

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

**Land Appeal  
Case No. 21/1778 SC/LNDA**

**BETWEEN: Titus Garu 1  
First Appellant**

**AND: Titus Garu 2  
Second Appellant**

**AND: Moses Molvatol  
Third Appellant**

**AND: Livo Joseph  
Fourth Appellant**

**AND: Family John Tari Molbarav  
Fifth Appellant**

**AND: Family Vatarvimoli  
Sixth Appellant**

**AND: Family Vatarvimoli  
Seventh Appellant**

**AND: Matihias Moisakel  
First Respondent**

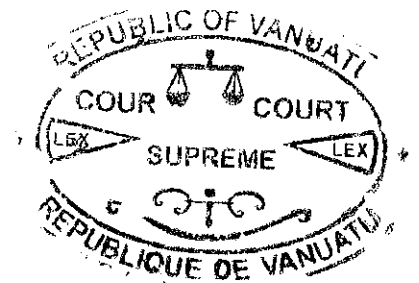
**AND: Zebedel Molvatol  
Second Respondent**

**AND: Family Tarusa Wells  
Third Respondent**

**AND: Family Vovrosale  
Fourth Respondent**

**AND: Family Tumu  
Fifth Respondent**

**AND: Posere Tribe  
Sixth Respondent**



**AND: Family Tevanu  
Seventh Respondent**

**AND: Family Tarsep  
Eight Respondent**

**AND: Family Tariga  
Ninth Respondent**

**AND: Francky Steven  
Tenth Respondent**

**AND: Family Riri  
Eleventh Respondent**

**AND: Family Revoa  
Twelfth Respondent**

**AND: Family Rady William  
Thirtieth Respondent**

**AND: Family James Rad  
Fourteenth Respondent**

**AND: Family Moltorua  
Fifteenth Respondent**

**AND: Family Moltanaute  
Sixteenth Respondent**

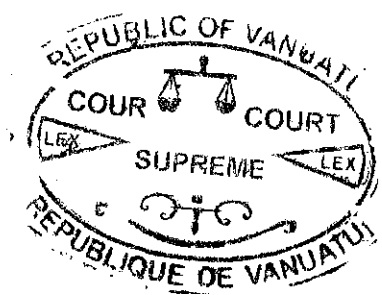
**AND: Family Molisale  
Seventeenth Respondent**

**AND: Morris Moldovo  
Eighteenth Respondent**

**AND: Joe Johnny  
Nineteenth Respondent**

**AND: Jeffery Sul  
Twentieth Respondent**

**AND: James Tura**



Twentieth First Respondent

AND: Family Jerom Tura  
Twenty Second Respondent

AND: Family Eric Toserekite  
Twenty Third Respondent

AND: Daniel Loy  
Twenty Fourth Respondent

AND: Brian Livo  
Twenty Fifth Respondent

AND: Family Boetara  
Twenty Sixth Respondent

AND: Family Eva Vovitu  
Twenty Seventh Respondent

AND: Family Benneth Sesei  
Twenty Eight Respondent

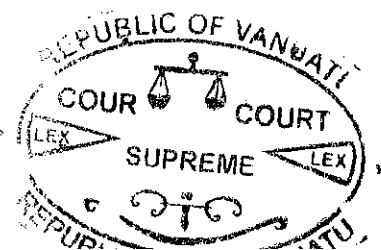
AND: Family Thomas Reuben Seru  
Twenty Ninth Respondent

AND: Tambae Vorivori  
Thirtieth Respondent

AND: Family Tangis  
Thirty First Respondent

**Coram:** Justice Aru

**Counsel:** Mr. N. Morrison for the First and Second Appellants (Titus Garu)  
Third Appellant (Moses Molvatol)  
Fourth Appellants (Livo Joseph)  
Mr. F. Fiuka for the Fifth Appellant (Family John Tari Molbarav)  
Sixth and Seventh Appellant (Family Vatavumoli)  
Mr. S. Kalsakau for the First Respondent  
Second Respondent – (Zebedel Molvatol)  
Third Respondent – (Family Tarusa Wells)



