

**BETWEEN:**           **GIDEON ROCROC**  
                                  **(Representing the Family Vuster Dame)**

**Appellant**

**AND:**                 **SARLO ROCOS**  
                                  **NORE FRANK**  
                                  **DANIA FRANK**  
                                  **BUNA FRANK**  
                                  **SCOTAIR PALAU**  
                                  **NICLOA FRANK**  
                                  **CRASEA ALGUET**  
                                  **MORRIS ALGUET**  
                                  **MAXIM PAULO**  
                                  **ELI PAULO**  
                                  **KRISANT FRANK**  
                                  **(Representing the Family Alget and the Family Paulo)**

**First Respondents**

**AND:**                 **TANIS LAS FRANK**  
                                  **LOUIS TIOMER**  
                                  **DOMINIQUE REP**

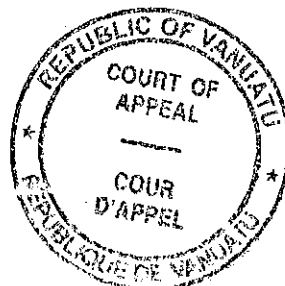
**Second Respondents**

**Coram:**             ***Hon. Chief Justice Vincent Lunabek***  
                                  ***Hon. Justice John von Doussa***  
                                  ***Hon. Justice Raynor Asher***  
                                  ***Hon. Justice Dudley Aru***  
                                  ***Hon. Justice David Chetwynd***  
                                  ***Hon. Justice Gus Andrée Wiltens***

**Counsel:**           ***Mr. B Livo for the Appellant***  
                                  ***Mr S Stephen for the Respondents***

*Date of Hearing:*    **17 April 2018**

*Date of Judgment:* **27 April 2018**



# JUDGMENT

1. This is an appeal against the decision of the Supreme Court dated 3<sup>rd</sup> October 2017. It concerns customary land known as Lathmav Sigon situated at Port Olry, East Santo. In October 2005 the East Santo Island Lands Tribunal deliberated on a dispute about the customary ownership of the land. The Tribunal decided part of the land belonged to Chief Bonaventure Frank and Chief Gratien Eugen and the Family Okome and Alguet; part belonged to Chief Gideon Rocroc and Family Vuster Dame and the remainder belonged to Chief Leone Katly, Noel Relie and Judah and Family Lankos. A written decision to that effect is dated 3<sup>rd</sup> November 2005.

2. The parties to this appeal do not dispute the correctness of the tribunal decision. None of the parties to this appeal seek to upset or vary the East Santo Island Lands Tribunal decision as to the customary ownership of any part of Lathmav Sigon.

3. The East Santo Island Lands Tribunal described the boundaries to the various pieces of land. The land belonging to Chief Bonaventure Frank and Chief Gratien Eugen is described as having the following boundary:

*"I stat long main beach. (Lathmav Sigon) long East Makem A mo iron West folem hill I go long hill long Counsel Haos I go antap West long bush long second step hill long L'Vatao long West, makem B mo I folem second step hill I go long North kasem greek long hill maken C. Long point C I kam taon long East folem greek long hill kam kasem Primary School long main beach (Lathmav Sigon) mo Aelan Malneth, makem D. Long point D I go long South ward stret long main beach (Lathmav Sigon) makem A stating point.*

4. The boundary of the land belonging to Chief Gideon Rocroc has the following boundary description:

*"I stat long main beach. (Lathmav Sigon) long East Makem A mo iron west folem hill I go long hill long Counsel Haos mo I go antap long hill long bush long second step hill long L'Vatao long West makem B mo I folem second step hill igo long South kasem OBA hill makem E. Long point E I kam taon long Easterly kasem Yeth Sing pakul I continue easterly kasem natora stone makem F, mo long point F I go long aelan Malvuel makem G. mo I go long Northerly direction stret long point liong beach (Lathmav Sigon) stating point."*

5. There is also a sketch map attached to the East Santo Island Lands Tribunal decision. On it are marked the various points A, B, C etc. which are mentioned in



the written description of the boundaries. The boundaries are not drawn on the sketch map as rigid straight lines. They show a wavy path which seems to indicate they follow the contours of features mentioned in the written descriptions such as the "second step hill".

6. The parties to this appeal do not disagree the written descriptions of the boundaries accurately describe the boundaries between the different pieces of land. The parties accept the sketch map as a correct representation of the boundaries.

