IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU **Judicial Review Case No. 25 of 2015**
(Civil Jurisdiction)

BETWEEN: FAMILY VIRANAMANGA
Claimant

AND: BULUBULU JOINT VILLAGE LAND TRIBUNAL
Defendant

Before Chetwynd J
Mr Joel for the Claimant
Mr Aron for the Respondent
Hearings 8th February and 1st April 2016

Decision following Rule 17.8 Conference

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1. I published a Minute in respect of this case on 8th February 2016. In the final paragraph I indicated that I was of the view that I should, for the reasons given, refuse to hear the claim and that it should be struck out. Because the Claimant's counsel did not attend the hearing on 8th February and in the interests of justice I adjourned the Rule 17.8 Conference to today and invited submissions on the issues raised in my Minute. The Claimant's counsel filed a memorandum just before the case was called on today. I heard brief oral submissions and reserved my decision on the Rule 17.8 conference. This is my reserved decision.

2. In the Minute of 8th February I pointed out the difficulty the Claimant had because of the repeal of the Customary Land Tribunal Act. I have to say I do not understand some of the Claimant's submissions on this point. He says that the order made by Spear J, "*...preserves the life of this claim*". His argument is that the tribunal whose decision he seeks to review did not do what Spear J said and so he can pursue this review. The logic of that submission escapes me because if he had any problems with what went on after His Lordship made his order then he should have raised it with the Bulubulu Joint Village Land Tribunal. If he was not happy with the decision of that tribunal he should have appealed it. He cannot now rely on His Lordship's decision of 11th June in these proceedings. Nothing else the Claimant raises in his submissions causes me to alter the view I reached in my 8th February Minute.

3. The Claimant also now says that in some way he has appealed to the next tier of the hierarchy under the repealed act. He has nowhere explained how or where that appeal is. The Claimant was well aware of the need to deal with that point because issue of ongoing disputes was raised in the February 8th Minute. I will return to this point later.

4. I also pointed out to the Claimant that a delay of nearly two years between the decision sought to be reviewed and the filing of the Claim made it impossible to say that there had been no undue delay. The Claimant points to a case where His Lordship Fatiaki J dealt with the provisions of Rules 17.4(3), 17.5 and 17.6. The Claimant overlooks that here I am dealing with the requirements of Rule 17.8 (3)(c). Under no circumstances can it be said that a delay of two years is not an "undue delay".

5. In my February 8th Minute I also indicated that I thought the Claimant had another remedy which would fully and directly resolve the issue, namely the right to apply under the "new" Custom Land Management Act 2013. I would also say that if, as is now suggested, there is a pending appeal under the "old" act then that too is a remedy that would fully and directly resolve the matter.

6. The Claimant has not been able to satisfy me that he has an arguable case (Rule 17.8(3)(a)), that there has been no undue delay (Rule 17.8(3)(c)) and that there is no other remedy available to him which would fully and directly resolve the matter (Rule 17.8(3)(d).

7. In accordance with Rule 17.8 (5) I must therefore decline to hear the claim and strike it out. Accordingly the Claim is hereby struck out.

8. So far as costs are concerned, I see no reason why the usual rule that costs follow the event should not apply and the Claimant shall pay the Respondents costs. The costs shall be taxed on a standard basis by the Master of the Supreme Court if they are not otherwise agreed.

Dated this 1st Day of April 2016 at Port Vila

Chetwynd J

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