

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

Judicial Review
Case No. 18/1168 SC/CIVL

**AND: SILAS VATOKO, MORRIS KELLY
VATOKO AND NAKMAU SAMBO**
Claimants

AND: HUMPHREY TAMATA
Defendant

**AND: SILU MALASIKOTO, TORIKO
MALASIKOTO AND FREDDY
MALASIKOTO**
Interested Party

Before: **Justice Saksak**

In Attendance: **Edward Nalyal for the Claimants**
Sammy Aron for the Defendant
No appearance for the Interested Party(Philip Fiuka)

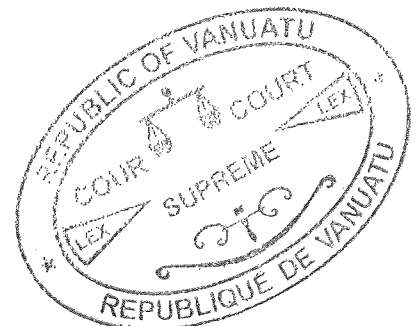
Dates of Hearing : **26th June 2019**

Date of Decision: **12th July 2019**

JUDGMENT

Relevant Background Facts

1. On 15th February 2018 the National Coordinator (the Coordinator) issued a Certificate of Recorded Interest in Land naming Silas Vatoko, Morris Kelly Vatoko, Nakmau Sambo and late Charlie Malasikoto as representatives of the Malasikoto Family in relation to Pangona Land.
2. On 20th March 2018 the Coordinator cancelled the said Certificate and reissued another naming Silu Malasikoto, Toriki Malasikoto and Freddy Malasikoto as representatives of Malasikoto Family.



Challenge

3. The Claimants challenge that decision alleging it is in breach of the provision of section 6H of the Land Reform Act CAP. 123. This section states-

“ Variation of names of representatives.

(1)All representatives of the custom owner group are appointed by the custom owners and must not act without the consent of the custom owners.

(2)Customers may at anytime meet and pass a resolution by consensus to vary their representatives. All members of the custom owner group or all members listed as descendants if original members have died must be present at a meeting to vary the representatives of the custom owners...”

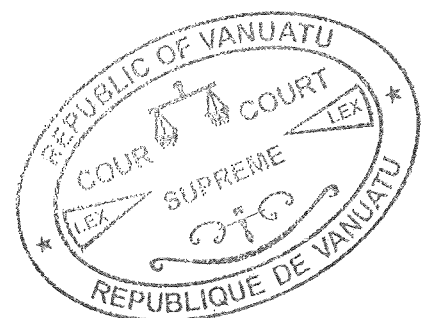
4. The defendant being the Office of the National Coordinator denies any breaches of section 6H (2). The Interested Party on the other hand say that the claimants have no standing to file this proceeding.

Evidence

5. The Claimants relied on the evidence of Silas Vatoko by sworn statements dated 25th April 2018 and also of 14th March 2019 in support of their claim.
6. The Defendant relied on the evidence by sworn statement of Humhprey Tamata dated 21st June 2018.
7. The Interested Party relied on the evidence by sworn statements of Silu Malasikoto dated 21st November 2018, 8th April 2019 and 9 May 2019 in support of their defence.

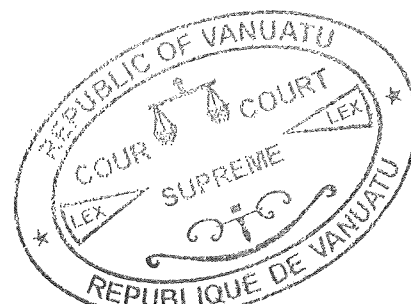
Issues

8. The issues are (a) whether section 6H (2) of the Land Reform Act was breached? And (b) whether the Claimants have standing?



