

**BETWEEN: CHIEF JOSEPH RIRI, MATHEW NDAI,
EDWARD SUMBE, TOM TAFTI AND
BARNABAS VURO**

Claimants

AND: SANTO ISLAND LAND TRIBUNAL

First Defendant

**AND: HAJUJU SOKOVATU, MOLVARA, TOM
RASU, KAURI AND TELES**

Second Defendants

AND: NELSON SESE AND SILAS SESE

Third Defendants

AND: TOM JOE BOTLENG AND JOEL BOELULU

Interested Party

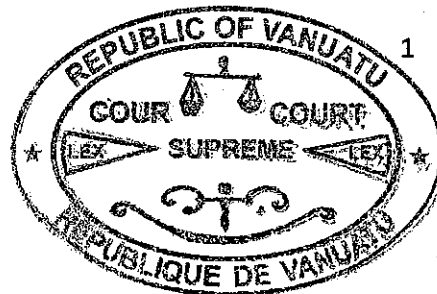
Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Mr. Felix Laumae for the Claimants
Ms. Christine Lahua for First and Second Defendants
Mr. Stephen Joel for Third Defendants
Mr. Kiel Loughman for Interested Party*

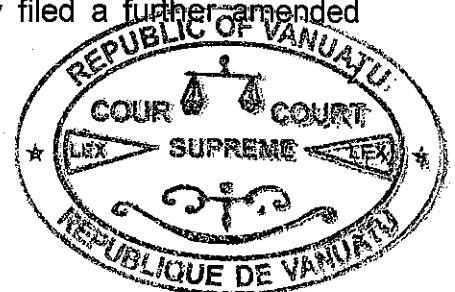
Date of Hearing and Oral Decision: 16th October 2013
Date of Judgment Issued: 21st October 2013

JUDGMENT

1. This judgment provides reasons for the oral decisions and orders issued on 16th October 2013.

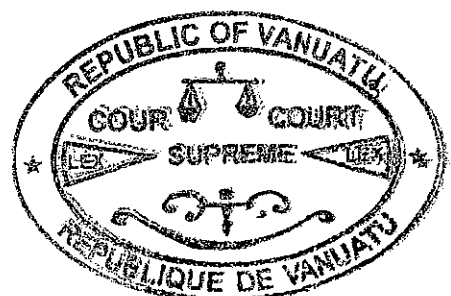


2. At the hearing on 16th October 2013, Messrs Stephen Joel and Kiel Loughman were not present. Nelson Sese, one of the Third Defendant was present in person and the Court heard brief responses from him as a lay person. The interested parties were not in attendance on 16th October.
3. The Court did not see any need to adjourn the hearing. None of the parties or counsel present sought an adjournment. Except for the Interested Party, the Third Defendants were present in person on 10th September 2013 when the Court fixed the trial date for 16th October 2013 at 0900 hours. Among others, the Court directed also that the Claimants pay a hearing fee of VT15.000 and the Third Defendants to pay the other VT15.000 within 7 days. The Claimants paid their hearing fees on 16th October 2013. The Third Defendants did not pay any hearing fees as directed.
4. The Claimants filed an amended judicial review claim on 9th August 2012 seeking to invoke the Court's powers under section 39 of the Customary Land Tribunal Act [Cap. 271] (the Act) to –
 - (a) Cancel the purported decision of the Joint Island Land Tribunal (JILT) dated 7th June 2012 and the clarification and extensions made by them on 1st January 2013 and on 13th February 2013 as invalid and of no legal effect.
 - (b) Direct the JILT to be reconstituted and rehear the Claimant's appeal.
 - (c) Direct the Public Prosecutor to lay charges against the Second Defendants and those who appointed them to sit for the purposes of hearing the appeal pursuant to section 42(c) and (d) of the Act; and
 - (d) Costs of and incidental to the action.
5. The Claimants abandoned their claim for an order directing the Public Prosecutor to lay charges against the Second Defendants. They filed a further amended

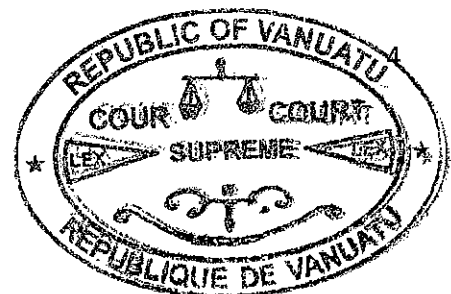


claim on 7th June 2013 reflecting this change and seeking an order directing the Chairman of the Santo Island Land Tribunal to establish a tribunal pursuant to the Act to determine the appeal.

