

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

Civil Appeal Case No. 30 of 2014

BETWEEN: CHIEF MALSANGAVUL
Appellant

**AND: LAMAP & LINGARAK JOINT VILLAGE
LAND TRIBUNAL**
First Respondent

AND: TONNY LONGA
Second Respondent

AND: REPUBLIC OF VANUATU
Third Respondent

Coram: *Hon. Justice Bruce Robertson
Hon. Justice Oliver Saksak
Hon. Justice Daniel Fatiaki
Hon. Justice John Mansfield
Hon. Justice Dudley Aru*

Counsel: *Mr. G. Boar for the Appellant
Ms. F. Williams and Mr. H. Tabi for the First and Third Respondents
Ms. P. Kaluatman for the Second Respondent*

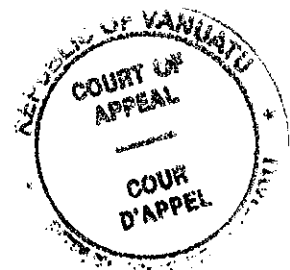
Date of Hearing: 7 November 2014

Date of Judgment: 14 November 2014

JUDGMENT

Introduction

1. The only proper Appellant in this case is Chief Lesley Malsangavul who was the second defendant in Judicial Review Case 29 of 2013 which is now the subject of this appeal. The other purported appellants have been removed. He appeals a decision of the trial judge made on 13 June 2014 quashing a declaration made by the Limap Lingarak Joint Village Customary Land Tribunal (LLJVCLT) on 26



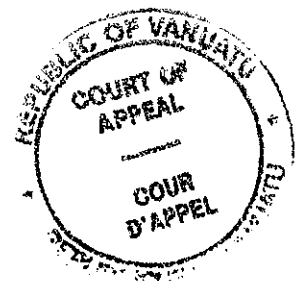
October 2007 which purportedly declared him as one of the custom owners of Bushman Bay land.

2. The Appellant's grounds of appeal are summarized as follows. First he says that the trial judge failed to provide him an opportunity to present his case. Secondly he says that by reviving the Second Respondent's claim in the court below, the trial judge failed to give any or sufficient weight to the length of time it took for the Second Respondent to lodge his claim for review and finally that by directing that the land the subject of the judicial review hearing be reconsidered under the Custom Land Management Act No 33 of 2013 (CLM Act) the trial judge erred in law in that s 5 of the CLM Act requires all parties to the dispute to agree to have the land claim determined under the CLM Act and only if there are still pending proceedings before the land tribunal for determination. That in this case there were no pending proceedings before any land tribunal.
3. The relief sought is first for the orders of 13 June 2014 to be set aside and a declaration that the LLJVCLT declaration of 26 October 2007 is still valid and effective.

Chronology of events

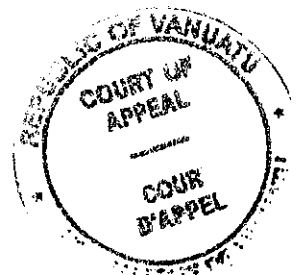
4. The following chronology of events is helpful in identifying the process of establishing the land tribunal to deal with the Bushman Bay land dispute and how events unfolded which led to the decision by the trial judge.

2003 – The chairman and secretary of the Malmetenvanu Island Council of Chiefs together with the chairman and secretary



of the Central Area Council of Chiefs went around the Central Custom Area where Bushman Bay custom land is located to make awareness and get the names of chiefs or elders qualified to be the adjudicators of land tribunals in the Central Custom Area.

- 2 April 2003 – The Malmetenvanu Island Council of Chiefs submitted the list of Chiefs of the Central Custom Area approved to sit in a land tribunal to the Lands Tribunal Office in Vila.
- 11 July 2006 – Chief Temo Saity informed the Lands Tribunal Office in Vila by letter that a conference was held with all the disputing parties of the Bushman Bay custom land and they resolved that the dispute must go to a joint village land tribunal. The matter then went to the Louni , Uripiv, Vinamavis, Potindir and Litzlitz Village Joint Land Tribunal. The chairman of this joint village land tribunal was Chief Johnathan Edwin of Litzlitz village and Secretary Telwien Otel of Uripiv Island.
- 4 June 2007 – The chairman of the LLJVCLT, Chief James Bangsuk put up a notice for anyone who has an interest in Metabon land to submit their claim to him.
- 14 June 2007 – All adjudicators of the Louni , Uripiv, Vinamavis, Potindir and Litzlitz Joint village Land Tribunal who were to adjudicate the dispute of Busman Bay land resigned.

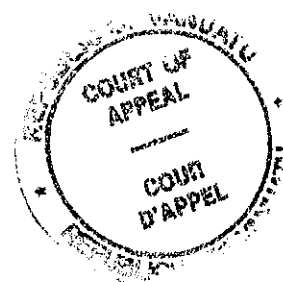


26 October 2007 – The LLJVCLT made a declaration that the paramount chief Lesly Malsangavul and chief Leonard Daniel together with the other chiefs that each has a nasara in Sachan are the true custom owners of Bushman Bay land.

13 June 2014 – The Supreme Court in its Oral Judgment quashed the tribunal's declaration of 26 October 2007 and further ordered that the matter be re determined by a differently constituted tribunal in accordance with the CLM Act.

