

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

Civil Appeal Case No. 20 of 2011

BETWEEN: ZAKIAS BATU LIVO
Appellant

AND: RACHEL VATARUL
Respondent

Coram: *Hon. Chief Justice Vincent Lunabek
Hon. Justice Bruce Robertson
Hon. Justice John von Doussa
Hon. Justice Daniel Fatlaki*

Counsel: *Mr. Tom Joe Botleng for the Appellant
Mr. Britien Yosef for the Respondent*

Date of Hearing: *14, 18 & 22 November 2011*

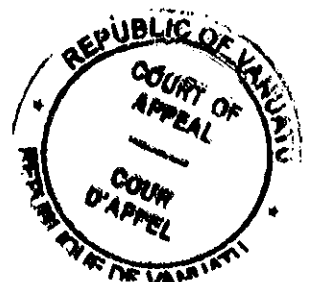
Date of Decision: *25 November 2011*

JUDGMENT

1. There was listed in the schedule for the current Court of Appeal session an appeal against the judgment of Justice Saksak delivered on 4 October 2011 in which Mr. Livo's claim was dismissed in its entirety.
2. We indicated at the call-over that we had some concerns as to whether the appeal could achieve the outcome which Mr. Livo was seeking and we invited counsel to consider the matter.
3. We were conscious that there were other proceedings between the parties which were occurring in the Supreme Court. Eventually on 22 November Mr. Botleng advised that he was not going to proceed with the appeal and accordingly it will be dismissed for want of prosecution.

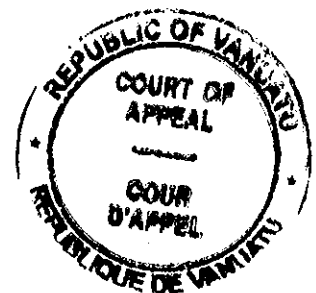


4. As the case is unusual it may be helpful if we indicate the areas which it became apparent to us are outstanding between the parties and in respect of which they want resolution.
5. David Vatu Livo died 23 March 2008. On 27 November 2009 letters of administration of part of his estate was granted to his sister the respondent in this case. The deceased's parents had seventeen children and then later in life the father Paul Livo took a second wife known as Letty Vovi Moli who came from the island of Aore. She was the daughter of the highest ranking paramount chief of Aore known as Lilou.
6. It appears not to be a matter of controversy that Letty Vovi Moli through a variety of circumstances was the customary owner of four sections on Aore Island. She took steps during her lifetime to ensure that they would in due course go to her daughter the current respondent.
7. What now appears to be controversial is the effect of various actions in the early 1980s. The respondent says she asked her brother David Vatu Livo to be her representative in respect of the custom land which was declared on a variety of occasions to be hers.
8. The appellant, who is one of the children of the deceased, contends that in the steps which occurred in the 1980s, 1990s and the first decade of this century, his father the deceased became the custom land owner of the four sections and that he was not holding them on behalf of his sister.
9. When David Vatu Livo died, Rachel applied for letters of administration in respect of the four listed land lease titles on Aore and nothing else.
10. Letters of administration are not the appropriate mechanism for the passing of customary land title but that was not the nature of contention



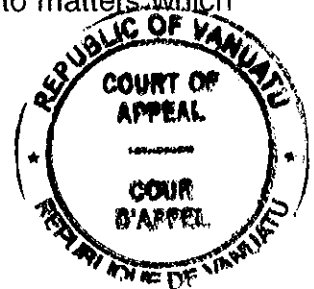
made in this case. The respondent argued that on the variety of occasions she had been declared to be the customary owner. All she was wanting to do with the letters of administration was to have the fact that they were in her brother's name in a representative capacity recognized and for a transfer now into her name. She did not want to administer the rest of her late brother's estate and never sought to do so. She was not asking for any determination about customary ownership because she said that was not an issue.