Discussion

9. The facts are not in dispute. There was therefore no hearing as to the facts so that deponents of sworn statements did not have to be cross-examined. All sworn statements were therefore admitted into evidence.
10. The two issues are interrelated. The first issue is a legal one, the second a factual issue. Regarding the first issue, Section 6H (2) requires “ **customowners to meet at anytime and pass resolution by consensus to vary their representatives**”. It requires also that “ **all members of the custom owner group must be present at the meeting**”.
11. The evidence of Humphrey Tamata discloses a minute of meeting with Malasikoto Family on 2nd November 2016 (“HT5”). This meeting did not take place because Silu Malasikoto did not turn up. The meeting was postponed to 30 November 2016. The Minute of that meeting is disclosed by Mr Tamata as “HT4”. The agenda was to appoint or nominate persons to be named in the Certificate of Recorded Interest in Land. These were Chief Silu Malasikoto, Toriko Malasikoto and Freddy Malasikoto. The persons recorded as present were Chief Silu and his wife, Elder Toriko and his wife, Freddy M and his wife, Kamilo M and his wife, Kalpa M and his wife, Lano M and his wife, Jime M and his wife, Leon M and his wife, Seule M and his wife, Nema O, Lama M, Peru M and his wife and Brian’s wife.
12. It is clear from the evidence that none of the claimants were present at the meeting on 30 November. But should they have been? The answer should be found from the definition of “Custom owners” defined under section 2 of the customary Land Management Act as meaning-
- “..... any lineage, family, clan, tribe or other group who are regarded by the rules of custom, following the custom of the area in which the land is situated, as the perpetual owners of that land and , in those custom areas where an individual person is regarded by custom as able to own custom land, such individual person.” (emphasis added).*



13. “Custom Land” defined in the same section “ means land owned or occupied, or land in which an interest is held, by one or more persons in accordance with the rules of custom”. (emphasis added).

14. Mr Aron submitted that the Coordinator had issued the Certificate of Recorded Interest on 20 March 2018 in compliance with section 19 and 57 of the Custom Land Management Act. And he did so by complying with the decision of the Island Court which declared the Malasikoto Family as the declared custom owners of Pangona Land.

15. Section 57 of the Act states-

“ Existing decisions of Island Court or Supreme Court.

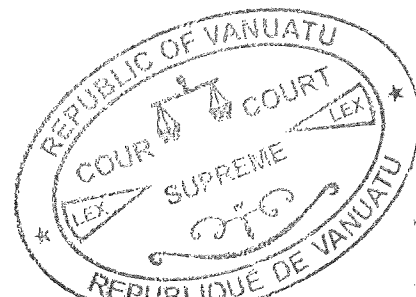
Decisions of the Supreme Court and an Island Court which determine the ownership of custom land and which were made before the commencement of the Act are deemed to create a recorded interest in land in respect of persons or persons determined by such Court to be the custom owners and will enable the custom owners so recorded to be identified for a negotiator’s certificate or a lease, or is to provide the basis for rectification of an existing lease instrument”. (emphasis added).

16. The relevant decision is that of the Efate Island Court in Land Case No. 1 of 1996 (“ HT1”) to Mr Tamata’s statement. The judgment is dated 22nd July 2004. The declarations are found on page 6 of the judgment. Before making the declarations the Island Court made findings after visiting the land and its boundaries. The Court said:

“..... Kot I faenemaot se family Malasikoto hem nao hemi tru kastomary land owner blong land ia Pangona. Kot I faenem tu se Family Lakelotaua Kalo Kanue Nakmau mo Family Elmu Labana Kaltamate Thomas tufala I gat raet long sam boundaries insaed long land ia Pangona.” (emphasis added).

17. Declaration 2 states –

“Family Malasikoto hemi true Kustomary Landowner blong land in Pangona.



18. Declaration 3 states –

Family Lakelotaua Kalokanue Nakmau mo Family Elmu Kaltamate Thomas oli gat raet long land ia Pangona tu be tufala stap long under long authority blong Family Malasikoto. (Emphasis added).

19. Then we come to the orders at the end of page 6. Order 1 states –

“Olgeta we oli no partis long land ia Pangona be oli stap kat access or stap mekem ol development long land ia bae oli mas kat permission long Family Malasikoto together wetem family Lakelotaua Kalokanue Nakmau mo Family Elmu Kaltamate Thomas blong oli continue wok long ples ia. (Emphasis added).

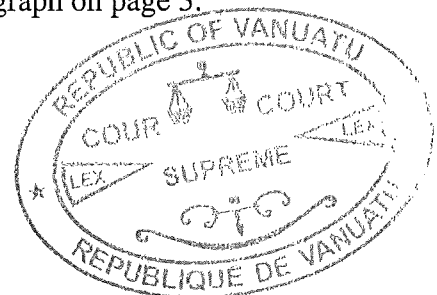
20. Orders 2 and 3 state in similar terms that permission must be obtained from Malasikoto Family together with (“together wetem”) Family Lakelotaua Nakmau and Family Elmu K. Thomas.

