

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

CIVIL APPEAL NO. 17 OF 2011

BETWEEN: **AUGUST TALIBAN**
Appellant

AND: **ALAN WORWORBU AND
GEORGE WORWORBU as
representatives of Family Worworbu**
First Respondents

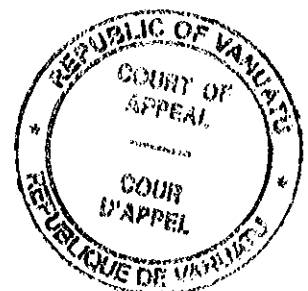
AND: **REPUBLIC OF VANUATU**
Second Respondent

Coram: **Hon. Chief Justice Vincent Lunabek**
Hon. Justice Bruce Robertson
Hon. Justice Jon von Doussa
Hon. Justice Robert Spear

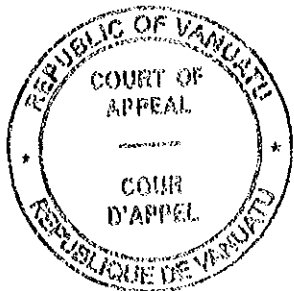
Counsel: **Mary Grace Nari for the Appellant**
Colin Leo for the First Respondent
Florence Williams for the Second Respondent

Hearing: **18 November 2011**
Decision: **25 November 2011**

JUDGMENT OF THE COURT

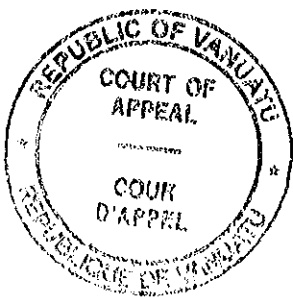


1. On 15 June 2009, the “*Batenja Village Land Tribunal*” (the “Land Tribunal”) declared Family Worworbu to be the true custom owner of land called *Batenja* or *Batenda*; which is land located in West Ambrym. The Craig Cove airport is located within that particular block of land. The Land Tribunal purported to act pursuant to the Customary Land Tribunal Act No. 7 of 2001.
2. Mr Taliban (the appellant) applied to the Supreme Court pursuant to s. 39 of the Customary Land Tribunal Act to cancel the decision of the Land Tribunal and for the dispute to be determined by a differently constituted land tribunal. The essential basis of his application was that the Land Tribunal was improperly constituted and that it had determined the matter in the absence of all the claimants to the land.
3. In a decision given on 19 July 2011, Fatiaki J dismissed Mr Taliban’s application on the grounds that Mr Taliban had “(*waived*) *his rights to object to the qualifications of the tribunal*” pursuant to section 26(2). The basis for Fatiaki J’s conclusion in that respect was the clear and determined refusal by Mr Taliban to attend the Land Tribunal hearing despite receiving ample notification of that hearing and even after being prompted by an emissary sent by the Land Tribunal requesting his attendance. Mr Taliban’s refusal to attend the Land Tribunal hearing was unquestionably a protest principally directed at (what he considered to be) the improper makeup of the tribunal.
4. Whether or not Fatiaki J’s reaction to Mr Taliban’s protest was an available outcome critically depends on whether the Land Tribunal was lawfully



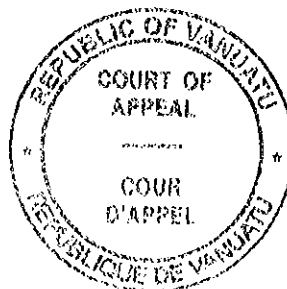
constituted under the Customary Land Tribunal Act. Fatiaki J did not address this issue notwithstanding that it was central to the application before him.