11. On the evidence before him Justice Saksak reached the only available conclusion namely that on the basis of various declarations which have been made on a number of occasions, the respondent was and always had been the custom land owner and was accordingly entitled to have the property in her name after her brother died.
12. What we understand the appellant now to say is that the various determinations which have previously been made were made, in error and not according to custom, and that the four sections were the property of David Batu Livo.
13. If that is the case the disposal of the land after his death is a matter for custom. If this matter is going any further it will require a formal challenge to the previous custom law determinations and the declarations which have been about custom ownership of the land.
14. Letters of administration are never going to be able to deal with that. There is some property of the deceased which apparently has not been dealt with which is not custom land and in respect of which the eldest son is able to take letters of administration and make distribution in accordance with the Queen's Regulation. We understand however the



bulk of the rest of the property of his later father was custom land and it will devolve according to custom.

15. It was only in the extraordinary historical circumstances of this case that the course adopted was available to achieve the end the respondent wanted. It was predicated always on the basis of the recognition and declaration of Rachel as the custom owner by a Joint Land Committee of which Chief Tom Rasu was the secretary and Chief Paul Hakwa the chairman in 1981 which concluded that the late David Paul Livo was not a claimant before them but only acted as a spokesman for his sister. He was to protect the land for her and on behalf of her children until they reached maturity.
16. There was a decision of the Supernatavuitano Council of Chiefs of 15 June 2005 which endorsed the 1981 decision. Finally a decision of the Area Land Tribunal in 2010 which reached the same decision as the Council of Chiefs and the Committee had previously that the respondent was the custom land owner of those lands in Aorere.
17. Justice Saksak, noting that there had been no challenge to the validity of the 2010 decision within six months after its delivery on 15 November 2010, was satisfied of the respondent's position in custom.
18. It is certainly unusual to have letters of administration in respect of part of an estate but, in the circumstances of this case, it is understandable because the respondent was seeking to protect only her interest.
19. We make no comment about the possibility that the appellant can now challenge or contradict the evidence which was available to the Supreme Court judge. An appeal to this Court was never going to advance his position. What he wants would involve an investigation into matters which



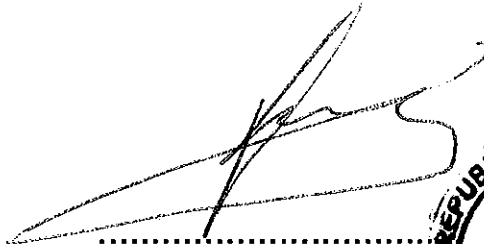
were not the issues determined by Justice Saksak. He will face serious time problems. There will be difficult issues of evidence and custom but they are not for us as an appeal Court.

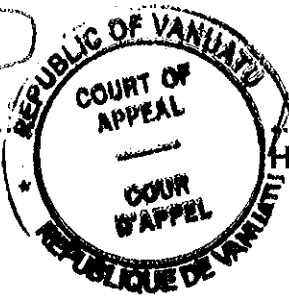
20. The appeal is dismissed.

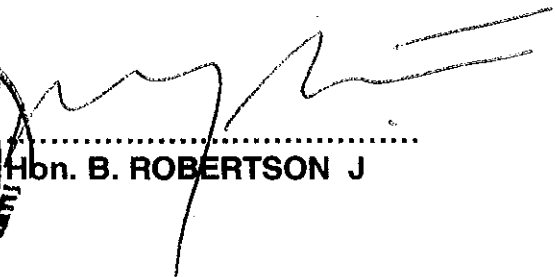
21. The respondent is entitled to costs as agreed or if necessary taxed between the parties.

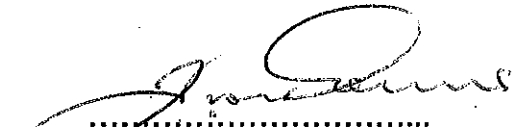
DATED at Port-Vila this 25th day of November 2011

BY THE COURT


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Hon. V. LUNABEK CJ


REPUBLIC OF VANUATU
COURT OF APPEAL
—
COUR D'APPEL
REPUBLIQUE DE VANUATU


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Hon. B. ROBERTSON J


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Hon. J. von DOUSSA J


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Hon. D. FATIAKI J