

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

Case No. 19/365 IC/CUST

IN THE MATTER OF: Part 4, Section 24(1) (2) (3) & (4) of the Custom Land Management Act No. 33 of 2013

AND IN THE MATTER OF A DECISION: Custom boundaries between Tikilaso and Unukapu

IN THE MATTER OF A DECISION OF: Decision of North East Efate Area Land Tribunal, dated 23 December 2013

BETWEEN: Otto Norman Matakorumarata and Masekau
As Paramount Chief of Emoi and Raitoa of Nguna
Island, North Efate, Republic of Vanuatu

APPLICANTS

AND: North East Area Land Tribunal
1st RESPONDENT

AND: Donald Manamena Tikilaso (chief)
Of Nguna Island, Republic of Vanuatu
2nd RESPONDENT

AND: Thompson Tokai Tangelele Unakapu
3rd RESPONDENT

AND: Masekau (chief)
Represented by Chief Frank Cyrus
4th RESPONDENT

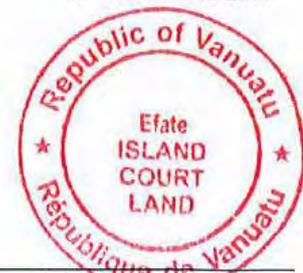
AND: Robert Nakmau Tassaruru (chief)
5th RESPONDENT

AND: Matakoriliu Tatie Tawia Cyrus (chief)
6th RESPONDENT

AND: Humphrey Tamata
National Coordinator of Customary Land
Management Office
7th RESPONDENT

Date: 2nd June 2023

Before: Chairlady B. Kanas Joshua (SM)
Justice Thomas Felix
Justice Lutu Sakito



*Justice Serah Paton
Justice Roy Tining*

Counsel: *Mr Collin B. Leo, for the Applicant
Mr Lennon Huri for the first and seventh respondents
Mr James Tari, for the second respondent
No appearance for the third respondent
Mr Robert Tasaruru representing himself and the fourth respondent
Mr Veillie Tatie Tawia Cyrus representing the sixth respondent*

RULING

Background

1. This is an application to review a judgment of North East Efate Area Land Tribunal (23/12/13) ("NEEALT"). The decision was made under the Customary Land Tribunal Act ("the CLTA"). The Customary Land Tribunal was repealed on 20th February, 2014. The Customary Land Management Act No. 33 of 2013 ("the CLMA") came into effect on the same date.
2. Section 58 of the CLMA provides for a grace period of 12 months for any aggrieved parties in decisions made under the CLTA. The 12 months grace period would lapse on 20 February, 2015. The application for review was filed on 9th February, 2015 and that it was made within the 12 months grace period.
3. Under the CLTA land disputes must first be heard in a village land tribunal ("VLT"). Decisions from a VLT can be appealed to an area land tribunal ("ALT") where its decisions can be appealed to an island land tribunal ("ILT"). Decisions by the ILT can be appealed to the Supreme Court.
4. This Court is not an appellate court for land decisions made in the nakamal or custom area land tribunals. The purpose of this Court is to review the decisions of a nakamal or custom area land tribunal on grounds of an incorrect composition, improper process or fraud.¹
5. An application to strike out the matter was also filed by the fifth respondent. This application was withdrawn, however, the grounds stated in the application were relied on in the submission made in Court.
6. It must be stated clearly that for the purposes of this case all parties shall be referred to by their given names and not their statuses as chiefs. This is to avoid any inferences on anyone to any chiefly titles that may be in dispute.

Grounds for review

7. Section 41 of the CLMA provides 3 grounds that a person can apply for review:
 - a. If the nakamal or custom area land tribunal was not constituted according to CLMA;
 - b. If there is a breach of the process; or
 - c. If the decision was procured by fraud.

