

**IN THE MATTER OF MAVUNLEV VILLAGE
LAND TRIBUNAL DECISION
DATED 21ST SEPTEMBER 2012**

BETWEEN: JIMMY VIRA MOLISALE TAVUIRONLEO
representing 92 other members of the Family
Claimant

AND: JAMES ARU
First Defendant

AND: REPUBLIC OF VANUATU
Second Defendant

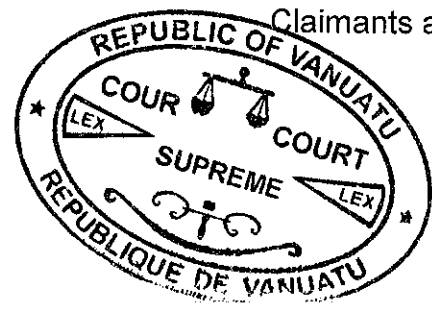
Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Mr George Boar for the Claimants
Mrs Marisan P. Vire for the First Defendant
Mr Kent Tari for the Second Defendant*

Date: *17th June 2014*

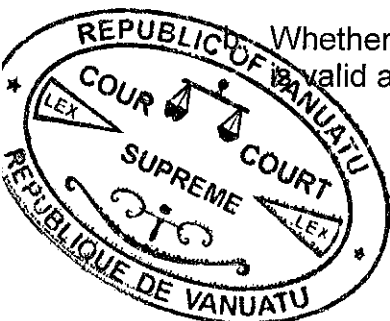
JUDGMENT

1. The Claimant, Jimmy Vira issued proceeding in a representative capacity on behalf of ninety-two other family members and relatives as named in the original claims filed on 26th August 2011.
2. They filed an amended claim on 26th October 2011. The Claimants sought leave of the Court on 17th October 2013 to file another amended claim which they did on 21st October 2013.
3. **The Claimants seek two Orders that-**
 - a. The Government be restrained from releasing funds, emanating from Belbura land to the first Defendant pending the final determination of the action.
 - b. The Second Defendant release to the Claimants Solicitor's Trust Account the sum of VT 13.302.756 being land premium and land rents for lease title 04/3013/003 currently held in the Custom Landowners Trust Account (COTA) by Government.
 - c. Costs of and incidental to the action be paid by the Defendants.
4. The basis of the claim is founded on the decision of the Mavunlevu Village Land Tribunal dated 21st September 2012 which recognised and declared the Claimants as the custom land-owner of Belbura Land.



5. The First Defendant filed a defence on 2nd August 2012 to the Claimant's amended claim dated 11 June 2012. The Court does not have any copy of this amended claim. In any event the first Defendant generally denies that the Claimants are the recognized custom land owners of Belbura land. In paragraph 5 of that defence the first Defendant pleads he is entitled to the funds held in COTA pursuant to a decision of an Island Land Tribunal. The decision of this tribunal is however not disclosed. The first Defendant pleads that the claims of the Claimants should be dismissed. The first Defendant filed defences to the amended claims on 3rd October 2011 and to that filed on 21st October 2013 and on 21st April 2014.
6. On 3rd October 2011 the first Defendant filed an application to dismiss the Claimants claims. It appears to the Court this application remains to be determined.
7. On 17th October 2013 when the Court granted leave to Mr Boar to file another amended claim the Court granted the restraining Order sought by the Claimants in their claims (see paragraph 3).
8. On 25th April 2014 the first Defendant filed another application to set aside Orders of 13 October 2013 or alternatively to strike out the proceedings. The date presumably is wrong as the only Orders issued by the Court was that of 17th October 2013. The application was supported by the sworn statement of James Aru filed also on 25th April 2014. Again it appears this application has not yet been heard and determined.
9. The essence of the Claimants case is that the decision of the Mavunlevu Village Land Tribunal made on 21st September 2012 was final without any appeal by the first Defendant.
10. By his defence however the first Defendant pleads that he had appealed against that decision and that on 7th October 2013 the Area Land Tribunal had nullified the decision of 21st September 2012 and therefore it was a final decision which was valid and binding.
11. The State as Second Defendant has not taken any active part in the proceeding because Counsel indicated on 17th October 2013 that the State would simply abide any Court Orders.
12. To assist the Court in formulating its Judgment the Court sat on 25th April 2014 and recorded again that-
 1. The State would abide Orders of the Court, except as to costs,
 2. The facts were not in dispute and that Counsel would file written submissions to address the following legal issues:-
 - a. Whether the decision of the Mavunlevu Village Land Tribunal dated 21st September 2012 is valid and binding?