6. The Claimants and the Third Defendants including the Interested Party are all claimers of Ratua Island situated off Aore Island within the South East Santo Custom area. Their dispute has been heard in the Village Land Tribunal and appealed to the Area Lands Tribunal. The Claimants then lodged their appeal against decision of the Area Lands Tribunal with the Santo Island Land Tribunal.
7. On 15th May 2012, the Second Defendants acting as Joint Island Land Tribunal purported to hear and determine the appeals lodged by the Claimants. The Claimants objected to the Second Defendants on the basis that they were not qualified as not being on the list of Chiefs approved by the South East Santo Area Council of Chiefs pursuant to Sections 35 and 36 of the Act. Their objection was overruled and the Defendants proceeded to hear the appeal in the Claimants' absence that the Third Defendants were the true custom-land owners of Ratua Island. The Defendants went further to write letters on 1st January 2013 and 13th February 2013 clarifying that the Third Defendants are the custom land owners of part of the main land Aore known as Belda Singo without notice of hearing. The Claimants seek to have these actions of the Defendants reviewed.
8. The Claimants filed a further sworn statement by Chief Joseph Riri on 9th August 2012 in support of the amended claim. The State filed a defence on 8th January 2013 but no sworn statements. On 4th April 2013, the State indicated in an e-mail from Mr. Alain Frederic Obed that they would abide by the Orders of the Court. The Third defendants filed a defence on 6th May 2013 together with Mr. Joel's notice of beginning of act. They have not filed any sworn statements. The Interested Party filed their applications for joinder on 3rd May 2013 together with the affirmed statement in support by Joel Boelulu. No defences or any other evidence were filed subsequently by them.



9. On 9th September 2013, the State Law Office filed the First and Second Defendant's amended defence. And on 2nd October 2013, they filed a sworn statement by Kennary Alvia.
10. Mr. Laumae filed written submissions on 7th August 2013. At the hearing on 3rd October 2013, Counsel relied on those written submissions. Counsel raised two basic issues namely:
- (a) Was the Joint Island Land Tribunal (JILT) lawfully constituted?; and
 - (b) Were the letters dated 1st January 2013 and 13th February 2013 extending the JILT's declaration to Beldasingo land on main land Aore placing reliance on the decision dated 7th June 2012 and declaring the Third Defendants as custom-owners of Beldasingo also, valid?
11. Mr. Laumae submitted in relation to the issue in (a) that pursuant to Part 5 of the Act and in particular Section 23, the JILT that sat on 15th May 2012 was not lawfully constituted. Counsel argued that except for adjudicator Bombilae who is from the South East Santo, all the other adjudicators are from South Santo and Malo and as such they were not qualified to sit. Counsel relied on the Court of Appeal Case of Taliban v. Worworbu & Others, Civil Appeal Case No. 17 of 2011 as his authority. Counsel also relied on the Court of Appeal Case of Bongnaim & Others. V. Worwor and Others Civil Appeal Case No. 40 of 2012 as his authority for submitting that as the Second Defendants' names were not included in an approved list for South East Land Tribunal, they were not qualified to sit as adjudicators for the purposes of hearing the Claimants' appeal on 15th May 2012. These cases were accepted as relevant and binding and the Court applied them to this case.
12. In relation to the issue in (b) Counsel submitted that pursuant to Sections 7, 8, 25, 26, 27, 28 and 29 of the Act, the actions of the JILT were ultra vires therefore they were invalid and of no effect.



13. Ms. Lahua submitted in brief that from the evidence filed, the JILT was legally constituted. The Court rejected this submissions as not tenable.

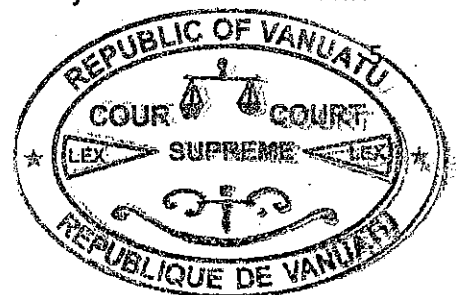
14. Third Defendant Nelson Sese was given an opportunity to respond in person. He endeavored to hand up some correspondences from the Bar Table but the Court refused to accept them. On the issue of the costs being claimed against them on the standard basis as agreed or taxed, the Defendant agreed to pay costs of the Claimants but subject to him being served with a memorandum or bill of costs.

15.1. Dealing first with the first issue.

The evidence of Kennerly Alvia annexes as "KA1" an Approval Form dated 15th November 2011. The Form contains the names of Chiefs Hajuju Sokovatu, Molivara Jingo, Kauri, Thomas Bombilae and Tom Rasu as Secretary. The approval was made by Chief Sale Rani Bani, Chief representative to the Island Council of Chiefs. The tribunal is named as Tabwemasana Joint Aore/Malo Island Land Tribunal. The list was purportedly approved in accordance with sections 35, 36 and 37 of the Act.

