

**BETWEEN: Noel Raf Karae Chairman of Matairan Area  
Council of Chief ( Big Bay INLAND)**  
*First Claimant*

**AND: Amy Garae & Wycliff Garae of Big Bay Inland,  
Santo Island**  
*Second Claimants*

**AND: Republic of Vanuatu**  
*First Defendant*

**AND: Taslamane Area Land Tribunal**  
*Second Defendant*

**AND: Solomon Tavue and Family and Job Thomas and  
Family**  
*Third Defendants*

**Date of Hearing:** *7<sup>th</sup> day of December 2022*

**Before:** *Mr. Justice Oliver A. Saksak*

**Counsel:** *Mr Sakiusa Kalsakau for the Claimants  
Ms Nadya Robert for First and Second Defendants  
Ms Laniana Raikatalau for Third Defendants*

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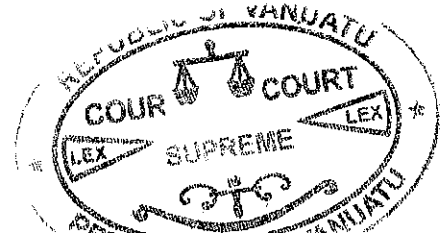
## DECISION

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1. The urgent application filed by the Third Defendants on 1<sup>st</sup> September 2022 to strike out the Claimants' claims is allowed.
2. The Orders sought in paragraphs 1 and 2 of the application are granted.

### Facts

3. Noel Raf filed Judicial Review Case No. 21/3553 in October 2021.
4. The Court dismissed the proceeding under Rule 17.8 of the Civil Procedure Rules on 21 June 2022.



5. The Claimants challenged the jurisdiction of the Taslamane Area Land Tribunal to hear and deal with land disputes involving Pakakara, Puelvusnpe and Nembuel Lands.
6. Subsequent to that dismissal Noel Raf and Amy and Wycliff Garae filed this proceeding on 24<sup>th</sup> June 2022, some 4 days later.
7. On 9<sup>th</sup> September 2020 a custom land officer referred the disputes over Nambuel/ Vulovulo Lands to the Second Defendant Tribunal pursuant to section 34 (1) of the Custom Land Management Act.
8. The Claimants alleged that the referral is erroneous and invalid in law because the Second Defendant is not the appropriate Tribunal to determine the disputes as the Lands are not situated within the boundary or domain determined by the Sanma Provincial Council and that the Malvatumauri Council of Chiefs has not yet confirmed the different area tribunals.

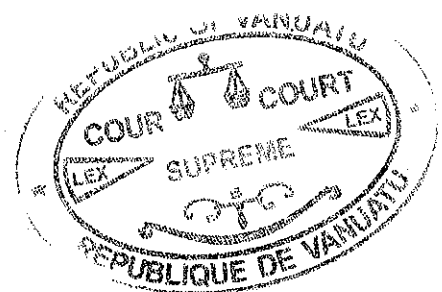
#### Defendants Case

9. The Third Defendants applied to have the proceeding struck out on grounds that-
  - The First Claimant has no standing
  - The issues raised and remedies sought are res judicata
  - The claim is statute-barred.
  - The Supreme Court has no jurisdiction to decide on the claims of the claimants.
  - The decision of the Second Defendant Tribunal is under review currently before the Island Court ( Land) in Case No. 20/1087 IC/ CUST.
  - The Claimants and their families are estopped, having participated in the Second Defendant Tribunal hearing.
  - The Claimants are vexatious litigants and their claims are designed to pervert the course of justice, thus amounting to an abuse of process.

#### Discussion

10. The first issue for consideration is the jurisdiction of the Court to Strike out a claim. The case of Ala v VNPF [2021] VUCA 34 sets out the clear answer to this issue.
11. Here the Court has to ask itself: Is this claim one where it is so clear the claim cannot succeed? The answer is “ yes” , therefore the Court has the jurisdiction to strike out at this point.
12. The Claimants argued that because the facts are in dispute, the Court cannot exercise its jurisdiction to strike out. Clearly that is the wrong argument. Facts are not in dispute. The issue is a legal one of whether a lands officer has the power to make a referral to a custom area council of chiefs under section 34 (1) of the Custom Land Management Act. It states:

*“ (1) If a custom land Officer becomes aware that it has not been possible to resolve a dispute in the nakamal, he or she must inform the chairperson of the custom area council of chiefs.”*



13. The proper place to challenge the exercise of that power is by way of judicial review as submitted by the Solicitor General, not by a formal claim as the claimants have done. The Court accepts it is an abuse of process.
  
14. The next issue: Is the claim statute-bar?  
The Claimant challenged the Tribunal's decision in Judicial Review Case 21/3553 which was dismissed. The Tribunal is Taslamane Area Land Tribunal.
  
15. The Tribunal sat as a result of the referral made by the custom land officer pursuant to section 34 (1) of the Act. If there was no referral, there would not have been a tribunal sitting and decision, and nothing to challenge.
  
16. The Court dismissed that proceeding under Rule 17.8 of the Civil Procedure Rules. The decision was final, it was not an interlocutory decision contrary to the submission of Counsel for the claimant. The Claimants did not appeal the decision. Instead of taking that course, the claimants have filed a fresh proceeding attempting to challenge the referral, in a different process. In my view they are estopped from doing so.
  
17. The case of Vanuatu Maritime Authority v Athy [2006] VUCA 12 is distinguished and is unhelpful to the claimant's position.
  
18. Next, the Claimants argued the position of Solomon Tavue and Job Thomas as Third Defendants should hereby be interested parties. These persons have declarations made in their favour as a result of previous tribunal hearings and sittings. They are therefore no longer interested parties; they are rightly defendants. They are entitled to have been made parties to afford them an opportunity to defend their positions.
  
19. Finally, are the claimants vexatious litigants?  
  
They appear so. They have been part of previous tribunal sittings and hearings and have not been successful. They tried challenging the decision of the tribunal but failed to do so correctly. They have tried another proceeding but filed it as an ordinary Supreme Court Claim when indeed they have challenged a decision of a custom land officer, which should properly be by way of a judicial review. It is again an abuse of process and is a vexatious claim.
  
20. For those reasons the application is successful. The claim and proceeding are struck out.
  
21. The defendant s are entitled to costs on an indemnity basis as agreed or taxed by the Master.

**DATED at Port Vila this 14<sup>th</sup> day of December, 2022**

**BY THE COURT**

  
**OLIVER A SAKSAK**

**Judge**

