

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**  
(Civil Jurisdiction)

Consolidated Civil Case No  
46 and Civil Case No 26 of  
2006

**BETWEEN: Zacharia Daniel  
C/- Sanma Provincial  
Government Council  
Luganville  
Santo**  
**First Claimant**

**AND: Bensive Tosu  
Representing Family Tsou**  
**Second Claimant**

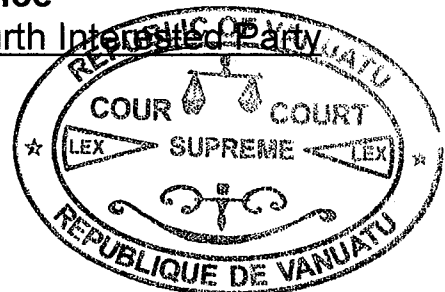
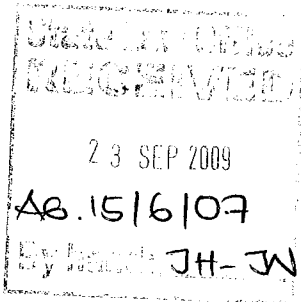
**AND: Supenatavui Tano Island Land  
Tribunal  
Luganville  
Santo**  
**First Defendant**

**AND : The Santo Island  
Land Tribunal**  
**First Interested Party**

**AND: The Supenatavui Tano  
Council of Chiefs**  
**Second Interested Party**

**AND: The Co-ordinator Lands  
Trubunal office**  
**Third Interested Party**

**AND: Family Toserekite  
Santo  
Sanma Province**  
**Fourth Interested Party**



**AND: Chief Philip Messer  
Natawa Village  
East Santo**

Fifth Interested Party

**AND: Family Rukon Perei**

Sixth Interested Party

**AND: Family Emil Sar**

Seventh Interested Party

### In Chambers

J.L. Dawson – Master

Counsel: Mr Willie Kapalu (for Mr D.Yawha)

Mr Stephens for First Defendant  
and Fourth and Fifth Interested Parties.

~~Mr Justin Ngele, State Law Office~~

Date of Hearing: 10 August, 2009

Date for Determination: 18<sup>th</sup> August 2009

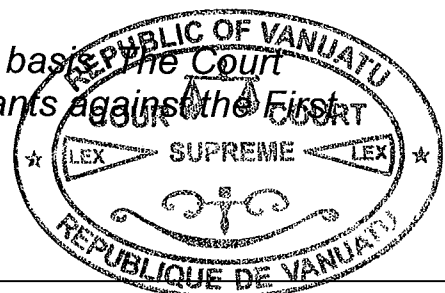
## DETERMINATION

### Background

(1) This is a taxation hearing matter concerning costs charged by Counsel for the Claimant as the successful party pursuant to a ruling of Justice Saksak dated 12<sup>th</sup> August 2008

Mr Justice Saksak delivered the judgment in this case and made the following order:

*The Claimants requested costs in an indemnity basis and the Court grants an order for costs in favour of the Claimants against the First*



*Defendant, the Fourth and Fifth Interested Parties, but it will be on the standard basis to be agreed, if not be determined by the court.*

(2) Following the ruling of the court on 12<sup>th</sup> August 2008, a Statement of Costs was forwarded by Counsel for the Claimant to the respective defendant and interested parties.

### (3) Issues

For consideration in this Determination.

- Whether each item of work listed in the statement of costs, and its time and costs allocation, was reasonable.
- Whether each item was necessary for and related to the proper conduct of proceedings.
- Whether the itemized disbursement claims should be allowed as necessary for the conduct of the case and supported by appropriate documentary evidence.

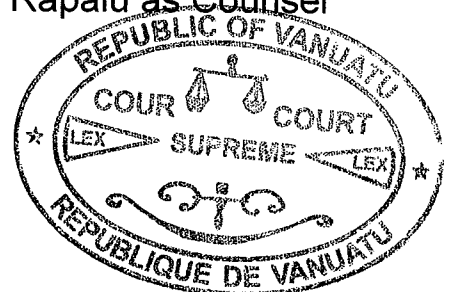
Considering the first two aspects:

### (4) Fairness and reasonableness of cost claimed and necessity for and related to proper conduct of proceedings.

The Statement of Costs sets out each item of work done, in its order of completion.

