

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**

(Civil Jurisdiction)

Civil Case No. 158 of 2009

BETWEEN: CHIEF KALTAU MANARURU
Claimant

AND: SIVIRI/TANOLIU JOINT VILLAGE LAND TRIBUNAL
Defendant

AND: JIMMI MEAMEADOLA
Second Defendant

AND: KALULU TARIPOA
Third Defendant

AND: KALFAU MATUELE
Fourth Defendant

**AND: GOVERNMENT OF THE REPUBLIC OF VANUATU
THROUGH ITS AGENT, MINISTER OF LAND, LAND
SERVEY & LAND RECORDS**
Fifth Defendant

Civil Case No. 92 of 2007

BETWEEN: CHIEF MORRIS MANARURU
Claimant

AND: SIVIRI/TANOLIU
First Defendant

**AND: CHIEF ANDREW POPOVI, CHIEF PETER
MASONGO MATUELE, SHEM LOC, PHILIP
PAKOALAEAE, JACKY PAKOA, CHIEF D.
MEAMEADOLA, KALULU TARIPOAWIN,
KENNETH PETER AND WILLIE TAPASEI**
Second Defendants

AND: REPUBLIC OF VANUATU
Third Defendant

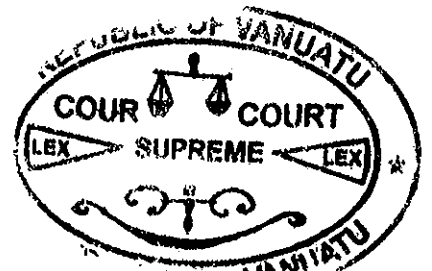
Constitutional Case No.: 04 of 2009

BETWEEN: CHIEF MORRIS MANARURU
Applicant

AND: REPUBLIC OF VANUATU
Respondent

Coram:

Justice N. R. DAWSON



Date of Hearing: 6th October, 2010

Date of Decision: 6th October, 2010.

*Counsel: No appearance for the Claimant (Mr. S. Stephens)
Ms. C. Thyna for First Defendants
Mr. J. Malcolm for Second Defendants*

ORAL RULING

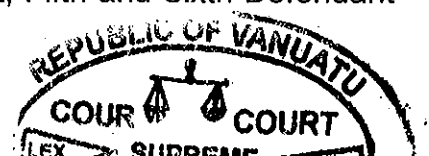
1. Today and tomorrow was set down for hearing of all 3 of these matters. It became apparent during the course of today's hearing that there is a lack of focus in relation to the legal issues in these 3 cases. Essentially all 3 Court files relate to the same single issue, that is that the Claimants are applying to the Court to have the decision of the Land Tribunal overturned and for a rehearing of the Land Claim before a new Land Tribunal. That is why these 3 files have been dealt with together and probably should continue to be dealt with together.
2. It has become apparent during the course of today's hearing that the decisions of the Land Tribunal are pursuant to section 33 of the Customary Land Tribunal Act [CAP. 271] final, subject to:-
 - a) The Constitution
 - b) The rights of appeal (in this case, section 22 of the Act)
 - c) The rights of supervision of the Supreme Court under section 39 of the Act.

The Applications by the Claimants need to be focused on 1, 2 or all 3 of the headings under section 33 of the Act. In order to progress all 3 of these matters the Court makes the following orders:-

- 1) The Claimants are to file and serve their submissions under such of the 3 headings in section 33 of the Customary Land Tribunal Act as are appropriate making reference to the evidence in those sworn statements that support their submissions, by 29th October, 2010.
- 2) The Defendants are to file and serve their submissions in response by 13th November, 2010.
- 3) A pre-trial conference will be held at 10 am on 15th November, 2010.



- 4) Counsel for the second defendant and counsel for the first, fifth and sixth defendants have made applications for wasted costs today. One of the difficulties of proceeding with today's hearing was the absence of Mr. Stephens. He represents the Claimant in Constitutional Case 4 of 2009. In a letter dated 22nd September, 2010 Mr. Stephens wrote to the Court advising that he would be overseas from 23rd September, 2010 to 9th October, 2010 and asked to have the hearing of this case adjourned. The Judge in this case was in fact overseas at the time this letter was written and was first brought to his attention on Monday 4th October, 2010.
3. It is a matter of great concern to this Court that many counsel seem to be under the very mistaken impression that if they write a letter to the Court advising that it does not suit them to attend a trial then the Court will simply adjourn it. That assumption is incorrect. The Court sets down matters for trial in consultation with counsel and they must make themselves available. If some unforeseen reason should arise which makes it difficult or impossible for them to attend they should immediately write to the Court and seek a time to see the Judge to make a proper application for an adjournment. It is completely unacceptable for lawyers, who are officers of the Court, simply to write a letter to the Court one day saying they are not available and to leave the country the following day assuming that an adjournment has been granted. Effectively this is putting lawyers in a position of deciding whether or not adjournments should be granted. That plainly is incorrect. This Court sets dates for trials and this Court has the sole discretion to decide whether or not to adjourn the trial. Lawyers cannot force the Court in this way to grant adjournments by writing and then failing to appear and failing to be in the country at the time of the hearing. This behaviour is extremely discourteous to the Court and is a breach of the lawyer's obligation to the Court as an officer of the Court.
4. Mr. Stephens has failed in his duty. Regrettably he is not the only lawyer who seems to consider that adjournments can be obtained in this way. All lawyers in this jurisdiction should know that if they seek an adjournment of a case they need to see the Judge as outlined above to seek the adjournment in a formal and proper manner.
5. Due to the wasted hearing today, due to the failure of Mr. Stephens to appear the Second Defendant is awarded VT 10,000 for wasted costs, payable by counsel for the Applicant in Constitutional Case 4 of 2009. The First, Fifth and Sixth Defendant



is also awarded VT 10,000 in wasted costs also payable counsel for the Applicant in Constitutional Case 4 of 2009. The remaining costs in these matters will remain in the cause.

Dated at Port Vila, this 6th day of October, 2010

BY THE COURT