*Fourth Respondent –(Family Vovrosale)*  
*Fifth Respondent- (Family Tumu)*  
*Mr. R. Tevi for the Sixth Respondent*  
*Seventh Respondent- (Family Tevanu)*  
*Eighth Respondent- (Family Tarsep)*  
*Ninth Respondent- (Family Tariga)*  
*Tenth Respondent-(Francky Steven)*  
*Eleventh Respondent- (Family Riri)*  
*Twelfth Respondent- (Family Revoa)*  
*Thirtieth Respondent- (Family Rady William)*  
*Fourteenth Respondent- (Family James Rad)*  
*Fifteenth Respondent- (Family Moltorua)*  
*Sixteenth Respondent- (Family Moltanaute)*  
*Seventeenth Respondent- (Family Molisale)*  
*Eighteenth Respondent- (Morris Moldovo)*  
*Nineteenth Respondent- (Joe Johnny)*  
*Twentieth Respondent- (Jeffery Sul)*  
*Twentieth First Respondent- (James Tura)*  
*Twenty Second Respondent- (Family Jerome Tura)*  
*Twenty Third Respondent- (Family Eric Toserekite)*  
*Twenty Fourth Respondent- (Daniel Loy)*  
*Mr. B. Livo Twenty Fifth Respondent*  
*Twenty Sixth Respondent- (Family Boetara)*  
*Twenty Seventh Respondent- (Family Eva Vovitu)*  
*Mr. J. Kilu for the Twenty Eight Respondent (Family Benneth Sesei)*  
*Mr. L. Tevi for the Twenty Ninth Respondent- (Family Thomas Reuben Seru)*  
*Thirtieth Respondent- (Tambae Vorivori)*  
*Thirty First Respondent- (Family Tangis)*

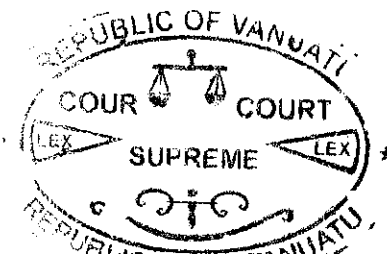
---

## RESERVED JUDGMENT

---

### Background

1. This is an appeal brought under s21 (3) of the Judicial Services and Courts Act [CAP 270] against a decision of the Acting Chief Magistrate's (as she was then) refusing to recuse herself from hearing a claim over custom ownership of land in Land Appeal Case No 5 of 1992 (LAC5/92). The claim was filed in the Santo/Malo Island by Mathias Molsakel as the original claimant.
2. On 3 May 2021 the Chief Magistrate gave her reasons rejecting the applications seeking her disqualification.



3. On 11 May 2021 Titus Garu appealed the rejection by filing their notice and grounds of appeal.
4. On 15 May 2021 the appellants also filed an Urgent application seeking to stay the proceedings in LAC5/92. The application was supported by a sworn statement of urgency, a sworn statement in support and an Undertaking as to damages.
5. On 24 August 2021 stay orders were issued staying the proceedings before the Santo/Malo Island Court and directions were issued to the parties to file their submissions and responses addressing the question of bias on the part of the Chief Magistrate. The appeal hearing was listed several times but was unable to be progressed by the appellants.
6. On 29 September 2023 I issued directions to issue judgement on the papers if no objection was received by close of business on 6 October 2023.
7. I have not received any objection to that course being taken.

## Laws

8. The Island Courts (Civil Procedure) Rules 2005, provide under rule 6 - Conduct of hearing that after entry of the justices (subrule 1) and the name of the case has been read out (subrule 2) a party may object to any justice sitting in the interest of justice. Subrule 3 states:-

" (b) Objection by party

*If a party considers that a justice is related to any of the parties or has an interest in the subject matter of the claim, that party may object to the court about the participation of that justice. If the other justices consider that the objection is well founded, the clerk shall adjourn the hearing to be heard by a different panel of justices.*

*If the justices consider that the objection is not well founded, the court shall continue with the hearing.*

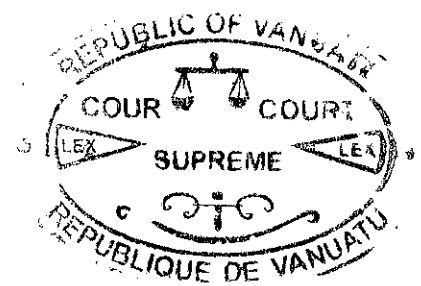
*(c) Recording of declaration or objection relating to the interest of a justice The clerk must record any declaration of interest made by a justice, or objection made by a party to the interest of a justice, and the result of that declaration or objection."*

9. Section 21 of the Judicial Services and Courts Act states as follows:-

*"Disqualification*

*(1) If:*

*(a) a magistrate has a personal interest in any proceedings; or*



(b) there is actual bias or an apprehension of bias by the magistrate in the proceedings;

he or she must disqualify himself or herself from hearing the proceedings and direct that the proceedings be heard by another magistrate.

