IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU
(Other Jurisdiction)

Judicial Review
Case No. 16/3362 SC/JUDR

BETWEEN: **Otto Norman Matakoromarata** as Paramount Chief of Emoi and as Paramount Chief of Raito

First Claimant

AND: **Otto Morris Takalo** representative of Tomtau Family

Second Claimant

AND: **Alicta Vuti National Coordinator**

First Defendant

AND: **Daniel Graham Lukai, Customary Land Officer Shefa**

Second Defendant

AND: **Customary Land Management Office**

Third Defendant

Before: *Justice Aru*

In Attendance: *Mr. F. Laumae for the First and Second Claimants*
Mr. T. Loughman First, Second and Third Defendants

JUDGMENT

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1. This is a claim for judicial review. On the 25 November 2016 I issued directions for the defendants to file their defence and listed the matter for the first conference pursuant to Rule 17.8 of the Civil Procedure Rules. At this conference as required by Rule 17.8 (3), I needed to be satisfied that the claimant has an arguable case and is directly affected by

the decision under challenge and there has been no undue delay in making the claim and finally that there is no other remedy that resolves the matter fully.

2. If I am not satisfied of these matters then I must decline to hear the claim and to strike it out. The relief sought are:-

    (1). An order quashing the advise or decision of the National Coordinator and Customary Lands Officer dated 16 November 2015;
    (2). An order declaring the decision of Emoi and Raitoa Council of chiefs dated 13 June 2008 a true decision of a nakamal;
    (3). An order compelling the first defendant to register the Emoi decision;
    (4). Alternatively an order compelling the defendants to perform their functions under the Customary Land Management Act No 33 of 2013 with regards to training of chiefs for the nakamal to determine custom owners of Emoi/Raitoa custom land.

3. The claimants rely on the claim, the sworn statement of Mr. Otto Norman Matakoromarata and also written submissions which were filed today by Mr Laumae. Mr Loughman relied on the defence filed and made oral submissions in response.

4. Dealing first with the second and third orders for relief, the gist of the claimants submissions are that the Emoi/Raitoa Council of Chiefs decision is a valid decision as it declared the first claimant paramount chief and custom owner of Emoi custom land in accordance with section 6 of the Customary Lands Tribunal Act [CAP 271] (the CLT Act). The claimants are now seeking a declaration that the Emoi decision be declared a valid decision of a nakamal pursuant to the provisions of the Custom Land Management Act and for the defendants to be compelled to register that decision.

5. First it is to be noted that procedure wise, although the claimants are seeking a declaration, the Attorney General is not named as a party in this matter as required by rule 17.4 (2) "*that the claim must name as defendant for a declaration, the Attorney General*".

6. Secondly , section 6 of the CLT Act provides as follows:-

"6. Arrangements outside this Act

(1) Nothing in this Act prevents a person or persons resolving a dispute about customary land in accordance with the rules of custom or in any other lawful way.

(2) Subsection (1) applies even if the way in which the dispute is resolved is inconsistent with the procedures under this Act for resolving disputes."

7. The CLT Act has now been repealed. Section 6 as applied then allowed for arrangements to be made outside the Act to resolve disputes about customary land in accordance with rules of custom or in any lawful way. Even if the way the dispute is resolved is inconsistent with the procedures under the Act.

8. The Emoi/Raitoa Council of Chiefs decision is a decision which has been made through arrangements outside the CLT Act. It therefore follows that only decisions made in accordance with the provisions of the Act, ie decisions of land tribunals could be enforced but not those made through arrangements outside the Act.

9. This view is supported by section 58 of the Custom Land Management Act which makes provision for existing decisions of Customary Land Tribunals. It is quite clear that only existing decisions of a land tribunal 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.*"

10. The Emoi/Raitoa Council of Chiefs decision is not a decision of a customary land tribunal and therefore cannot be deemed to create a recorded interest in land. There is therefore no basis for seeking orders two and three.

11. With regards to the first order sought, it seeks to quash a decision of Mr. Daniel Graham Lukai, CLO Shefa (the CLO decision) made on 16 November 2015 advising the first claimant to call off the Emoi/Raitoa nakamal meeting as the required training of Nguna/Pele heads of nakamal and adjudicators under the Custom Land Management Act had not been undertaken as yet.

12. Rule 17.5 of the Civil Procedure Rules requires that a claim for judicial review must be made within 6 months of the decision being challenged. If the claim is filed after the 6

months period, the court may extend the time for making a claim if it is satisfied that substantial justice requires it.

13. In this case, the CLO decision was made on 16 November 2015. The claim was filed on 4 October 2016 some 11 months later. There is no application to extend time however Mr Laumae argues that the claim be heard as firstly the justice of the case requires it and secondly the claimants had not been sitting on their rights but had written to the defendants to pursue the matter. I note that a letter was sent to the first defendant on 23 February 2016 by Mr Laumae giving an ultimatum that if the defendants failed to meet the claimants' request within 30 days, proceedings would be instituted. The 6 months period lapsed in May 2016 however no proceedings were issued up to that date and no further steps were taken by the claimants for a further five months until the claim was filed in October. The defendants on the other hand now inform the Court that the training of the Nguna/Pele heads of nakamal and adjudicators has been done and took place on 14 to 16 November 2016.

14. Having considered these factors, I am not satisfied of the matters in rule 17.8 (3) therefore I decline to hear the claim and it is hereby struck out. The defendants are entitled to costs on a standard basis to be agreed or taxed by the Master.

DATED at Port Vila this 20 day of December, 2016.

BY THE COURT

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D. ARU

Judge