

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

Civil Case No. 79 of 2010

BETWEEN: JOELY ASAIAH SARIPAN
Claimant

AND: FAMILY WORWORBU
First Defendant

AND: THE GOVERNMENT OF THE
REPUBLIC OF VANUATU
Second Defendant

Coram: Justice D. Fatiaki

Counsel: Mr. J. Kilu for the Claimant
Mr. C. Leo for the First Defendant
Mr. J. Ngwele for the Second Defendant

Date of Decision: 25th August 2010

RULING

1. This matter has come before this Court pursuant to an order of the Magistrates Court dated 9 June 2010 in the following terms:

"ORDER

This matter came before this court by way of a Magistrates Court claim filed on 2 October 2009, seeking the following orders:

1. *An order staying the Judgment of Ranu Village Lands Tribunal dated 15 June 2009 pending the appeal to the next level of that tribunal;*
2. *An order restraining the Government from effecting any compensation payments to any of the disputing parties of their family members, or agents or representatives pending the Tribunal's final decision as to the declared true customary landowner of Craig Cove Airport land;*
3. *Costs of this proceeding to be paid by the First Defendant;*
4. *Any other order as the Court deems proper.*



It transpired from the framing of issues this morning, that the cause of action is not clear. However it would seem that the orders sought would be ultra vires the powers of this Court.

I THEREFORE order transfer of this matter to the Supreme Court for the claimant to seek its inherent power and power of that court which is vested with supervisory power over Land Tribunals."

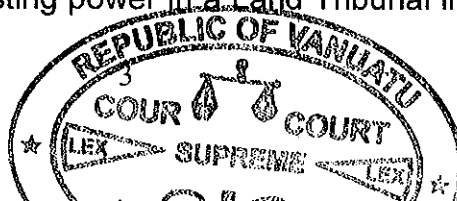
5. The referral order makes no reference to any statutory provision or power in the Magistrates Court to refer the proceeding to this Court other than the cryptic suggestion that "... it seems that the orders sought would be ultra vires the powers of this Court" and further, that the Supreme Court "is vested with supervisory power over Land Tribunals".
6. In this latter regard Section 39 of the Customary Land Tribunal Act [CAP. 271] expressly provides:-

"Supervision of land tribunals by Supreme Court

- 39. (1).** *If a person who is not qualified to be a member or a secretary of a land tribunal participates in the proceedings of the tribunal, a party to the dispute may apply to the Supreme Court for an order:*
- (a) to discontinue the proceedings before the tribunal or to cancel its decision; and*
 - (b) to have the dispute determined or re-determined by a differently constituted land tribunal.*
- (2).** *If a land tribunal fails to follow any of the procedures under this Act, a party to the dispute may apply to the Supreme Court for an order:*
- (a) to discontinue the proceedings before the tribunal or to cancel its decision; and*
 - (b) to have the dispute determined or re-determined by a differently constituted land tribunal.*
- (3).** *The Supreme Court in determining an application may make such other orders as it considers necessary.*
- (4).** *Subject to the Constitution, the decision of the Supreme Court on any application:*
- (a) is final and conclusive; and*
 - (b) is not to be challenged, appealed against, reviewed, quashed, set aside or called in question in any court on any ground."*



7. It is sufficiently plain from a cursory reading of the section that this Court's supervisory power is limited to ensuring that land tribunals are properly and lawfully constituted and, correctly follow the procedures laid down in the Act for the determination of customary land disputes.
8. This Court's power does not extend to the merits of the tribunal's determination nor does it expressly preclude the exercise by the Magistrates Court of its jurisdiction and powers under the Magistrates Court (Civil Jurisdiction) Act [CAP. 130] or pursuant to the provisions of Judicial Services and Courts Act [CAP. 270].
9. State counsel correctly describes the claim in the Magistrates Court as seeking "*orders staying the Ranu Village Land Tribunal's decision concerning the ownership of the land where Gray Cove airport is located and restraining the Government from effecting payment of compensation for the acquisition of the land.*" In brief, the Claimant seeks a stay and an injunction. Counsel submits however, that as the Magistrates Court does not have jurisdiction to entertain the underlying substantive cause of action (which is not identified in the submission) therefore the Magistrate could not grant the orders sought. I cannot agree.
10. The Statement of Claim in the Magistrates Court sets out the history of the proceedings before the Ranu Village Lands Tribunal; the fact that the Claimant has lodged an appeal against its decision with the Fan Area Lands Tribunal; and the fact that the successful party before the Lands Tribunal "*are taking steps to have the Government pay the compensation money for Craig Cove Airport to them ...*" and the Claimant seeks the present orders "*... to maintain the status quo pending the determination of the appeal*". No claim, orders or relief is sought under the Customary Land Tribunals Act [CAP. 271] nor against the Ranu Village Land Tribunal's substantive decision in favour of the First Defendant.
11. The First Defendant, who was the successful party before the Ranu Village Land Tribunal, successfully sought to be joined as a party in the Magistrates Court claim and in its defence denies that the Claimant was a disputing party before the Ranu Village Land Tribunal but, significantly, it admits taking steps to receive payment from the Government for the use of the disputed land.
12. I accept at once that the Magistrates Court is not mentioned in the Customary Land Tribunal Act [CAP. 271] nor is it vested with any jurisdiction under the Act, but that, does not answer the question of whether or not the Magistrates Court has jurisdiction to entertain the claim, which simply seeks to obtain interlocutory orders to maintain the status quo pending determination of the Claimant's appeal before the Fan Area Land Tribunal pursuant to the Customary Land Tribunals Act [CAP. 271].
13. I note in this regard that the Customary Land Tribunals Act does not contain any provision vesting power in a Land Tribunal in which an appeal



