

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

Civil Case No. 02 of 2012

BETWEEN: JOLE ANTAS

Claimant

**AND: SANTO/MALO JOINT AREA LAND
TRIBUNAL**

First Defendant

AND: SANTO/MALO ISLAND LAND TRIBUNAL

Second Defendant

AND: BEN SUA

Third Defendant

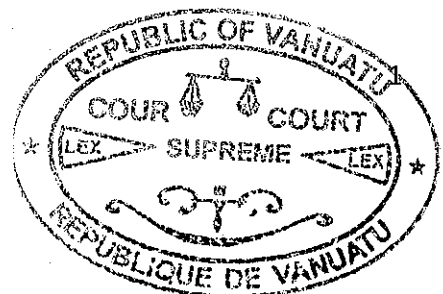
Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Mr. George Boar for Claimant
Attorney General for First and Second Defendants
Mr. Bill Bani for Third Defendants*

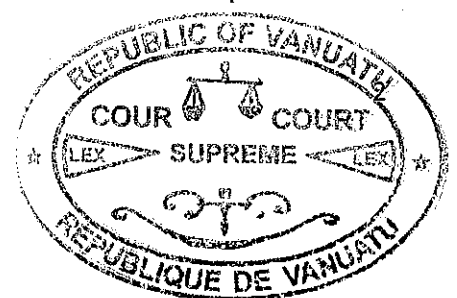
Date of Hearing: *10th September 2013*
Date of Judgment: *27th November 2013*

JUDGMENT

1. On 10th September 2013 Mr. Boar, Mr. Gilu and Mr. Sale Daniel as representative of the Third Defendant agreed that the facts are not in dispute and that the case required legal submissions to be made subject to:-
 - (a) The Claimant filing written submissions within 14 days;
 - (b) The Third Defendant filing their sworn statements (if need be) and written submissions within 14 days thereafter; and



- (c) The First and Second Defendants file any supplementary submissions within 7 days thereafter.
2. The Attorney General filed written submissions on behalf of the First and Second Defendants on 9th September 2013. No supplementary legal submissions have been filed. They filed a defence on 9th September 2013.
 3. Mr. Boar filed written submissions on 26th September 2013.
 4. The Third Defendant has not filed any submissions. They have not filed any defence despite they were directed to do so in paragraph 3 of orders dated 2nd August 2012. They did file a very short sworn statement by Sale Daniel on 4th June 2013. That is the only document the Third Defendants have before the Court.
 5. This is a judicial review claim filed initially on 14th March 2012. The Claimant filed a sworn statement in support of the claim on 19th April 2012. However as the claim was filed outside of the 6 months period allowed by Rule 15.5(1), the Claimant filed application seeking leave of the Court to extend time on 9th May 2012.
 6. Leave was granted by the Court on 2nd August 2012 and subsequently the Claimant filed a proper claim on 20th August 2012.
 7. On 28th August the Claimant filed an application seeking leave to file an amended judicial review claim and leave was granted on 6th September 2012. Subsequently the Claimant filed their amended judicial review claim on 12th September 2012.
 8. The Claimant seeks the Court's indulgence in reviewing two decisions. One is the decision of the First Defendant Tribunal dated 3rd December 2009 and the second is the decision the Second Defendant Tribunal made on 23rd April 2010.



9. The Claimant seeks the following reliefs –

(a) An Order quashing the First and Second Defendant Tribunals dated 3rd December 2009 and 23rd April 2010 respectively; and

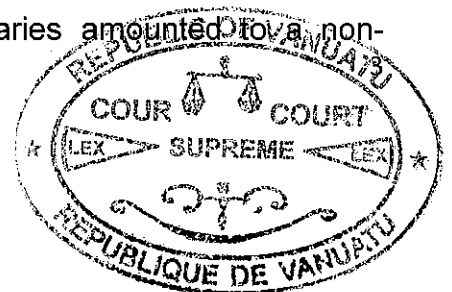
(b) A declaration that the Claimant is the declared custom land owner of Jingoaru Land in South Santo as determined and declared by the Vaturani Kastom Land Tribunal on 2nd June 1998 and as confirmed by the Santo/Malo Joint Area Land Tribunal on 9th September 1998.

10. Despite that the Supenatavuitano Island Council of Chiefs had declared on 2nd June 1998 that (a) Vunabaka Land belongs to Vombanici Family, (b) Naone Vuso belongs to the Third Defendant Family and (c) Jingoaru belongs to the Claimant, and again on 9th September 2008 the Santo/Malo Joint Area Land Tribunal had declared the Claimant as custom land owner of Jingoaru and demarcated its clear boundaries, another Joint Area Land Tribunal of South Santo, Fanafo Cannal and Malo chaired by Chief James Tangis issued a public notice that the tribunal was to sit on 15th June 2009 to hear disputes in respect to Belbura, Vunabaka, Belmoli, Beljihi, Artacha, Nasulnun, Naone Vuso and Lambea Lands.

