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IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU

Civil Case No: 09 of 2012

(Civil Jurisdiction)

**BETWEEN: BEN TUNALA TOASERKIT**  
**Representative of Toaserkit Family**

Claimant

**AND: REPUBLIC OF VANUATU**

First Defendant

**AND: FAMILY BOETARA**

Second Defendant

**AND: ZEBEDEE TARVUI**

Third Defendant

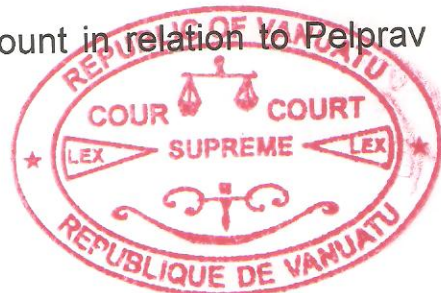
Mr Justice Oliver A. Saksak

Mr Colin Leo for the Claimant, not appearing  
Mr Godden Avock for the State, not appearing  
Mr Felix Laumae for the second Defendant  
No appearance for the Third Defendant.

Date of Hearing and Oral Ruling: 15<sup>th</sup> May 2012  
Date of Judgment: 25<sup>th</sup> May 2012

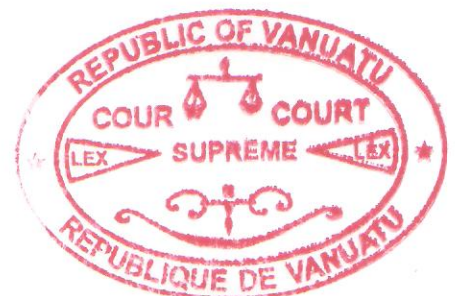
## JUDGMENT

1. This judgment publishes the reasons for the Ruling and Orders issued on 15<sup>th</sup> May 2012.
2. On 29<sup>th</sup> February 2012 the Claimant filed an application seeking the following Orders :-
  - " 1. That the first defendant be restrained from releasing any funds held in the first defendants trust account in relation to Pelprav



land, the subject of the Veriodale Land Tribunal decision dated 30<sup>th</sup> May 2005 until this Court further orders.

2. That all land rents premiums and any payment of leases with respect to same be held in trust in the Chief Registrar's Trust Account.
  3. That the Area Land Tribunal convene the Claimant's appeal hearing within 28 days from today.
  4. Such further orders as the Court deem just.
  5. Costs."
3. The application is supported by the sworn statement of Ben Tunala.
  4. The application was first listed for hearing by Notice dated 21<sup>st</sup> march 2012 returnable on 17<sup>th</sup> April 2012.
  5. When the Court sat on 17<sup>th</sup> April 2012 Mr Ben Tunala appeared in person without Counsel. He informed the Court that Mr Leo could not attend Court that day because he was preparing for his appeal cases. Mr Godden Avock appearing for the State that day advised he had no service of documents. The Second and Third Defendants did not appear on that morning. Mr Laumae however appeared at 2.15pm and sought to be heard. A further hearing was called and Mr Avock was present. Mr Tunala was not present.
  6. At the hearing in the afternoon of 17<sup>th</sup> April 2012 after hearing Mr Laumae and Mr Avock the Court issued the following additional Orders :-



“Upon hearing the Claimant in person and upon hearing Mr Laumae and Mr Avock in relation to –

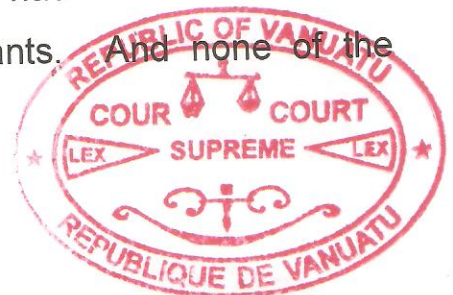
- (a) An application by the Claimant for adjournment on the basis that his Solicitor is not available;
- (b) Cross-Application by Singo Molvatol that the Third Defendant be removed as a party and that Singo Molvatol be substituted in his place as Third Defendant,

**It is Ordered that -**

- “1. Zebedee Molvatol be hereby removed and SINGO MOLVATOL be hereby substituted as the Third Defendant in this action.
2. The Claimant be hereby required to effect service of his claims and supporting documents on all the defendants within 7 days from the date hereof.
3. All the Defendants be required to file and serve their responses, defences and sworn statements within 14 days thereafter.
4. The Claimant’s application be adjourned and be called for hearing on Tuesday 15<sup>th</sup> May 2012 at 0830 hours.
5. Costs be in the cause.”

