

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

Judicial Review Case No. 4 of 2013

BETWEEN : MORRISON TOTAR
Claimant

AND: THE COMMISSIONER OF MINES
AND MINERALS
First Defendant

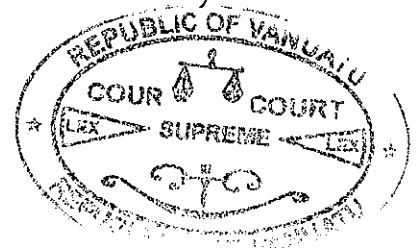
AND: IFIRA GENERAL SERVICES
Second Defendant

Coram: Justice Aru

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

DECISION

1. The Claimant filed this claim for judicial review as representative of the Kalpram Tuekot Family. The claim is supported by Mr. Morrison W Tuekot's sworn statement filed on 2 July 2013. In his amended claim filed on 30 April 2013 the claimant sought orders that the decision of the first defendant to award the quarry permit to the second defendant was ultra vires the powers of the first defendant under the Mines and Minerals Act [CAP 190] and secondly that the matters which the first defendant had regard to in granting the permit to the second defendant were irrelevant and without basis.
2. The declarations sought were that the quarry permit issued by the first defendant to the second defendant on 26 March 2013 is of no effect and secondly that the quarry permit issued by the first defendant was issued contrary to the



provisions of the Mines and Minerals Act. The second defendant also filed an Application to strike out the claim.

3. This Application was dealt with as part of the first conference as required under Rule 17.8 of the Civil Procedure Rules. Sub-rules 3), 4) and 5) provide that :

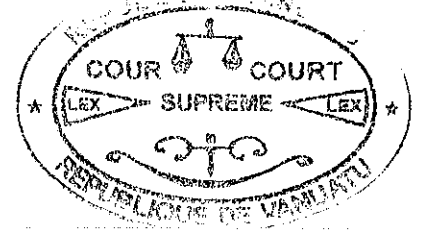
“17.8 Court to be satisfied of claimant’s case

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- (3) The judge will not hear the claim unless he or she is satisfied that:
- (a) the claimant has an arguable case; and
 - (b) the claimant is directly affected by the enactment or decision; and
 - (c) there has been no undue delay in making the claim; and
 - (d) there is no other remedy that resolves the matter fully and directly.
- (4) To be satisfied, the judge may at the conference:
- (a) consider the papers filed in the proceeding; and
 - (b) hear argument from the parties.
- (5) If the judge is not satisfied about the matters in subrule (3), the judge must decline to hear the claim and strike it out.”

4. Pursuant to Rule 17.8, I am not required to hear the claim unless I am satisfied with the matters specified in sub rule 3). If I am not satisfied then I must decline to hear the claim and strike it out pursuant to sub-rule 5).

5. At the outset, the claim is defective in that it does not comply with Rule 17.4 2) (a). It seeks declarations without naming the Attorney General as a party. In as far as timing for the filing of the claim is concerned the parties did not take issue with that. The claimant submitted that he has an arguable case. Firstly he submits that the quarry is located on customary land which is currently pending on appeal for determination of the rightful custom owners .The lease which was



issued to Mr. Joshua Kalsakau by the Minister of Lands was issued in breach of the orders made by Dawson J on 24 March 2010 in Land Appeal Case No 1 of 2009 which restrains anyone dealing in the disputed "ELEO-EURAKOT" land pending determination of the appeal. He submits that the lease was registered on 18 February 2011 in breach of Dawson J's orders which were made earlier in time on 24 March 2010.

6. Secondly he submits that the first defendant failed to consider the letters issued by the claimant objecting to the issuance of the quarry permit .He submits that the quarry notice issued for anyone objecting to the second defendant's application for a quarry permit was to have expired on 1 April 2013. He submits that he was not given an opportunity to be heard as he submitted his objections by letter dated 28 March 2013 however the quarry permit was issued on 26 March 2013. As a result he was directly affected by the granting of the quarry permit and there is no other remedy that fully resolves the matter.
7. The defendants submit firstly that the claimant has no locus standii to bring the proceedings as firstly the land in question is public land pursuant to the declaration made by the Minister of Lands by Order 26 of 1981 under the Land Reform Regulation of 1980. The sworn statement of Joshua Kalsakau clearly identifies the boundaries of Port Vila declared as public land under this order. Lease title 11/X212/003 where the quarry is located was issued by the Minister of Lands as lessor because it is part of the public land declared by Order 26 of 1981.
8. As for the quarry notice, the Commissioner of Mines in his sworn statement confirms that following the issuance of the Quarry Notice, Mr. Kalsakau being the lessee gave his consent for the quarry to be located on his lease. Mr. kalsakau himself confirms in his sworn statement that he had given his approval to the second defendant to extract limestone gravel from within his lease.
9. Having considered the submissions and the papers filed, I am not satisfied that the Claimant has an arguable case as he clearly has no standing to bring this proceedings. The quarry is located on a lease registered to Mr kalsakau by the Minister of Lands as the lessor of all public land. Secondly the claimant is



clearly not affected by the decision as consent was given by the registered lessee for the issuance of the quarry permit to the second defendant.

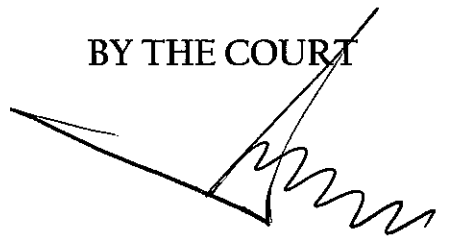
10. The argument that there is no other remedy that fully resolves the matter must also fail as firstly, the claimant has no final declaration that he is the custom owner as the matter is still pending on appeal. If the claimant is finally declared custom owner, compensation could be an option if he can successfully make out a case that having been declared custom owner, he is now entitled to some form of compensation.
11. I am therefore satisfied that this claim must be struck out and I make the following orders :

ORDER

- a) The Judicial Review claim is struck out.
- b) The defendants are entitled to costs on a standard basis to be taxed failing agreement.

DATED at Port Vila this 11 day of September 2013

BY THE COURT



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D. Aru
Judge

