

**BETWEEN: JOE KAMJI**  
Claimant

**AND: REPUBLIC OF VANUATU**  
Defendant

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

**Counsel:** *Less Napuati for the Claimant  
Adeline Bani for the Defendant*

**Date of Hearing:** *Monday 27<sup>th</sup> February 2017*

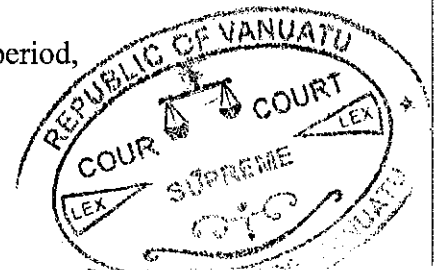
**Date of Judgment:** *Friday 3<sup>rd</sup> March 2017*

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## **JUDGMENT**

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1. The Claimant moves the Court to review the decision of the National Co-ordinator of the Customary Land Management Unit, Mr Alicta Vuti as the defendant herein ( the Co-ordinator), made on 29<sup>th</sup> June 2016 when he refused to grant a “green” certificate to the Claimant recognising him as the declared custom-owner of Irumanga custom land.
2. The claimant seeks-
  - a) An order quashing the Coordinator’s decision of 29<sup>th</sup> June 2016,
  - b) An order directing the Coordinator to issue the green certificate applied for, and
  - c) An order for costs.
3. The claimant alleges that-
  - a) The Co-ordinator failed to place reliance on the decision of the Nasepmene Land Tribunal, instead relied wrongly on the decision of the West Tanna Area Land Tribunal which Tribunal had been terminated prior to hearing a purported appeal by the Namry Family.
  - b) The purported appeal was made outside the 21 days appeal period,



- c) The purported appeal was made to the wrong tribunal, and
  - d) The Co-ordinator had breached Article 78 (3) of the Constitution ( Sixth Amendment No.27 of 2013)
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4. The evidence in support of the Claimant's claim are contained in the sworn statements of -

- a) Joe Kamji ( claimant) dated 16<sup>th</sup> August 2016 and of 2<sup>nd</sup> November 2016 and filed on 2<sup>nd</sup> December 2016 and of 6<sup>th</sup> September 2016,
- b) Seth Kaurua of 20<sup>th</sup> September 2016 filed on 24<sup>th</sup> November 2016,
- c) Nariu Freeman of 20<sup>th</sup> September 2016 filed on 24<sup>th</sup> November 2016, and
- d) Robert Napau of 21<sup>st</sup> September 2016 filed on the same date.

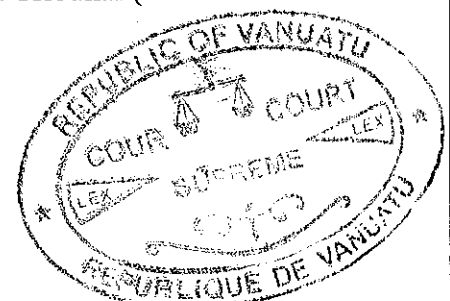
5. The defendant filed a defence on 12<sup>th</sup> September 2016 recognising the decision of the West Tanna Land Tribunal of 19<sup>th</sup> May 2010, in favour of the Namry Family as valid under the provisions of section 58 of the Custom Land Management Act No. 33 of 2013. Further the defendant denies any breach of Article 78 (3) of the Constitution and says the claimant is not entitled to any of the reliefs he seeks.

6. The defendant relies on the evidence contained in the sworn statement of Alicta Vuti filed on 12<sup>th</sup> September 2016.

7. The claimant relies on his written submissions filed on 9<sup>th</sup> December 2016 on 7<sup>th</sup> February 2017 and the memorandum filed on 27<sup>th</sup> February 2017. And the defendant relies on their written submissions filed on 7<sup>th</sup> February 2017.

8. The following facts are not in dispute:

- a) On 25<sup>th</sup> June 2009 the Nasipmene Custom Sub-Area Land Tribunal (the Tribunal) declared the claimant as custom owner of Irumaga custom land ( the land).
- b) On 7<sup>th</sup> July 2009 Family Namry filed a notice of appeal against the Tribunal's decision of 25<sup>th</sup> June 2009 to the West Tanna Custom Area Tribunal (the West Tanna Tribunal).

