authorises only applications to the Supreme Court, not appeals. That is Mr Hakwa's short point. We agree. The primary Judge was correct to hold that the appellants have no right of appeal to the Supreme Court.

18. Mr Hakwa said that, if the appellants had applied to amend their notice of appeal to make it an application on one or more of the grounds permitted by s.47, his clients would not have objected. He also acknowledged that the appellants can start again in the Supreme Court with a fresh application under s.47.

19. The course of events has been unfortunate. In the circumstances, the appellants should have recognised that their purported appeal was inappropriate. But Mr Hakwa and the other respondents could have conceded that the appellants were really bringing a s.47 application and cooperated in the regularising of the proceedings. Considerable time and resources, including the resources of this Court, would have been saved had they done so.

20. We mention Ground 2 briefly. The appellants contended that the Judge should have referred to *Kalmet v Kalmermer* [2013] VUCA 30. However, that decision concerned the jurisdiction of the Island Court (Land), and not rights of appeal to the Supreme Court. Accordingly, it does not assist the appellants presently.

21. Finally, as there is no right of appeal, the question of leave to appeal does not arise. It was not necessary for the Judge to address that question.

Result

22. For the reasons set out above the appeal is dismissed. As noted in the body of the reasons, Mr Hakwa accepts that it is open to the present appellants to start again in the Supreme Court with an application under s.47.

REPUBLIC OF VANUATU COURT OF APPEAL COUR D'APPEL REPUBLIQUE DE VANUATU

23. Given that the issue as to the competence of the proceedings could have been sorted out with some common sense by the parties in the Supreme Court, there will be no order as to the costs of the appeal.

DATED at Port Vila, this 15th day of November, 2024.

BY THE COURT

REPUBLIC OF VANUATU
COURT OF APPEAL
COUR D'APPEL
REPUBLIQUE DE VANUATU

Hon. Chief Justice Vincent Lunabek