

(Civil Jurisdiction)

**BETWEEN: JOHN TARI MOLBARAV, LAUREN SOLOMON,
JEROME NATU, MATHEW TAMATA**

Claimants

AND: THOMPSON WELLS

First Defendant

AND: MATHIAS MOLSAKEL AND RACHEL MOLSAKEL

Second Defendant

AND: BEN TUNALA

Third Defendant

AND: PETER PATA

Fourth Defendant

AND: GORDON ARNHAMBAT

Fifth Defendant



Mr Justice Oliver A. Saksak

Mr Felix Laumae for the Claimants

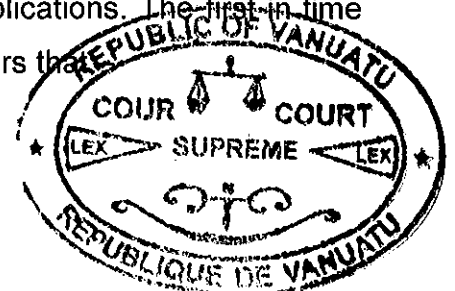
Mr Saling Stephens for the Second Defendants and as Agent for Mr Colin Leo for First and Third Defendants.

Mr Justin Ngwele for Fourth and Fifth Defendants

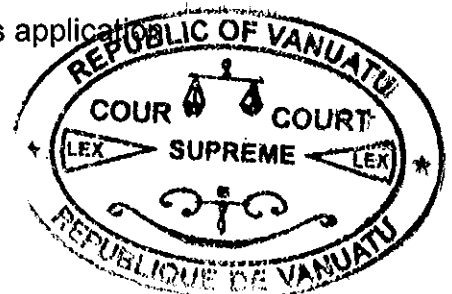
Date of Hearing: 6th September 2012

REASONS FOR ORAL DECISION

1. This morning the Court had before it two separate applications. The first in time was filed on 5th September by Mr Laumae seeking orders that



- (a) Time be abridged for the hearing of the application pursuant to Rule 18.1 of the Rules;
 - (b) Judgment be entered against the defendants pursuant to Rule 18.11(4) of the Rules; or alternatively that;
 - (c) The Court grants judgment against the defendants pursuant to Rule 9.6 of the Rules; and
 - (d) Costs of and incidental to the action be awarded.
2. The second application was filed also on 5th September 2012 at 4.30 pm by Mr Stephens seeking orders that –
 - (a) This proceeding be stayed pending further orders of the Court;
 - (b) Such other or further orders deemed fit; and
 - (c) Costs be reserved.
3. I chose to hear Mr Stephen's application first. And after hearing submissions in support of the application by Mr Stephens relying on the sworn statements of Mr Molsakel filed on 28th August 2012 and on 6th September 2012; and upon hearing submissions in response by Mr Laumae, and upon hearing Mr Ngwele who indicated the State would abide by any Court Orders except as to costs, the Court took a brief adjournment to consider its decision. When the Court resumed, I delivered an oral decision to the effect that the application was declined and therefore dismissed. Costs were reserved.
4. As regards the Application by Mr Laumae, the Court decided to refuse the order abridging time for the hearing. The Court simply adjourned the balance of the application to be heard within the Court of Appeal Sitting in Port Vila from 10th to 14th September 2012. The actual date will be fixed and a Notice will be issued from the Registry in Port Vila.
5. I now provide reasons for the dismissal of Mr Stephens application.



6. Mr Stephens relied on the 13 grounds stated in the application which could best be summarized into two main grounds as the gist of their arguments and submissions as follows:-

(a) That the dispute over ownership of Belbarav Land is still alive in view of the appeal by the Molsakels on grounds that the Veriondali Lands Tribunal was not legally constituted thus making its decision irregular; and

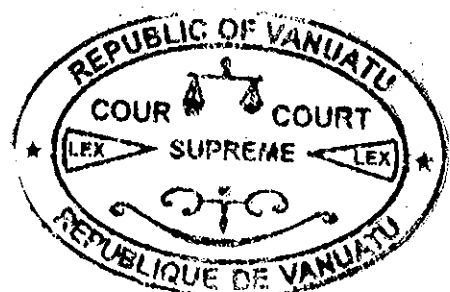
(b) An appeal has been filed by Mr Colin Leo as Civil Appeal Case No. 34 of 2012 which raises the same issues of Belbarav Land.

