

(Civil Jurisdiction)

BETWEEN: CHIEF JEROME NALIUPIS

Claimant

**AND: PETRO RITE
ARMAND RITE**

First Defendants

AND: KAVCOR WASS

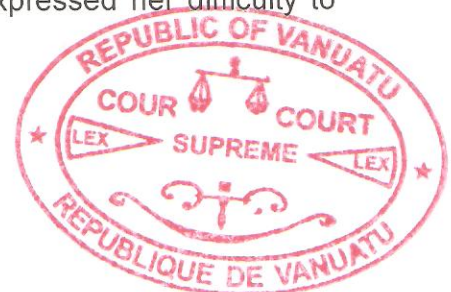
Second Defendant

Mr Justice Oliver A. Saksak

Mrs Marisan P. Vire for the Claimant/Respondent
Mr Saling N. Stephens for the Defendants/Applicants

DECISION

1. The defendants apply by formal application dated 3rd May 2011 seeking orders that –
 - (a) Civil Case No. 8 of 2010 be dismissed on the basis that it has no merit and that it is statute-barred.
 - (b) Costs of and incidental to the application and action be paid to the defendants.
2. The grounds are stated in the application and includes matters raised in the sworn statement of Mr Stephens dated 3rd May 2011 and of Mr Petro Rite dated 28th March 2011.
3. In response, Mrs Vire relies only on the defence to the application to strike out filed on 16th May 2012. Counsel expressed her difficulty to



respond adequately because her client has not made any contacts to prepare and depose to a sworn statement in response.

4. That being so, the matters raised in the statements of Mr Stephens and Mr Rite stand unchallenged. Those matters present the Claimant with great difficulties he will have if the matter proceeds to trial.
5. The Court is aware the Island Court is currently sitting to hear the Parties claims to ownership as to Sakau Island.
6. The Court is of the clear view that any claims whether by the Claimant or by the defendants should best be instituted only after the issue of ownership has been determined and a declaration to that effect has been made by the Island Court.
7. The Court is satisfied the first part of the claimants claims from 1972 to say December 1994 are statute-barred. Any claims thereafter must be made only after the Island Court has made a determination as to ownership. The Court is further satisfied the claims are not only frivolous and vexatious, they are premature in the absence of who is the appropriate owner of the lands on Sakau Island.
8. For those reasons, Civil Case No. 18 of 2010 is dismissed in its entirety.
9. The Claimant has put the defendants to unnecessary costs. The Court orders that the claimant pays the defendant's costs of and incidental to the Application and the whole action on the standard basis as agreed or determined by the Court.

DATED at Luganville this 26th day of June 2012.

BY THE COURT


OLIVER A. SAKSAK
Judge

