

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

**Civil Case
Case No. 15/156 SC/CIVL**

BETWEEN: Tom Numake

Claimant

AND: Airports Vanuatu Limited

First Defendant

AND: Rakatne Tribe and Family Kapatangtang

Second Defendant

And: Family Nipiknam

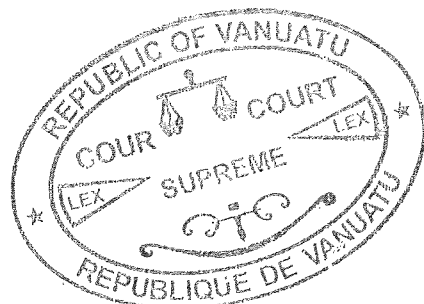
Interested Party

Date of Hearing: 21st June 2019
Date of Judgment: 23rd September 2019
Before: Justice Oliver Saksak
In Attendance: Mary Grace Nari for the Claimant
Nigel Morrison for First Defendant
Daniel Yawha for Second Defendant- Rakatne Tribe and
Family Kapatangtang
Willie Kapalu for Interested Party- Family Nipiknam

JUDGMENT

Introduction

1. The Claimant says that he is the declared custom owner of the land on which the current airport is operated pursuant to the judgment of the Native Court, in Civil Case No 1 of 1973. As such the Claimant says he is entitled to be paid the moneys held in the Chief Registrar's Trust Account in the sum of VT 5.120.000.
2. Only the Second Defendant and Interested Party oppose the claim. They say that because the dispute as to boundary is currently pending in the Tanna Island Court, the sum of VT 5.120.000 should not be released as yet until a final decision as to boundaries are made.

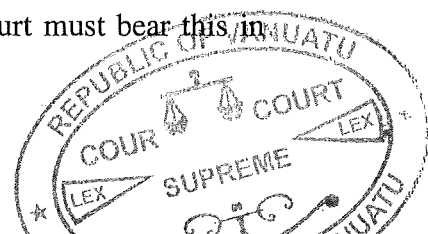


Background

3. The claim has its roots from the judgment of the Native Court of the New Hebrides in 1973. It has a long history.
4. There were only 2 parties in that Court, Tom Numake the Claimant and Nisak the defendant. The Second defendant and the Interested Party were not parties. The land in dispute is “Niougan” land on which the airport is situated.

Discussion

5. As said in the preceding paragraph this case has a long standing history. It has been complicated by new families and parties getting in at different stages or levels of Court starting with the Tanna Island Court, the Magistrate Court, the Supreme Court and the Court of Appeal. Much have been said and it is not necessary to repeat them.
6. The issue to be decided is simply whether this proceeding should be stayed pending the determination of the applications of the Second Defendant and the Interested Party, or whether the VT 5.120.000 held in trust should be released to the Claimant?
7. As indicated earlier in 1973 the disputing parties were only Tom Numake and Nisak. The question to ask is: where were the other parties then?
8. In 2014 before the Tanna Island Court 8 other parties came in . These were Rakatne Tribe, Family Nalne Nissamim, Family Nipiknam, Family Iahlan Asul, Family Kaso Inam Nahew Faillet Namal, Naturra Mataua and Family Nawakai Kapatangtang.
9. The decision of the Island Court dated 25 September 2014 was appealed to the Supreme Court. It was from the Island Court decision that it is clarified that “Niougan” land as called in the judgment of the Native Court in 1973 is known also as Longknowgen. The Supreme Court on 6th September 2013 quashed the Island Court decision and returned the case for rehearing before a differently constituted Island Court.
10. The Native Court judgment is now res judicata. The Supreme Court judge at paragraph 7 of his judgment recognises that. The Court of Appeal on 19 July 2019 noted and confirmed the 1973 Native Court judgment but also recognised there may be small portions of land within “Niougan” land that may require more consideration. (See paragraph 33).
11. There are the applications currently before the Island Court awaiting hearing and determinations. From 1973 to 2019 has been some 46 years. Tom Numake has been denied the fruit of his judgment. The Tanna or Tafea Island Court must bear this in

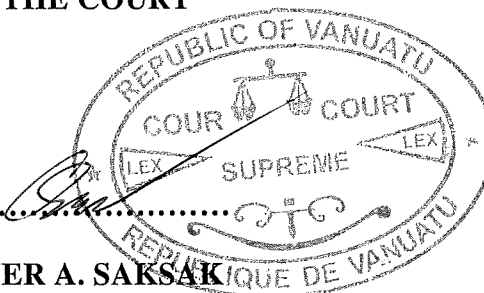


mind and fix the case for hearing and determination as soon as possible. The Supreme Court made some clear directions in paragraph 11 of its Judgment of 6 September 2013, some 6 years ago first that the Island Court should have the area surveyed at the cost of the parties showing agreed boundaries, boundary marks and custom features. Second, parties are restricted to the 8 Families or Names specified in paragraph 7 of this judgment, and Tom Numake.

12. It has been some 6 years since the Orders were issued. It is not apparent to me whether the Island Court has done such a survey or whether the parties themselves have drawn up their own maps when they could and have attached to their applications.
13. If the Island Court and the parties (excluding Mr Numake) have no such plans and the Island Court has not made a determination of those boundaries within 2 months from today, this Court will issue a final order releasing the moneys held on trust.
14. This proceeding is therefore stayed for the period of 2 months from today.

DATED at Port Vila this 23rd day of September, 2019

BY THE COURT


.....
OLIVER A. SAKSAK

Judge