(2) A party to any proceedings may apply to a magistrate to disqualify himself or herself from hearing the proceedings.

(3) If a magistrate rejects an application for disqualification, the applicant may appeal to the Supreme Court against the rejection. If an appeal is made, the magistrate must adjourn the proceedings until the appeal has been heard and determined.

(4) A magistrate who rejects an application for disqualification must give written reasons for the rejection to the applicant."

(emphasis added)

10. And s38 states:-

" 38. Disqualification

(1) If:

(a) a judge has a personal interest in any proceedings; or

(b) there is actual bias or an apprehension of bias by the judge in the proceedings;

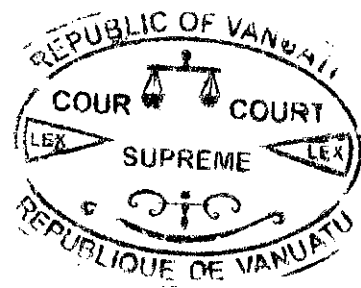
he or she must disqualify himself or herself from hearing the proceedings and direct that the proceedings be heard by another judge.

(2) A party to any proceedings may apply to a judge to disqualify himself or herself from hearing the proceedings.

(3) If a judge rejects an application for disqualification, the applicant may appeal to the Court of Appeal against the rejection. If an appeal is made, the judge must adjourn the proceedings until the appeal has been heard and determined.

(4) A judge who rejects an application for disqualification must give written reasons for the rejection to the applicant."

11. Section 21 and s38 of the Judicial Services and Courts Act are worded in similar terms. The latter applying to Judges of the Supreme Court. Section 21 applies to Magistrates. It is not disputed that s21 does not apply in this case although the Chief Magistrate only made reference to s 38. Secondly, The Act makes it clear that a party to any proceedings may apply to a Magistrate to disqualify himself or herself from hearing the proceeding. That in my view is inclusive of all proceedings before a Magistrate Court and includes the Island Court where a Senior Magistrate is presiding to hear custom land disputes.



## Decision Appealed

12. A number of parties in the LAC5/92 dispute applied to the Acting Chief Magistrate to disqualify herself namely : Family Tangis (first applicant), Zebedee Molvatol, Beneath Sese, Vovrosale family, Motorua, Vatavimoli family and Titus Garu (second applicant), Zebedee Molvatol, family Vovrosale, family Vatavi Moli, family Riri, family Rady William, family Rad James, Molvatol Moses, family Molisale, Livo Joseph, family John Tari Molbarav, Jeffery Sul, Brian Livo, family Boetara, Garu Titus 2, family Vovitu Eva, family Bennet Sese, family Moltorua, family James Tura and family Vivi (third applicants). The allegations in each of the applications and the Chief Magistrate's decision in relation to each application were recorded as follows:-

"Aplikesen long family Tangis

*Family Tangis e mekem aplikesen blong disqualifiem Majistret from Majistret e bin sidaon long Ramuir kastom graon long Santo finis mo from kot e givim raet long different pati.*

"

.....  
Aplikesen blong Zebedee Molvatol, Bennet Sese, family Vovrosale, Moltorua, family Vatarvimoli mo Titus Garu"

*Olgeta applicants oli bin filem aplikesen blong disqualifiem jif Magistrate blong harem keis blong graon is folem tingting ia se:*

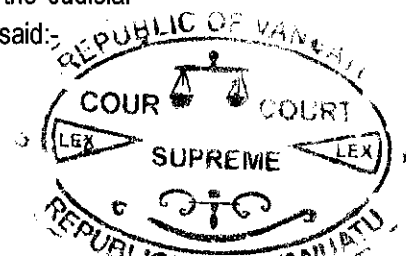
- (a) *Orijinal klema wetem Jif Magistrate oli blong sem province;*
- (b) *James Tura e bin kivim wan pis kraon igo long jif Magistret insaed long Molsakel graon*
- (c) *James Tura e givim mani long jif Magistret .*

