

BETWEEN: TIMOTHY MOLBARAV, AMALI SOLOMON,
PETER NATU AND JAMES TAMATA AND
SINGO MOLVATOL of BOETARA FAMILY
represented by their straight blood sons JOHN
TARI MOLBARAV, LAUREN SOLOMON,
JEROME NATU, MATHEW TAMATA AND
MOSES MOLVATOL of Tebroma/Lopelope Village
and Tutuba Island, South East Santo, Vanuatu
Appellants

AND **THOMPSON WELLS**
First Respondent

AND: **THE REPUBLIC OF VANUATU**
Second Respondent

Coram: *Hon. Justice Bruce Robertson*
Hon. Justice Daniel Fatiaki
Hon. Justice John Mansfield
Hon. Justice Dudley Aru
Hon. Justice Mary Sey

Counsel: -*Mr Felix Laumae for the Appellant*
 -*Mr Colin Leo for 1st Respondent*
 -*Mr Frederic Gilu for 2nd Respondent*

Date of hearing: 15th November 2013

 21st November 2013

Date of judgment: 22nd November 2013

JUDGMENT

The Boetara family have applied for leave to appeal from the ex parte interlocutory order made in Supreme Court Civil Case 18 of 2012 on 2 April 2012. The Court restrained the Republic from releasing any funds held in trust on account of the custom owners of the Belparav land.

On 6 July 2012, the court adjourned an application to discharge that order.

On 30 September 2013, the Court again adjourned an application to discharge that order, and an application to summarily dismiss the action itself.

The Boetara family now apply for leave to appeal out of time from the orders of 2 April 2012 and 6 July 2012.

The Court has adjourned those applications to the next sitting of the Court of Appeal. The Supreme Court action, and related Supreme Court actions, are in active case management by Justice Spear. His last case conference was on 29 October 2013 and the next is on 29 November 2013. As Spear J. has indicated, the actions and the related actions, concern who are the custom owners of the Belparav land. The Veriondali Land Tribunal on 20 May 2005 (and clarified on 16 April 2012) decided that Boetara family are the custom owners of the Belparav land.

The issues still outstanding are whether there is outstanding any valid appeal from that decision to the Joint Custom Area Land Tribunal. If there is, then that Tribunal will decide the issue of custom ownership. When that is finally resolved, the funds held by the Republic can be released to the correct custom owners.

The Court of Appeal does not consider it appropriate at present to decide that issue. There are conflicting assertions by the parties. The material on the issue (it has been fully assembled) is not in the appeal book. That is understandable, as the application was brought on at short notice. It is an issue more properly assessed in the first instance by the Supreme Court. There is some suggestion in the material presented that the Joint Custom Area Land Tribunal was to conduct its hearing in July 2012, but was prevented from doing so by an injunction granted by the Boetara family, although they simply say in their submissions that there is no such appeal. There is no other information about the outcome of its hearing. The Court of Appeal should not decide contested factual issues as a first instance Court.

The Court notes, and appreciates, the cooperation of the parties and of the Republic in preparing the material before the Court so quickly. It also appreciates the efforts of their lawyers to fairly present to the Court the relevant material, and in particular the proper role of the Republic in providing the objectively relevant material to assist the Court.

However, for the reasons given, it is appropriate that Justice Spear continue the conduct of the Supreme Court matters, including by the Conference on 29 November 2013.

The Boetara family may seek to have their application relisted in the next session of the Court of Appeal, but obviously there are steps to be taken and material to be revealed before the matter can be ready for an appeal hearing.

DATED at Port-Vila this 22nd day of November 2013

BY THE COURT



Hon. Justice Bruce Robertson

