

BETWEEN: Sakaraia Daniel Loi and Family Loi

Claimant

AND: Chairpersons of the Island Court (Land)

First Defendant

AND: John Tari Molbarav and Family

Second Defendant

AND: Nambuloaru Nakamal

Third Defendant

AND: Customary Land Management Office

Fourth Defendant

Date of Hearing: 28 February 2020
Date of Judgment: 15 April 2020
Before: Justice Andrée Wiltens
In Attendance: Ms Marie Noelle Farrieux Patterson for the Claimant
Mr Philip Fiuka for the Second Defendant
Ms Adeline Bani for the First, Third and Fourth Defendants

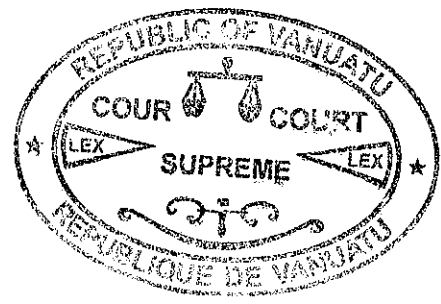
JUDGMENT

A. Introduction

1. This is an application for judicial review ("JR") of an Island Court (Land) decision of 15 March 2019.

B. The Issue

2. Pursuant to Rule 17.8 of the Civil Procedure Rules a conference must be called at an early stage in the proceeding to determine a number of preliminary issues. The purpose for such a conference to be convened is to ensure that there is really something for the Court to determine.

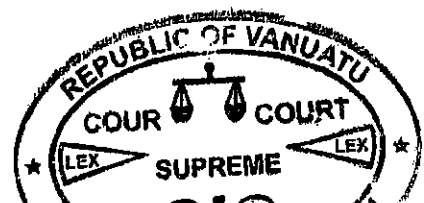


3. Firstly, a JR application must be filed timeously, namely usually within 6 months. This application was filed on 5 September 2019 and is therefore within time.
4. Secondly, the applicant must be directly affected by the decision sought to be reviewed. Here, the decision was to the effect of rejecting the applicant's claim to be the customary owner of Nambuloaru land on Espiritu Santo. Clearly he is directly affected by the decision.
5. Thirdly, the applicant must establish that there is an arguable case to be determined. In this instance, the applicant has pointed to a number of alleged irregularities in the process adopted, prior to the final determination which are said to have directly adversely impacted the final decision. In my view there is an arguable case here. I am comforted in drawing that conclusion by the concession made as to this by Ms Bani for the First, Third and Fourth Defendants.
6. The final matter to be addressed at a Rule 17.8 conference is whether there is not an alternative remedy. If there is, then JR is not the appropriate course for the applicant to follow. JR is a measure of last resort. There is no agreement between the parties on this last matter.

C. Discussion

7. I am advised that there is a current extant case before the Santo Malo Island Court (Land), namely Land Case No. 92/5. Mr H Tamata, the National Coordinator of the Customary Land Management Office, has made a sworn statement appending relevant sketches of the boundaries of the enormous piece of land under consideration in Land Case No. 92/5. Within that parcel of land lies Nambuloaru land, the land the subject of the Claimant's JR.
8. Mr Tamata commented that he was unaware whether the claimants are party to Land Case No. 92/5, but he considered: "... it is proper that the claimants apply to be joined in that pending case as they have an interest over Nambuloaru customary land which is part of the large area yet to be determined....".
9. I note that Mr Fiuka supported this view.
10. Mrs Ferrieux Patterson did not address this aspect of her application. She concentrated on the allegations that made up her arguable case. However I note that the relief sought in the JR application is that the decision of 5 September 2019 be reviewed; and, among other things, the following relief be granted:

"(d) A quashing order that the finding of the Chairperson that the Application of the Claimant [in] the Island Court (Land) Review case No. 17/362 SC/CUST was misconceived, was incapable of being reviewed by the Court and that the dismissal of the Claimant's application by the Chairperson in his ruling of 15.03.19 is invalid and must therefore be quashed; "



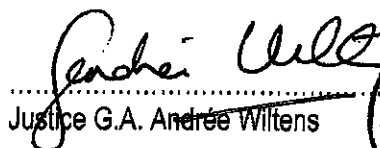
11. The effect of granting the relief sought would be to re-instate the Claimant as the declared customary owner of land that is the subject of the current extant Land Case No. 92/5.
12. In these circumstances, what this JR application seeks to do is to have two Court proceedings running alongside each other dealing with the same subject matter. That is bad for public policy reasons. It has the effect of possibly inconsistent rulings.
13. What ought to happen is that the issue of who should be the declared customary owners of all parts of the land involved in Land Case No. 92/5 should be determined by the Island Court (Land). In argument before me, Mrs Ferrieux Patterson advised me that her clients were already a party to Land Case No. 92/5.
14. Accordingly, there is nothing to be gained by the Claimants from the present JR application. If their claim to be the declared custom owner of part of the land is upheld, then the steps allegedly erroneously taken by the Chairperson leading to the decision of 15 March 2019, will of necessity have to be set aside.
15. I therefore consider the last Rule 17.8 requirement here not been satisfied - in other words, there is an alternative remedy available for the Claimant. It follows that there is no need for this JR application to be heard. Indeed Rule 17.8(5) requires that in such circumstances that I decline to hear the application and strike it out.

D. Decision

16. This JR application is struck out pursuant to Rule 17.8 of the Civil Procedure Rules.
17. Costs are appropriate. They are set at VT 50,000 for Mr Fiuka's client and VT 50,000 for Ms Bani's clients - a total of VT 100,000. They are to be paid within 21 days.

Dated at Port Vila this 15th day of April 2020

BY THE COURT


Justice G.A. Andree Wiltens

