

(Civil Jurisdiction)

BETWEEN: BENSIVE TOSU

Claimant

AND: SANTO ISLAND LAND TRIBUNAL

Defendant

Mr Justice Oliver A. Saksak

Mr Stephen Joel for Claimant
Mr Godden Avock for Defendant

Date of Hearing: 29th March 2011
Date of Judgment: 4th October 2011

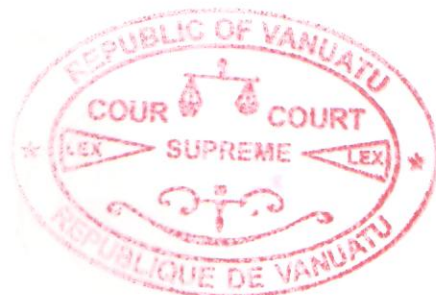
JUDGMENT

Introduction

1. The Claimant filed their claim for judicial review on 20th May 2010 seeking an order to quash the decision of the defendant made on 3rd May 2010. Apart from the Defendant, the Claimant named Family Toserikite as Second Defendant, Philip Sar/Emile Sar Poviar as Third Defendant and Sacharia Daniel as Fourth Defendant. However, these three Defendants were removed as Defendants on 2nd November 2010 on the basis of Rule 17.4(1) and (2).

Decisions Challenged

2. On 3rd May 2010, the Defendant Tribunal –



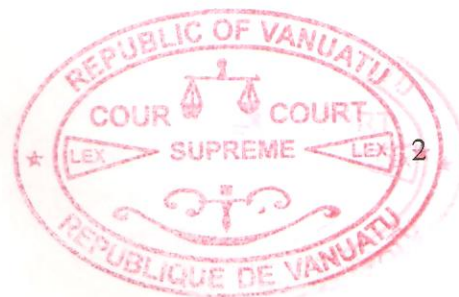
- (a) Held that Putingin Land does not currently have any surviving owners or descendants;
- (b) Accepted the Village Land Tribunal decision that Emile Sar (Third Defendant) is the fourth owner of this land;
- (c) The owners of Putrigin Land are Toserikite Family, Bensive Tosu, Zacharia Daniel and Family Emile Sar.

Grounds

- 3. The grounds provided by the Claimant in support of the judicial review claims are that –
 - (a) The Defendant Tribunal failed to comply with sections 20(1); 27(b); and 29(2) and (3) of the Customary Lands Tribunal Act No. 7 of 2001 (the Act);
 - (b) There was a long delay between hearing and the site visit;
 - (c) The Defendant Tribunal had charged excessive fees in respect of the hearing; and
 - (d) The Defendant Tribunal was biased in its decision.

Relief Sought

- 4. The Claimant seeks the following orders:-
 - (a) That the decision of the Defendant giving the four parties a 25 percent share of the Hydro Power Lease payment and rental be quashed.



- (b) That the decision to divide Putingin Land equally between four family be quashed.
- (c) That the decision to respect rights of people who have grown gardens on Putingin Land be quashed.
- (d) The dispute be reheard by a differently constituted tribunal.
- (e) The Defendant pays costs on an indemnity basis.

Hearing And Submissions

5. At the conference hearing on 29th March 2011, Counsel indicated that facts were not in dispute and that they would file and serve written submissions on the legal issues to assist the Court to formulate its decision.
6. Mr Joel relies on the written submissions he filed on 5th March 2011. The Sate Law Office filed submissions on 14th April 2011.

Discussions

- 7.1. This Court has supervisory jurisdiction over land tribunals under section 39 of the Act which states in subsection (2) as follows:-
"If a Land Tribunal fails to follow any of the procedures under this Act, a party to the dispute may apply to the Supreme Court for an order:
(a) to discontinue the proceedings before the tribunal or to cancel its decision; and



(b) to have the dispute or re-determined by a differently constituted land tribunal.”

- 7.2. What the Claimant appears to be doing is not asking this Court to invoke its supervisory powers under section 39(2) but rather to ask this Court to review the merits of the Defendant’s decision of 3rd May 2010. This is clear from the grounds raised as follows –
- (a) That under section 28(1) of the Act custom was not complied with – Ground 1.
 - (b) That section 27(5) and (6) of the Act was not complied with – Ground 2.
 - (c) That section 29(2) of the Act was not complied with – Ground 3.
 - (d) That excessive fees of VT80.000 was charged against the Claimant contrary to section 32(2) of the Act – Ground 4.
 - (e) That the Defendant was impartial and biased in its decision of 10th May 2010 – Ground 5.
8. The Court readily accepts Defendant’s Counsel’s submission that Judicial Review is not an appeal on the merits of a decision. Section 39(2) of the Act is not ambiguous that this Court has supervisory jurisdiction only, and in no way could it be invoked by any parties to a land dispute to lure the Court into usurping that jurisdiction to make a substantive decision to substitute that of the original decision-maker. The cases of Chief Constable of the North Wales Police v. Evans [1982] 3 ALLER 141 at 143 – 4; 154 and Willie v. Public Service Commission [1993] VUCA 4 [1990 – 1994] VLR 634 both lend support to that position.
9. Case No. 1 of 2010 was heard in the Santo Island Land Tribunal on or about 3rd May 2010. The disputing parties were –
- (a) Zacharia Daniel;



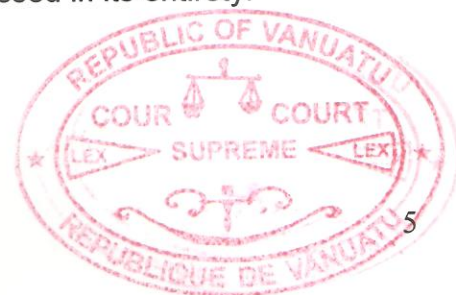
- (b) Bensive Tosu – Claimant in this proceeding;
- (c) Emile Sar; and
- (d) Family Toserikite.

On its face, it was an appeal hearing. The rehearing of the appeal on 3rd May 2010 was done in compliance with the direction orders of this Court dated 12th August 2008.

10. As it was an appeal to the Island Land Tribunal, the relevant provisions of the Act are under Part 5, sections 21, 22, 23 and 24. The Claimant did not complain about the Defendants non-compliance with any of its obligations under any of these sections. The only complaint of any relevance is made under section 29(1) of the Act – (Ground 4) that the Defendant did not deliver its decision within 21 days after the completion of the hearing. But there is no evidence before the Court as to when was the date of completion of the hearing therefore, this ground cannot be sustained.

Conclusions And Orders

11. The Court arrives at the conclusion therefore, that Grounds 1, 2, 3, 4 and 5 of the Claimants claims and submissions are not tenable and therefore, the whole claims of the Claimant must fail.
12. The Court agrees with defence Counsel's submissions that pursuant to section 33 of the Act, the decision of the Defendant dated 3rd May 2010 is final. The Santo Island Land Tribunal is the final Land Tribunal with appellate jurisdiction within the customary land dispute process. See Schedule 1 to the Customary Land Tribunal Act No. 7 of 2001.
13. Accordingly, the Claimant's claims are dismissed in its entirety.



14. The Claimant has put the Defendants to costs. He is ordered to pay the Defendant's costs of and incidental to this action on the standard basis as agreed or taxed by the Court.

DATED at Luganville this 4th day of October 2011.

BY THE COURT



OLIVER A. SAKSAK

Judge

