

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**  
*(Civil Jurisdiction)*

**Judicial Review Case No. 12 of 2013**

**BETWEEN: JIMMY JEHU**  
*Claimant*

**AND: METAMLI LAND TRIBUNAL**  
*First Defendant*

**AND: ANDREW WELWEL**  
*Second Defendant*

**Conference:** 30 September, 2013  
**Before:** Justice Robert Spear  
**In attendance:** Claimant - Eric Csiba  
First Defendant – Alain Obed (SLO)  
Second Defendant – George Boar

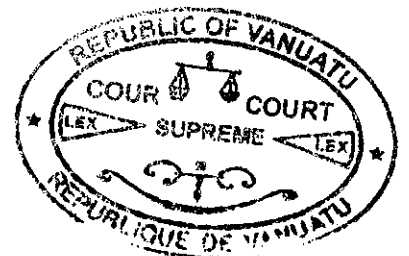
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**Reasons for the Decision to Dismiss the Claim**

**(19 December 2013)**

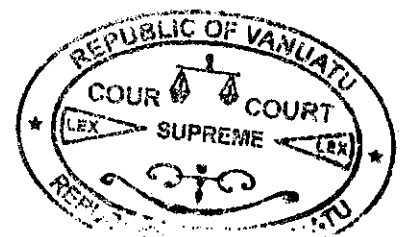
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1. This conference was convened under CPR 17.8 for a determination as to whether it should proceed to a hearing. I determined that the claimant did not have an arguable case and dismissed the claim. I now publish the reasons for that determination
2. The claim seeks the review of the decision of the “Metamli (Fanjever) land tribunal” which on 18 February 2010 declared that Family Roriri were the custom owners of Malwei/Metamli land (including Faliliu and Fajevev villages) in North Ambrym.
3. This claim can be considered as an adjunct proceeding to Civil Case No. 61 of 2011 (Welwel v. Bongnaim & Ors.) in which Family Roriri sought to assert their rights as custom owners. The defence to that claim in CC 61/11 is that the Metamli (Fanjever)



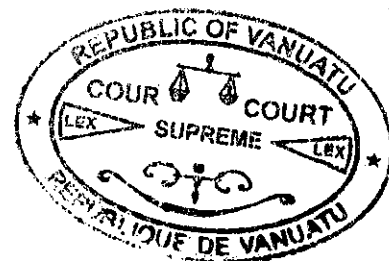
land tribunal was not lawfully constituted and accordingly its declaration as to custom ownership in favour of Family Roriri cannot have legal effect.

4. This dispute has already made its way through both the Supreme Court (CC 61/11) and the Court of Appeal (CAC 40/12).
5. In the Supreme Court in CC 61/11, summary judgment was entered on 14 August 2012 requiring the defendants in that case (the claimants here) to leave the land in question. Judgment was also entered on liability in respect of damage.
6. The Court of Appeal considered that the defence raised and the evidence for the defence in CC 61/11 raised questions about the legitimacy of the tribunal and thus its ability to make a decision as to custom ownership. In particular, the evidence in the Supreme Court was by a sworn statement from James Tari to the effect that his enquiries indicated that the customary land tribunal system had not been set up on Ambrym with the defining of the custom areas and the approval of certain chiefs or elders as adjudicators. Particularly given that the matter before the Supreme Court was an application for summary judgment, the Court of Appeal clearly held that an arguable defence had been raised principally by the evidence from Mr Tari. The summary judgment was set aside.
7. When the matter returned to the Supreme Court, a sworn statement from Chief Leingkone Gideon of Fanjever Village, North Ambrym was filed which contradicted the evidence given earlier by Mr Tari particularly that no chief had ever been approved to adjudicate disputes relating to the customary ownership of land in North Ambrym. Mr Tari was then given an opportunity to consider this position particularly as the evidence he had earlier given relied upon enquiries that he had made of a senior member of the Customary Land Tribunal Office.
8. Mr Tari then filed a further sworn statement confirming that his earlier evidence relied on enquiries that he had made of Mr Arnhambat who is a senior lands officer in the Customary Land Tribunal Office . Mr Tari in his second sworn statement acknowledged

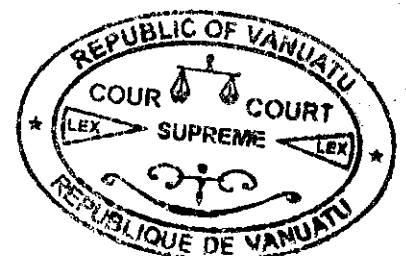


that he had since received a letter from Mr Arnhambat (dated 25 March 2013) in which Mr Arnhambat states that he *“revokes all (his) sworn statements and (his) letters concerning land tribunal issues on Ambrym Island”*.

