

(Civil Jurisdiction)

BETWEEN: JAMES TURA

First Claimant

AND: MOSES MOLI

Second Claimant

AND: BARNABAS VISI

Third Claimant

**AND: VILLAGE LAND TRIBUNAL For Million Dollar
Point represented by Mannaseh Vocor**

First Defendant

AND: ELISABETH VIVI & JAMES SURAI

Second Defendants

Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

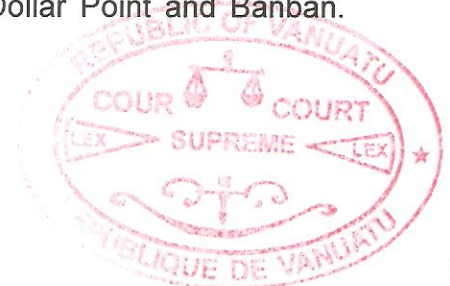
Mr Bill Bani for the Claimants
Mr Frederick Gilu for First Defendant
Mr Edward Nalyal for Second Defendants

Date of Hearing: 19th October 2011
Date of Judgment: 11th November 2011

JUDGMENT

Relevant Background Facts

1. On 3rd August 2010, the Village Land Tribunal for Million Dollar Point (the Tribunal decided that Elizabeth Vivi and James Surai are the true custom owners of land at Bombua, Million Dollar Point and Banban.



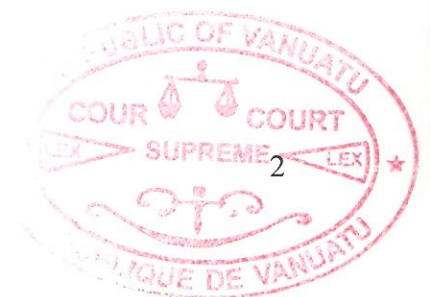
The Tribunal sat to hear the Claim of the Second Defendants from 20th to 28th July 2010. At the hearing the Claimants were not present. The Tribunal found that Pelinkula land belonged to Elizabeth Moli, Harry Moli, Thomas Boe and James Surai. In their declaration the Tribunal declared ownership of the land in favour of Elizabeth Vivi and James Surai. The declaration is dated 3rd August 2010.

2. On 26th October 2010, the Claimants filed their original judicial review claim. They sought leave to amend their claims on 16th November 2010 and leave was granted. They filed their amended claims on 11th July 2011.
3. The Claimants seek a quashing order of the decision of the Tribunal of 3rd August 2010 on grounds that the Tribunal lacks jurisdiction to determine the dispute in that it was not properly constituted in accordance with the requirement of section 9 of the Customary Land Tribunal Act No. 7 of 2001 (the Act).
4. The Claimants bring their claims pursuant to section 39 (1) and (2) (a) of the Act.

Evidence by Claimants

5. The Claimants relied on the evidence of James Tura contained in the sworn statements dated 9th August 2011 (Exhibit C1) and of 26th October 2010 (Exhibit but C2). Mr Tura confirmed these in the witness box in examination-in-chief and was cross-examined by Mr Gilu and Mr Nalyal.

First Defendants' Case



- 6.1. The First Defendant filed a defence only on 19th October 2011 at 0830 hours some 30 minutes before trial began at 0900 hours. In summary it appears the First Defendant's case is that the Tribunal was properly constituted and as such, its decision of 3rd August 2010 was valid. This is apparent from paragraph 1 (a) and (b) of their defence. At paragraph 4 (a) and (b) the First Defendant says in response to paragraph 4 of the Claimants' claims that they are purporting to challenge substantive grounds and as such it was not within this Court's jurisdiction to consider merits but only the process of hearing.
- 6.2. During the hearing Mr Gilu indicated to the Court that the First Defendant would abide by any orders of the Court except as to Costs. Counsel also indicated that the First Defendant would rely on the case authority of West Tanna Area Council Land Tribunal v. Natuman Civil Appeal Case No. 21 of 2010 in their submissions. This case is indeed an authority against the actions or omissions of the First and Second Defendants.
- 6.3. The First Defendant had no evidence before the Court orally or by sworn statements.

Second Defendants' Case

7. The Second Defendants' case was that the decision of the Tribunal of 3rd August 2010 was valid. It was their case that the Tribunal was validly appointed by the Santo Island Land Tribunal. It was also their case that the then Chairman of the Santo Island Land Tribunal had sent a letter to Mr Tura in June 2010 inviting him to a round-table meeting on Wednesday 30th June 2010. Notices were posted at Banban, Million Dollar Point and Unity Shell inviting persons having an interest or claiming ownership over Pelinkula land to register their claims within 21 days.



Second Defendants Evidence

8. The Second Defendants relied on the evidence of Elisabeth Vivi also known as Moli contained in her sworn statements of 30th August 2011 (Exhibit D1), and of James Surai dated 30th August 2011 (Exhibit D2). Elizabeth Moli confirmed her statement on oath and was cross-examined by Mr Bani. The evidence of James Surai was allowed without cross-examination only after objections were raised over admissibility of annexure "JS5" referred to in the last sentence of paragraph 11 of the statement. That sentence and its annexure were disallowed by the Court. As regards Elizabeth's evidence objection were raised to admissibility of annexure "EV4" referred to in paragraph 13. That last sentence and annexure "EV4" were ruled inadmissible by the Court.

