

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

Civil Appeal
Case No. 21/2629 SC/CIVA

BETWEEN: Family Segen Barangsusrup
Appellant

**AND: Family Roma Massing represented by
Willie Apia Massing**
Respondent

Date: 9 June 2022
Before: Justice V.M. Trief
Counsel: Appellant – Mrs C.T. Gesa
Respondent – Mr W. Kapalu

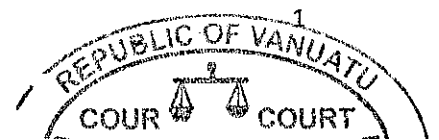
JUDGMENT

A. Introduction

1. This appeal arises from the Magistrates' Court decision dated 8 July 2021 in Civil Appeal Case No. 2166 of 2021 dismissing Family Rogen's appeal for lack of standing and jurisdiction.
2. On the day of hearing of the appeal, Mr Kapalu requested that I determine the appeal on the papers without the need for appearances by counsel or oral submissions. Mrs Gesa agreed to that course.
3. This is my judgment and the reasons for it, based on the material provided by counsel and the court files.

B. Background

4. By Decision dated 3 November 1988, the Malekula Island Court found that Sengen Barangsusrup and Pastor Roma Massing both had some rights in the Presbyterian Mission land at Unua, Malekula which was located inside the boundary of Hemirtungan custom land. The Court held that neither party were from Hemirtungan but were from Bangtete

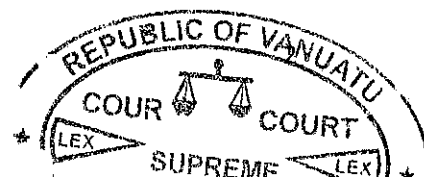


and Hemerif nasara respectively, both of which were given user rights by Hemirtungan. Further, that there were no surviving descendants from Hemirtungan.

5. By Decision dated 22 June 2021 in Civil Case No. 709 of 2021 ('CC 21/709'), the Malekula Island Court granted Family Roma Massing's application to obtain an official stamp of the Island Court on a map that the Island Court was satisfied accorded with the Island Court decision and orders dated 3 November 1988. There was no named-respondent; the Application was undefended. The Application had been made in order to satisfy the requirements of the *Custom Land Management Act 2013* to obtain a Certificate of Recorded Interest in Land (also known as a 'green certificate').
6. On 5 July 2021, the Appellant Family Segen Barangsusrup filed its appeal in the Magistrates' Court Civil Appeal Case No. 2166 of 2021 ('CAC 21/2166') on grounds that the Respondent Family Roma Massing lacked standing as it was never a declared custom owner of Hemirtungan land but was only assigned user rights and the custom ownership of Bugut and Neramb custom lands remained undertermined therefore its Application was an abuse of the Court process and fraudulent. Further, that the Appellant should have been given an opportunity to be heard by the Malekula Island Court.
7. Also on 5 July 2021, Family Rogen filed in CAC 21/2166 an Application for a Stay of both Malekula Island Court decisions dated 3 November 1988 and 22 June 2021 "pending the process commenced by the Custom Land Management Office". The supporting sworn statements of Wilson Barang and William Sengen stated that the stay of the judgments was sought pending the Magistrates' Court's determination of the appeal.
8. By Minute and Ruling dated 8 July 2021 in CAC 21/2166 between Family Rogen represented by Petuel Willie (Appellant) and Willie Apia Massing and Family Massing (Respondents), Magistrate Naieu ruled that the appeal would not be listed for hearing and was dismissed for lack of standing. Further, that a Magistrate had no jurisdiction to hear an appeal against the decision of another Magistrate. Finally, that the appeal was an abuse of the Court process and procedure.

C. Grounds of Appeal

9. It was submitted that the Appellant Family Segen Barangsusrup had standing to bring its appeal as it has an interest in the subject land.
10. The other grounds of appeal were that:
 - a) The Respondent Family Roma Massing represented by Willie Apia Massing was never declared as custom owner of Hemirtungan but only had user rights;
 - b) The lands covered by the Malekula Island Court decision dated 3 November 1988 are described as Bugut and Neramb custom lands however their custom ownership has not been determined therefore this was an abuse of process;
 - c) It was fraudulent for Family Roma Massing to use the Malekula Island Court decisions dated 3 November 1988 and 22 June 2021 to obtain a green

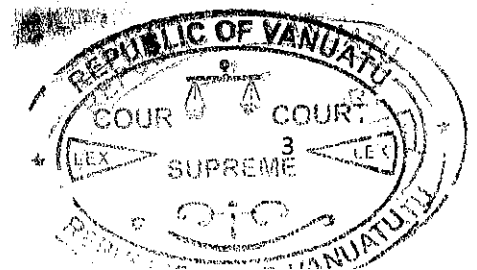


certificate in respect of land whose custom ownership had not yet been determined;

- d) Filing CC 21/709 as an undefended case constituted an injustice and breach of Family Segen Barangsusrup's Constitutional rights; and
 - e) The Court failed to provide an opportunity for the parties to be heard before striking out the matter for lack of standing and jurisdiction which was unfair.
11. A Response, Submissions and Supplementary Submissions were filed for the Respondent to the effect that the appeal was irregular, that Family Segen Barangsusrup have no standing to file this appeal as they were never a party to CAC 21/2166, that the Magistrate was correct to hold that Family Rogen's Application was an abuse of process and seeking personal costs against Mrs Gesa of VT200,000 and costs of VT100,000 otherwise.

D. Discussion

12. The first ground of appeal is the only ground that needs to be discussed as it disposes of the appeal. The remaining grounds of appeal are all matters for the hearing of the appeal in the Magistrates' Court which, as set out below, has not yet occurred.
13. On 5 July 2021, Family Segen Barangsusrup filed its appeal in CAC 21/2166 in the Magistrates' Court against the Malekula Island Court decision dated 22 June 2021. That appeal was filed within time and remains on foot.
14. Also on 5 July 2021, Family Rogen filed its Application seeking a stay of both Malekula Island Court decisions pending the determination of the appeal in CAC 21/2166.
15. However, Family Rogen had not filed an appeal in CAC 21/2166. Accordingly, it was not a party to that proceeding and did not have standing to apply for Orders.
16. For that reason, the Magistrate was correct to dismiss Family Rogen's Application although he could have more clearly stated in his Minute and Ruling that he was determining that Application and not the appeal filed by Family Segen Barangsusrup. The appeal in the present matter against the Magistrates' Court decision dated 8 July 2021 therefore fails and must be dismissed.
17. It is unclear why the Magistrate stated in his Minute and Ruling dated 8 July 2021 that he had no jurisdiction to hear an appeal of a decision of another Magistrate as the subject decisions were both by the Malekula Island Court and he was not determining an appeal but an Application for stay of the Island Court decisions.
18. The appeal filed by Family Segen Barangsusrup in CAC 21/2166, however, remains on foot and must be heard. It appears that the Minute and Ruling dated 8 July 2021 has been understood to also apply to that appeal. It cannot. That appeal must be listed for hearing and heard by the Magistrates' Court.



E. Result and Decision

19. For the reasons given, this appeal is dismissed. The Magistrate's Minute and Ruling dated 8 July 2021 stands but applies only to the Application for a Stay filed by Family Rogan.
20. The appeal filed by Family Segen Barangsusrup in CAC 21/2166 in the Magistrates' Court against the Malekula Island Court decision dated 22 June 2021 remains on foot and must be heard by the Magistrates' Court.
21. Each party shall bear its own costs.

**DATED at Port Vila this 9th day of June 2022
BY THE COURT**

VM Trief
Justice Viran Molisa Trief

