

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

Civil
Case No. 18/3055 SC/CIVL

AND: FAMILY CHICHIRUA represented by
Gilbert Kanegai, Leisale Chichirua
Saurei, Eana Chichirua Kila, Tony
Kanegai and Ben Chichirua
Claimant

AND: HUMPHRY TAMATA
First Defendant

AND: FAMILY GEORGE KANO represented by
Andrew Kano Chichirua
First Interested Party

AND: FAMILY KALSAKAU AND OTHERS
Second Interested Party

Before: Justice Saksak

In Attendance: Silas C Hakwa for Claimants
Lennon Huri for the Defendant
Willie Daniel for First Interested Party
Bruce Kalotiti and Juliette Kaukare for Second Interested Party

Date of Hearing : 29th May 2019

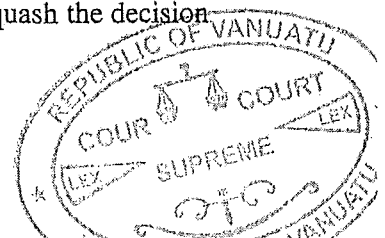
Date of Decision: 10th June 2019

JUDGMENT

1. The Claimant's claim for judicial review filed on 2nd November 2018 is hereby dismissed in its entirety with costs in favour of the defendant and the First and Second Parties.

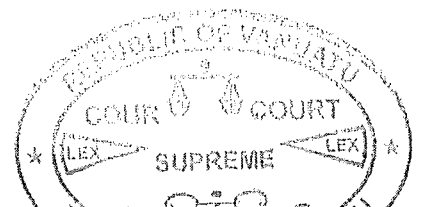
Reasons

2. The Claimant seeks judicial review of the National Coordinator's grant of a Certificate of Recorded Interest in Marope Custom Land to Family George Kano represented by Andrew Kano Chichirua. They seek (a) an order to quash the decision



made by the Coordinator on 29th June 2018, (b) a mandatory order directing the Coordinator to issue a Certificate of Registered Interest to Family Chichirua, (c) costs.

3. The Co-ordinator issued three Certificates first on 28th July 2014 to late Aloani George Kano Chichirua, Family Sope Imere, Chief Nunu Naperik Mala (Jnr), George Sualo and Family Kalsakau. Then on 10th May 2016 the Coordinator advised he had cancelled the first certificate and issued the second to Family George Kano (custom owner), Naflak Feufi Ifira (Perpetual Right Owner), Chief Nunu Neiperik Mala and Family (Perpetual Right Owner), Family Sope Inmere (Perpetual Right Owner) and Family Kalsakau (Perpetual Right Owner). Then on 28th October 2016 this certificate was cancelled and a third one issued to Andrew Chichirua. The decision to grant the third certificate to Andrew Chichirua was made by the Co-ordinator on 29th June 2018. On 2nd July 2018 the Coordinator advised the claimant that he would not grant a certificate to them as a result of him granting the certificate to Andrew Chichirua.
4. The claimant seeks an order quashing this decision and to grant a certificate to Family Chichirua.
5. The defendant opposes the claim in its defence filed on 24th February 2019. The defendant says in essence that the Claimant has no standing to claim they are the custom owners of Marope Land to be granted a certificate of Registered Interests. They relied on the evidence of Crimson Bani filed on 28th February 2019 in support of their defence. The State Law Office filed submissions on 26th March 2019 on a Rule 17.8 Hearing coupled with an application to strike out the Claimant's claim.
6. The First and Second Interested Parties were served with the claim and applied to become interested parties. The Court granted leave and Counsel filed sworn statements. Mr Daniel filed a defence on behalf of the First Interested Party.
7. In his submissions Mr Hakwa objected to Mr Crimson Bani's statement on grounds it contained hearsay evidence. Counsel relied on Rule 17.7 (4) which states that-
" with the defence the defendant and other person must file:



- a) *Detailed grounds for disputing or supporting the claim, and*
- b) *A sworn statement supporting those grounds.*