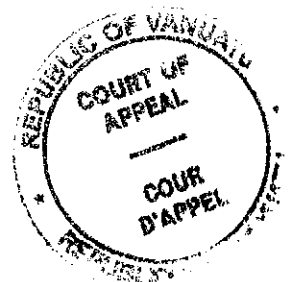
Civil Case 184 of 2009

5. Without going into the details of this case, all that needs to be said is that this was the first attempt by one Charlie Kaun who is not a party to this appeal to challenge the LLJVCLT declaration of 26 October 2007 but was eventually struck out by Fatiaki J because of non-compliance with orders of the court. The matter was never fully heard.
6. Following the striking out of CC 184 of 2009, the Second Respondent filed proceedings on 12 December 2013 which are currently the subject of this appeal. This was the second proceeding challenging the LLJVCLT declaration of 26 October 2007.
7. The First and Third Respondents in their defence conceded that the LLJVCLT declaration of 26 October 2007 was made by an improperly constituted tribunal and that the dispute should be redetermined under the CLM Act.



8. The trial judge in quashing the LLJVCLT declaration of 26 October 2007 said in his Oral Judgment on 13 June 2014 that:

- "1. In this proceeding Mr Tonga (sic) seeks an order that the declaration of the first defendant Tribunal be quashed because the tribunal was improperly constituted. He seeks a further order that the land dispute be re determined by a differently constituted land tribunal.*
- 2. The claim was filed on 12 December 2013 and there were some initial procedural difficulties. To remedy those I formally grant a renewal of the claim pursuant to rule 4.15.*
- 3. Once the first and third defendants were served with the claim a defence was filed by the Solicitor General on 20 May 2014. In paragraph 10 of that document, the Solicitor General concedes on behalf of her clients that the declaration of 26 October 2007 was made by an improperly constituted tribunal and agrees with the claimant that the dispute should be re determined in accordance with the new legislation the Customary land Management Act [CAP 33] of 2013.*
- 4. Because the application for judicial review was not lodged within 6 months of the decision in question it is necessary for the court to extend time to permit the filing of the claim. On the oral application of Mr Vira today I grant that application for the obvious reason that not only does substantial justice required that but it overwhelmingly requires it since effectively the tribunal itself, through the Solicitor General, agrees that its decision was wrong in the sense that the tribunal was improperly constituted and therefore unable to come to a correct decision.*
- 5. I formally quash the Tribunal's decision of 26 October 2007 and make a further order that the land dispute be re determined by a differently constituted land tribunal in accordance with the new legislation."*

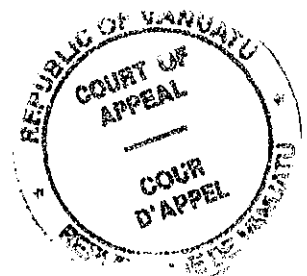


Discussion

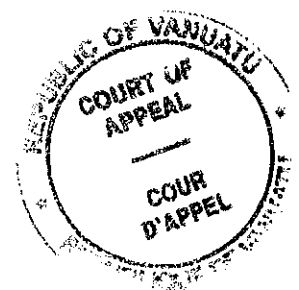
9. Essentially the main issue is whether the LLJVCLT was lawfully constituted when it made its declaration of 26 October 2007 . Flowing from this is the issue as to whether or not the trial judge erred in quashing that declaration. The Customary Land Tribunal Act [CAP 271] sets out the requirements for the establishment and functioning of the land tribunals. This court in *Taliban v Worworbu* [2011] VUCA 31 said at paragraph 11 of its judgment that:

"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."

10. Mr Boar in his submissions has not been able to identify any evidence that shows that the LLJVCLT was lawfully constituted when it made its declaration of 26 October 2007 despite repeated requests to him from the bench. He conceded in the end that the only ground he relies upon is that the Appellant was not given an opportunity to be heard by the trial judge before the LLJVCLT decision was quashed.



11. The Second Respondent who was the claimant in the court below in his proof of service deposes that he served the claim upon the Appellant through his solicitors Leo Lawyers on 16 December 2013. Despite being served with the claim there is no evidence before us that a defence to the claim was filed by the Appellant.
12. On 4 April 2014 Daniel Yahwa appeared for the Appellant before the trial judge as recorded in the Judge's minute. It was further noted in the minute that three and a half months had lapsed since the filing of the claim and that there was no evidence of service. That unless steps were taken by 17 April 2014 the file would remain closed.
13. On 28 April 2014 there was no appearance by the Appellant before the trial judge when the matter was called. It was noted by the trial judge in his minute that the State Law Office had been served but that no application to renew the claim had been filed. This was re emphasized to the claimant's Counsel who was the only one present on that day.
14. On 4 June 2014 again there was no appearance by the Appellant when the matter was called and the trial judge noted in his minute that the First and Third Respondents had filed their defence and sworn statement and conceded that the LLJVCLT declaration of 26 October 2007 was made by an improperly constituted land tribunal. The matter was then listed for conference on 13 June 2014 for appropriate orders.
15. The Appellant was again not in attendance on 13 June 2014 when the trial judge quashed the LLJVCLT declaration of 26 October 2007. It is clear that since the




Appellant was served with the claim on 16 December 2013, six months had lapsed without the Appellant doing anything. This is more than ample time within which he should have taken the appropriate steps to be heard.

16. For these reasons the appeal must be dismissed. The Respondents are entitled to costs to be taxed if not agreed.

Dated at Port Vila, this 14th day of November, 2014.

BY THE COURT


Justice Bruce Robertson

