

**IN THE MAGISTRATES COURT  
OF THE REPUBLIC OF VANUATU**  
*(Other Jurisdiction)*

**Civil Appeal  
Case No. 19/2922 MC/CIVA**

**BETWEEN: WILLIE BEBE**

First Appellant

First Appellant's Lawyer:

Mr. James Tari of James Tari & Partners  
Port Vila, Efate  
Republic of Vanuatu

**AND: JONAH WAYBACK**

Second Appellant

Second Appellant's Lawyer:

Mr. Brian Livo of PSO Lawyers  
Port Vila, Efate  
Republic of Vanuatu

**AND: ERICK WAYBACK LUSTAVU**

First Respondent

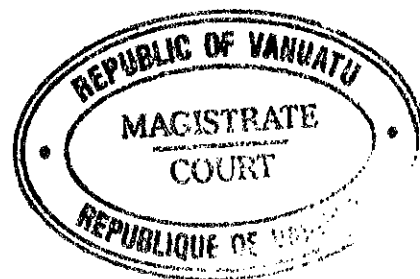
First Respondent's Lawyer:

Mr. Daniel Yawha of Yawha & Associates  
Port Vila, Efate  
Republic of Vanuatu

**AND: RON TAMTAM**

Second Respondent

Of Pentecost Island  
Penama Province  
Republic of Vanuatu



***In Attendance:***

***Mr. James Tari for the First Appellant. Mr. Brian Livo for the Second Appellant. Mr. Roger Rongo for the First Respondent. No appearance by Second Respondent***

***Copy:***

***Parties, Molbaleh Lawyers, Pentecost Island Court Clerk***

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## DECISION

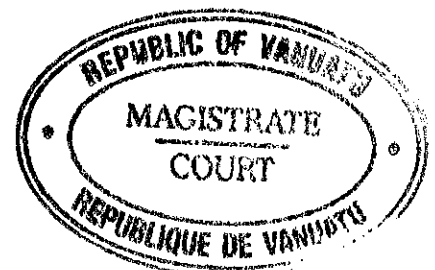
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### A. Introduction

1. This matter came by way of appeals filed by three potential appellants who are aggrieved by the decision of Pentecost Island Court over a chiefly title dispute.
2. In a court ruling dated 30 April 2020, two of the appellants' appeal were regularly filed within the prescribed time (30 and 60 days) in accordance with section 22 (5) of the Island Courts Act. The third appellant Mr. Peter Bebe's appeal was disallowed because he has filed his appeal outside the period of 60 days.
3. In preparation towards hearing of the case, the appellants cited a number of irregularities, which they think, had been ignored by the Pentecost Island Court when making its decision.
4. As a result, they have all agreed with the Respondent that this matter should be dealt with by way of revision pursuant to section 21 of the Island Courts Act since I am the judicial officer empowered under a warrant to supervise the Island Court of Pentecost Island.

### B. Background / Chronology of the case

- The chiefly title dispute was filed and registered in the Pentecost Island Court by Ron Tamtam on 1 August 2019 against Erick Wayback Lustavu and Family.
- The PIC issued notices to both parties (Ron Tamtam and Erick Wayback Lustavu Family) on 1 August 2019 advising them of the hearing scheduled for 31 August 2019.
- Soon after filing of the claim, Mr. Ron Tamtam was incarcerated in Luganville Correctional Center for a crime he committed.



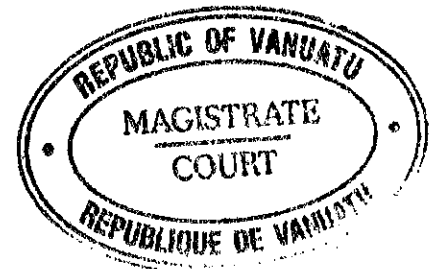
- On 12 August 2019, Mr. Ron Tamtam wrote to the court giving his consent for the chiefly title (Lustavu) currently possessed by him be transferred to the defendant and that the court hearing proceed in his absence due to his confinement.
- The court convened at Pangi, South Pentecost on 29 August 2019 and Mr. Rolanson Bule wrote on behalf of his brother Jonah Wayback Tor (second appellant) asking the court to cancel the hearing and not issue a judgment on the matter until he is given an opportunity to present his counter claim. The court record showed the clerk took no notice of the letter.
- A decision was issued on 30 August 2019 dismissing the claimant's (Ron Tamtam) claim. He was ordered to refrain from using the chiefly title name Lustavu indefinitely. The PIC further ordered the chiefly title of Lustavu to Mr Simon Tor Bebe Teol Tavu and his tribe.
- Three appellants namely Willie Bebe, Jonah Wayback and Peter Bebe filed appeal in the Magistrates' Court. On 30 April 2020, the court allowed appeal filed by Willie Bebe and Jonah Wayback but refused the appeal of Peter Bebe on the ground that his appeal was filed outside of 60 days.
- Mr. Peter Bebe appealed the decision of the Magistrate to the Supreme Court and in its decision on 19 August 2020; the Supreme Court dismissed the appeal.