11. The Lands Department by its letter dated 18th August 2009 advised the tribunal against holding the meeting as notified. The letter was unheeded so that on 3rd December 2009 the Tribunal delivered its decision declaring that the Third Defendant is the custom land owner of Naone Vuso. However, the Tribunal extended the boundary of Naone Vuso land to cover Jingoaru land all the way to the Venue River.

12. The issues raised were therefore –

(a) Whether or not the First Defendant's decision dated 3rd December 2009 in so far as it extended the Third Defendant's land boundaries of Naone Vuso land to include the Claimant's Jingoaru Land boundaries amounted to a non-



compliance with the procedural requirements of the Customary Land Tribunal Act No. 7 of 2001 (the Act); and

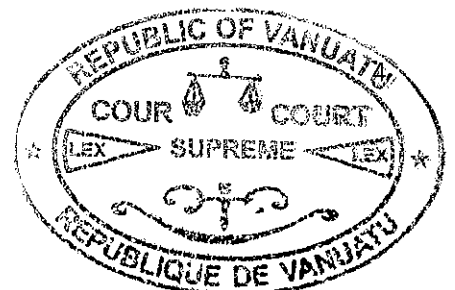
(b) Whether or not the Second Defendant's decision dated 23rd April 2010 in so far as it extended the Third Defendant's land boundaries of Naone Vuso Land to include the Claimant's Jingoaru Land boundaries amounted to a failure to comply with the procedural requirements of the Act?

13. The facts were not in dispute.

14. The Third Defendant did not file any defence or written submissions as directed by the Court. They filed a short sworn statement by Sale Daniel but it lacks further documentary evidence to support the assertions made in the statement. This statement does not assist the Third Defendant.

15. Mr. Boar filed quite extensive written submissions quoting Section 12 of the Act. This section sets out the procedure for giving appeal notices in the event there is an appeal against a Land Tribunal's decisions. He submitted that in this case there was no appeal lodged under Section 12. As such, Mr. Boar contended that when the tribunals that sat in 2009 and 2010 they had not acted in compliance with the Act. As such, it was contended that the tribunal's actions amounted to breaches of the Act and those decisions ought to be quashed by the Court on review. Mr. Boar relied on the cases of Maragamba Land Owners v. Joint Area Land Tribunal for Longana Airports [2010] VUSC 58; CC 26 of 2009 and Sumbwe v. Joint Village Land Tribunal [2011] VUSC 349; CC 11 of 2010. The Court accepts those submissions.

16. Secondly, Mr. Boar submitted that when the Santo/Malo Joint Area Land Tribunal declared the Claimant as custom land owners of Jingoaru Land on 9th September 2008 and there was no appeal, the matter became res judicata. Counsel relied on the English case of Crown Estate Commissioners v. Dorset County Council [1990] 1 ALL ER 19 for the proposition that -



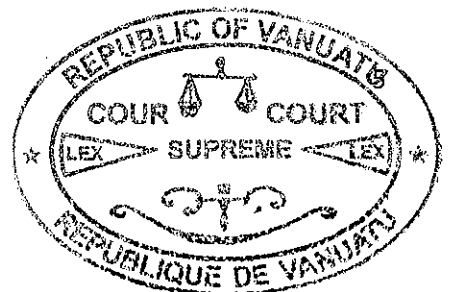
"Res judicata is a special form of stoppel. It gives effect to the policy of law that the parties to a judicial decision should not afterwards be allowed to re litigate the same question even though the decision may be wrong. If it is wrong, it must be challenged by way of appeal or not at all. As between themselves, the parties are bound by the decision, and may neither re litigate the same cause of action nor re open any issue which was an essential part of the decision. These two types of res judicata are nowadays distinguished by calling them "cause of action" estoppel and "issue" estoppel respectively."

17. Mr. Boar also referred the Court to Halsbury's Laws of England (4th Edition) Vol. 16 para.977 which summaries the principles of issue estoppel in this way:-

"A party is precluded from contending the contrary of any precise point which having once been distinctly put in issue has been solemnly and with certainty determined against him. Even if the objects of the First and Second actions are different, the finding on a matter which came directly (not collaterally) or incidentally in issue in the first action, provided it is embodied in a judicial decision that is final, is conclusive in a second action between the same parties and their privies. This principle applies whether the point involved in the earlier decision, is an error of fact or law, or one if mixed fact and law."

18. Mr. Boar also submitted that public interest in land cases in Vanuatu dictates that there should be finality in litigations concerning land ownership. Counsel relied on the case of Johnson v. Gore Wood & Co. [2000] UKHL 65, 1 ALL ER 48 where Lord Bingham said:

"The underlying public interest is the same that there should be finality in litigation and that a party should not be twice vexed in the same matter....."