*Kot e harem Moses Molvatol long behalf blong every Applicants we is signem aplikesen ia. Long swon stetmen blong Moses Molvatol we hemi filem long 27 April 2021 hemi talem se hem e tekem infomesen long Palika blong James Turawe nem blong hem Marris Tura . Marisse Tura e talem long hem se James Tura e givim wan graon long jif Majistret mo hem e stap givim mani long jif Magistret.*

.....  
Aplikesen blong Zebedee Molvatol, family Vovrosale, family Vatavi Moli, family Riri, family Rady William, family Rad James, Molvatol Moses, family Molisale, Livo Joseph, family John Tari Molbarav, Jeffery Sul, Brian Livo, family Boetara, Garu Titus 2, family Vovitu Eva, family Bennet Sese, family Moltorua, family James Tura and family Vivi

*Aplikesen blong olgeta aplikents we oli filem long 28 April 2021 oli askem blong disqualifiem Jif Majistret long graons se Jif Majistret wetem original klema oli kam aot long Torba province we isave gat conflict of interest. Olgeta parties oli fraet blong exchange mol document long tingting se wan pati e save stilim history blong wan nara pati blong mekem klem blong olgeta sipos kes is e appeal afta appeal e sendem ikam bak long Aeland kot bagegen.*

13. The Court considered s3 of the Island Courts Act [CAP 167] and s38 of the Judicial Services and Courts Act [CAP 270]. In respect of each application, the Court said:-



*"kot e luk luk long aplikesen blong family Tangis mo kot e luk save section 38 blong Judicial Services and Courts Act nao kot e sakem aot aplikesen blong family Tangis.*

*Kot e lukluk long aplikesen blong Zebedee Molvatol mo olgeta nara patis we oli stap mekem allegation agensem Jif Majistret se Palika blong James Tura e givim mani mo graon long jif Magistret. Kot e lukluk long section 38 blong Judicial Services and Courts Act [CAP 270] mo kot e askem Moses Molvatol blong pruvum olgeta allegations ia . Moses Molvatol e talem long kot se hemi no kat evidence blong pruvum allegation ia be hem e harem nomo. Kot e finem se ino kat eni pruv blong sapotem aplikesen ia. Moses Molvatol e apologise long Kot from olgeta false allegation ia. Kot e akseptem apologies blong hem . Kot e finem se Jif Majistret inogat eni conflict of interest long Molsakel graon.*

*Long sem lukluk se jif Majistret e mas remuvum hem long kes ia from hem wetem Orijinal klema oli blong Torba province. Kot I luk save section 38 blong Judicial Services and Courts Act [CAP 270] mo e finem se jif Majistret ino kat eni conflict blong interest long Molsakel land kes ."*

14. Following the above considerations the Court issued the following Orders in respect of each application:-

*"1. Kot e sakem aot aplikesen blong Titus Garu;*

*...*

*3. Kot e sakem aot aplikesen blong family Tangis;*

*.....*

*5. Kot e sakem aot aplikesen blong Zebedee Molvatol, Benneth Sese, family Vovrosale family, Moltorua, Vatarvimoli family mo Titus Garu we oli filem long Kot long 27 April 2021.*

*.... "*

## **Grounds**

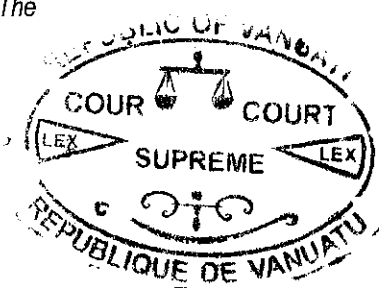
15. The grounds of appeal alleging bias by the Chief Magistrate were filed on 3 September 2021 by Titus Garu . In summary, it states:-

*1. The Island Court case is to do with South East Santo thus custom land ownership should be determined by this area's custom law;*

*That Magistrate Laloyer:*

*(2) does not allow a lot of questions especially ones to do with custom . She allows Mathias Molsakel to aske these type of questions without hesitation or interruption Magistrate Laloyer does not allow parties to ask these similar or same questions as previous parties . She says they are repetitive;*