15.2. The evidence of Chief Joseph Riri by sworn statement dated 15th May 2012 deposed that he is the chairman of the Veriondali South East Santo Area Council of Chiefs. As one of the Claimants he has a conflict of interest. He deposed also that Chief Hajuju who sat as Chariman of the Tabwemasana Joint Aore/Malo Land Tribunal is not the Chairman of the South East Santo Council of Chiefs but is Vice-Chairman of Santo Island Land Tribunal and is from South Santo. Further that Chiefs Molvara, Tom Rasu, Kauri and Teles are from Malo and South Santo and are not from South East Santo custom area. These evidence are unchallenged.

15.3. In the evidence of Chief Riri in his further sworn statement dated 9th August 2012, he annexed as "JR1" copy of the decision of the JILT dated 7th June 2012. At page 3 the decision is signed by the Chairman Chief



Hajuju, the Secretary Chief Tom Rasu, Chief Kaory Livo as member, Chief Molivara as member and Chief Bombilae as member. These evidence are unchallenged by the defendants.

15.4. Joel Boelulu Joe deposed to an affirmed statement dated 3rd May 2013. He annexed as "JBJ 2" a copy of a letter dated 13th February 2013 which certifies that Nelson Sese and Silas Sese have been declared as custom land owners of Ratua Island. This document is signed by Chief Hajuju Chairman, Chief Tom Rasu as Secretary, Chief Kaory Livo as member, Chief Molivara as member and Chief Bombilae as member.

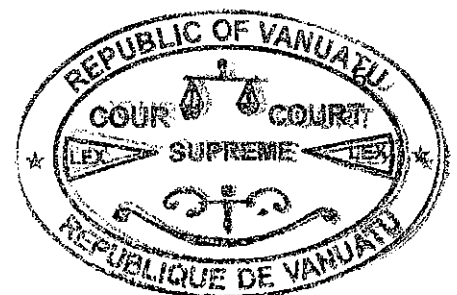
15.5. Finally, Kennery Alvia's evidence by sworn statement dated 2nd October 2013 annexes a Decision Form as recorded by the Lands Tribunal Office on 23rd July 2012. It indicates the name of the tribunal as Tabwemasana Joint Aore/Malo Island Land Tribunal. It lists the members as Chief Hajuju, Chief Molivara, Chief Kaory and Chief Bombilae. It names the Secretary as Chief Tom Rasu. It records the venue of meeting as SANMA Council Chambers. It provides the date of meeting as 12th June 2012. It provides for date of decision as 18th June 2012. It provides the name of disputed land as Ratua Island and indicates it is an offshore Island off Aore. It declares the names of Nelson and Silas and Family Varituae as true custom owners. It records the decision of the tribunal. It is signed by Chief Hajuju as Chairman, Chief Tom Rasu as Secretary, Chief Molivara as member, Chief Kaory Livo as member and Chief Bombilae as member. It provides the date of judgment as "16th day of July, 2012".

16. The relevant legal provisions are –

(a) Section 36(1), (2) and (3) which provide:

"Determination of boundaries and lists for islands with one custom area.

1. This section applies to an island if there is only one custom area on the island.



2. As soon as possible after this Act commence, the island council of chiefs must:

(a) Determine the boundaries of the custom area; and

(b) Approve a list of chiefs and elders who have sufficient knowledge of the custom of the island and each custom area to adjudicate disputes relating to the boundaries or ownership of customary land on the island and in each custom sub-area.

3. The island council of chiefs must, as soon as possible after the end of each year, revise the approved lists of chiefs and elders, making such additions, deletions and amendments as it considers necessary to keep the list up to date and accurate."

(emphasis added).

(b). Section 37 of the Act provides for qualifications of members of land tribunals. Subsection (1) is relevant and states –

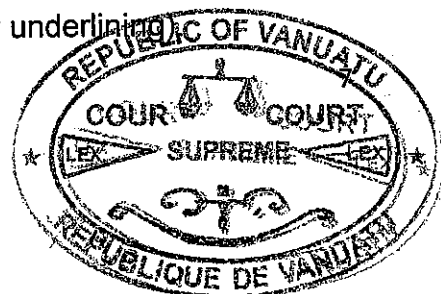
"A chief or elder is not qualified to be a member of a land tribunal unless he or she is included in a list approved under section 35 or 36." (emphasis by underlining).