7. Mr Tunala was served with a copy of the above Orders on 18<sup>th</sup> April 2012 by the Assistant Sheriff, who deposed to a sworn statement as to service dated 18<sup>th</sup> April 2012.

8. The Claimant had not indicated whether he had effected service of his claims and documents on the defendants. And none of the



defendants had filed any responses, defences or sworn statements. Only the second defendant filed written submissions on 15<sup>th</sup> May 2012 seeking dismissal of the claimant's application.

9. Mr Leo wrote to the Court on 14<sup>th</sup> May indicating he would not be available in Court on 15<sup>th</sup> May as he was conducting a trial before another judge in Port Vila on 14<sup>th</sup> – 15<sup>th</sup> May. He sought an adjournment to another date. He indicated that he had written to Mr Laumae and the Attorney General about same on 8<sup>th</sup> May 2012.

10. Mr Laumae responded by submitting that since 11<sup>th</sup> May 2012 Mr Leo was put on notice that he would proceed with the application seeking dismissal with an order for costs on an indemnity basis. Mr Laumae mentioned that position on 15<sup>th</sup> May 2012.

11. Mr Laumae submitted –

(a) There was no appeal as claimed by the Claimant.

(b) Even if there was an appeal, it was filed outside the 21 days period required by Section 12 of the Customary Land Tribunals Act No. 7 of 2001 (the Act).

(c) The claim of the claimant under which the purported appeal is pending is res-judicata.

(d) Even if an adjournment was granted it would not make any difference to the outcome on the next date.

12. Mr Laumae relied on the case of Coconut Oil Production (Vanuatu) Ltd. v. Tavoia and Terry [2005] VUCA 24 to reinforce his argument that it was imperative that the listing date be maintained and not overlooked (see page 2, 13<sup>th</sup> and 14<sup>th</sup> paragraphs)



13. From the evidence it can be seen that -

- (a) The decision sought to appeal against was made on 30<sup>th</sup> May 2005.
- (b) On 30<sup>th</sup> April 2009 almost 4 years later the claimant paid VT30.000 but it is recorded as "Court Fee- South East Area Tribunal (Veriondali) Belbarap Land.
- (c) On 13<sup>th</sup> June 2005 the claimant wrote a letter "re: Dispute & Appeal Long Decision We istap" to the Chairman of Veriondali Lands Tribunal (See Annexure "BT2"). A follow-up letter dated 23<sup>rd</sup> September 2009 is attached as "BT3".
- (d) The claimant was a party to Civil Case No. 44 of 2008 as Second Appellants. The claimant sought to rely on the letters of 13<sup>th</sup> June 2005 and of 23<sup>rd</sup> September 2009. This Court held that those letters did not amount to appeals (see paragraph 4 of Judgment dated 5<sup>th</sup> may 2009). The Court refused adjournment sought by the claimant and dismissed his application with costs. The claimant did not appeal against those orders and the judgment remains valid and binding.

14. This Court considered Section 12 of the Act and concluded that the Claimant did not comply with the 21 days requirement. The Court of Appeal has made rulings about filing appeals against decisions of Island Courts within the time limit fixed under Section 22 of the Island Court's Act Cap 167 that it is to be given a strict interpretation. It is my view that the same approach ought to be given to the interpretation of the 21 days requirements in Section 12 and other sections of the Lands Tribunal Act. This is to ensure finality to cases.



15. Applying the law to the facts of the case, I was satisfied -

- (a) There is no appeal on foot by the claimant.
- (b) Section 12 of the Act was not complied with by the claimant.
- (c) The claims of the claimant have been dealt, with and are now res judicata.
- (d) Even if an adjournment was granted, it would not make a difference on the next return date.
- (e) The claimant's application was an abuse of process warranting an order for costs against him on an indemnity basis.

16. It is for those reasons that the claimant's application for adjournment was refused and his application and claims were dismissed with costs on indemnity basis.

**DATED at Luganville, this 25<sup>th</sup> day of May 2012.**

**BY THE COURT**



**OLIVER A. SAKSAK**

**Judge.**

