

BETWEEN: ALICK LOUIS MANASAKAU
First Claimant

AND: TIMATASOMATA KOKORU
Second Claimant

AND: MAUTIKETIKE VANUAKORO
Third Claimant

AND: FORARI VILLAGE LAND TRIBUNAL
Defendant

AND: KENEDY MATOKOALE TARIWER
Interested Party

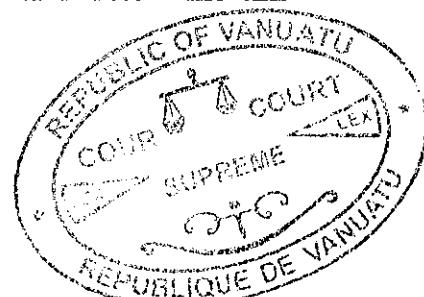
Coram: Mr. Justice Oliver A. Saksak

Counsel: Colin Leo for the Claimants
Defendant in person, unrepresented
Kent Tari for the State as Amicus Curiae
Willie Daniel for the Interested Party

Date: 29th September 2014

JUDGMENT

1. This judicial review application was adjourned on 11th September for hearing today.
2. Mr Daniel for the Interested Party introduced the amended defence filed on 19th September and four sworn statements deposed to by Chief Kenedy Matokoale Tariwer, Chief Kaltau Sepa Timatasoroto, Roger Taripoalepule and Richard Wilfred Ma-Tivate. These were filed on 26th September 2014 respectively in compliance with the direction orders of 11th September.
3. The Court then raised two preliminary legal issues and invited Counsel's verbal responses to them. The Court saw the significance of determining these two issues as a preliminary matter so as to give effect to the overriding objective of the Rules laid down in Rule 1.2, and to ensure the case is managed actively to give effect to Rule 1.4 of the Civil Procedure Rules No.49 of 2002 (the Rules).
4. The two preliminary issues raised by the Court were-
 - a) **Has the Customary Lands Tribunal Act [CAP 271] been repealed? and**
 - b) **Does the Supreme Court have jurisdiction to hear and determine this current- application by the Claimants?**



5. Mr Tari did not answer the issues directly. Instead Counsel assisted by informing the Court that the decision which the Claimants seek to have reviewed by the Court was made on 14th February 2014. The Custom Land Management Act No.33 of 2013 come into effect on 20th February 2014, Counsel informed.
6. Mr Leo informed the Court that the Customary Lands Tribunal Act was repealed by Parliament in or about February 2014. Despite its repeal Counsel argued and submitted that this Court has jurisdiction to hear and determine this judicial review application.
7. Mr Willie Daniel told the Court that he was taking the contrary view that (a) as the Customary lands Tribunal Act had been repealed, (b) this Court no longer has any jurisdiction to hear and determine the Claimants application.
8. Having heard Counsel, The Court then made references to-
 - a) The Customary Land Tribunal (Repeal) Act No. 34 of 2013 which came into effect on 20th February 2014. Section 1 of the Act repeals the Customary Land Tribunal Act completely with no saving provisions.
 - b) The Custom Land Management Act No 33 of 2013 came into effect on 20th February 2014, some six days after the Defendant's decision was made on 14th February 2014. Section 58 provides for Existing Decisions of Customary Tribunal as follows:-

“(1) Decisions of:

- a) a single or joint village Customary Land Tribunal, or
- b) (Not applicable)
- c), or (Not applicable)
- d), (Not applicable)

Which determined the ownership of custom land which were made before the commencement of this Act and have not been challenged within 12 months after the commencement of this Act, are deemed to create a recorded interest in land in respect of the person or persons determined by such tribunal to be a custom owner.