#### C. Issues

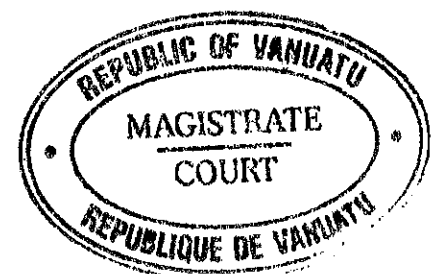
- Whether the PIC convened its hearing after 30 days from the date of filing of claim?
- Whether the PIC could proceed in the absence of the claimant and by consent of the claimant, transfers the chiefly title to the defendant?
- Whether the PIC can register the name of a deceased person as a party and declare the rights to the surviving family members?
- Whether the appellants have an arguable defence in custom over chiefly title Lustavu?

#### D. Discussion

5. The court record showed the claimant filed the chiefly title dispute claim of Lustavu in the PIC on 1 August 2019 and the court sat at Pangi, South Pentecost on 31 August 2019.
6. The Island Court (Civil Procedure) Rules 2005 at Rule 1 (4) states: *"If the clerk of the office is satisfied that the statement of claim is in accordance with the preceding paragraphs of this rule, the clerk shall register the statement of claim in the record books of the court, and shall enter the claim in the list for hearing on a certain day, which shall not be earlier than 30 days after the date of filing."* (My underlining).
7. It appears the court convened to hear the dispute in 28 days and not after 30 days as per Rule 1 (4) of the Island Court CPR. The first issue is therefore answered in the negative.



8. With regard to the second issue, the court is mindful of the discretions given to the Island Court under Rule 4 of the Island Court CPR in situations of non-appearance by the claimant. However, having looked at the rule which states "*If the claimant does not appear at the time of hearing of the claim, the court shall, unless it considers that there is some good reason for the claimant's non-attendance...*" (My underlining).
9. The claimant was confined in prison so he could not attend hearing. The PIC was advised of the claimant's circumstances through the letter of the claimant dated 12 August 2019 addressed to the court sheriff in Luganville.
10. The PIC in its judgment of 30 August 2019 at paragraph 4 acknowledges the claimant's position and the hearing was conducted wholly on the instructions of the claimant through the letter.
11. The letter is suffice to justify the claimant's non-attendance and therefore could have prevented the PIC from proceeding to hear the matter until such time the claimant is released from custody.
12. The third issue relates to the name of the defendant as Erick Wayback Lustavu Family and Descendants. The depositions of all the parties showed Erick Wayback Lustavu is deceased. Mr. Simon Tor Bebe Teol Tavu filed counter claim and presented his claim on behalf of Erick Wayback Lustavu. The decision of the PIC stated at paragraph 3. "*Kot ia hemi rul se defendant Mr Simon Tor Bebe Teol Tavu wetem tribe blong hem, olgeta nao oli gat right long Chiefly Taetol ia Lustavu*".
13. It is a principle of law that where a person has died before an action is taken to court, there has to be a legal representative of the deceased or that the action should be brought against the Estate of the deceased. This may be slightly a contrast in custom on the accepted ceremonies in custom giving effect to passing of chiefly titles and custom properties of the deceased. While the PIC decision explained a process of that sort to have taken place after the passing of Erick Wayback Lustavu, what appears concerning is that the deceased is named as the defendant and the decision is ordered in favour of Mr. Simon Tor Bebe Teol Tavu. A deposition of Ron Tamtam in sworn statment filed on 19 December 2019 at paragraph 1 states "*The reason I lodged the claim against the deceased Erick Wayback Lustabu (sic) was because he was the one who handed over the said chiefly name to me, however; his family descendants have the legal right to represent him though dead in order to reclaim their right by custom.*"
14. Mr. Ron Tamtam does not explain in the depositions the rights he has in custom to have the chiefly title bestowed on him by the Erick Wayback Lustavu (deceased).
15. For the reasons so mentioned, the issue must be answered in the negative.
16. With regard to the final issue, what transpires in the submissions of the Second Appellant Jonah Wayback Tor and the Respondent Simon Tor is that the Island Court acknowledges that chiefly title rights passes through patrilineal and not matrilineal.



17. However, since there is no male surviving bloodline of Lustavu, the court ordered the right to Simon Tor Bebe Teol Tavu through matrilineal bloodline connections of her mother Serah Matas.
18. The submissions of the second appellant Jonah Wayback is that Serah Matas has a brother called Zacchaeus Bebe. His first wife is barren and died and so he remarry the second wife who has a male child from another relationship but raised by Zacchaeus Bebe as his son.
19. I therefore hold the view that he has presented a right that has to be determined by custom in a competent court. This issue is answered in the affirmative.

**E. Order**

20. The decision of the Pentecost Island Court dated 31 August 2019 is set aside.
21. In accordance with the powers given under section 21 (2) (b) of the Island Courts Act, I as the Supervising Magistrate for Pentecost Island Court hereby order that this matter shall return to the Pentecost Island Court for re-hearing before a different constituted Island Court.
22. The appellants and any other persons who may have an interest in the chiefly title Lustavu are given liberty to file their claims before the Pentecost Island Court.
23. Parties are to meet their own costs associated with this proceeding.

**DATED at Port Vila this 28<sup>th</sup> day of April 2021**

**BY THE COURT**

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**MOSES PETER**  
Senior Magistrate