21. It is clear therefore the Island Court not only found the Malasikoto Family as custom land owners of Pangona Land, they also found and declared that Family Lakelotaua Nakmau and Family Elmu K. Thomas had interests to that land. Following on from that the Court ordered that persons dealing in land within the boundaries of Pangona land must first obtain permission not only from the Malasikoto Family, but also (together with) the permission from the other 2 families named.

22. I am satisfied this falls squarely within the ambit of Section 57 of the Act and the definitions of “custom owners” and “custom land” in Section 2 of the Act.

23. Family Lakelotaua Nakmau was the First Claimant and Family Elmu Labua Kaltamate was the Second Claimant in Land Case No. 1 of 1997. Therefore Nakmau Sambo is clearly of standing.

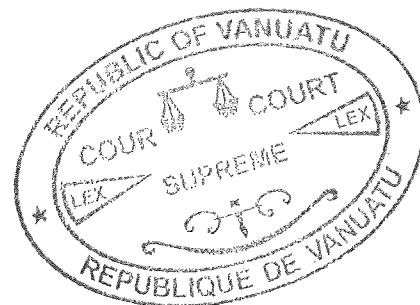
24. Both Family Lakelotaua Nakmau and Family Kaltamate Thomas cancelled their claims and became one with Family Malasikoto in their claims. The Island Court recorded this fact on page 2, fourth paragraph and the first paragraph on page 3.



25. Silas Vatoko was the spokesman for the Malasikoto Family at the hearing in the Island Court. Charlie Kaltaua Malasikoto was the representative of the Malasikoto Family. It was he who showed the justices of the Island Court where his great great grandfather Malasikoto Kaltaua Lulu Kalpares Nawota had travelled and named the place.
26. The Family Tree of Malasikoto Kaltaua Lulu Kalpares Nawota is disclosed by Mr Vatoko in his statement of 25 April 2018 as “SVI”.
27. This Family Tree is very telling and informative. It reveals that Family Vatoko and Family Lakelotaua and Silu Malasikoto are all descended and are descendants of Malasikoto Kaltaua Lulu Kalpares Nawota, who are the declared custom owners of Pangona land with perpetual land rights.
28. The argument by the Interested Party that the Claimants are not part of the Malasikoto Family and that they have no standing to file this proceeding, is nearsighted and untenable. It is rejected.

Findings

29. I find therefore as follows-
30. The Claimants have standing to bring this proceeding as they are directly affected by the action of the Coordinator cancelling the Certificate issued on 18th February 2018 and reissuing the Certificate of 20th March 2018.
31. The Co ordinator had allowed the names of Silu Malasikoto, Toriko Malasikoto and Freddy Malasikoto to appear on the Certificate of Recorded Interest in Pangona Land who were nominated in breach of the requirements in section 6H (2) of the Act.
32. The Family Lakelotaua Kalokanue Nakmau and Family Vatoko are part of the Malasikoto Family.



33. The Family Malasikoto, Family Lakelotaua Nakmau, Family Elmu Kaltamate Thomas and Family Vatoko all have interests to and in the Pangona Land and all those family rights must be adequately and evenly represented and protected.
34. This protection can only be made and achieved by all the families attending a new meeting to be called and held pursuant to section 6H (2), to nominate and appoint new persons to be named as representatives of custom owners in a new certificate to be issued.

The Result

35. Accordingly I give and enter judgment in favour of the Claimants.
36. The formal orders granted are-
37. The Certificate of Recorded Interest in Pangona Land issued on 20th March 2018 is hereby quashed.
38. All the members and descendants of the Malasikoto family including those from the Taea Family, Vatoko Family, Sambo Family and Family Elmu Thomas Kaltamate in conjunction with the Office of the National Co ordinator, be required to arrange a meeting for all the members of these families in accordance with section 6H of the Land Reform Act, not later than 29th July 2019.
39. The Claimants are entitled to their costs of and incidental to this action on the standard basis as agreed or be taxed by the Master. The Defendant and the Interested Party shall pay these costs to be divided equally between them.

DATED at Port Vila this 12th day of July 2019

BY THE COURT

OLIVER.A.SAKSAK

Judge