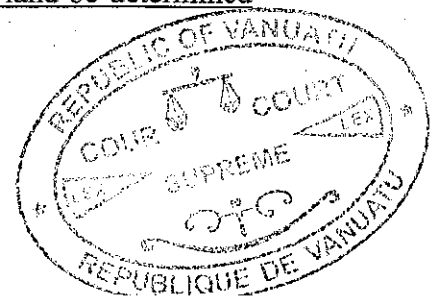
(2) (Not applicable)

3. A person may challenge a decision of a Customary Land Tribunal under this section by filing an application with the appropriate Island Court (Land) that the decision of the Customary Land Tribunal be reviewed on ground that:

- a) It has been made at a meeting that was not properly constituted, or
- b) It has been made in breach of the authorised process, or
- c) It has been procured by fraud, or
- d) It was wrong in law or custom.

4. The Island Court (Land) after hearing all relevant evidence may dismiss the application for review, or may order that the decision of the Customary Land Tribunal be set aside and direct that the ownership of custom land be determined in accordance with this Act.”

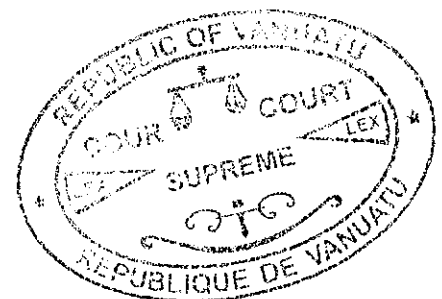
(My underlining for emphasis).



9. The Court then clarified the common facts which are not in dispute as follows:-
- a) The Defendant, Forari Village Land Tribunal made its decision which is under challenged on 14th February 2014.
 - b) The Tribunal(Defendant) is a single village tribunal- Section 58 (1) (a).
 - c) The decision was made six days before the commencement of the Custom Land Management Act- Section 58 (1).
 - d) The Claimants filed their application on 13th March 2014, within 12 months after the commencement of the Act- Section 58 (1).
 - e) The decision of the Tribunal is challenged- section 58 (1)
 - f) The Customary Land Tribunal Act was repealed completely on 20th February 2014.
10. Section 39 of the Customary Land Tribunal Act clearly provided supervisory role to the Supreme Court which extended to the power to review decisions of Land Tribunals which were made in breaches of procedural requirements under the Act. That section gave the Supreme Court discretionary powers to-
- a) Discontinue current proceedings, or
 - b) Cancel current decisions, or
 - c) Redirect rehearings by same tribunals or by differently constituted tribunals.
- With the Act now completely repealed, these powers are no longer in existence.
11. That being the position in law, the ultimate question remains whether the Supreme Court in this case has jurisdiction to continue to hear and determine the Claimant's application. The application seeks-
- a) An Order that the Decision of the Defendant dated 14th February 2014 be called up and quashed,
 - b) An Order that he Forari Land dispute be determined by a differently constituted village land Tribunal, and
 - c) Costs

These powers originally existed under section 39 (1) and (2) of the Customary Land Tribunal Act. The Act has been repealed. But those powers now exist under section 58 of the Custom Land Management Act. And specifically, it is the Island Court (Land) that has this jurisdiction, and not the Supreme Court.

12. The Court then gave the final opportunity to Counsel to indicate whether or not they accepted this legal position. All the Counsel indicated affirmatively that the Supreme Court does not have the jurisdiction to hear and determine the Claimant's application for judicial review in this proceeding. The Court then indicated its decision that this proceeding and the application would be dismissed.
13. Mr Leo indicated that he would be filing an application in the Island Court.



14. Mr Daniel sought an Order for costs. Mr Tari and Mr Leo objected to costs being ordered. The Court decided that costs should lie where they fall. None of the Counsel was able to identify these legal hurdles in the first place. The defendants failed to raise these issues in their pleadings. For that reason, the request for costs was declined.
15. Accordingly for obvious reasons, that the Supreme Court does not have jurisdiction to hear and determine this judicial review application, the Court Orders that-
- a) **The application by the Claimants filed on 13th March 2014 be hereby dismissed in its entirety.**
 - b) **Costs lie where they fall. Each Party will pay their own costs.**

DATED at Port Vila this 29th day of September 2014.
BY THE COURT


OLIVER.A.SAKSAK
Judge

