

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

Judicial Review No.08 of 2015

**IN THE MATTER OF: BELJI CUSTOM LAND**

**BETWEEN: JAMES BOWI**

Claimant

**AND: THE SANTO MALO ISLAND LAND  
TRIBUNAL**

Defendant

**AND: SAWO ORO**

Interested Party

Judicial Review No.09 of 2015

**IN THE MATTER OF: BELMOL CUSTOM LAND**

**BETWEEN: JAMES BOWI**

Claimant

**AND: THE SANTO MALO ISLAND LAND  
TRIBUNAL**

Defendant

**AND: KARAILAN**

Interested Party

**Coram:** *Justice D. V. Fatiaki*

**Counsel:** *Mr. S. T. Joel for the Claimant  
Mr. S. Aron for the Defendant Tribunal  
No appearance for the Interested Party*

**Date of Decision:** *3 November 2017*

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**JUDGMENT**

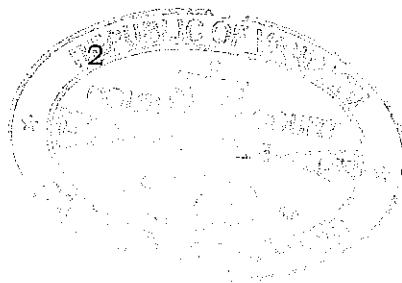
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1. On 23 April 2010 the defendant Tribunal comprised of "Jif Kalmasei Warsal"; "Jif Molivara Jingo"; "Jif Tahe Tamata" and "Jif Namser Yako", without noting or recording the names of any other parties to the appeal merely referred to and endorsed the decision of the "Santo/Malo Joint Area



*Land Tribunal* that "*Belji land*" situated in South Santo belonged to Mr. Sawa Oro of Avulua Village, Malo Island.

2. On the same date the Minutes of the defendant Tribunal which records nothing about the hearing of the "*Belji land*" appeal, reveals that it considered "*Belmol land*" also situated in South Santo. In particular, the tribunal identified two valid appeals before it, an appeal by Family Bebelao concerning "*Vunapaka land*" and the other appeal by Andipura Lipes over "*Belbura land*". No mention is made in the Minutes of an actual appeal about "*Belmol land*" or an appeal by the claimant yet the table it refers to, shows the claimant's appeal as the first entry concerning "*Belbura land*" which is contained within "*Belmol*".
3. Be that as it may, the defendant Tribunal determined that the Family Bebelao appeal concerned an internal family leadership squabble which had been amicably resolved at a reconciliation ceremony and the appeal over "*Belbura land*" was adjourned because of the absence of Andipura Lipes on 23 April 2010.
4. On 20 February 2015 the applicant issued judicial review claims in the Supreme Court invoking Section 39 of the Customary Land Tribunals Act ("*CLTA*") challenging the decision of the defendant Tribunal concerning "*Belji land*" (**JR No. 8 of 2015**) and "*Belmol land*" (**JR No. 9 of 2015**).
5. On 5 November 2015 both judicial reviews were ordered consolidated as they were between the same applicant and defendant Tribunal and concerned the decisions the defendant Tribunal made at its meeting on 23 April 2010. Both judicial review applications also sought the same relief and were based on the same grounds of complaint.
6. On 18 June 2016 in **JR No. 8 of 2015** State counsel for the defendant Tribunal applied to strike out the claims on the basis that it was brought almost 5 years after the decision sought to be reviewed in breach of Rule 17.5 of the Civil Procedure Rules and without first obtaining the leave of the Court and counsel refers to three judgments of which the only relevant one is: Family Tavuironeo v. Santo Malo Island Land Tribunal [2011] VUSC 249. In that case, an application under Section 39 of the CLTA was dismissed because it was brought 2 years and 5 months out of time and no leave to issue the claim had been obtained prior to its filing.
7. I have read the short judgment which is 6 paragraphs long and confess that I prefer the contrary view expressed by this court in Kaun v. Lingarak and



Limap Village Joint Land Tribunal [2012] VUSC 12 where this Court said of Section 39 at paras. 19 and 20:

*"... Section 39 of the **Customary Land Tribunal Act** does **not** prescribe a time limit within which the section can be invoked after a land tribunal has delivered its decision. This omission contrasts significantly with the various other provisions in the Act which provides a dissatisfied party with a right of appeal "... within 21 days after the announcement of that decision" to a higher tribunal [see: Sections 12(1); 17(1) and 22(1)]. (**expressio unius est exclusio alterius**)*

*Viewed in that statutory context and given the fairly limited nature of the Supreme Court's supervisory role under Section 39 of the Act, I am **not** persuaded that the "omission" of a time limit was unintended or that the 6 month time limit in **Rule 17.5** should be adopted unequivocally as to introduce a time limit for invoking section 39 where the Act itself has provided none."*

This ground to strike is misconceived and is accordingly dismissed.