Issues

9. There are only three main issues that need to be determined by the Court. These are (a) whether the Tribunal was properly constituted, (b) whether the Tribunal followed process in determining the dispute before them in July 2010 and (c) whether the declaration of 3rd August 2010 is valid.

Discussions

- 10.1. The First issue is whether the Tribunal was properly constituted? The second and third issues hinge on this first issue. The name of the Tribunal is uncertain and remains a mystery. In the evidence both by the Claimants and the second defendants the Kastom Ona Declaration Form is disclosed as Annexure "JTA" and "A" by James Tura in both his statements. In paragraph 1 corresponding to "Nem blong Tribunal" is written "Bombua Million Dollar Point and Banban Land." This does not sound like a name of a tribunal to anybody at all.



10.2. Secondly, the constitution of the so-called tribunal. The Chairman is named as Manasse Vohor. The members are named as Andrew Fari, Eloi Tarissa, George Nial, Wargon Lario and Palo Nadege. None of these persons gave any evidence orally or by sworn statements. Mr James Tura, the First Claimant gave evidence to his belief that these persons including the Chairman belong to East Santo. That evidence was unchallenged.

10.3. The Public Notice annexed as "JS3" to the sworn statement of James Surai (Exhibit D2) and annexure "Ev2" to the sworn statement of Elizabeth Vivi (Exhibit D1) is purported to have been issued by the Chairman of the Joint Village Land Tribunal. It is not clear who that Chairman was because he did not sign the notice. Someone else signed for him. The Chairman or the person who signed the Notice did not produce any evidence to confirm that notice. Therefore, Elizabeth Vivi and James Surai not being makers of the document could not rely on that document as evidence. The document is stamped with the official seal of Santo Island Land Tribunal. That makes the matter more complicated.

Relevant Laws

10.4. If the tribunal that determined the dispute was a joint village land tribunal as indicated by the Notice, then the relevant law is section 9 of the Act. It states –

"9. Joint Village Land Tribunals.

(1) The principal chief of each village who receives a notice of a dispute under paragraph 7 (2) (b)) must, within 21 days after the last day on which a principal chief receives the notice, together establish a joint village tribunal to determine the dispute.

(2) The joint village land tribunal consists of:



- (a) Subject to subsection (3), the principal chief of each village if he or she is qualified under this Act to adjudicate the dispute and is willing to do so; and
 - (b) 2 other chiefs or elders of each village appointed by the principal chief of that village; and
 - (c) A secretary appointed by the principal chief of each village acting together.
- (3) If the principal chief of a village is not qualified under this Act to adjudicate the dispute or is not willing to do so, the principal chief must appoint another chief or elder of that village as a member.
- (4) A person must not be appointed:
- (a) Under paragraph (2) (b) or subsection (3) unless the person is qualified under this Act to be a secretary and is willing to do so.
- (5) The principal chiefs of each village who are members of the village land tribunal and the members appointed under subsection (3) (if any) must elect one of their number to be the chairperson of the joint village land tribunal.”

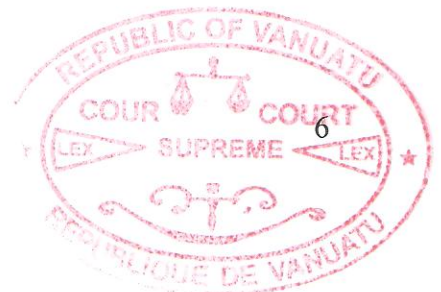
Section 7 of the Act states –

“7. Notice of disputes.

(1) If a person or a group of persons:

- (a) Is a party to a dispute about the ownership or boundaries of customary land; and
- (b) Wants to have the dispute dealt with under this Act; the person or group must give notice of the dispute in accordance with subsection (2) and (3).

(2) The notice must be given –



(a) *If the land is situated wholly within the boundaries of a village to the principal chief of that village.*

(b) *If the land is situated within the boundaries of more than one village to the principal chief of each of those villages.*

(3) *The notice must:*

(a) *Be given orally or in writing in Bislama, French, English or another language of the person or group giving the notice; and*

(b) *Specify clearly the land which is in dispute; and*

(c) *Contain the names of the parties to the dispute.”*

Applying the Law to the facts

10.5. Applying the law as in section 9 and section 7 (2) (b) of the Act, the Court comes to the conclusions and declarations that –

- (a) The Tribunal that heard the dispute of the Second Defendants from 20th to 28th July 2010 and made a decision on 3rd August was not properly constituted and is therefore unlawful and invalid.
- (b) The Public Notice issued by the Tribunal (“JS3” and “EV2”) is unlawful and therefore invalid.
- (c) The hearings by the Tribunal from 20th to 28th July 2010 were therefore unlawful and invalid.
- (d) The decision of 3rd August 2010 is therefore invalid and of no legal effect.



- (e) The steps taken by the Santo Island Land Tribunal to “facilitate” the establishment of the purported joint village land tribunal to hear and determine the dispute of the second defendants were unlawful and therefore invalid in all respects.
- (f) The purported Tribunal did not follow the procedures specified in section 9 of the Act.

Conclusion

11. Having made the above findings and declarations, the Court concludes that the Claimants succeed in their claims. The decision of the tribunal dated 3rd August 2010 is therefore hereby quashed by the Court.

Costs

12. The Claimants having succeeded are entitled to their costs of and incidental to this action on the standard basis as agreed or taxed by the Court.

DATED at Luganville this 11th day of November 2011.

BY THE COURT


OLIVER A. SAKSAK

Judge

