

(Civil Jurisdiction)

BETWEEN: CHIEF SOLOMON TAVUE

Claimants

**AND: JOEN VILLAGE LAND TRIBUNAL COURT
MOLITAMATA LAND TRIBUNAL COURT
NOKA LAND TRIBUNAL COURT
MEREY LAND TRIBUNAL COURT**

Defendants

AND: GABRIEL WOILOLO & BAIS RAVUL

First Interested Party

AND: JERRY VOIYASUSU

Second Interested Party

**Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk**

**Mrs Marisan P.Vire for Claimants
Mr George Boar for First Interested Party
Mr Kiel Loughman for Second Interested Party
Mr Godden Avock for Defendants Tribunals**

Date of Hearing and Oral Decision: 4th October 2012

DECISION


1. At the outset of this hearing Mr Avock indicated to the Court that the Defendant Tribunals would simply abide by any orders of the Court except as to costs.
2. The Claimant sought leave to file a Judicial Review Claim and leave was granted on 1st August 2012. The Claim was filed on the same day with the application seeking leave.

3. Defences and sworn statements have been filed by the Interested Parties.
4. The hearing on 4th October 2012 was for the Court to consider Rule 17.8(3) and be satisfied that:-
 - (a) The Claimant has an arguable case;
 - (b) The Claimant is directly affected by the enactment or decision;
 - (c) There has been no undue delay; and
 - (d) There is no other remedy that resolves the matter fully and directly.
5. The Court heard detailed submissions and arguments by Mrs Vire in order to determine if the four tests or criteria laid down under Rule 17.8(3) (a) – (d) were made. The Claimant had the burden of proof.
6. Mr Boar and Mr Loughman of Counsel for the First and Second Interested Parties made submissions in objection to the application based on the evidence filed by their respective clients. I was impressed by their submissions and arguments based on the evidence of Judah George, Gabriel Woilolo and Jerry Voiasusu.
7. I was satisfied that the tests set out in Rule 17.8(3) were not met by the Claimant. As such, the Court exercised its powers under Rule 17.8(5) to decline to hear the claim further but to dismiss it in its entirety with costs in favour of the Interested Parties on the standard basis as agreed or be determined by the Court.
8. The Court now publishes its reasons as follows:-
 - (a) On whether the Claimant has an arguable case, he asserts he had no notices about the Tribunal sitting. However, there was overwhelming evidence by Judah George that the Claimant had notices of the Tribunal Hearings on at least four occasions. The Claimant could not disprove or rebut that evidence.

- (b) On whether or not he was directly affected by the decision of the tribunal; the Claimant asserts that he was. However, there is also overwhelming evidence that he was not a party to the dispute. There is evidence he paid his fees and then withdrew those fees basically withdrawing himself as a party to the dispute. As such, the decision complained of did not affect him.
- (c) On whether there has been no undue delay, he argues the issue was resolved when the Court granted him leave on 1st August 2012. That is correct but that is only one hurdle of the matter. He still has the Rule 17.8(3) hurdles to jump over. And in my opinion he has not and cannot jump over them. The delay was indeed more than 2 years after the date of the decision. If the Claimant was serious, he could have filed a claim immediately but he was not interested because he had no interest in the land in question, so much so that he saw fit to withdraw his fees.
- (d) On whether or not there is no other remedy, by not being a party he has no remedy, indeed, but it was a result of his own decision for which he cannot attribute blame on the defendants or the Interest Parties.
9. Due to the foregoing reasons, the Court exercised its powers which is mandatory under Rule 17.8(5) to dismiss the Claimant's Claims in its entirety with costs as ordered.

PUBLISHED at Luganville this 11th day of October 2012.

BY THE COURT


OLIVER A. SAKSAK
Judge.