7. What the parties cannot apparently agree is where these boundaries are on the ground and in particular the east west boundary between the land accepted as belonging to Chief Bonaventure Frank and Chief Gratien Eugen and that to the south accepted as belonging to Chief Gideon Rocroc. The latter claims the respondents have encroached on his land and carried out "tourism activities" namely the building of bungalows and a restaurant.

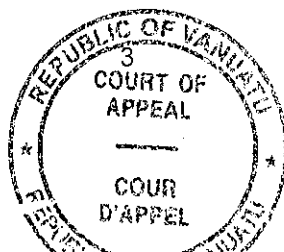
8. He filed a claim in the Supreme Court seeking vacant possession of his land, injunctions preventing further work by the respondents on his land and damages. The claim was filed in 2012 but was initially struck out in 2013 because the appellant's then counsel failed to attend court. The claim was re-instated, on terms, in January 2016.

9. On 19<sup>th</sup> April 2016 the Supreme Court made an order that the claimant (the appellant in this matter) file sworn statement(s), "as to the boundary" and leave was given to the defendants to file sworn statements in response. A further conference was listed. According to the judgment appealed, the Supreme Court then identified a preliminary legal question. The question was whether the Supreme Court had jurisdiction to determine the boundary of the lands and if not, which court had the jurisdiction to do so. The Court ordered further written submissions on the issue identified. The appellant did not comply with that order but the respondent did. The Judge in the Court below published his written decision on 1<sup>st</sup> November 2017.

10. He found that the Supreme Court had no jurisdiction to determine where the boundary of the dispute lies. The Judge said that it was a matter for the Land Tribunal that made the determination on 3<sup>rd</sup> November 2005. He dismissed the appellant's claim and vacated the injunctive order he had made in August 2017. He also ordered costs against the appellant.

11. The reasoning behind the decision was set out at paragraph 4 of the judgment:

*"Section 47(4) of the Customary Land Management Act No. 33 of 2013 is very clear on the subject of this Court's jurisdiction. It states:-*



"(4) To avoid doubt, pursuant to Article 78 of the Constitution, the Supreme Court and all other Courts have no jurisdiction to determine matters related to land ownership or land disputes.

(5) All matters related to land ownership or land disputes must be referred to a nakamal or a custom area land tribunal for determination in accordance with the provisions of this Act."  
(emphasis added)."

12. His Lordship did not set out Article 78 but it is, for the sake of completeness, set out below. Following the passing of the Constitution (Sixth) (Amendment) Act No.27 of 2013 in December 2013, Article 78 reads:-

**"78. Customary institutions to resolve land ownership and disputes**

(1) Parliament by enactment shall formalise the recognition of appropriate customary institutions or procedures to resolve land ownership or any disputes over custom land.

(2) Parliament may recognise an institution as a customary institution by enactment for the purposes of subarticle (1).

(3) Despite the provisions of Chapter 8 of the Constitution, the final substantive decisions reached by customary institutions or procedures in accordance with Article 74, after being recorded in writing, are binding in law and are not subject to appeal or any other form of review by any Court of law.

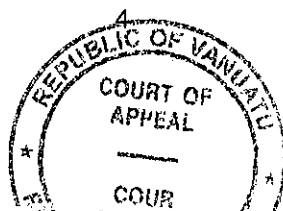
(4) Subarticle (3) does not apply to any matter being referred to a Court before the commencement of this amendment.

(5) Where consequent to the provisions of this Chapter there is a dispute concerning the custom ownership of land the government may hold such land and manage it in the interests of disputing parties until the dispute is resolved."

13. It is also pertinent to set out the definition of land dispute found in the Custom Land Management Act No 33 of 2013:

**"land dispute** means a dispute between two or more indigenous citizens or groups about the ownership of custom land"

14. Taking all the relevant legislation into account the Judge in the Court below was quite correct in saying that the Custom Land Management Act precludes the



Supreme Court from determining matters related to land ownership or land disputes. However in the case before us there is no land dispute. The parties all agree the East Santo Island Lands Tribunal decision as to ownership of and the boundaries between the various pieces of Lathmav Sigon land is correct. They do not dispute that decision. What they cannot agree is where those boundaries are on the ground. What the appellant is therefore trying to do is enforce the decision of the East Santo Islands Land Tribunal.