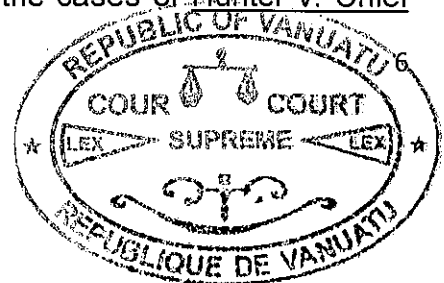
Mr. Boar further referred the Court to the case of Henderson v. Henderson considered and extended in the case of Barrow v. Bankside Agency Ltd [1996] 1WLR 257 where the Court said:

".....It is a rule of public policy based on the desirability, in the general interest as well as that of the parties themselves; that litigation should not drag on forever and that a defendant should not be oppressed by successive suits when one would do. That is an abuse at which the rule is directed."

19. I consider and accept all the above principles as good law which apply equally in Vanuatu and more so in relation to land cases. Having regard to the evidence of the Claimant by sworn statement dated 9th April 2012 which evidence are not challenged by the Defendants, and applying the above principles of law to the facts, I am satisfied that –

- (a) The decision for the Santo/Malo Joint Area Land Tribunal dated 9th September 2008 which endorsed the earlier decision of Supenatavuitano Island Council of Chiefs dated 2nd June 1998 was res judicata.
- (b) As such, the Santo/Malo Joint Area Land Tribunal chaired by Chief James Tangis which made the decision extending the Naone Vuso boundary to cover Jingorua Land belonging to the Claimant on 3rd December 2009 was estopped from doing so.
- (c) When the Tribunal made the decision without an appeal from the 9th September 2008 decision, they had acted ultra vires Section 12 of the Act and as such their action amounted to a non-compliance with the procedural requirements of the Act.

20. Mr. Boar went further to submit that the Santo/Malo Joint Area Land Tribunal by its decision of 3rd December 2009 amounted to a collateral attack on the earlier decision of 9th September 2008. Counsel relied on the cases of Hunter v. Chief



Constable of the West Mainlands Police [1981] UKHL 13; [1982] AC 529 and the Australian case of Walton v. Gardener [1993] 177 CLR 378 in support of his proposition.

The Court accepts those submissions.

21. In relation to the second issue which concerns the Santo/Malo Island Land Tribunal decision of 23rd April 2010, Mr. Boar repeated all his submissions in relation to the first issue. The Court accepts all those submissions and comes to the same conclusions reached in paragraph 19 (a), (b) and (c) of this judgment.

22. The Attorney General indicated in their written submissions filed on 9th September 2013 that –

(a) They would accept the Court's decision and not take any active part in the proceeding following the case of West Tanna Area Council Land Tribunal v. Natuman [2010] VUCA 35; CAC 21 of 2010.

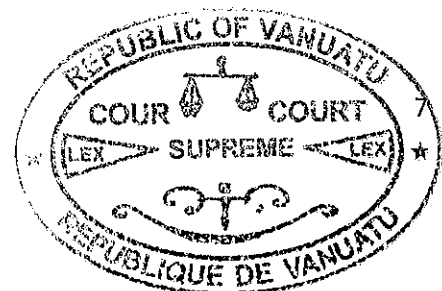
(b) They would endeavor to assist the Court to ensure the Court was properly informed about the issues, procedures and reasons.

(c) They would abide any orders of the Court except as to costs.

23. The Attorney General conceded that –

(a) The First Defendant's decision dated 3rd December 2009 was made by the Tribunal failing to comply with the procedural requirements of the Act; and

(b) The Second Defendant's decision dated 23rd April 2010 was made by the Tribunal failing to comply with the procedural requirements of the Act.



24. For all those reasons, the Court enters judgment in favour of the Claimant. He is therefore entitled to the following orders and declarations:-

- (a) The decision by the Santo/Malo Joint Area Land Tribunal (First Defendant) chaired by Chief James Tangis and dated 3rd December 2009 to extend the boundary of Naone Vuso land to cover Jingoaru land is declared to be null and void and of no legal effect. Accordingly that part of the decision is brought up and quashed.
- (b) The decision by the Santo/Malo Island Land Tribunal (Second Defendant) chaired by Chief Kalmase Warsal and dated 23rd April 2013 endorsing the decision of the First Defendant tribunal to extend the boundary of Naone Vuso land cover Jingoaru land is declared to be null and void and of no legal effect. Accordingly it is brought up and quashed.
- (c) The decision of the Joint Village Land Tribunal of South Santo, Fanafo Canal and Malo chaired by Chief Levus Tamata and dated 9th September 2008 in favour of the Claimant as custom land owner of Jingoaru land is confirmed and upheld by this Court as final.

25. The Claimant sought costs of and incidental to this action but this is declined. There was some public interest in this proceeding being brought and in my view that has been achieved. In that regard costs must lie where they fall. Each party will pay their own costs.

DATED at Port Vila this 27th day of November 2013.

BY THE COURT


OLIVER A. SAKSAK
Judge