(c). Section 39 of the Act provides for supervisory powers by the Supreme Court over land tribunals. Subsection (1) states –

"If a person who is not qualified to be a members or a secretary of a land tribunal participates in the proceedings of the tribunal, a party to the dispute may apply to the Supreme Court for an order:-

(a) to discontinue the proceedings before the tribunal or cancel its decision; and

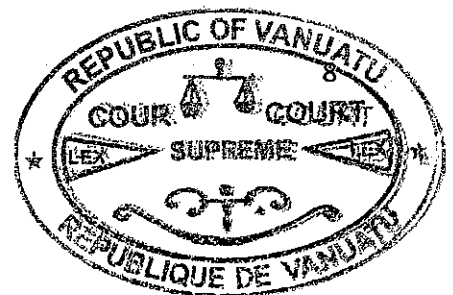
(b) to have the dispute determined or re-determined by a differently constituted land tribunal." (emphasis by underlining)



(d). Section 3 of the Act defines "Chairperson" to mean "the Chairperson of a land tribunal" and "Member" means "the Chairperson or any other member of a land tribunal, but does not include the Secretary of land tribunal." (emphasis added).

(e). Section 23 of the At provides for Island Land Tribunals. It states –

- "(1) The Chairperson of the island council of chiefs must convene a meeting of the council within 21 days after receiving a notice of appeal under section 22.
- (2) The island council of chiefs must establish an island land tribunal to determine the appeal.
- (3) If the land the subject of the decision being appealed is situated wholly within one custom area, the island land tribunal consists of:
 - (a) subject to subsection (4), a chairperson who is to be the chairperson of the custom area council of chiefs if he or she is qualified under this Act to adjudicate the dispute and is willing to do so, and
 - (b) 4 other chiefs or elders from the custom area appointed by the island council of chiefs; and
 - (c) a Secretary.
- (4) If the Chairperson of the custom area council of chiefs is not qualified under this Act to adjudicate the dispute or is not willing to do, he or she must appoint another chief or elder from the custom area as the chairperson." (emphasis added).



17. Applying the relevant sections of the Act as stated above to the facts, the Court finds as follows:-

(a) There are too many inconsistencies such as –

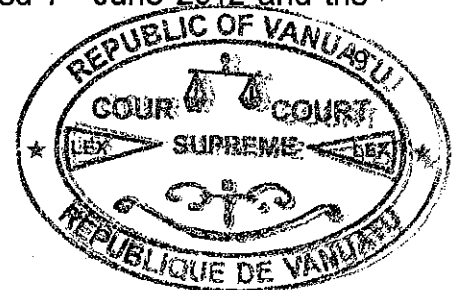
- (i) The date of decision given at 18th June 2012 does not correspond to the date of judgment which is given at 16th July 2012.
- (ii) The date of decision recorded by the Secretary being 7th June 2012 does not correspond to the date of decision on the register being 18th June 2012.
- (iii) If indeed the JILT sat on 12th June 2012 but the Secretary's note records the decision on 7th June 2012, the necessary inference the Court draws is that the decision was made some 5 days earlier before the tribunal actually sat to hear the appeal. These inconsistencies call the credibility of these documents into question.

(b) Mr. Kennery Alvia is not the maker of the register of decision (see Annexure "KA3") or the maker of the Minutes dated 29.11.11 (see Annexure KA4" and of the decision dated 7th June 2012 (see Annexure KA4"). As such these documents are questionable.

(c) Further, Mr. Alvia is not the maker of the Approval Form he annexed as "KA1" to his sworn statement. It shows the date of approval as 15th November 2011. This was not done in accordance with Section 36(2) and (3) of the Act.

(d) The constitution of the JILT was not done in accordance with Section 23(a), (b) and (c) of the Act. These require that the proper constitution of the JILT must be 5 members being (a) chairman and (b) 4 other chiefs or elders. The Approval Form shows a tribunal with only 4 members and not 5 as required by Section 23 (a) and (b).

(e) Chief Tom Rasu took oath and signed the approval form as secretary and also as member. He even signed the decision dated 7th June 2012 and the



letter dated 13th February 2013. That is an ultra vires act. The definition of "member" of a tribunal in Section 1 is very clear. It does not include the secretary.

(f) From the evidence of Chief Joseph Riri, it is clear Chief Hajuju or Chief Sale Rani Bani who purportedly did the approval are not from South East Santo but from Malo and South Santo. And it is also clear that Chief Molivara and Kaory Livo are also not from South East Santo. Only one member Chief Bombilae is from South East Santo and pursuant to Section 23 (b), only he was qualified to adjudicate.

(g) There was no evidence of any approved lists done by the island council of chiefs in accordance with Section 36 (2) (b) and (3) of the Act.

18. From the above findings, the Court concluded that Chief Hajuju, Chief Molivara, Chief Kaory and Chief Tom Rasu were not qualified to be appointed or approved as adjudicators to determine the Claimants appeal on 15th May 2012 and on 12th June 2012. Their approval, constitution and sitting on those dates and making the purported decisions under review were done ultra vires Sections 23, 36 and 37 of the Act.

19. For those reasons, the Court delivered the oral decision and orders dated 16th October 2013. Those decisions and orders are reaffirmed by this judgment.

DATED at Luganville this 21st day of October 2013.

BY THE COURT


OLIVER A. SAKSAK

Judge