15. The provisions as to enforcement of a lands tribunal decision are to be found in the Civil Procedure Rules. Rule 16.25

***"16.25 Claim for enforcement***

*(1) A person who wishes to enforce a decision of a land tribunal may file a claim in the Supreme Court.*

*(2) The claim must:*

*set out the decision, the date it was made and who made it; and*

*name as defendant the person against whom the decision is to be enforced; and*

*state in what way the defendant is not complying with the decision; and*

*set out the orders asked for; and*

*have with it a sworn statement in support of the claim.*

*(3) The sworn statement must:*

*give full details of the claim; and*

*have with it a copy of the record of the decision; and*

*state that:*

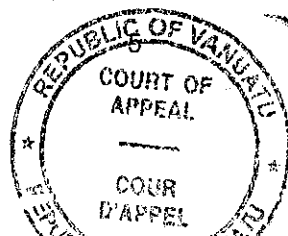
*the time for an appeal from the decision has ended and no appeal has been lodged; or*

*an appeal was made but was unsuccessful.*

*(4) The claim and sworn statement must be served on the defendant.*

*(5) A defence filed in the proceeding must not dispute anything in the record of the decision.*

*(6) If the court is satisfied that the defendant is in breach of the decision, the court may make an enforcement order."*



16. There is no suggestion from the respondent in this appeal that the claim lodged by the appellant in 2012 was defective in some regard in respect of the provisions of Rule 16.25. Nor is there any challenge to the claim's validity as an enforcement claim in the defendant's submissions to the Court below. The challenge to the Court's jurisdiction was on the basis that the claim was "*akin to appealing the East Santo Land Tribunal*". The defendant noted the Customary Land Tribunal (Repeal) Act 2013 and referred to the provisions of section 47(4) of the Custom Land Management Act.

17. Finally the defendant cited section 5(3) of the Custom Land Management Act and said that the defendant did not consent to the Supreme Court continuing to have jurisdiction. That submission turned section 5(3) entirely on its head. The section says that if at the time the Custom Land Management Act came into force (in February 2014) there were proceedings pending in either the Supreme Court or an Island Court those proceedings could not be dealt with under the *new* provisions of the Custom Land Management Act. The section does not say all parties must consent to proceedings *remaining* in either the Supreme Court or the Island Court.

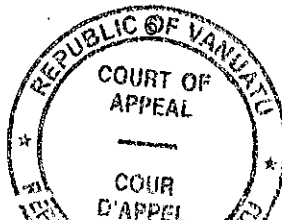
18. The judgement appealed clearly says the claimant did not file submissions on the preliminary question. However, there are submissions in the appeal book at page 54. The filed stamp shows they were not lodged until 3 pm on 30<sup>th</sup> October. With such a last minute filing it is likely the Judge did not see the submissions. Even if he did they were unhelpful.

19. It is clear that both the appellant and the respondents made no mention of the enforcement provisions in Rule 16.25. Both assumed that a failure to agree the exact position on the ground of boundaries which they accept were correctly described in the East Santo Island Lands Tribunal decision and shown on the sketch map, was a land dispute. As a result the Judge in the Court below was misled and wrongly dismissed the claim.

20. The correct position is that the boundaries fixed by the Lands Tribunal are accepted. There is no land dispute. There is a dispute about where features and structures are in relation to the boundaries. That is something the Supreme Court can determine if provided with proper survey evidence comparing the features in question with the boundaries.

21. The appeal is allowed and the decision dated 1<sup>st</sup> November 2017 is quashed. The claim is to be returned to the Supreme Court so that the decision of the East Santo Island Land Tribunal can be enforced.

22. We stress that this is not an invitation to the parties to renew arguments over the definition of the boundaries. The evidence will be restricted to evidence showing where the boundaries, as described by the East Santo Islands Land Tribunal are on



the ground. The parties will need to produce evidence matching the location of the boundary on the ground with the descriptions in the Land Tribunal decision. They will no doubt need the assistance of professional surveyors and/or cartographers to do that. It was mentioned during the appeal that there is a sworn statement made by one of the members who sat on the Land Tribunal in 2005. There was no copy in the appeal book so it is not known what was said. It will be a matter for the Supreme Court Judge as to what evidence or assistance he would like from the Land Tribunal. It may be by further sworn statements from the members or a reference back to them. Again it is stressed, this would not be to ask them to decide anew as to where the boundaries are, it would be to ask them to clarify the descriptions of the boundaries referred to in their decision.

23. As to costs, although the appeal has succeeded, the Supreme Court decision has been quashed, it was not for the reasons advanced in the Notice of Appeal. In all the circumstances the parties to the appeal will bear their own costs of the appeal. As to the costs in the Supreme Court, they will be a matter for the Supreme Court.

**DATED at Port Vila this 27<sup>th</sup> day of April, 2018.**

**BY THE COURT**

**Hon. Vincent LUNABEK**  
**Chief Justice.**