*(3) accepted late entry of claims that are about 3 years late from the due date. The majority of the late parties are self interested Mathias supporters;*





(4) allowed Mathias to remove his witness, Samuel Toa half way into questioning of this witness. The witness Toa was saying many things against Matthias's claim;

(5) bias in favour of Molsakel allowed a claimant spokesman to get out of hand with rude aggressive finger pointing and hurtful and unnecessary comments which ended with things getting heated and a fight occurring in the Court precinct;

(6) blatantly refused to acknowledge the Judicial Services and Court's Act provisions;

(7) entertains claims from persons from Santo Hydra and Hog Harbour which further displays her bias in this proceeding;

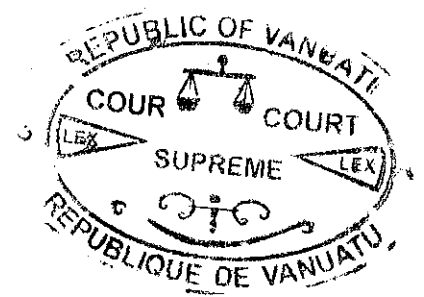
(8) calls party James Tura "father". Mr Tura has given some land to Magistrate Laloyer after making a decision in favour his family in the past;

(9) subsequent to the Court hearing being adjourned, has asked Tura to side with her in this case and take action against persons who have disagreed with her by way of a defamation proceeding.

## Discussions

16. Having considered the evidence and submissions filed, at the outset I note that the appeal raises new allegations of bias (grounds 1 to 7 ) aside from the ones raised in the Island Court. All the allegations of bias raised before the Island Court were found to be false and unsubstantiated and were accordingly dismissed. One of the applicant parties, Moses Molvatol, admitted he had no evidence to support the allegations made and apologised to the Court for making false allegations. The Court accepted his apologies.
17. Appeal grounds 8 and 9 raise the same issues again. No evidence is identified to substantiate these allegations.
18. The test for bias or an apprehension of bias as applied by the Court of Appeal in **Sawa Matarave & Ors v Peter Talivo and others** in Civil Appeal Case No 1 of 2010 is:-

*"...whether a fair minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the questions which the Court was required to decide. In the case of the assessors the test is the same."*
19. The factual circumstances of this current case are different to *Matarave*. There is no evidence of any alleged conduct outside of Court which could lead to a likely apprehension of bias on the part of the Chief Magistrate if she continues to sit with the Island Court. Apart from grounds 8 and 9, all the grounds raised on appeal relate to the conduct when the Island Court began its hearing.



20. In relation to ground 4, Samuel Toa as a witness was excused as he had a hearing problem. This is confirmed by a Medical Certificate issued by the Northern Provincial Hospital on 20 May 2021 stating that:-

*"...he (Samuel Toa) has Presbycusis which are related to his aging factor. Also, this aging contributes to a short term memory loss, " Alzheimer's Disease" and seen that he is unfit or unable to function well".*

21. A copy of the Medical Certificate was annexed to the sworn statement of Anderson Wells Varso filed on 27 September 2021. Jean Claude Tevanu in his sworn statement filed on 17 February 2022 at paragraph 12 confirms the Chief Magistrate was provided a copy of Samuel Toa's Medical Certificate and on that basis excused him from continuing in the proceedings as a witness.

22. Mr Tevanu in relation to ground 3 says that the acceptance of new parties was put to all the parties whether they consented to the Court accepting new parties. And all the parties including the appellants indicated their consent by show of hands.

23. The remaining grounds relate to complaints about the management and orderly conduct of the proceedings. At the end of the hearing, the Island Court must apply the law and relevant customs in reaching its decision. Arguments concerning overlapping of boundaries by the Molsakel claim with lands previously determined by the Santo/Malo Island Court are matters for submissions for the Court's consideration.

24. The parties appeal rights are preserved by s.22 of the Island Courts Act [CAP 167] should any party wish to appeal any declarations made.

## Result

25. Having made the above observations, I am of the view that the appeal has no merits and must be dismissed. The appeal is dismissed. Each party to bear their own costs.

DATED at Port Vila this 20<sup>th</sup> day of October, 2023

BY THE COURT

D. Aru  
Judge

