

(Civil Jurisdiction)

**BETWEEN: FAMILY BANIMASANGA** represented by Taharo  
Bani, Dehi Bani, Vanua Bani, Rongo Bani

Claimants

**AND: FAMILY RASU MOLITAHUEMUELE**

Defendants

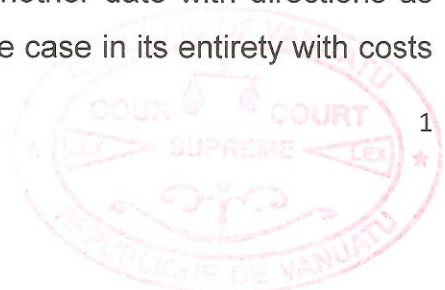
Mr Justice Oliver A. Saksak

Claimant's representative in person

Mr Wilson lauma of Counsel for the Defendants

## DECISION

1. The Claimants are represented by Mrs Vire of Vire Lawyers. She makes no appearance this afternoon. Although a member of the Claimant family appears in person, he has not indicated to the Court in what capacity he appears.
2. The Court hears Mr lauma. He informs the Court about the Defence filed on 17/10/012 and the sworn statement filed on 19/10/012. He confirms both documents were served on the Claimants however there has been no response to date. He informs the Court his clients have limited financial resources therefore he seeks wasted costs of appearing today at VT51,250 comprising of return airfares and subsistence of VT20.000. Counsel further seeks direction orders and raised a preliminary issue about the Claimant's standing to bring this claim. He indicates he would be speaking with Counsel for the Claimants to formulate agreed facts and produce them to the Court on the next return date.
3. The Court decides not to adjourn the matter to another date with directions as requested. Instead the Court decides to dismiss the case in its entirety with costs



in favour of the defendants being costs of and incidental to the action on the standard basis as agreed or determined by the Court.

4. The reasons for the dismissal are –

- (a) The claim of the Claimants is misconceived as having no legal basis. It is a claim based on the decision of an Area Lands Tribunal held in 2005, some 7 years. However, the Defence of the defendants show they have another decision made earlier in 2004 by a Village Land Tribunal. Both decisions remain valid as neither parties appealed and neither parties have sought judicial reviews of those decisions.
- (b) That being the position it appears the Claimants have no locus standi to bring this action. There can only be one valid decision and not two. In the normal course of events the earlier decision is recognized as the valid one. That decision is the Village Lands Tribunal made in 2004 in favour of the defendants. Unless appealed and/or reviewed by way of judicial review and declared void, it remains a valid decision. Likewise, the decision in favour of the Claimants made a year later in 2005, but under mysterious circumstances.
- (c) Under those circumstances and scenario, the appropriate course is for the Parties to come to some common sense approach and agree to return to the Village Land Tribunal or otherwise to have their dispute properly heard and decided.
- (d) As things stand, the Claimants cannot proceed and succeed in the way they have done. All they have done is to put themselves and the defendants to unnecessary costs which are not warranted.
- (e) The Court has an overriding duty to ensure that this case is dealt with speedily and fairly in a way as to save costs in respect of each party.



5. It is for the foregoing reasons that the Court sees fit to dismiss the Claimant's claims in their entirety with costs in favour of the defendants.

**DATED at Luganville this 8<sup>th</sup> day of November 2012.**

**BY THE COURT**

  
**OLIVER A. SAKSAK**

**Judge**

