

**IN THE ISLAND COURT (LAND)
OF THE REPUBLIC OF
VANUATU – Port Vila
(Custom Land Jurisdiction)**

Case No. 22/2718 IC/CUST

IN THE MATTER OF: Forari/Manuro Customary

AND IN THE MATTER OF A DECISION OF: The Forari Village Land Tribunal, dated 14th February, 2014

IN THE MATTER OF: An Application pursuant to Section 45 of the Custom Land Management Act

BETWEEN: Chief Tarinuamata

APPLICANT

AND: Forari Village Land Tribunal East Efate

1st RESPONDENT

AND: Kennedy Matokuale Tariwer

Of Marou Village, Emau Island

2nd RESPONDENT

Date: 2nd December 2022

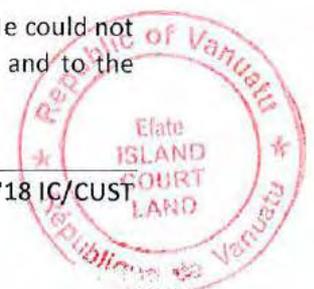
Before: Chairlady B. Konas Jashua (SM)
Justice Thomas Felix
Justice Lutu Sakita
Justice Serah Paton
Justice Roy Tining

Counsels: Mr Sammy Aron (*amicus curae*) for the applicant
Mr Lennon Huri for the first respondent
Mr Roger Rongo for the second respondent

RULING

Background

1. On 24 November 2022, the Court granted the application for enlargement of time to the applicant. The Court found that,
 - a. The applicant and second respondent were a party in the Efate Island Court Case No. 04/1995 & Civil Case No. 04/1988 ("EIC") as counter-claimants 8 and the Declaration 13 ("the declaration") of the judgment ruled in their favour;
 - b. The second respondent filed a claim in the Forari Village Land Tribunal ("the Tribunal") regarding Declaration 13 without the applicant and the Tribunal ruled in the second respondent's favour;
 - c. The applicant later found out that he was not included in that decision. He could not be a party to the matter when it was appealed to the Supreme Court and to the



Court of Appeal as he was not a party at the village tribunal. At the Court of Appeal, the second respondent was directed to challenge the decision in the Island Court (Land) ("ICL");

- d. Section 58(1) and (3) of the Customary Lands Management Act ("CLMA") provides that decisions under the repealed Customary Lands Tribunal Act ("old Act") can be filed in the ICL within 12 months. One aggrieved party filed their case within the 12 months period and when the applicant attempted to file an application for joinder as an interested party, he was advised by the Registrar of ICL to file a separate application for review.
2. The enlargement of time was granted and the second respondent withdrew his application to strike out, as the grounds were the same for enlargement of time. His response to the application for review, however, remained. The applicant pointed out that from this response, the points were futile and redundant because of the following reasons:
 - a. Paragraph 1 – 3 were undisputed facts,
 - b. Paragraph 4 regarded a Notice that was disregarded by the Court, as it was not submitted in the pleadings,
 - c. Paragraph 5, 6 and 7 concerned "out of time". This was made redundant when the Court granted the application for enlargement of time, and
 - d. Paragraph 8 concerned strike out, which counsel had withdrawn.
 3. Despite the points raised by the applicant, the second respondent insisted on proceeding with the application for review.

Application for Review

Decision made by the Tribunal was procured by fraud

4. The ground for review is that the decision made by the Tribunal was procured by fraud.
5. The review concerned a decision made by the Tribunal on 14 February 2014. The decision was made following a claim that the second respondent filed before the Tribunal. It was based on the declaration (Declaration 13) in the EIC judgment regarding the Forari/Manuro custom land:

"Title 'TARINUAMATA' hemi title blong Buniga we oli ordainem John Luen long hem long Emae. I gat high probobility se Tarinua mo Tariwer ikamaot long area ia, but ino Karngo title 1940."
6. This land case was brought before the Island Court when the old Act was still in force. Six days after the decision was delivered the old Act was repealed and the CLMA came into effect.
7. In that judgment, there was an original claimant and 9 counter-claimants. The applicant and the second respondent were counter claimant 8. Subsequently, the declaration was made to both of them.
8. When the CLMA came into effect the Forari Village Lands Tribunal was set up and the second respondent filed a claim before the Tribunal. The claim filed by the second respondent was done on his own without the applicant knowing. The applicant was under

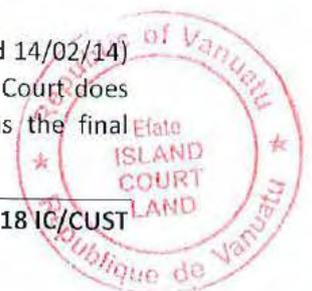


the impression that the second respondent had filed the claim on both of their behalf, as counter-claimant 8.