8. State counsel also doubted the claimant's "*locus*" to invoke Section 39 in so far as he was not "*a party*" before the defendant tribunal whose decision is being challenged. The submission is misconceived in narrowly construing the phrase: "*... a party to the dispute ...*" in Section 39 to mean "*... a party to the decision*" (being appealed) which is the expression used in Sections 12(1)(a); 17(1)(a) and 22(1)(a). It is also not dissimilar to an expression, in Section 24(1)(b).
9. In my view, the expression "*... a party to the dispute*", although undefined, is more closely identified with the commencement of proceedings under Section 7 which uses the same expression: "*... a party to a dispute*" and where a "*dispute*" actually exists as opposed to a "*decision*" that is being challenged on an appeal by a dissatisfied or unsuccessful claimant or appellant.
10. Furthermore the Court of Appeal in West Tanna Area Council Land Tribunal v. Natuman [2010] VUCA 35 expressed the view that the term "*... the party to the dispute*" under the CLTA was "*... not intended to be a restrictive one (and) may include any party whose proper interest may be affected by the resolution of the dispute*".
11. In the present matter the undisputed evidence is clear that the claimant had paid filing fees in respect of his claims over "*Belji land*" and the "*Belmoli Cattle Project*" in 2007 and 2008 and also to Jif James Tangis the chairman of the Santo/Malo Joint Area Land Tribunal on 27 November 2009 7 days before it delivered its decision on "*Belji land*". In my view he was plainly "*... a party to the dispute ...*" over "*Belji*" and "*Belmoli*" and accordingly this ground of objection must also fail.

12. The application to strike out the judicial review applications fails and was accordingly dismissed.
13. The substantive grounds challenging the defendant Tribunal's decisions includes a complaint that the defendant Tribunal was constituted in breach of Section 23 of the CLTA in view of the common undisputed fact that the lands under dispute namely, "Belji" and "Belmol" are both situated wholly in the South Santo custom area on the Island of Santo and neither is located on Malo Island. Given the above fact and considering the provisions of Section 2 of the CLTA the joinder of 2 separate islands (not custom areas), namely, "Santo" and "Malo" must be considered of doubtful validity.
14. The undisputed fact is confirmed by Alicita Vuti Kwirinavanua who deposed:

*"... the custom land of Belji is situated wholly within the customary boundary of Belmoli custom land on South Santo"*

and later with regard to the setting up of the defendant Tribunal he deposes:

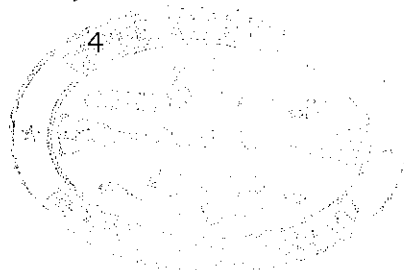
*"... (Belji) the subject being appealed against is situated wholly with the Custom Area of South Santo. However, the Santo Malo Island Council of Chiefs established a Joint Island Land Tribunal of Santo and Malo because the appellant was from Malo Island."*

(my underlining)

15. Section 23 of the CLTA provides (so far as relevant):

***"Island land tribunals***

- 23. (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 against 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 appointed by the island council of chiefs.

(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 so, he or she must appoint another chief or elder from the custom area as the chairperson.

(my highlighting)

16. It is clear from the above provisions that it is the "custom area" and the particular location of the disputed land that dictates whether or not a single or joint land tribunal is required to be established to determine any dispute or appeal. Whatsmore in the absence of any mention of it, neither the "place of residence" or the "island of origin" of the claimant or appellant is relevant in such a determination. It should not have been the basis for constituting the defendant Tribunal however desirable and that was a critical error.
17. In the present claims given the undisputed location of "Belji" and "Belmol" being "situated wholly within (the) one custom area" of South Santo, the composition of the "Santo/Malo Joint Area Land Tribunal" which was the lower tribunal whose decision was being appealed to the defendant Tribunal, was seriously flawed and non-compliant with the provisions of the CLTA.
18. Unfortunately, that error was not corrected at the Island Land Tribunal level as it should have been, instead, the error was perpetuated in constituting the defendant Tribunal with the inclusion of three (3) unqualified members namely, Chief Molivara Jingo from West Malo as chariman and two other members who were "... not from South Santo".
19. Furthermore Section 23 (3) requires an island land tribunal to consist of:
- (a) A (1) chairperson who is the chair of the custom area council of chiefs (ie. South Santo Custom Area Council of Chiefs); **and**
  - (b) Four (4) other chiefs from the "custom area" appointed by the island council of chiefs (ie. for Santo Island); **and**
  - (c) A (1) secretary;

In total, there should be five (5) members and a secretary. On the face of the statutory Form recording the defendant Tribunal's decision there were only four (4) members sitting on the defendant Tribunal on 23 April 2010. On that basis also, the defendant Tribunal was incompletely constituted and non-compliant with the requirements of Section 23.



20. In light of the foregoing the judicial review applications are upheld and the decisions of the Santo/Malo Island Land Tribunal concerning "Belji" and "Belmo" customary lands are quashed.
21. Given the repeal of the CLTA, the parties are left to determine how best to deal with their competing claims to "Belji land" and "Belmol land" under the provisions of the Custom Land Management Act.
22. The claimant is awarded costs against the defendant Tribunal which are summarily assessed at VT50,000 payable within 21 days.

**DATED at Port Vila, this 3<sup>rd</sup> day of November, 2017.**

**BY THE COURT**



**D. V. FATIAKI**  
Judge.