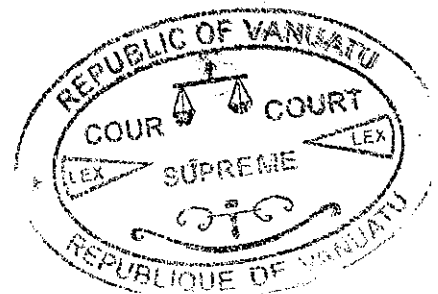


- c) On 12<sup>th</sup> February 2010 the Niko Letan Council of Chiefs of Tanna wrote to West Tanna Tribunal terminating it as a Tribunal.
- ~~d) On 19<sup>th</sup> May 2010 the West Tanna Tribunal sat and heard the appeal of the Family Namry and declared them as custom owner of the land.~~
- e) On 7<sup>th</sup> July 2010 the West Tanna Tribunal confirmed the appeal decision to the Niko Letan Council of Chiefs.
- f) On 14<sup>th</sup> June 2014 the defendant confirmed receipt of the Tribunal's decision dated 25<sup>th</sup> June 2009 and advised the claimant it could not issue a certificate of recorded interest to him as requested.
- g) On 29<sup>th</sup> June 2016 the defendant informed the claimant of Family Namry's success on their appeal.
- h) On 24<sup>th</sup> August 2016 the claimant filed this proceeding.

### Discussions

9. The defendant raised two issues namely:
- Whether the decision of the defendant in refusing to issue a certificate to the claimant was in breach of Article 78(3) of the Constitution?, and
  - Whether the Supreme Court has jurisdiction to order the Defendant to issue a certificate to the claimant?
10. Relying on Article 78(3) and on section 58(1) and (3) of the Custom Land Management Act the defendant argued and submitted that Article 78(3) was not breached and that this Court has no jurisdiction to order the defendant to issue a certificate.
11. Article 78(3) of the Constitution states:
- “ Despite the provisions of chapter 8 of the Constitution, the final substantive decision reached by customary institutions or procedures in accordance with Article 74, after being recorded in writing, are binding in law and are not subject to appeal or any other form of review by any Court of law.”*
12. Section 58 of the Custom Land Management Act states;

*“ Existing decisions of customary Land Tribunal*



1. *Decisions of:*

- a) *A single or joint village Customary Land Tribunal, or*
- ~~b) *A single or joint sub-area Customary Land Tribunal, or*~~
- c) *A single or joint area Customary Land Tribunal, or*
- d) *And Island Customary Land Tribunal*

*which determined the ownership of custom land and which were made before the commencement of this Act and have not been challenged within 12 months after the commencement of this Act, are deemed to create a recorded interest in land in respect of the person or persons determined by such tribunal to be a custom-owner.*

1. *.....( not applicable)*

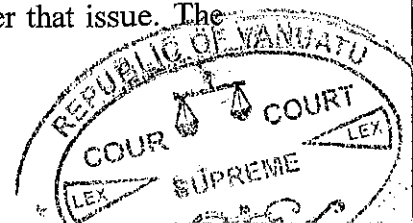
2. *A person may challenge a decision of a Customary Land Tribunal under this section by filing an application with the appropriate Island Court ( Land) that the decision of the Customary Land Tribunal be reviewed on the ground that:*

- a) *It has been made at a meeting that was not properly constituted, or*
- b) *It has been made in breach of the authorised process, or*
- c) *It has been procured by fraud, or*
- d) *It was wrong in custom or law.*

3. *The Island Court (Land) after hearing all relevant evidence may dismiss the application for review, or may order that the decision of the Customary Land Tribunal be set aside and direct that the ownership of custom land be determined in accordance with this Act."*

13. In regard to the first issue this is not a constitutional application and therefore it is in appropriate for the Court to determine this issue.

14. As for the second issue, it is the defendant's strongest defence. And the Court agrees with the defence but it is not the relevant issue to be determined. Whether or not this Court has the jurisdiction to order the Co-ordinator to issue a certificate is arguable but it is not the essential issue here. And the Court will not consider that issue. The



real issue is whether this Court can review the decisions of the Nasipmene Land Tribunal made on 25<sup>th</sup> June 2009 and or the West Tanna Tribunal of 19<sup>th</sup> May 2010. ~~The answer to this issue lies with sections 45 and 58 of the Custom Land Management Act and the answer is clearly "No".~~

15. The claimant argued that the appeal to the West Tanna Tribunal was late. I doubt that the evidence support that argument. Their strongest argument was perhaps that West Tanna Tribunal was terminated and as such it was not the appropriate tribunal to have heard the purported appeal. The evidence support their case on this aspect. Further it was their argument that the disputed land is on East Tanna and it could not have been appealed to the West Tanna Tribunal. Their evidence supports that contention as well but it is an arguable point. But all these are arguments although good have to be raised in the Island Court (Land) and not in this Court.

### **Conclusion**

16. This claim by the claimant is misconceived and accordingly it is dismissed.

17. This proceeding was instituted by the claimant on the advice of the Co-ordinator. For that reason there will be no order as to costs. Each party will bear their own costs of the proceeding.

**DATED at Port Vila this 3<sup>rd</sup> day of March 2017**

**BY THE COURT**

**OLIVER.A.SAKSAK**

**Judge**