Whether the decision of the Santo Island Land Tribunal dated 17th May 2010 is valid and binding?

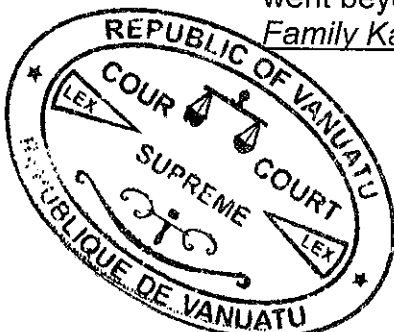


- c. Whether the decisions of the Vaturani Island Council of Chiefs dated 9th September 2008 is valid and binding?
- d. Whether the decision of the Area Lands Tribunal dated 4th October 2013 is valid and binding?
- e. Whether James Aru has been validly adopted in custom by Tavuironleo?
- f. Whether as adopted son of Tavuironleo, James Aru has equal rights to property or land of Tavuironleo?
- g. What is the legal effect of the customary adoption of James Aru by Tavuironleo?

13. Mr Boar filed extensive written submissions addressing all the issues on 9th May 2014. Mrs Vire has not filed any written submissions. Mrs Vire was present in Court on 28th April 2014. It has been a little over a month since.

14. I have read and considered the evidence filed by Jimmy Vira in support of the claim. I have also read and considered the evidence filed by James Aru and the defences he filed on 2nd August 2012, on 3rd October 2011 and on 21st April 2014. I have considered the issues formulated by the Court on 28th April 2014 in light of the evidence and the pleadings. I therefore answer the issues as follows:-

- a) Decision of 21st September 2012 by the Mavunlevu Village Land Tribunal, this decision is still valid and binding.
- b) Decision of the Santo Island Land Tribunal dated 17th May 2010, this decision was quashed by this Court on 20th August 2012. The decision remains and has not been appealed by James Aru. Even if he appeals it is well out of time to do so.
- c) Decision of the Vaturani Island Council of Chiefs dated 9th September 2008, this decision is not valid as the tribunal lacked the jurisdiction to hear this dispute. The proper tribunal to have heard this dispute was the Fanafo Canal Area Land Tribunal.
- d) Decision of the Area Lands Tribunal dated 4th October 2013, this decision is declared invalid and of no legal effect because-
 - i. This Tribunal was constituted and convened in contravention and breach of the Court Orders issued on 17th September 2013 in Civil case No. 39 of 2013.
 - ii. The decisions of this tribunal was extended to "strangers" who were not parties before the Mavunlevu Village Land Tribunal at its hearings in September 2012. When the tribunal decided in favour of Salelui, Arvijrave, and family Veusi who are named as Denis Philip, Jerome Philip, Moise Philip, Anaclet Philip, Cyprien Philip, Jean Yves Philip and Juliano Philip, it went beyond the scope of the appeal. The Court relies on Family Kalmet v. Family Kalmermer (2014) CAC 33 of 2013.



- iii. The Tribunal was not properly constituted as it appears two Justices who sat were from East Santo and not from Fanafo Canal area.
- e) The adoption of James Aru- this has been strongly opposed by the Claimant who deny any adoption. There appears to be some merit in this because if it were true, James Aru should be living at Mavunlevu Village with the Claimants and not at Nambauk. Secondly the Land Tribunal has decided that his adoption was not done in accordance with custom as it was not done within the bloodline but outside of it. As such the Tribunal has decided that James Aru has no right to claim customary ownership of Belbura Land. The issues in (e) (f) and (g) are therefore answered in the negative.
15. The decision of the Tribunal dated 26th August 2013 is still valid and binding.
16. The Court gives Judgment in favour of the Claimants.
17. The Court Orders the Second Defendant to release forthwith the sum of VT 13,302,756 to the Claimant's solicitor's Trust Account.
18. There will be no Order as to costs. Had the Claimants been at the hearing on 4th October 2013, the result might have turned out to be different.
19. The applications by the First Defendant filed on 3rd October 2011 and on 25th April 2014 are hereby dismissed.

DATED at Port Vila this 17th day of June 2014.

BY THE COURT

