

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

Civil Case No. 71 of 2010

BETWEEN: PAUL HAKWA
First Claimant

AND: FAMILY MOLIVAKARUA
Second Claimant

AND: FAMILY BOBO VANUA
Third Claimant

AND: MOLIMAIMAI LAND TRIBUNAL
First Defendant

AND: WESLEY RASU
Second Defendant

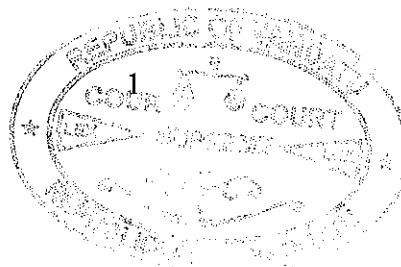
Coram: Justice Daniel Fatiaki

Counsel: Ronald Warsal for the Claimants
Edward Nalyal for the Defendants

Date of Judgment: 20 June 2014

RULING

1. The defendants have applied to strike out the whole action brought by the claimants. Written submissions have been filed by both counsel.
2. In their amended claim the claimants seek an order declaring a decision of the Molimaimai Land Tribunal, (*"the defendant Tribunal"*) made on or about 11th July 2008 *"null and void"*. Documents filed by the parties give many different dates for the decision under challenge, but there is no dispute between them as to the particular decision of the defendant Tribunal which is in issue or of the indentify of the customary land involved.
3. The amended Claim does not expressly plead **Section 39 (2)** of the **Customary Land Tribunal Act [Cap. 271]** (*"the Act"*) as the basis for the claim as it should have, but that provision is the only available source of jurisdiction for the Supreme Court to review a decision of a land tribunal, and to make an order of the kind sought by the claimants. **Section 39 (2)** provides:-



"If a land tribunal fails to follow any of the procedures under this Act, a party to this dispute may apply to the Supreme Court for an order:

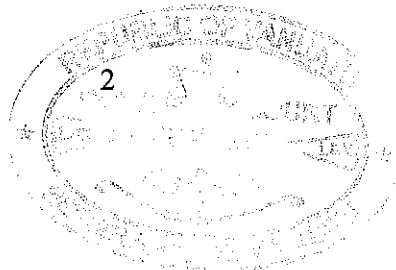
- (a) to discontinue the proceeding before the tribunal or to cancel its decision; and*
- (b) to have the dispute determined or re-determined by a differently constituted land tribunal."*

4. The strike out application is made on the ground that the claimants were not "parties to the dispute" before the defendant Tribunal and therefore have no standing to invoke the supervisory jurisdiction of the Supreme Court under **Section 39 (2)** of the Act. The amended Supreme Court claim pleads that:

- (i) The Second and Third Claimants are Ni-Vanuatu, from Malo Island, Sanma Province, Republic of Vanuatu and Claimants and/or custom owners of the land known as Malokilikili, Maloveleo, Navinamape Olo Olo, and Avasise.*
- (ii) The First Claimant is the representative of the Family Sarinavanua and Claimant of Nambua and Malotina.*
- (iii) The First Defendant is an Island Land Tribunal of Malo, Sanma Province. At times it is responsible to hear all land disputes pursuant to the Provisions of the Customary Land Tribunal Act no. 7 of 2001 (The Act).*
- (iv) The Second Defendant is a Ni-Vanuatu originating from the Island of Malo, in Sanma Province, Republic of Vanuatu.*
- (v) On or about July 11th, 2008 the First Defendant adjudged and by Judgment granted customary ownership to the Second Defendant for the lands known as Navimape Olo olo, Avasise, Abaone, Malotina, Malokilikili, Maloveleo and Nambua.*
- (vi) The Claimant contends that the Judgment the First defendant made in granting customary ownership to the Second Defendant was made contrary to the provisions of the Act.*

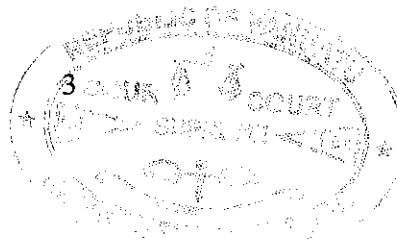
Particulars

The Claimants contend that the Notice issued by First Defendant on the East of Malo on 20th May 2008 which included the land Navimape Olo Olo, Avasise, Malokilikili, Maloveleo, Nambua, Avasise and Malotina Land are not the lands subject of dispute in the Molivitinatamata Village Land



Tribunal and the East Malo Area Land Tribunal, which had only dealt with the lands known as Abaone pursuant to Section 7 of the Act."

