

**BETWEEN:** **JIMMY VIRA**  
Claimant

**AND:** **MILAE VANUATU LIMITED**  
First Defendant

**AND:** **REPUBLIC OF VANUATU**  
Second Defendant

**AND:** **JAMES ARU**  
Interested Party

**Coram:** *Mr. Justice Oliver A. Saksak*

**Counsel:** *George Boar for the Claimant*  
*Hardison Tabi for the Second Defendant*  
*Marisan P Vire for the Interested Party*  
*Less John Napuati for the First Defendant (Ceased Acting)*

**Hearing Date:** *1<sup>st</sup> June 2015*  
**Judgment:** *2<sup>nd</sup> March 2016*

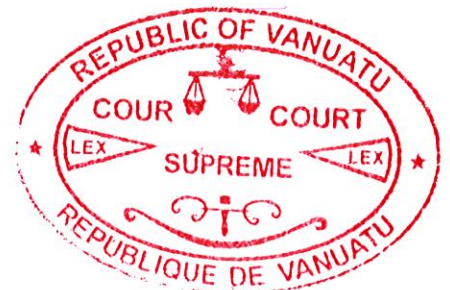
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## **JUDGMENT**

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### **Background**

1. On 20<sup>th</sup> February 2015 the Claimant filed a further Amended Supreme Court Claim, claiming he is the authorised representative of Family Molisale Tavuironleo (MT) and that he is the custom landowner of Belbura land.
2. He seeks the following reliefs-
  - a) An order preventing the Defendants from surrendering leasehold Title 04/3013/003 and subdividing and/or creating separate leasehold titles.
  - b) An order directing the First defendant to release VT 13.302.756 to the claimant and the Interested Party in the following manner:
    - I. VT 7.302.756 – Jimmy Vira ( Claimant)
    - II. VT 6.000.000 – James Aru



- c) A declaration in the event of a surrender of title and creating different titles that the total area of land comprised in Lease 04/3013/003 shall be 1.320 hectares, the area surveyed and confirmed by Sandra Andrew, a registered surveyor.
- d) An order that the claimant and the Interested Party be entered on the Register as Lessors of Belbura land with authority to sign all leases, transfer, mortgage agreements and all leases created thereon.
- e) Costs.
3. The Defendant filed a defence on 30<sup>th</sup> March 2015 generally denying the claims. The defendant however admitted that the Minister was ( and still is) the lessor of Lease Title 04/3013/003 and that they operate a Custom Owners Trust Account ( COTA) on behalf of the custom-owners and that the sum of VT 13.302.756 had been paid out to certain declared custom-owners and that the monies have been depleted, therefore they could not pay the claimant. Finally the defendant says it will abide the orders of the Court except as to costs.
4. The First Defendant filed a statement of defence on 6<sup>th</sup> March 2015 consisting of mixed admissions and denials and omissions due to having no knowledge, and otherwise denying that the claimant is entitled to the restraining orders sought in paragraph 2 (a) of this judgment.
5. Mr Napuati filed a notice of ceasing to act for the First Defendant on 19<sup>th</sup> May 2015.
6. The Interested Party filed a defence on 30<sup>th</sup> March 2015 denying the claimant's claims on the basis that the decision of the Mavunlevu Village Land Tribunal of 21<sup>st</sup> September 2012 no longer exists as it was appealed and quashed on 7<sup>th</sup> October 2013 and substituted to the effect that James Aru is now the recognised custom owner.

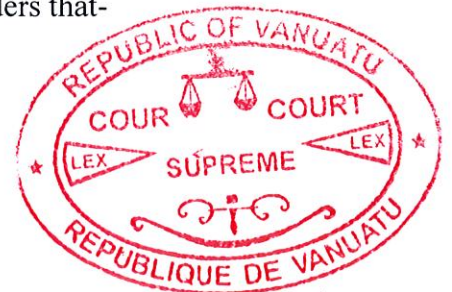




7. The claimant filed an application for summary judgment on 11<sup>th</sup> May 2015 seeking orders that the sum of VT 13.302.756 be released within 14 days and that it be shared as follows:-
  - a) VT 7.302.756 to be paid to the claimant, and
  - b) VT 6.000.000 to be paid to James Aru, the Interested Party
8. On 1<sup>st</sup> June 2015 the Court issued directions that the Defendants and the Interested Party filed their written submissions within 14 days and with liberty to the claimant to file a reply within 7 days thereafter.
9. As early as 18<sup>th</sup> May 2015 it was agreed by Counsel that this claim did not concern Milae Ltd First Defendant, and that they were excused from further hearings.
10. The Claimant's Counsel filed written submissions in support of the application for summary judgment on 27<sup>th</sup> May 2015. Mrs Vire filed written submissions in response on 10<sup>th</sup> July 2015.
11. The Second Defendant only filed their written submissions at 12:27 pm yesterday 1<sup>st</sup> March 2016. Those submissions are very late and having read them, they add little or nothing to the findings of the Court.

### **Discussions**

12. The claimant relied basically on the judgment of the Court of Appeal in Civil Appeal Case No. 21 of 2014 and in particular what the Court said in [ 19] and [20] of their judgment and sought the following reliefs on their pleadings:-
  - a) That the claimant be declared joint custom owners representative of Belbura land together with James Aru.
  - b) Both of them be entitled to equal benefits emanating from Belbura land, and
  - c) Both be registered as lessors of the leases created on Belbura land.
13. On the summary judgment application the claimant sought orders that-
  - a) VT 7.302.756 be paid to Jimmy Vira ( claimant), and  
VT 6.000.000 be paid to James Aru



- b) Both of them be jointly added as lessors to existing leases on Belbura land and to sign leases, mortgages, transfers and consent agreements.
- c) A declaration that Belbura land boundaries contains an area size of 1.320 hectares as mapped out by surveyor Sandra Andrew.
14. On careful observation of the reliefs sought they are different. The reliefs sought in the request for summary judgment are different from the reliefs sought in the claims of the claimant. It would therefore be grossly unfair and unjust to grant the reliefs sought by the claimant when his pleadings and evidence do not support them and furthermore when the defendants have not had the opportunity to respond to them appropriately.
15. For those reasons the reliefs sought by the claimant in his request for summary judgment are an abuse of process and must be declined. And I so rule.
16. What remains now are the reliefs sought in the main claim. And I consider first the claimant's relief for a declaration of joint custom owners representatives. The short answer to this is that this Court lacks jurisdiction to make such a declaration therefore that is the end of this claim.
17. The second relief sought by the claimant is that there be an order that both the claimant and the Interested Party be entitled to equal benefits emanating from Belbura land. There are two answers to this, first the Court has no jurisdiction to decide on this aspect of sharing and second, the claimant has no standing to make such a claim. The current situation is that James Aru is the declared custom owner of the land in question and it is he who has standing to come to the Court to seek this relief. This relief is therefore declined.
18. Finally the relief that both the claimant and James Aru be registered as lessors of leases created on Belbura land, this relief must also be declined. For as long as these persons continue to maintain their current positions, their dispute is ongoing and as such, those leases must remain with the Minister as lessor.



**The Result**

19. The end result, and for the foregoing reasons all the claims of the claimants fail and are hereby dismissed.

20. This is a case where no parties are entitled to costs. Each party is to pay their own costs.

**DATED at Port Vila this 2<sup>nd</sup> day of March 2016**

**BY THE COURT**

  
**OLIVER.A.SAKSAK**

**Judge**

