

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

Civil Case No.128 of 2010

AND: KEN ALLAN BELL
Claimant

AND: NARAK COUNCIL OF CHIEFS
First Respondent

AND: NARAK LANDS TRIBUNAL
Second Respondent

AND: ISAAC WALU
Interested Party

Coram: *Justice D. V. Fatiaki*

Counsels: *Mr. J. L. Napuati for the Claimant
Ms. F. Williams for the Tribunal
No appearance for the Interested Party*

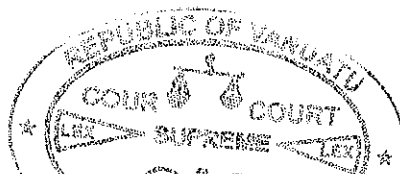
Date of Hearing: 6 May 2014

REASONS FOR DECISION

1. On 6 May 2014 this Court granted the claimant's judicial review claim quashing the decision of the **Narak Lands Tribunal** dated 13 August 2010. The claimant was also awarded costs to be taxed if not agree. I now provide reasons for the decision.
2. The original claim for judicial review was filed on 31 August 2010 and subsequently amended on 23rd September 2011. The numerous grounds enumerated in the original claim have been significantly refined and reduced in the amended claim.
3. For present purposes it is only necessary to refer to one (1) of the grounds claiming that there had been a deliberate ignoring by the Tribunal of the provisions of **Section 5 (3)** of the **Customary Lands Tribunal Act** ("*the Act*") which rendered its decision ultra vires and void.
4. **Section 5** of the Act provides:

"Pending court proceedings

5. (1) If:
 - (a) *a person is a party to a proceeding before the Supreme Court or an Island Court relating to a dispute about customary land; and*
 - (b) *the person applies to that Court to have the proceeding withdrawn and the dispute dealt with under this Act; and*



- (c) *the other party or parties to the proceeding consent to the withdrawal and to the dispute being dealt with under this Act; and*
- (d) *that Court consents to the withdrawal and to the dispute being dealt with under this Act;*

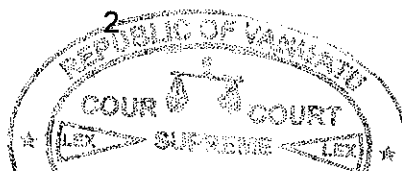
the dispute must be dealt with under this Act and one of the parties must give notice under section 7.

(2) *the Supreme Court or an Island Court may:*

- (a) *order that any fees paid to that Court in respect of such proceedings be refunded in full or in part to the applicant or any of the other parties; and*
- (b) *make such other orders as it thinks necessary.*

(3) *To avoid doubt, if proceedings before the Supreme Court or an Island Court relating to a dispute about customary land are pending, the dispute cannot be dealt with under this Act."*

6. The section is plainly intended to avoid duplicitous proceedings over the same customary land occurring at the same time in the Island Court and in a land tribunal established under the Act.
7. The section allows for the consensual withdrawal and referral of a dispute about customary land that is pending before the Island Court to a Customary Land Tribunal and in the absence of such consent, *"the dispute cannot be dealt with under the Act"*.
8. The claimant filed several sworn statements in support of the claim for judicial review from **Lui Nila, James Narueang, Iatamil Daniel and Nariu Freeman**. The witnesses' evidence is uniformly consistent in that there was a claim pending since 1993 before the **Tanna Island Court** concerning the ownership of the customary land known as *"Kitow"* situated at Whitesands, Tanna and that this fact was brought to the attention of the Tribunal members but was ignored.
9. The documentary evidence attached to the witnesses sworn statements included a letter from the **Chief Registrar** dated 30 August 2012 and an earlier letter dated 6 August 2010 (2 months prior to the challenged Tribunal hearing) from the clerk of the **Tanna Island Court**. Both letters confirm the existence of a pending **Land Case No. 07 of 1993** before the **Tanna Island Court** relating to *"Kitow Land"* on East Tanna in which Family Walu Sack was the original claimant seeking a declaration of customary ownership of the land and Family Nakuse Armaning was the counterclaimant.
10. In the face of the strong *"prima facie"* evidence, counsel for the respondent Tribunal was given time to produce evidence either refuting the existence of a pending proceeding in the **Tanna Island Court**



concerning the same land or confirming the consent of all parties to the transfer of the case to be dealt with under the Act. After four (4) months and several adjournments at counsel for the Tribunal's request, no evidence has been forthcoming.

11. In the circumstances, I am satisfied and accept the claimant's evidence and find that the respondent Tribunal lacked the jurisdiction to determine the customary ownership of "Kitow" land in the absence of the consents required under **Section 5(3)** of the Act. The decision taken by the **Narak Land Tribunal** on 13 August 2010 is accordingly null and void and is hereby quashed.
12. The claimant having succeeded in this judicial review is awarded standard costs to be taxed if not agreed.

DATED at Port Vila, this 6th day of May, 2014.

BY THE COURT



D. V. FATIAKI
Judge.

