

BETWEEN: **WILLIAM AMEARA**
Claimant

AND: **NATIONAL COORDINATOR OF
CUSTOMARY LAND MANAGEMENT
OFFICE**
First Defendant

AND: **REPUBLIC OF VANUATU**
Second Defendant

Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Gregory Takau for the Claimant
Jelinda Toa for the Defendant*

Date of Hearing: *14th August 2017*
Date of Judgment: *19th December 2017*

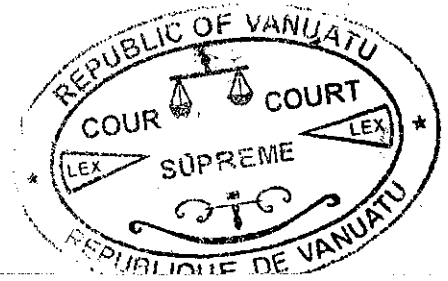
JUDGMENT

Introduction

1. The Claimant filed his claim on 4th May 2017 seeking-
 - a) An order quashing the decision of the first defendant dated 13th April 2017, and
 - b) A mandatory order that the first defendant issues a certificate of registered interest.

Background Facts

2. On 12th October 2012 the Claimant claims he was declared custom-owner of Takara land by the North West Efate Land Tribunal. As a result the Claimant claims he wrote a letter to the First defendant requesting that a certificate of registered interest be issued in his favour. On 13th April 2017 the first defendant wrote a letter to the



claimant declining to issue the certificate as requested. The Claimant issued this proceeding.

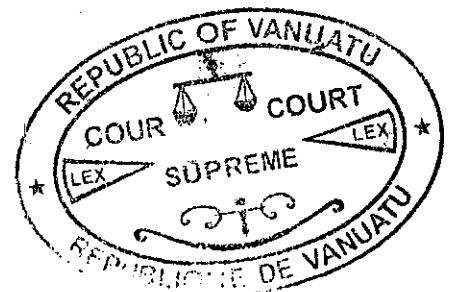
3. The full background facts are helpfully set out in paragraphs 1-19 of the defendant's submission filed on 18th September 2017. I adopt them and do not intend to restate them in this judgement. The Court appreciates defence Counsel's assistance.

The Issues

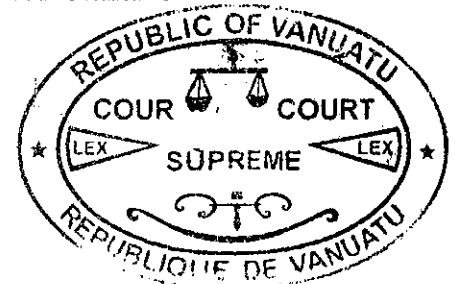
4. The defendants raised two issues for determination as follows:-
 - a) Whether or not the claimant is the declared custom land owner of Takara land?
 - b) Whether or not the First defendant should issue the certificate of recorded interest on Takara land to the Claimant?

Discussions

5. At the hearing on 14th August 2017 Counsel agreed the facts were not in dispute and that the matter did not require a trial hearing. The Court issued directions requiring parties to file written submissions within 14 days and for objections to be filed in relation to a new sworn statement filed by the claimant. The defendants filed their objections on 18th August 2017 to paragraphs 21, 22, 23 and 24 of the statement of the claimant dated 8th August 2017. I accept the objections and disallow paragraphs 21, 22, 23 and 24 that the sworn statement as evidence. They are not evidence, rather they are submissions as points of law.
6. The Claimant was directed to file written submissions by 1st September 2017. They filed a book on 1st September 2017 Headed "***SUBMISSION (Sic) OF THE CLAIMANT.***" It is more like an Appeal Book instead of submissions. It contains a Table of Contents with numbered pages 1-245. I do not see any legal submissions in the book.



7. For the defendants, the Court is truly grateful to Counsel for the defendant's submissions filed on 18th September 2017 with a case law of Valele Family.v. Toura [2002] VUCA 3. The facts are clearly and fully set out. The two issues are well argued.
8. The Claimant bases his claim for customary ownership of Takara land on the decision of the North West Efate Lands Tribunal in Land Case No.1 of 2009 dated 12th October 2012. This is annexed as "AVK 1" to the statement of Alicta Vuti dated 16th June 2017.
9. However Mr Vuti also gave evidence of appeals against the decision of 12th October 2012. The first appeal is dated 12th October 2012 by the claimant himself (Annexure "AVK 2"). The second appeal is by the Karaf Family dated 29th October 2010 (Annexure " AVK 3 and 4).
10. Mr Vuti declined the claimant's request for a certificate of recorded interest based on those 2 appeals which his evidence shows have been transferred to the North East Efate Area Lands Tribunal for determination in February 2016. The appeals have not yet been heard. The referral was done pursuant to section 5 (4) of the Customary Land Management Act. (the Act).
11. As long as the two appeals remain unheard, the decision of the North West Lands Tribunal dated 12th October 2012 is not a final decision granting definite customary right of ownership of Takara land to the claimant to entitle him to a certificate of recorded interest under section 57 of the Act.
12. It strikes me as strange that the claimant would forget his own appeal and put in his request under section 57 of the Act. That is an act of pure dishonesty.
13. Those reasons are enough for the Court to answer the two questions raised as follows:-
 - a) Whether or not the claimant is the declared custom land owner of Takara Land?
The answer is "No"



b) Whether or not the first defendant should issue the certificate of recorded interest in Takara land to the claimant?

The answer is "No"

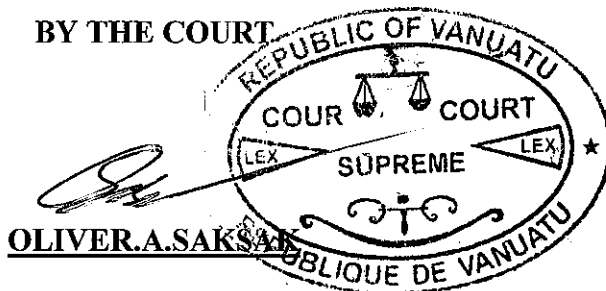
The Result

14. The Claimant is unsuccessful. His claims are dismissed. He has put the defendants to unnecessary cost. This claim should not have been filed in the first place. It is misconceived and amounts to an abuse of process. The defendants submit they are entitled to costs in the sum of VT 300.000. In my considered view, in the circumstances of the case, this is not an unreasonable sum and I therefore allow it.

15. I order that the claimant pays the defendant's costs which I fix at VT 300.000 for reasons I have given in the preceding paragraph.

DATED at Port Vila this 19th day of December, 2017

BY THE COURT



OLIVER.A.SAKSAI

Judge