

BETWEEN: Tony Naliups, Patrick Paliupus, Sergio Naliupus,
Annie Naliupus, Dannie Naliupus, Enock
Naliupus Charlot Sam, Nias Warcon, Jean Fred,
Alick & Saki
Claimants

AND: Customary Land Management Unit
Defendant

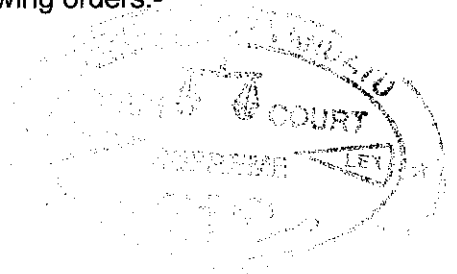
Before: Justice Aru

In Attendance: Mr. L. Napuati for the Claimants (no appearance)
Mr. S. Kalsakau for the Defendant
Mr. E. Toka for the Interested party

JUDGMENT

Introduction

1. This is a claim for judicial review filed on 12 January 2017, "*as per court order dated 25 November 2016*". I will refer to this order later. On 20 February 2017 the defendant filed an Application to strike out the claim with a sworn statement of Mr Kalsakau in support. A response was filed by the claimants on 7 March 2017. On 19 May 2017 all Counsels were in attendance in chambers when the strike out Application was listed for hearing today at 900am. When the matter was called this morning Mr Napuati was not in Court. I proceeded to hear the Application given that Mr Napuati has had due notice of the hearing date and is aware that the defendant's Application will be heard today.
2. Having heard Mr Kalsakau on his Application I made the following orders:-



- a) the Application to strike out is granted and the claim for judicial review is struck out;
- b) the defendant is entitled to costs in the sum of VT 30,000 to be paid within 14 days with VT 5000 wasted costs ordered on 19 May 2017 making a total of VT 35,000.

3. I now provide my reasons for making these orders.

Background

4. The background to this claim is that on 20 September 2016, the claimant Tony Naliupis filed Judicial Review Case No 3175 of 2016 (JR 3175 of 2016) **Tony Naliupis v Customary Land Management Unit**. The subject of the claim was land known as Lorewele/Levuka land and the claimant sought to challenge decisions made by two land tribunals in relation to that land and the issuing of a green certificate. The decisions are namely:-

- (i) The Port Olry Land Tribunal decision of 23 August 2003
- (ii) The East Santo Lands Tribunal decision of 2 October 2004
- (iii) The Green certificate issued on 2 October 2004 to Family Kaven

5. Chetwynd J dealt with JR 3175 of 2016 and refused the claimant's application to extend time to file the claim. In his Minute of 25 November 2016 at paragraph 9 and 10 he said that:-

"9....in view of the nature of the claim and the date of the decision being challenged the applications to extend time are refused.

10. This means that the claimant cannot proceed with his claim. If he wants to challenge the decisions he will have to file a fresh a claim making sure he complies with all the requirements Part 17

..."

(emphasis added)

6. This appears to be the reason why the current claim has been filed *"as per court order dated 25 November 2016"*.



7. In this current claim, the parties are the same with a number of individuals added joining Tony Naliupis as claimants. The subject land is still the same, Lorewele/levuka land and the same decisions concerning that land are being challenged namely:-

- (i) The Port Olry Land Tribunal decision of 23 August 2003
- (ii) The East Santo Lands Tribunal decision of 2 October 2004
- (iii) The Green certificate issued on 2 October 2004 to Family Kaven

Application to Strike out

8. The application to strike out is made on the basis that the claimants' claim contains identical pleadings to JR 3175 of 2016. Secondly that leave has already been refused to extend time due to considerable lapse of time and finally that the claim is an abuse of process as it was filed outside the time permitted by Rule 17.5 1) of the Civil Procedure Rules and is contrary to public interest as to finality.

9. The claimants' response to the Application is that the defendant in its letter of 8 August 2016 permitted the claimant to file his JR claim out of time.

10. I accept that this is an identical or similar claim to JR 3175 of 2016 and has been filed either out of ignorance or misunderstanding of what Justice Chetwynd said in his Minute that *"if he (the claimant) wants to challenge the decisions he will have to file a fresh claim making sure he complies with all the requirements of Part 17."*

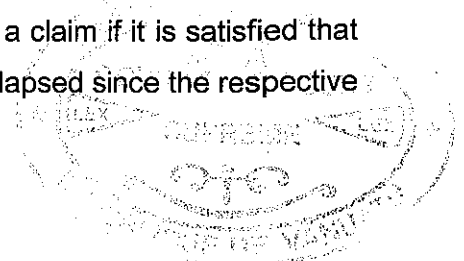
11. First, rule 17.5 provides for the timing for filing a JR claim and states:-

" (1) The claim must be made within 6 months of the enactment or the decision.

(2) However, the court may extend the time for making a claim if it is satisfied that substantial justice requires it."

(emphasis added)

12. One of the requirements of Part 17 of the Civil Procedure Rules is that Rule 17.5 above requires that any JR claim must be filed within 6 months of the decision being challenged and the Court may only extend time for making a claim if it is satisfied that substantial justice requires it. More than a decade has now lapsed since the respective

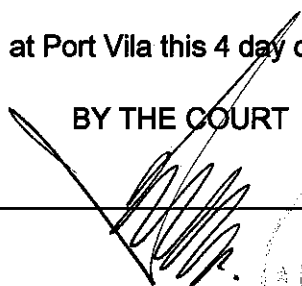


land tribunal decisions were made and the green certificate was issued. The claimants sat on their rights and did nothing. No application was made to extend time and in the absence of that, the claim must therefore be struck out as it is filed out of time.

13. In passing might I add that the letter of 8 August 2016 (Annex 'TN6' to the sworn statement of Tony Naliupis) is nothing more than guidance to the Claimants should they wish to challenge the land tribunal decisions. The ultimate decision whether or not to file a claim given the circumstances rests with the Claimants and their legal counsels.

DATED at Port Vila this 4 day of July, 2017

BY THE COURT



D. Aru
Judge