has been lodged, to grant a stay of execution pending the determination of the appeal nor, in my view, can such a power be assumed as incidental to the tribunal's power to hear an appeal.

14. I also accept that under normal circumstances, the filing of an appeal does not operate as a stay of execution. Neither does an appeal preclude the successful party from taking steps to enforce the judgment in his favour nor invalidate any intermediate act or proceeding taken under the appealed judgment. Accordingly, such executory or enforcement steps or proceedings must be prevented or stayed by a court order ordinarily issued by the trial court or by the court being appealed to.
15. The question which needs to be answered is: Does the Magistrates Court have jurisdiction to stay the execution of an appealed decision of a Land Tribunal and/or grant the injunction sought by the Claimant against the Government?
16. Although I accept State counsel's submission that the Magistrates Court has no jurisdiction under the Customary Land Tribunals Act, I am less certain about the submission that "*the Magistrates Court cannot grant the injunction sought*". In the first place the Customary Lands Tribunals Act does not provide for such a power (to grant an injunction) nor does it empower a land tribunal hearing an appeal to grant a stay of the decision being appealed from. The practical difficulty of making such an urgent interlocutory application before a land tribunal cannot also be ignored. Whatsoever section 2 of the Magistrates Court (Civil Jurisdiction) Act [CAP. 130] does not expressly exclude the grant of a stay or of an interlocutory injunction by the Magistrates Court.
17. Secondly, the Civil Procedure Rules which apply to proceedings in the Magistrates Court (see: Rule 1.6) does not prevent the Magistrates Court from granting "*interlocutory orders*" which would include a stay and an injunction such as is sought in the Claimant's application. In this regard Rule 7.5 (3) provides that:

"The Court may make the (interlocutory) order if it is satisfied that:

 - (a) *the application has a serious question to be tried and, if the evidence brought by the applicant remains as it is, the applicant is likely to succeed; and*
 - (b) *the applicant would be seriously disadvantaged if the order is not made."*
18. There is no doubt in my mind that the Claimant's appeal is properly before the Vanuatu Land Tribunal of North Ambrym. Equally, that unless the interlocutory orders sought are granted the Claimant will be "*seriously disadvantaged ...*" in the pursuit of his appeal. If it is determined in his




favour, it would be a hollow victory if the compensation monies for the acquisition of the disputed land was already paid out to the losing respondent in the Claimant's successful appeal. In other words unless the compensation payment is restrained the Claimant's successful appeal would be rendered nugatory.

19. The power of a Magistrates Court to grant an injunction also finds some support in Rule 16.26 and Rule 16.27 which deals with appeals from the Magistrates Court to the Supreme Court where the decision appealed against includes: "*(b) an interim injunction*".
20. I am satisfied that the Magistrates Court has the necessary jurisdiction and power to grant the interlocutory orders sought by the Claimant albeit in support of an appeal before the Fan Area Lands Tribunal brought under the provisions of the Customary Lands Tribunals Act.
21. For the foregoing reasons the Magistrates Court referral order is both misconceived and ultra vires and must be set aside. The Magistrates Court file No. 105 of 2009 is accordingly directed to be returned to the Magistrates Court with a copy of this ruling for its consideration and continuation.

DATED at Port Vila, this 25th day of August, 2010.

BY THE COURT


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D. V. FATIAKI
Judge.

