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

Civil Appeal Case No. 09 of 2015

BETWEEN: RICKY TORO & TONY TORO
Appellants

AND: REPUBLIC OF VANUATU
Respondent

Coram: ***Hon. Justice Bruce Robertson***
Hon. Justice Oliver Saksak
Hon. Justice Daniel Fatiaki
Hon. Justice John Mansfield
Hon. Justice Mary Sey
Hon. Justice Stephen Harrop
Hon. Justice David Chetwynd

Counsel: ***Mary Grace Nari for the Appellants***
Christine Lahua for the Respondent

Date of Hearing: ***Tuesday 14th July 2015***
Date of Judgment: ***Thursday 23rd July 2015***

JUDGMENT

Introduction

1. This is an appeal against the ruling of the Supreme Court dated 9th February 2015 whereby the primary Judge struck out the claim of the appellants in Judicial Review Case No. 14 of 2014 on the basis that the appellants lacked standing.

2. The appeal is advanced on two main grounds that the primary Judge erred in fact and law –

   (a) By striking out the claim through an interlocutory process without fully hearing the claim and allowing formal proof into the issue of standing; and

(b) By striking out the claim without giving the appellants as claimants, the opportunity to present all their evidence relating to their standing.

Background

3. By way of background –

(a) The appellants had filed a Judicial Review Claim on 8th July 2014 claiming two mandatory orders: first, to enforce a determination by the Valuer-General dated 2nd July 2007 pursuant to Section 43(2) of the Land Leases Act [CAP.163] and second, to require the Director of Lands to rectify the lessor's name by entering Family Toro's name as lessor in place of the Minister on the lease register in respect to Lease Title No. 12/0633/410, ("the 410 Lease").

(b) On 24th September 2014, the Republic (as defendant) filed an application seeking to strike out the judicial review claim on the basis that the appellants as claimants were not the declared custom-owners of land on which the 410 Lease is situated.

4. When this appeal first came on for hearing on 6th May 2015 the Court stood the appeal over to this session of the Court of Appeal sitting because much additional information was required. The Court issued a Memorandum on 8th May 2015 seeking assistance of all parties in providing original maps and documents relating to LAVISKONI custom land area in good time before the hearing of the appeal.

5. In compliance with that request the appellants filed a sworn statement by Teriki Paunimanu Mantoi Kalsakau III on 4th June 2015 annexing amongst others, 5 maps, and a sworn statement by Russell Nari filed on 24th June 2015 annexing 2 other maps.

6. The respondent filed two sworn statements by Gordon Arnhambat on 9th July 2015 and by the Director of Lands, Jean-Marc Pierre on 10th July 2015. The latter

annexes a Pre-Independence Plan No. 78 showing old title 57I which comprises Laviskoni land.

7. This additional information is extremely helpful not only to this Court but also to the parties and, if the appeal is allowed, it will be very helpful to the primary Judge. When the appeal was called for hearing on 14th July 2015 the Court asked Mrs Nari as to what specific relief the appellants were asking from the Court. Mrs Nari asked that the matter be sent back to the primary Judge for the hearing of the judicial review claim and for an interpretation of section 99 of the Land Leases Act as to how it operates.

8. Ms Lahua argued that the appellants did not produce sufficient evidence to show they have an arguable case. Counsel further submitted that the Council of Ifira that made the declaration of ownership of Laviskoni land in favour of the appellants in 1999 was not a competent court or tribunal to determine ownership of customary land. Further, counsel argued that the boundary of Laviskoni is still uncertain.

Consideration

9. In our view the issues raised by counsel for the respondent are substantial issues for argument in the Supreme Court when the judicial review claim is heard. This includes consideration of section 99 of the Act.

10. In the judgment under appeal the judge was not required to and did not consider section 99 of the Act and therefore it is not necessary for this Court to embark on the interpretation of the section at this stage and how it operates or should operate.

11. All the primary Judge was obliged to do was consider the pre-requisites prescribed in rule 17.8(3) of the Civil Procedure Rules No. 49 of 2002 (the Rules) which states –

"(3) The judge will not hear the claim unless he or she is satisfied that:

(a) The claimant has an arguable case; and

(b) The claimant is directly affected by the enactment or decision; and

(c) There has been no undue delay in making the claim; and

(d) There is no other remedy that resolves the matter fully and directly."

12. That is an interlocutory process within a judicial review proceeding. It was during this process that the primary Judge held the appellants had no standing to bring the action and struck out the claim. The appellants now contend that the Judge was wrong in fact and in law in doing so.

13. We accept the appellants' contention for these reasons: first, standing is not a criteria or pre-requisite under rule 17.8(3), but it may be a matter going to whether there is an arguable case. Secondly, we note in the ruling the Judge recorded at [5] thereof that:

"Both parties accept that on 30th November 2005 the IVLT declared Family Toro as the custom owners of Laviskoni land...."

Thirdly, from the materials now before us, it is apparent that since November 1999 when the declaration was initially made until November 2005 when it was reconfirmed and thereafter, there had (and still have been) no appeals against that declaration.

14. In our view the appellants' interests as declared custom owners of part of Laviskoni land provides adequate justification and standing to the extent that they have an arguable case and as such they are entitled to have their day in Court.

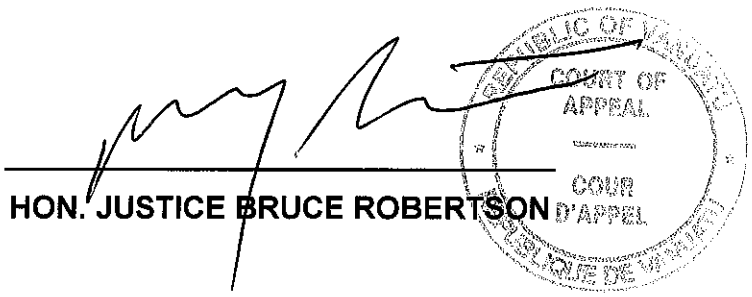
Result

15. We therefore allow the appeal and set aside the ruling of 9th February 2015. We remit the matter back to the Supreme Court for the primary Judge to fix a date for the hearing of the judicial review claim of the appellants.

16. Costs in the cause.

DATED at Port Vila this 23rd day of July 2015.

BY THE COURT



HON. JUSTICE BRUCE ROBERTSON