5. If the Land Tribunal was not lawfully constituted then Mr Taliban had nothing to which he needed to object.
6. While Mr Taliban could have appeared before the Land Tribunal and voiced his objection to any or all of the members of the Land Tribunal (pursuant to his rights under section 26 of the CLT Act), he will have lost nothing by staying away providing that it is eventually determined that the Land Tribunal was not lawfully constituted in the first place. It must be said that there are significant risks in the strategy adopted by Mr Taliban.
7. It was necessary for the Supreme Court to address the issue of whether the Land Tribunal was lawfully constituted before it could consider the consequences of Mr Taliban's decision not to attend the hearing and, more specifically, not to attend and voice his objection to the individual members of the Land Tribunal.
8. When a Court is faced with such an objection to the constitution of a land tribunal, it is necessary to have regard first and foremost to sections 35, 36 and 37 of the Customary Land Tribunal Act.
9. By those sections, the council of chiefs for a particular area (whether a custom area or custom sub-area) is required first to determine the boundaries of the area under its *customary regulation* (to adopt the terminology employed by s.3 of the Act). That council of chiefs is then required to



approve a list of those chiefs and elders who are considered qualified (as defined) and acceptable to adjudicate on disputes as to the boundaries or ownership of custom land within that area. These are mandatory requirements preliminary to but also essential to the establishment of any village land tribunal under ss 7 - 9.

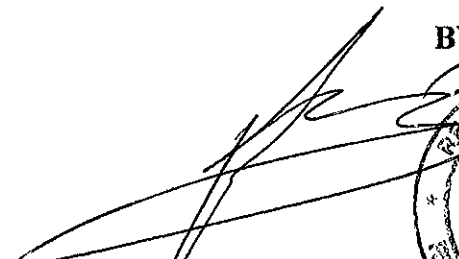
10. There are other requirements on the council of chiefs including: (1) to forward the list of approved adjudicators to the Secretary of the Island council of chiefs (for a custom sub-area, a copy is also to be sent to the secretary of the council of chiefs for the custom area to which the sub-area belongs); and, (2) the annual revision of that list. The importance of those two steps to the legitimacy of a particular land tribunal will depend on the circumstances of the individual case.
11. In order to determine whether this Land Tribunal was lawfully constituted, and accordingly whether its decision is valid, it will be necessary for the Supreme Court first to ascertain which particular council of chiefs had "*customary regulation*" over the land in question. Once that is established, it will then need to determine whether the members of the land tribunal in question were, in each case, drawn from the list of approved adjudicators compiled by that particular council of chiefs. Finally, it must be satisfied that the necessary procedural steps (the giving of public notice and suchlike) have been taken pursuant to ss 7 - 9. This is a different issue to whether a land tribunal has conducted itself correctly under Part 6 of the Act.

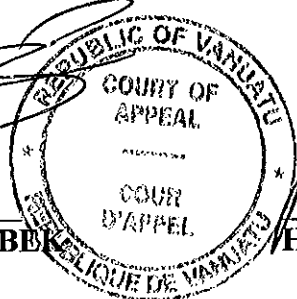


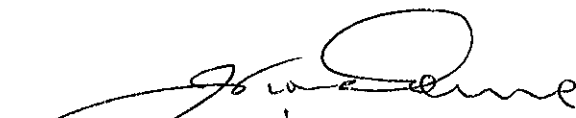
12. There is no option but for this case to be remitted back to the Supreme Court and for that Court to determine whether this Land Tribunal was indeed lawfully constituted under the Customary Land Tribunal Act.
13. For these reasons, the appeal is allowed and the decision under appeal is quashed. We remit the case to the Supreme Court for determination of the central issue raised by Mr Taliban; that is, was this land tribunal lawfully constituted pursuant to the Customary Land Tribunal Act. If it is found to have been lawfully constituted, the Supreme Court will then need to determine the consequences of Mr Taliban's refusal to appear and voice his objection to the individual members of the Land Tribunal pursuant to s. 26.
14. The appellant is entitled to costs to be taxed if not agreed. We direct that those costs be paid by the Second Respondent given the unfortunate turn that this case has taken through no fault of either the appellant or the first respondent.


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

BY THE COURT


Hon. Chief Justice V. LUNABEK


Hon Justice B. ROBERTSON


Hon. Justice J von DOUSSA


Hon. Justice R. SPEAR