



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

Civil Appeal Case  
Case No. 20/734 SC/CIVAL

**BETWEEN:** Family Fabiano Warsal, Ferdinan Karae, Richard  
Tagetaviti, Freddy Johnny, Alredo Raupepe,  
Hendricko Rep

Appellants

**AND:** Bruno Cevuard

Respondent

*Date of Hearing of Strike*

*out Application :* 10<sup>th</sup> August 2020

*Date of Decision:* 11<sup>th</sup> August 2020

*Before:* Justice Oliver.A.Saksak

*In Attendance:* Ms Viska Muluane for the respondent/applicant  
Mr John Taiva Wingi for the appellants/ respondents

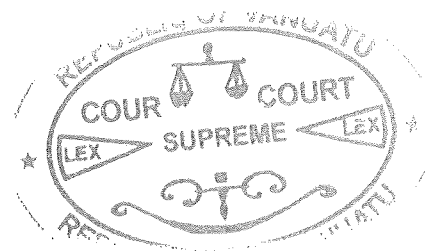
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## DECISION

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### Introduction

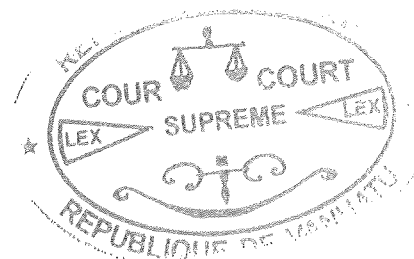
1. The appellants appealed the decision and order of the Senior Magistrate issued on 16<sup>th</sup> March 2020. That order quashed the earlier decision and orders issued on 20<sup>th</sup> December 2019. The appellants contended that the Magistrates Court has no jurisdiction to conclude that Votgasariv custom land is yet to be decided. Further that the Court below had erred in holding that a land tribunal that made the decision on 27<sup>th</sup> June 2011 in favour of the appellants was not properly constituted.
2. The respondent applied for an order to strike out the appeal on grounds that-
  - (a) The appellants have no standing to seek the restraining orders initially issued on 20<sup>th</sup> December , 2019
  - (b) The appellants did not seek leave to appeal the orders which are interlocutory orders and not



- final orders,
- (c) The appellants failed to comply with the Court's directions to file appeal books by 16 June 2020 , and
- (d) That they have failed to take necessary steps to ensure their proceeding continues. The application is made pursuant to Rules 9.10 and 18.11 of the Civil Procedure Rules No. 49 of 2002 ( the Rules)

### **Background Facts**

3. Votgasariv custom land has been the subject of a dispute before the Santo Land Tribunal since 2006. On 3<sup>rd</sup> November 2006 this tribunal found ownership in favour of Theophile, Fabiano, Manuel, Petro and Gratien.
4. Petro Rite brought a Judicial Review claim which this Court heard and determined on 19<sup>th</sup> and 29<sup>th</sup> June 2007. On 2<sup>nd</sup> November 2007 this Court allowed the claim and quashed the declaration dated 3<sup>rd</sup> November 2006 for reason the decision was void and of no legal effect.
5. The Court ordered that the dispute be heard by a differently constituted land tribunal.
6. The Santo Island Land Tribunal sat again on 27<sup>th</sup> June 2011 pursuant to the Supreme Court orders of 2<sup>nd</sup> November 2007.
7. The Santo Island Land Tribunal decided and declared ownership of Votgasariv Land in favour of Petro Rite Family, Gratien Alguet Family and Fabiano Warsal Family.
8. Subsequent to that declaration, Family Fabiano Warsal and Ferdinan Karae, Richard Tagetaviti, Freddy Johnny, Alfredo Raupepe and Hendricko Rep filed a claim in the Magistrates Court as Civil case 3434 of 2019. They alleged that the respondent had trespassed into their fence and damaged it together with their garden crops. They sought damages and permanent restraining orders against the respondent.



9. The Magistrates Court issued ex parte restraining orders against the respondent on 20<sup>th</sup> December 2019 and directed the respondent (as defendant) to (a) file a response and defence within 14 days, (b) the claimant to file a reply to any defence within a further 14 days and (c) that the matter be set for first hearing on 13<sup>th</sup> February 2020 at 10:30am.
10. The respondent however applied on 12 February 2020 to set aside the orders of 20 December 2019 and sought restraining orders against the appellants instead.
11. The Magistrates Court heard the application on 16 March 2020 and allowed the application. The Court quashed the orders of 20 December 2019 and issued restraining orders against the appellants (as claimants). The Court below ordered at paragraph 5 of its orders that the respondent (defendant) "*shall proceed forthwith to call a proper Land Tribunal sitting to resolved the mater as Ordered by the Supreme Court on 2<sup>nd</sup> November 2007*". Further the Court below Ordered the defendant to file sworn statement in support of his counter-claim for damages to his fence within 14 days.