5. The pleading does not sufficiently identify the factual background against which the strike out application is made. However the statement of agreed facts and the sworn statements establish that the claimants were parties to a dispute over ownership of land which was submitted, in the first instance, to the **Molivitinamata Village Land Tribunal** ("the Village Land Tribunal") on 30th January 2007. The dispute submitted is described in the agreed statement of facts as relating to the "Abaone land claim". After publishing Notice of Hearing of the "Abaone land" claim the Village Land Tribunal delivered its judgment.
6. On 5th November 2007 the East Malo Area Land Tribunal heard an appeal from the decision of the Village Land Tribunal. From that decision the **Family Rasu** (represented by the second defendant in these proceedings) appealed to the **defendant Tribunal**. The defendant Tribunal issued a notice of hearing ("*the Notice*") identifying the land the subject of the appeal to it. The defendants assert that the Notice expressly identified "Abaone Land" as one of the lands in question.
7. The claimants did not appear at the hearing before the defendant Tribunal or take any part in it. They were aware of the Notice, but did not participate as they say the Notice did not specify "Abaone lands", and as the Department of Lands in Santo advised them not to attend as the land specified in the Notice was not the same land which was the subject of the two lower Customary Tribunal hearings that they had been involved in.
8. It is not necessary for the purpose of this application to determine the correct meaning and scope of the Notice published by the defendant Tribunal. The undisputed fact is that the claimants did not participate in the hearing before the defendant Tribunal.
9. The decision of the defendant Tribunal determined *inter alia* custom ownership of "Abaone land", and the claimants are aggrieved by the decision which they say is contrary to the claim which they had earlier made in the Molivitinamata Village Land Tribunal.
10. In support of the strike out application the defendants' submission is simple:
 - the undisputed fact is that the Claimants were not ("parties") to the appeal heard by the defendant Tribunal; and they therefore have no standing under **Section 39(2)** to bring the present Supreme Court proceedings.



11. The claimants contend however, that a wide meaning should be given to the expression "a party to the dispute" in **Section 39 (2)**. They contend that they are within the meaning of that expression as they were parties to the dispute over customary ownership of "Abaone land" in the lower Customary Land tribunals. The claimants rely on the decision of the Court of Appeal in West Tanna Area Council Land Tribunal v. Natuman & Ors. [2010] VUCA 35.
12. In the West Tanna case the respondents sought to invoke the jurisdiction of the Supreme Court under **Section 39 (2)** to review and overturn a decision of a Land Tribunal. The question before the Court was whether the respondents had been "a party to the dispute" determined by the Land Tribunal. Like the present claimant, the respondents had not participated in the hearing before the Land Tribunal, but said they had been involved as claimants in hearings in a lower Customary Land Tribunal. The Court of Appeal in dismissing the appeal said:

"18. On a judicial review application under s.39 of the Act, clearly the parties should include the person or persons in whose favour the Land Tribunal made an order for custom ownership. This is because the judicial review application might adversely affect those persons' interest. In that way, there is a party taking one position before the Court and another party taking the opposite position so the Court is best placed to make a just decision. That also means the Land Tribunal can adopt a neutral position, as discussed above.

19. The parties should also include any other persons who were parties to the dispute when it first arose. The first notification of a dispute under the Act is given under section 7 of the Act by the person or group of persons who have the dispute about the ownership or boundaries of custom land. That will lead to a single village or joint village land tribunal hearing. It makes a decision. Although it is not explicit, obviously all "parties" to the dispute are expected to participate, so the dispute is resolved fairly. Any party to the dispute may appeal a custom sub-area land tribunal, or to a custom area land tribunal, under Parts 3 & 4 of the Act (depending on which Part applies). Those decisions may then be appealed so an island land tribunal, whether it is hearing an appeal under s.23 or rehearing it under s.24 must give notice to the parties to the dispute under section 25, and give all parties to the dispute the chance to be heard under section 27.

20. The term "the parties to the dispute" is not defined. Clearly any person to the initially-notified dispute will be a party. The term is not intended to be a restrictive one. Otherwise it would not be consistent with the way the various tribunals are to operate. However, especially because section 27 provides for all parties to be given a full and fair hearing, it is clear that the "parties" may include any party whose proper interests may be affected by the resolution of the dispute. Those parties will depend on the circumstances of the particular case. In certain circumstances, as the



primary judge observed, those persons may include persons who under custom law may have an interest in the land in dispute even though they are not named in the original notice of dispute."

(my underlining)

13. In the present case the claimants were "*parties to the dispute*" when it first arose, and some of the claimants, according to the agreed statement of facts, were "*parties*" who initiated or were initially notified of the dispute over "*Abaone land*".
14. In light of the foregoing the Court accept that the claimants come within the expression "*a party to the dispute*" in **Section 39 (2)** of the **Customary Land Tribunal Act** and therefore the application to strike out the Supreme Court proceedings must be and is hereby dismissed.
15. The defendants must pay the claimants' costs on a standard basis.
16. By way of further directions this matter is listed at 11 am on 9 July 2014 for a Rule 17.8 (3) conference.

DATED at Port Vila, this 26 day of June, 2014.

BY THE COURT



D. V. FATIAKI
Judge.