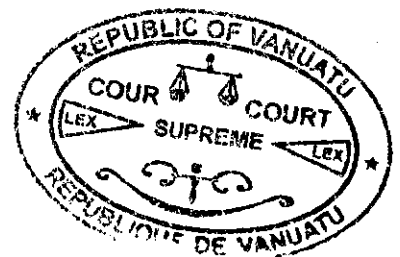
9. Mr Tari accepted, at a conference in respect of CC 61/11 on 8 April 2013, that his (Mr Tari's) earlier evidence which relied on Mr Arnhambat's statements to him could not be relied upon. At that stage, the State Law Office was included in that proceeding as should have been the case earlier. That claim was amended accordingly.
10. Following a succession of conferences, the matter returned for a conference on 24 May 2013 with the State having filed a sworn statement from Mr Arnhambat; the same Mr Arnhambat who provided the advice to Mr Tari at the time of the summary judgment application. The sworn statement from Mr Arnhambat confirmed the statements by Chief Leingkone Gideon to the effect that there was indeed an approved list of chiefs from North Ambrym and that the members of the Metamli (Fanjever) land tribunal in question were all from that particular list. Furthermore, Mr Arnhambat stated that the advice that he had earlier given to Mr Tari was quite wrong and a response to threats he had received from people associated with the claimant that he would incur serious harm would if he did not provide that false advice.
11. Mr Tari sought time to take further instructions from his clients as clearly there was no credible evidence that the land tribunal had not been lawfully constituted.
12. At a conference on 2 July 2013, Mr Tari indicated that his clients still challenged the lawfulness of the land tribunal decision. It was determined at conference that this challenge to the lawfulness of the land tribunal decision would best be addressed by a separate but associated proceeding brought by Mr Tari's clients seeking the judicial review of the decision of the land tribunal. While that judicial review was proceeding, CC 61/11 would be placed on hold until that vital issue was resolved by way of review.



13. This approach had immediate appeal as the evidence in CC 61/11 as the evidence from Chief Gideon and from Mr Arnhambat was to the combined effect that the decision of the Metamli (Fanjever) land tribunal should be accepted as having been legitimately and correctly determined under the Act. This approach would leave the challengers to the lawfulness of the Metamli (Fanjever) land tribunal with the burdon of proving that it was not lawfully constituted and thus not able to reach a lawful determination as to custom ownership.
14. This claim for judicial review was then commenced by Mr Jehu representing his wider family. The evidence filed in the allied civil case 61/11 was to be read in this judicial review proceeding.
15. The claim for judicial review sought the decision of the land tribunal to be called up and quashed in its entirety on the following grounds:-
  - a) That the tribunal is not formed as required by the Customary Land Tribunal Act;
  - b) The island of Ambrym has not been divided into custom areas as required by s. 35 (1);
  - c) The appointment of adjudicators was not made in accordance with the provision of the act;
  - d) The secretary of the tribunal did not qualify under the Act to carry out the work of the secretary of a village land tribunal;
  - e) There was accordingly no system based on custom to resolve disputes about customary land as required by s. 1 of the Act;



- f) And other grounds that effectively stated the same points but in different ways.
16. The only evidence filed in support of the claim was from the claimant who simply asserted his belief that the island of Ambrym has not been divided into custom areas nor that those persons who served on the tribunal had been lawfully appointed from an approved list under the Act. Mr Jehu's evidence is simply an assertion of his belief and has virtually no evidential value.
  17. The claim for judicial review was met by defences filed by the State in respect of the Metamli (Fanjever) land tribunal and Family Roriri as the second defendant.
  18. It is of significance that the evidence for the State (filed in CC 61/11) in fact confirms that Ambrym is divided into 3 customary areas including North Ambrym and that those members of the Metamli (Fanjever) land tribunal who determined custom ownership by its decision of 18 February 2010, including the Secretary, were all drawn from an approved list compiled under the procedures prescribed by the act.
  19. CPR 17.8 primarily requires the presiding judge to be satisfied that the claimants' case for judicial review is arguable before allowing it to proceed to a hearing. There are other considerations but they are not relevant to this case. In particular, CPR 17.8 requires the judge to be left satisfied that the claimant has an arguable case. If not then the judge is directed to decline the claim and strike it out.
  20. In short, the evidence for the claimant is completely insufficient to establish that the question of the lawfulness of the decision under review is arguable. Mr Tari earlier acknowledged in CC 61/11 that the sworn statement that he filed could no longer be relied upon and accordingly it could not support this claim; and I entirely agree with that acknowledgment. The sworn statement from Mr Jehu is simply the bare assertion of a belief without any support. Against that there is the evidence from both Chief Gideon and Mr Arnhambat that the provisions of the Customary Land Tribunal's Act had been



complied with and the Metamli (Fanjever) land tribunal had been constituted in accordance with the provisions of the Act.

21. In all the circumstances, it is clear that this claim for review of the decision of the village land tribunal stood no chance of success and clearly the challenge to the lawfulness of the decision was not arguable. In those circumstances, I had no option but to dismiss the claim and it is accordingly dismissed.
22. That determination brought this particular proceeding to an end but, of course, it also means that CC 61/11 can now be progressed. That progression will be addressed in a separate Minute.
23. The costs of and incidental to this judicial review proceeding are reserved and to be determined at the time that the allied proceeding CC 61/11 is finally determined.

**BY THE COURT**