¹ Section 1(3), Customary Land Management Act No. 33/2013



8. It was submitted that the proceeding had nothing to do with Raitoa and Emoi as they do not share boundaries with Tikilasoia and Unakapu. However, when declarations were made they also made declarations for Raitoa and Emoi. In addition, the two areas were not subject of dispute so it was wrong for them to make a declaration on a non-party.
9. Counsel for first and seventh respondents submitted that the relief sought is not the jurisdiction of this Court. Counsel for the second respondent stated that the judgment referred to is on boundaries and does not fall in the jurisdiction of this Court. The applicant can only request for a review if one of the three grounds for review is satisfied.
10. The applicant also stated that, even if the judgment concerned Raitoa and Emoi, as the chief he did not receive any report about a dispute of the two areas. According to Section 24(1) of the CLMA, it states that if there is a dispute over a custom land that lies entirely within the boundary of one nakamal, it must be reported to the head of nakamal to convene a meeting to resolve the matter. The relief he sought from this Court is to have the declarations on Raitoa/Emoi removed, with costs.
11. Counsel for the third respondent did not appear in Court. However, there was a response by the third respondent. In his response he stated that the applicant has no standing to file an application because he was not a named party in the appeal matter. The fourth and fifth respondents also concurred that the applicant did have the locus standi to apply for a review in the Island Court (Land).
12. Upon rebutting the respondents' submissions in Court, the applicant stated that the actions taken by the tribunal constituted fraud. This was not elaborated on.
13. Based on the submissions, the Court finds that,
 - a. In the application the applicant claims the chiefly title of Masekau, who is the chief of Raitoa. The application of review heavily contained issues to do with chiefly title, in particular the chiefly title of Masekau. This is disputed by the applicant, the fourth respondent and the fifth respondent and is a pending matter before the Efate Island Court.
 - b. In the submission made by the applicant, it showed that there was a breach of process when the applicant did not receive a notice of dispute to be determined.
 - c. The history of the Daporae land case appeal also affected Raitoa and Tanoropo land boundaries when a decision was made on 3rd September, 2009. Tikilasoia and Raitoa appealed this decision to the Supreme Court and the Court ordered Marakinavata to hear the appeal.
 Tanoropo area withdrew their claim and only three parties went ahead with the proceeding. They were Tikilasoia, Unakapu and Raitoa. The proceeding commenced on 5 – 6th December, 2013, in Vila. On 9th December, 2013, the parties went on a site visit.
 - d. Section 45 of the CLMA provides that "a member of a nakamal or a disputing group that a decision" allows the applicant the right to file an application for review, even if he was not party in the appeal matter.

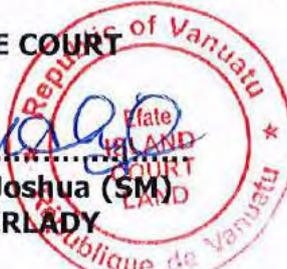


Conclusion

14. Upon the findings above, the Court sets aside the judgment of Daporae Land Appeal Case made on 23rd December, 2013, in its entirety on the following grounds:
- That the applicant is also an interested party in the Daporae land case; and
 - That the case also affects Raitoa, which the applicant claims chiefly title over.
15. The Court further orders that,
- A newly constituted village nakamal must hear the proceeding, with the applicant and any other members of the nakamal who holds interest in Raitoa. This does not limit any other members of other nakamals who have interests in the boundaries in question.
 - The village nakamal must not hear the matter until the chiefly title of Masekau has been fully adjudicated in Court.
 - The chiefly title of Masekau must not be used by the applicant, the fourth respondent, the fifth respondent and any other members of the nakamal in any court proceeding before the Island Court (Land).
 - In the event that the village nakamal sits to hear the matter, it must comply with the procedures in the Customary Land Management Act No. 33/2013.

Dated at Port Vila on this 2nd day of June, 2023

BY THE COURT


B. Kanas Joshua (SM)
CHAIRLADY


 Justice T. Felix


 Justice L. Sakita


 Justice S. Paton


 Justice R. Tining