

BETWEEN: Family Kalmet and Family Kaltatak
Appellant

AND: Family Kalmermer
First Respondent

AND: Johnston Kalman Tau and Rene Tain
Second Respondents

AND: Jack Kalon
Third Respondent

AND: Charlot Nawen Rutau
Fourth Respondent

AND: Customary Land Management Office
Fifth Respondent

Before: Justice Oliver A. Saksak

Counsel: Mr James Tari for the Appellants
Mr Silas C Hakwa for the First and Second Respondents
Mr Colin B Leo for the Third Respondent
Mr Kent T Tari for the Fourth Respondent
Mr Tom Loughman for Fifth Respondent

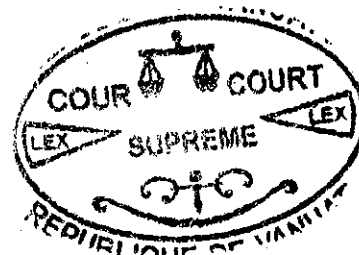
Date of Hearing: 2nd February 2024

Date of Judgment: 9th August 2024

JUDGMENT

Introduction and Background

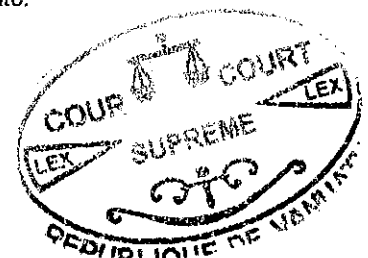
1. This judgment is formulated from the papers and submission as directed by the Court on 2nd February 2024.
2. Mr James Tari filed written submissions prior to the formal directions issued on 2 February on 16 January 2024.



3. Mr Hakwa filed the First and Second Respondent's Appeal Book on 4th March 2024 and filed legal submissions on 26 March 2024.
4. Mr Kent Tari filed written submissions in response for the Fourth Respondent on 15 February 2024.
5. The Attorney General filed written submissions for the Third Respondent.
6. It appears Mr Leo did not and has not filed any written submissions for the Third Respondent.
7. The appellants filed their Notice and Grounds of Appeal on 30th October 2023 against the entire judgment of the Island Court (Land) dated 15 October 2023 seeking orders that-
 - a) The whole decision dated 15 October 2023 be cancelled in accordance with section 47 (2) of the Custom Land Management Act No. 33 of 2013 (the Act).
 - b) Land Cases No. 23/2634 and 23/2635 currently proceeding in the Island Court (Land) be discontinued in accordance with section 47 (1) (a) of the Act, and
 - c) Costs of the appeal and any other orders as deemed fit.
8. Mr Hakwa filed an initial response opposing the appeal on 6th December 2023 asserting that the purported appeal was misconceived and should be dismissed in its entirety with costs on the started basis.

Facts

9. Family Kalmermer (First Respondent) filed an application in the Island Court (Land) pursuant to section 58 (1), (3) and (4) of the Act on or about 19 February 2015. It named Chief Andrew Bakoa Kalpoilep and Chief Jack Kalon and Maseimermerman as Defendants 1 and 2.
10. The applicant sought a review of the decision of the Eratap Land Tribunal dated 18th May 2004.
11. The application was filed out of time therefore Mr Hakwa filed a proper application to extend time on 2nd October 2023 to review the decision of the Eratap Customary Land Tribunal dated 18 May 2004 in Land Case No. 1 of 2004. This application was registered as Judicial Review Case No. 23/2634.
12. The second application for review was filed also on 2 October 2023 registered as Judicial Review Case No. 23/2635 seeking a review in the Efate Island Court (Land) of the decision of the Eratap Customary Land Tribunal dated 25 November 2003 in Land Case No.1 of 2003.
13. The Efate Island Court (Land) heard and determined the application to extend time in both Judicial Review Cases and its conclusion in paragraph 18 of the Judgment the Island Court granted leave to the applicants.
14. And in paragraph 19 of the Judgment of the Island Court Ordered in addition:-
 - a) that all necessary documents must be filed and served on all parties before the next Court date.*
 - b) That the Eratap Customary Lands Tribunal must produce minutes of what had transpired during the sittings of case No. 1/2003 and Case No. 1/2004 before the next Court date.*




c) That the application for review must be listed for hearing in the next session of the Island Court (Land) on Efate”

Discussion

15. Mr Hakwa submitted that this purported appeal is misconceived and should be dismissed. Mr Hakwa submitted that section 47 of the Act does not provide any right of appeal to the appellant. Counsel relied on the case of Philip Kalsuak v Billy Kalmay Tungulmanu CC 23/1197 VUSC. Counsel also submitted that the decision of the Island Court (Land) dated 15 October 2023 was an interlocutory decision and the applicants had not sought leave of the Court to appeal against it.
16. I accept Mr Hakwas’s submissions . Section 47 of the Act provides only for the Supreme Court's limited powers of supervision and it does not include any right of appeal. I accept also that the decision of the Island Court (Land) dated 15 October 2023 is an interlocutory decision and the appellants have not sought prior leave to appeal.
17. I accept the appeal is misconceived and premature and should be dismissed at this point. Accordingly the appeal is dismissed. There will be no order as to costs. Each party is to bear their own costs.

DATED at Port Vila this 9th day of August 2024

BY THE COURT


Hon. OLIVER A SAKSAK
Judge

