

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

**Civil  
Case No. 16/940 SC/CIVL**

**BETWEEN: DENNISON TARI DULE**

*Claimant*

**AND: PATRICE TARI & FAMILY**

*First Defendant*

**AND: SYLVERE MERA & FAMILY**

*Second Defendant*

***Date of Hearing:*** 16<sup>th</sup> March 2018

***Date of Decision:*** 16<sup>th</sup> August 2018

***Before:*** Justice Oliver A. Saksak

***Counsel:*** Stephen T. Joel for the Claimant  
Roger Tevi for the Defendants

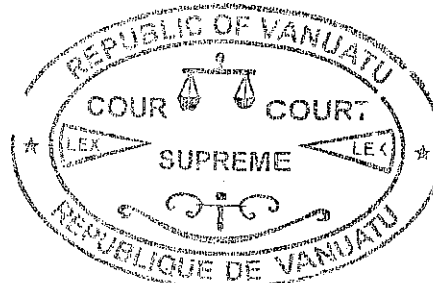
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## **DECISION**

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### **Background**

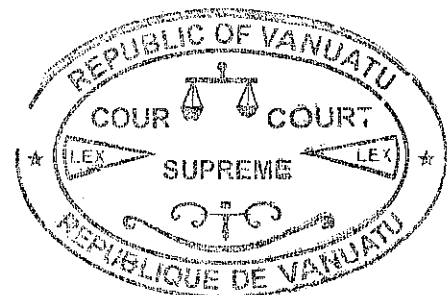
1. The Claimant filed their claim on 1<sup>st</sup> April 2016 claiming the sum of VT7,217,196 together with interests at 10% plus costs.
2. This amount of VT7,217,196 was awarded by the Vatubulei Tagaro Area Land Tribunal on 7 April 2010 when the Tribunal found in favour of the claimant as custom owner and declared him as such.
3. The defendants filed a late defence only on 13 February 2018. The only claim they seek to challenge is the amount of VT7,217,196 which they argue the Tribunal had no jurisdiction to award.



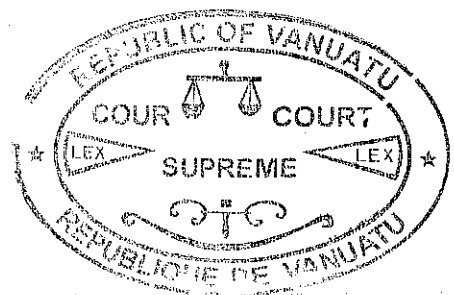
4. On 16 March 2018 Counsel agreed to a timetable order in order to file written submissions purely on the issue of “whether or not the Tribunal has jurisdiction to award the compensation it did?”
5. The defendants filed their written submissions first in time on 4<sup>th</sup> April 2018. The claimant’s submissions were filed on 27 April 2018.

### Discussions

6. Rule 14.9 of the Civil Procedure Rules No. 49 of 2002 (the Rules) clearly states that Court orders may be enforced at any time within 6 years after the date of the order.
7. The Tribunal issued its orders on 7 April 2010. The claimant filed his claims on 1<sup>st</sup> April 2016. Although still within the 6 years period, it was done very late. Had it been done after 30 days after which period the appeal period had lapsed, it would have given the defendants the opportunity to (a) consider an appeal or (b) file for judicial review under the Act which was then in force. The Act has now been repealed and replaced. The late filing of the claims mean the defendants have been prejudiced by the huge delay.
8. As to jurisdiction of the Tribunal, it is in question: Section 30(c) of the Act certainly gives power to the Tribunal to grant an order for compensation but fell short of specifying the amount.
9. By comparison the Island Court’s criminal jurisdiction is VT24,000 and its civil jurisdiction limit is VT50,000. For Magistrate’s Court the limit for physical injury is VT1,000,000 and the limit in respect of land disputes is based on the value of the land not exceeding VT2,000,000.
10. Surely the Customary Land Tribunal’s jurisdiction could not, whether express or implied be presumed to be over and above the Magistrates’ Court’s jurisdiction of VT2,000,000 in respect to land dispute? I doubt that very much.



11. What the Tribunal could have done was to grant the order for compensation, but as their jurisdiction is unclear as to the amount, grant liberty to the claimant to file a separate claim for damages to the Supreme Court.
12. Having failed or omitted to do so, I accept Mr Tevi's submissions that the Tribunal could not and did not have any powers to award the compensation sum of VT7,217,196.
13. The Decision dated 7 April 2010 annexed as "DT1" to the statement of Dennison Tari filed on 15 September 2016 does not contain any order under paragraph 9 for compensation of VT7,217,196.
14. What is disclosed as "CDT4" is another document purported to be the decision of the Tribunal. It is dated 17 September 2011. That is the document that orders at (c) that Mr Sylvere Mera (Tari) and Patrice Tari to pay VT7,217,196 as compensation for use of land for the last 6 years. And it attached a Compensation Document dated 26 April 2011. This document is not however disclosed. But it confirms what I have stated at paragraph 11 that there appears to be a compensation claim of VT7,217,196 put before the Tribunal which would have been properly filed in the Supreme Court, as the Tribunal lacked jurisdiction to entertain such a huge compensation claim.
15. Further from paragraph 1 of the said document there appeared to be an appeal hearing on 18 March 2010 following the decision of 7<sup>th</sup> April 2010. Two things must be noted (a) at paragraphs 10 and 11 of the Record of Decision ("CDT1") it is stated there was no appeal and (b) if there was an appeal ( as recorded at paragraph 1, it was heard by the same members of the Tribunal that made the decision on 7<sup>th</sup> April 2010. Surely that is questionable and could not be the correct approach under the scheme as it was under the Lands Tribunal Act.
16. I find the whole decision mysterious and questionable, but I have not been asked to declare the whole decision void and of no effect, so I will refrain from doing so.
17. However I have been asked to consider only whether the Tribunal had jurisdiction to award a compensation of VT7,217,196 against the defendants, and my clear finding is



that the Tribunal lacked jurisdiction. And for the reasons given that part of the decision must and is hereby declared invalid and of no effect. It is to be removed or deleted from the decision.

18. As for the balance of the claim the claimant is successful and the Court grants the orders sought as follows:-

- (a) The first and second defendants are to vacate the Nabiribiri Custom Land at Lolovuevue area, North Ambae, Penama Province forthwith.
- (b) All permanent developments done by the first and second defendants on Nabiribiri Custom Land including houses remain part of the land and must be left without any damage or destruction.
- (c) All kava crops, gardens and economic crops on the said custom land are to remain on the land without damage or destruction.

19. The claims for compensation, interests and costs are declined. Each party is to pay their own costs.

**DATED at Port Vila this 16<sup>th</sup> day of August, 2018.**

**BY THE COURT**

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**Oliver A. Saksak** ★

**Judge**