It may be observed that the statement of Costs in this matter does not wholly comply with Rule 15.7. (3) (a) in that the various items are not numbered consecutively. For the purpose of this Determination, numbers have been allocated to each item of work, numbering items from 1-18 to correspond with work dated 1/9/06 – 12/8/08. The hourly rate is not specifically stated, but clearly is that of VT 10,000.

(5) At the hearing of this matter, Counsel for the First Defendant and Fourth and Fifth Interested Parties submitted that sums in relation to items of work numbered 1-8 (1/9/06 – 9/5/07) should not be claimed, given the decision of Saksak J on 1<sup>st</sup> June 2007 as to the Default Judgment. Such submission was accepted by Mr Rapalu as Counsel for the Claimant.



It was further noted by Counsel for the First Defendant and the Fourth and Fifth Interested Parties that the Sum of VT 34,500 is held on account by the Claimants lawyers.

In view of all these factors, and the decision of Saksak J. in which the Default Judgment was vacated in its entirety, claims in respect of all items of work numbered 1-8 (1/9/06 – 9/5/07) are disallowed.

(6) As regards the work activities described in items 9-18 (9/5/07 – 12/8/08). The rate of VT 10,000 is reasonable and it would appear that the time allocation for all matters listed is also reasonable. This is particularly so given the length of proceedings in this matter. All work activities listed above could also be said to be necessary for and related to the proper conduct of proceedings.

Accordingly the sums claimed in respect of items 9-18 amounting to VT 125,000 are allowed.

#### **(7) Claims for Disbursements.**

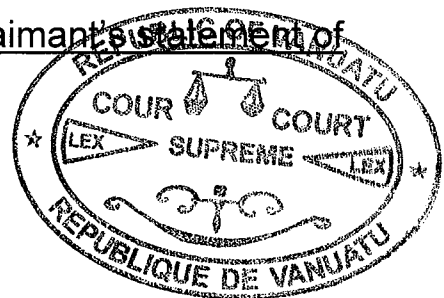
The Statement of Costs lists a number of claims for disbursements. It is accepted that in proceedings of this length, disbursements will have been incurred as items of expenditure necessary to the conduct of the case.

However it must be strongly emphasized that disbursement claims should be justified by the production of receipts or some form of documentary evidence.

At the hearing for the determination of costs in this Matter, it was agreed and ordered that:

- The Claimant will within 21 days file and serve Sworn Statements showing receipts in respect of their disbursements, and that
- The First Defendant, Fourth and Fifth Interested Parties will within 14 days thereafter file and serve their responses and/or objections. The Sworn Statement of Zacharia Daniel in support of assessment of cost was filed and served on 2<sup>nd</sup> September 2009.
- No response and/or objection to the same has been filed and served by the First Defendant, Fourth and Fifth Interested Parties.

Accordingly, claims for disbursements in the claimant's statement of Costs to be addressed as follows:



Court filing fee	VT 20,000 allowed
Air fares	VT 81,000 allowed
Transport fee	VT 37,000 allowed
Telecard fee	VT 1,000 allowed
Accommodation and food	VT 1,500 allowed
Stationary	VT 20,000 allowed
<b>Total Sum of disbursement</b>	<b>VT 160,500 allowed</b>

All Claims for disbursement not supported by documentary evidence have been disallowed for reasons set out above.

**(8)** In the Application for Determination of Costs, the Claimant sought an order for the costs of this application. The Sum of VT 5,000 is awarded as Costs of the application.

**(9)** After taking into account the factors referred to in paragraphs 6 and 7 herein, the submissions of counsel and the court file relating to this matter, it is the view of this court that the appropriate sum of costs payable by the First Defendant and the Fourth and Fifth Interested Parties to the Claimant pursuant to the ruling of Justice Saksak is the Sum of VT 290,500.

DATED at Port Vila this 18<sup>th</sup> day of September, 2009.

BY THE COURT.

  
 J.L. DAWSON  
 Acting Master