On the basis of these two basic and general grounds, Mr Stephens submitted it was necessary to stay this proceeding pending determinations of those appeals.

7. Regarding the first ground, Mr Stephens drew the Court's attention to a Public Notice annexed "A" to the sworn statement of Mr Molsakel filed on 14th August 2012. Further, he drew the Court's attention to a purported appeal by his client annexed "A" to Mr Molsakel's sworn statement dated 25th August 2012. It was submitted by Mr Stephens that those documents show there is a live appeal in the Lands Tribunal.

8. In response, Mr Laumae made oral submissions objecting to Mr Stephens submissions. Counsel referred the Court to its previous decision in Civil Case No. 48 of 2009 where the Court ruled on a letter which Mr Ben Tunala and Johnny Joseph relied on as their purported appeal. The Court ruled the letter did not amount to an appeal and held there was no appeal pending before the Veriondali Lands Tribunal.

9. The Court takes judicial notice of that case and in order to maintain a consistent approach, this Court must maintain that there is no appeal pending before the



Lands Tribunal and as such. This Court must also maintain that the ownership of Belbarav Land is res judicata.

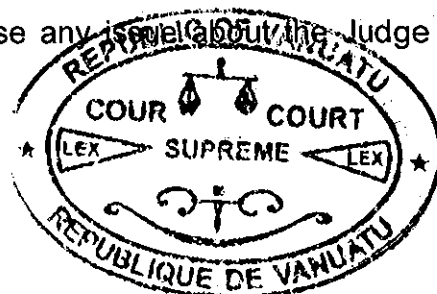
10. The documents sought to be relied on by Mr Molsakel could have been before the Court in Civil Case No. 48 of 2009 some three years ago but were not. The Court must ask why have they surfaced only this late?

11. In respect to the second issue, the appeal in Civil Appeal Case No. 34 of 2012 raises among others, bias against the judge. Of particular note and concern is a letter dated 1st May 2011 annexed "B" to Mr Molsakel's statement of 14th August 2012. Second to last paragraph thereof states –

"Mi bin faenemaot tu se honorable Saksak emi pem trifala parcel blong land inside long area blong Belbaraf Land so emi kam obvious se igat Conflict of Interest long tufala cases ya mo mi stap askem honorable Court blong save transferem tufala files antap iko long Port Vila Registry blong oli save kivim long wan Supreme Court Judge we emi neutral."

12. With respect to Mr Stephens and his client there is not a shred of truth and evidence to found such an assertion on. It is totally untrue and baseless. In my 12 years of serving as judge on Santo, I have never purchased any plot of land from anyone anywhere on the whole island. I consider that statement to be contemptuous and defamatory. Counsel would do well to advise his client to retract it and purge the contempt by the next conference or hearing date.

13. Further, the issue of bias was and has never been raised at any time by any defendants or their Counsel since the commencement of Civil Case No. 25 of 2012. On 1st August 2012 when the case was first called for Conference Mr Leo was not in attendance. Only Mr Stephens was appearing as agent for Mr Thompson Wells but no issue of bias was ever raised. Then on 17th August 2012 when the matter was called for second conference Mr Leo made appearance for First and Third Defendants but did not raise any issue about the Judge being



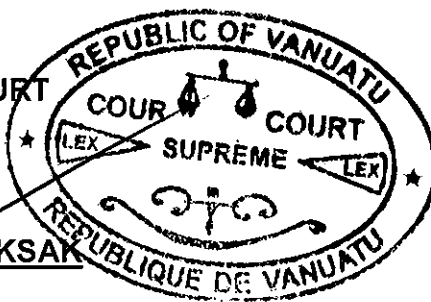
First and Third Defendants but did not raise any issue about the Judge being biased. How therefore could this issue be appealable when it was not raised with the Judge of the first instance for consideration?

14. The applicant is not a party to Civil Appeal Case No. 34 of 2012, therefore it is not open to him to use it as the basis of his application.


15. For the reasons provided, the Court saw fit to dismiss the application by Mr Stephens.

DATED at Luganville this 6th day of September 2012.

BY THE COURT



The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The words "REPUBLIC OF VANUATU" are written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. The words "COUR SUPREME" are written across the center, with "COUR" on either side of the scale. Two small triangles containing the word "LEX" are positioned on either side of the scale. Two stars are located on the left and right sides of the seal.


OLIVER A. SAKSAK
Judge