

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

Judicial Review  
Case No. 15/612 SC/CIVL

**BETWEEN: Max Tamata Andrew**  
**Frank Andrew representing Family Andrew**  
**Claimants**

**AND: The Santo Malo Island Court**  
**Defendant**

**Date of HEARING:** 22<sup>nd</sup> May 2020  
**Date of Decision:** 10<sup>th</sup> June 2020  
**Before:** Justice Oliver.A.Saksak  
**In Attendance:** Mrs Marie Noelle Patterson for the Claimants  
Mr Sammy Aron for the Defendant

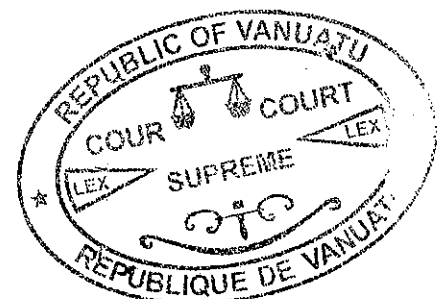
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## DECISION

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### Background

1. On 12<sup>th</sup> June 2015 the Santo Malo Island Court (SMIC) heard and determined Land Case No. 4 of 1992 and declared ownership of Belmol land in favour of the Family Taftumul.
2. The Claimants seek judicial review of that judgment and say the judgment should be quashed, and that the SMIC should be reconvened with the claimants added as a party so they can be given the opportunity of being heard.
3. They alleged they had paid a filing fee in February 2010 and as such they were parties to Land Case No.4 of 1992. However despite that, the SMIC never included them as a party and all hearings held by the Court were made in their absence. They now seek an opportunity to be heard.
4. They say they have a customary interest in Belmol land but that they were never notified to take part in any hearings in the past either in the SMIC or in the Supreme Court in its appellate jurisdiction.



## Defence

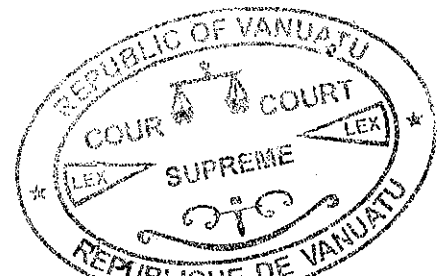
5. The defendant denies the claimants are entitled to any of the reliefs they are seeking. They say the claimants were never a party to Land Case No. 4 of 1992 and therefore they have no standing to file this proceeding. They argued this is the very reason no notice was given to them to attend hearings of either the SMIC or this Court. They say the claimants have not pleaded their interest in Belmol land in their claim and further that they have no evidence in support of their customary interest.

## Issues

6. The Claimants have raised 3 issues for consideration by the Court as follows:-
  - a) Whether the claimants are a party to Land Case No. 4 of 1992?
  - b) Whether they have disclosed their interest in Belmol Land or not?
  - c) Whether they are aggrieved by the decision of the Court not allowing anymore parties to join in Land Case No. 4 of 1992?
7. The Claimants have the burden of proof on the balance of probabilities to prove each allegation made.

## Discussion

8. On the first issue of whether the claimants were and are parties to the Land Case No. 4 of 1992? From the sworn statement of Max Tamata dated 17<sup>th</sup> June 2015 he annexes as "A" a receipt showing the payment of a fee of VT 1,000. The date is 19/02/2010. Specifically this money was the fee for an "Application to joint (sic) as a party Land Case No. 4 of 1992". It appears to have the stamp of the Efate Island Court.
9. Anthony Lessy currently the Island Court Clerk of SMIC deposed to a sworn statement on 21<sup>st</sup> January 2016 at paragraph 11 denying the claimants had registered any application to be joined as a party in Land Case No. 4 of 1992.
10. That is the difficulty the claimants have. They have not shown the actual application they presented to the registry of the Court on 19<sup>th</sup> February 2010 either at the Efate Island Court or the Santo Malo Island Court. The receipt itself is insufficient.



11. If the payment of VT 1.000 was paid into the registry of the Efate Island Court, then it was done in contravention of the Island Court (Civil Procedure) Rules 2006. Rule 1 states as follows-

**"(1) Filing of statement of claim**

*"Every civil claim must be stated by the person making the claim (called the claimant) filing a written statement of claim which is signed by the claimant at an office of an Island Court.*

*The claim must be a claim which is stated by the warrant of jurisdiction of that Island Court to be within the jurisdiction of that Court to hear and determine.*

*The Claimant must also provide to the office sufficient numbers of copies of the statement of claim for service on each person against whom the claim is made (called the defendant)."*

**"(2) Place of Filing**

*A statement of claim must be filed at the Office of the Island Court within whose jurisdiction the defendant ordinarily resides or carries on business, or within which the cause of action arose, or in the case of a claim about ownership or boundary of customary land, within whose jurisdiction the land is situated."*

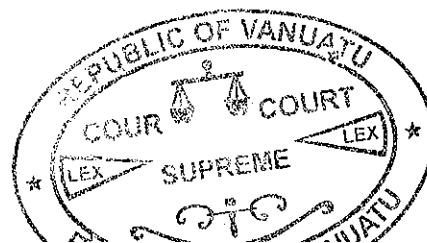
( My emphasis)

**"(3) Contents of Statements of Claim**

*The statement of claim must state the name, occupation and address of the claimant and of the defendant, and also the grounds or basis of the claim.*

*If the claim relates to ownership or the boundary of customary land the statement of claim shall contain in description of the boundaries and also contain a sketch map of the land" ( My emphasis).*

12. Clearly the claimants have no evidence showing their statement of claim. As their claim purportedly relates to the customary ownership of Belmol Land, they should show their claim with the description of the boundaries and a sketch map. They have not done so. They paid a fee but to the wrong registry. And that fee was in relation to an application for joinder; it is or was not a filing fee for a statement of claim which must be made in accordance with Rule 1 (1), (2), and (3) of the Rules.



13. Therefore the first issue must be answered in the negative.
14. The second issue whether the claimants have disclosed their interest in Belmol Land, the answer is also in the negative for the same reasons they have not produced their statement of claim filed in the Santo/Malo Island Court describing their land boundaries and their sketch map. And indeed their pleading lacks disclosure of their interest, if any.
15. Finally are they aggrieved? If they are, then it is due to their own fault of not complying with Rule 1 of the Island Court (Civil Procedure) Rules. No blame could be attributed to the Courts for such failures or omissions on their part. In any event the decision they seek to judicially review does not concern them. They have no standing and should not be aggrieved by it.
16. For those reasons the claimants fail in their claims. The claims are therefore dismissed.
17. The defendant is entitled to their costs of and incidental to this action on the standard basis as agreed, or be taxed.

**DATED at Port Vila this 10<sup>th</sup> day of June 2020.**

**BY THE COURT**

  
**OLIVER A. SAKSAK**  
Judge