8. Mr Hakwa submitted Mr Bani was not the defendant in this case and that his evidence should not be admitted.
9. Mr Bani states in paragraph 1 of his statement he is the Principal Custom Land Officer of the Custom Land Management Office. Although Mr Humphrey Tamata, the National Coordinator is named as the defendant, this is not a personal suit against him but rather it is a claim against his office. Therefore despite the rule says the defendant should file a statement, it was sufficient that another person from his office filed the statement instead of him. And I do not accept the submission that his statements are or contains hearsay evidence which should not be admitted. I reject that submission.
10. Secondly Mr Hakwa argued that the First and Second Interested Parties were not defendants and did not need to file defences. Mr Daniel argued otherwise relying on Rule 17.7 (2) which states-

“ Any other person served with the claim who wants to take part in the judicial review must file a defence within 14 days of service of the claim.”

(my underlining)

I agree with Mr Daniel. This rule is mandatory and therefore his client was entitled to file a defence.

11. Further Mr Hakwa argued Mr Daniel was not entitled to file an application to strike out under a Rule 17.8 hearing. Mr Daniel objected and relied on Rule 17.8 hearing. Mr Daniel objected and relied on Rule 17:3 which states:

“The rest of these Rules apply to a claim for judicial review subject to the rules in this part.”

I agree with Mr Daniel. The scheme under Rule 17.8 hearing is intended to show a prima facie case on the part of the Claimant. If a Claimant is unable to satisfy the Court with the four criteria in Rule 17.8 (3) then it is inevitable that the judge should not strike the case out as early as possible under Rule 17.8 (5) to ensure costs and time



are kept at a minimum to all parties. Written applications are therefore necessary to put the Claimant on notice so they can come to the Rule 17.8 hearing ready and prepared so that they are not caught by ambush.

I therefore reject Mr Hakwa's argument on this point.

12. Under Rule 17.8 (3) the Claimant has to satisfy the Court that-

- a) He or they have an arguable case,
- b) They are directly affected by the decision of the Coordinator,
- c) There has been no undue delay, and
- d) There is no other remedy.

13. The first certificate was issued on 28th July 2014, some 5 years ago to Aloani George Kano Chichirua, Family Sope Imere, Chief Nunu Naperik Mala, George Sualo and Family Kalsakau. The Claimant did not question that decision. They have not given any reasons why they did not do so. Even when this first certificate was cancelled and the second one issued on 10th May 2016 the claimant did not challenge that decision. It was only when the Coordinator decided on 29th June 2018 to cancel the second certificate and issue the third to Andrew Chichirua that the claimant has challenged the decision. They go further to seek an order from the Court to order a mandatory issuance of a certificate to the Family Chichirua. This Court has no jurisdiction to decide on customary ownership of land. To do so would be to usurp the Court's powers.

14. For the Claimant to satisfy me they have an arguable they have to show the Family Chichirua was a claimant and party to the proceedings in the Island Court in Land Case No. 1 of 1993. The judgment of this case is annexed as "CB1" to the statement of Crimson Bani. The names of the parties are shown on the front page. The Claimant(s) do not appear as Land claimants. Sadly not even George Kano Chichirua or Andrew George Kano Chichirua are named as Land Claimants in the case.

15. I am therefore not satisfied the claimant has any arguable case. He or they have no cause of action and therefore they are not entitled to bring this judicial review



proceedings. That is enough to accept the strike out applications by the defendant and by the Interested Parties. It is not therefore necessary to consider the other three remaining criteria in Rule 17.8 (3).

The Result

16. The Claimant's claim and proceeding is hereby dismissed in its entirety. They have put the defendant and interested parties to unnecessary costs. I order that the claimant pays the costs of the proceeding to the Defendant and to the First and Second Interested Parties on the standard basis to be agreed or be taxed by the Master.

DATED at Port Vila this 10th day of June, 2019.

BY THE COURT


OLIVER.A.SAKSAK

Judge

