

(Civil Jurisdiction)

**BETWEEN: FAMILY MOLISALE TAVUIRONLEO**  
represented by JIMMY VIRA

Claimant

**AND: SANTO/MALO ISLAND LAND TRIBUNAL**

First Defendant

**AND: JAMES ARU**

Second Defendant

**AND: ANDI BURA**

Third Defendant

Mr Justice Oliver A. Saksak  
Mrs Anita Vinabit – Clerk

Ms P. Kalwatman for Claimant  
Mr Frederick Gilu for the First Defendant  
Mrs Marisan P. Vire for Second and Third Defendant – Not appearing

### DECISION


1. Mrs Vire is excused due to illness. She has written to inform the Court about her condition.
2. Counsel for the Claimant seeks leave to file an amended claim.
3. Mr Gilu opposes the application. He refers the Court to the application filed by Mrs Vire on 17<sup>th</sup> June 2011 which seeks to strike out the proceeding in its entirety.
4. I have had the advantage of seeing the grounds in support of the said application. I have also had the privilege of perusing the defences filed by Mrs Vire on 17<sup>th</sup> June 2011 on behalf of the Second and Third Defendants. I have also perused the defence filed by Mr Gilu on 9<sup>th</sup> August 2011.



5. From those grounds and defences, it is the clear view of the Court that this claim is ill-conceived for the following reasons –
- (a) The claimant has not obtained leave to file a Judicial Review Claim. The decision sought to be reviewed was made on 9<sup>th</sup> September 2008. Rule 17.5(1) requires that a claim must be made within 6 months of the decision. The claim was filed only on 28<sup>th</sup> February 2011 some 2 years and 5 months later. And no leave had first been obtained by claimant prior to filing the claim in February 2011. And today they are not seeking leave to file a judicial review claim out of time but to amend the claim. It is not the correct process and the Court refuses to grant the leave sought.
- (b) The claim is pleaded in such a way that it is an appeal in disguise. It pleads matters which go to the substance of the findings of the Land Tribunal rather than on matters of process as required under Section 39(1) and (2) of the Customary Lands Tribunal Act No. 7 of 2001.
6. For the foregoing reasons Civil Case No. 5 of 2011 is dismissed. The claimant has put the defendants to unnecessary costs therefore the claimant is ordered to pay the defendants' costs of and incidental to the proceeding. The first, second and third defendants must submit their Bill of Costs to be agreed, if not be determined by the Court.

DATED at Luganville this 10<sup>th</sup> day of August 2011.

BY THE COURT

  
OLIVER A. SAKSAK  
Judge