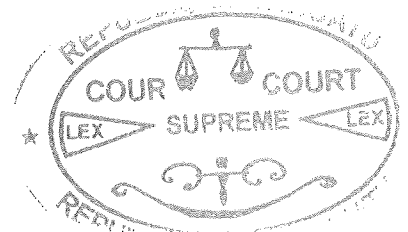
### **Submissions**

12. Mr Taiva submitted (a) the appellants had valid reasons why they did not file their appeal books within the time directed by the Court on 25<sup>th</sup> May 2020 and (b) the appeal has merits and should be heard by the Court. They rely on the sworn statement of Franco Warsal filed today in support of these submissions.
13. Ms Muluane submitted (a) the appellants have no standing, (b) they failed to comply with the clear directions of the Court and (c) they have not sought leave to appeal the interlocutory orders of the Magistrates Court of 16<sup>th</sup> March 2020.

### **Consideration/ Discussion**

14. I heard Counsel orally in relation to the application to strike out the appeal and in relation to whether the appeal has any merits. I consider the following issues:

(a) First, whether the appellants failed to comply with the orders of this Court dated 25 May 2020?



From the evidence of Franco Warsal, it is obvious the appellants had difficulties with previous counsel.

It is obvious the appellants failed to comply with the directions of 25 May 2020 but not altogether. They filed an appeal book eventually albeit late, on 5<sup>th</sup> August 2020.

(b) Second, do the appellant's have standing?

They filed a claim in the Magistrates Court on 17<sup>th</sup> December 2019. The Claimants named are Family Fabiano Warsal, Ferdinan Karae, Richard Tagetaviti, Freddy Johnny, Alfredo Raupepe and Hendricko Rep. Therefore their standing is questionable. Only family Fabiano Warsal is one of the declared custom owners of Votgasariv land and only this family has standing to be the claimant in Civil Case No. 3434 of 2019.

(c) Third, whether the appellants required leave prior to filing their appeal to this Court?

Upon reaching the orders of 16<sup>th</sup> March 2020, they are clearly interlocutory orders. As such the appellants required leave from the Magistrate's Court prior to filing their appeal. No such leave was obtained.

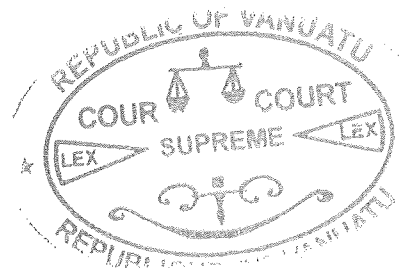
(d) Fourth, whether or not the appeal has merits?

The appellants challenge the jurisdiction of the Magistrates Court in ruling that the decision of the Santo Island Land Tribunal dated 27<sup>th</sup> June 2011 was not a decision of a properly constituted land tribunal. That is a valid challenge. The appeal therefore has merit on that ground.

(e) Fifth, whether or not the Votgasariv custom land is yet to be decided?

The Senior Magistrate reached that conclusion in her findings and orders of 16<sup>th</sup> March 2020 which is under appeal. Did the Court err in that finding? The answer is "yes".

15. The tribunal that sat on 27<sup>th</sup> June 2011 sat in compliance with the orders of this Court dated 2<sup>nd</sup> November 2007. Whether that tribunal was validly constituted is not the issue. That decision has not been challenged by the respondent for the last 8 years. He does raise a challenge in his defence and counter-claim to the appellant's claims but there is no evidence in support of that pleading. As it stands that decision is final, unless and until it is challenged and quashed.



## The Result

16. In all the circumstances of this case, I have arrived at the conclusion that-
- (a) The application by the respondent to strike out the appeal is unsuccessful and is dismissed.
  - (b) Leave is granted by this Court to the appellants to appeal the orders of 16<sup>th</sup> March 2020. The appeal of the appellant Family Fabiano Warsal is successful and is allowed.
  - (c) The Orders dated 16<sup>th</sup> March 2020 are hereby quashed.
  - (d) The Orders dated 20<sup>th</sup> December 2019 be restored to maintain status quo until the final determination of the appellant's claims in Civil Case 3434 of 2019. The respondent has liberty to apply to vary the orders to include the appellant and their agents on an equal footing.
  - (e) Any application to have Ferdinan Karae, Richard Tagataviti, Freddy Johnny, Alfredo Raupepe and Hendricko Rep removed as claimants on grounds of lack of standing be made to the Magistrates Court for determination.
  - (f) The case is remitted to the Magistrates Court for the substantive hearing as to damages and the counter-claim of the respondent.
  - (g) There be no order as to costs.

**DATED and ISSUED at Luganville this 11<sup>th</sup> day of August 2020  
BY THE COURT**

Oliver.A.Saksak  
Judge