9. The Tribunal's decision declared that the judgment of the EIC gave the second respondent the power to the claim before the Tribunal. The decision did not include the applicant even though Declaration 13 was for counter claimants 8.
10. The CLMA does not define "fraud", however, according to Black's Law Dictionary, fraud is *A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.*
11. In applying this to the current matter, the second respondent used the EIC judgment, in particularly, Declaration 13 in his claim filed in the Tribunal and knowingly omitted the applicant so the Tribunal can rule in his favour. The second respondent did not include the applicant even though they acted as one party in the judgment. He took advantage of the CLMA to endorse the declaration to be in his favour alone, when the declaration was clearly directed to the second respondent and the applicant.
12. Neither the applicant nor the second respondent appealed the EIC judgment. However, a judicial review was filed in the Supreme Court in March 2014. This was dismissed on 29 September 2014 as the Supreme Court did not have the jurisdiction to determine the claim pursuant to the CLMA. An application for review was lodged on the same date pursuant to Section 58(3) of the CLMA. As no appeals were made within the 12 months stipulated in Section 58(1) both the applicant and the second respondent are pursuing a certificate of recorded interest in the land.
13. The land stated in Declaration 13 cannot be declared to be a recorded interest for the mere fact that it does not specify which land belongs to whom. The sentence "*I gat high probability se Tarinua mo Tariwer ikamaot long area ia...*" (my emphasis) is too general. If this Court declares that the judgment in the EIC is the final determination, neither of the parties can pursue a certificate of recorded interest in the land because it does not state clearly which land belongs to which party. This must be made clear and that can only be done in the appropriate Tribunal.
14. The second respondent pointed out to the Court that Declaration 13 referred to Tarinuamata and Tarinua, and questioned if this was one and the same person. The applicant clarified this to say that Tarinuamata was a counter-claimant who represented Tarinua and presented Tarinua's history. This Court is satisfied that this is not an issue in this application.

Conclusion

15. In light of the above, the Court is satisfied that the decision made on 14 February 2014, by the Tribunal was procured by fraud, instigated by the second respondent. The second respondent deliberately excluded the applicant in his claim in order for the Tribunal to rule in his favour alone.
16. The Court hereby sets aside the decision of the Forari Village Land Tribunal (dated 14/02/14) and refers the matter to be re-heard before a newly constituted nakamal. This Court does not have the power to order that the judgment of the Efate Island Court is the final



determination. Although there were no appeals, it is clear that there are aggrieved parties from the judgement but their remedy was not readily available to them, resulting in wrong applications made to the Supreme Court and Court of Appeal. The right avenue for the parties is the Island Court (Land). This Court has identified the discrepancies in the process and there is clearly a need to rectify this process. This Court upholds the judgment of the Efate Island Court, Case No. 04/1995 & Civil Case No. 04/1988. The remedy for any aggrieved party from that judgment can only file an application for review in the Island Court (Land).

17. Additionally, the Court makes the following directions:

- a. That the Chairman of the nakamal must be the paramount chief of the jurisdiction which covers Forari.
- b. That the second respondent is refrained from selling, sharing and developing the said area of land until the matter is determined and fully adjudicated.
- c. That the newly constituted nakamal must hear the claim of both Tariwer and Tarinuamata and determine "the area" belonging to the applicant and second respondent by way of sketch maps showing their custom land boundaries and landmarks, and custom area names. (Note: google maps must not be used).
- d. That the newly constituted nakamal must carry out a site visit to the custom land area claimed by the parties.
- e. That the Custom Lands Officer must ensure that claims filed in the nakamal are in accordance with the Custom Lands Management Act.
- f. That proceedings in the nakamal must be in accordance with the Custom Lands Management Act.

Dated in Port Vila, on this 2nd day of December, 2022

BY THE COURT



B. Kanas Joshua (SM)
CHAIRLADY

Justice T. Felix

Justice S. Paton

Justice L. Sakita

Justice R. Tining