

BETWEEN: REUBEN ESTAPAS, COLLIN HOPKINS and
GREATON WEBA
Claimants

AND: THE NATIONAL COORDINATOR OF THE LAND
DISPUTE MANAGEMENT
First Defendant

AND: THE GOVERNMENT OF VANUATU
Second Defendant

Before: Justice Oliver A. Saksak

In Attendance: Garry Blake for the Claimants
Freddie Bong for the Defendants

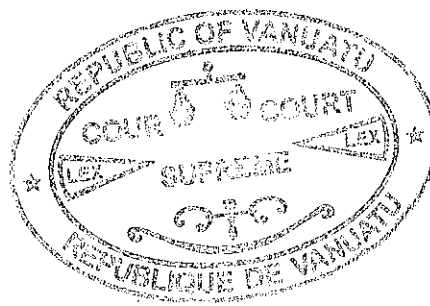
Date of Hearing: 15th December 2022

Date of Judgment: 31st January 2023

JUDGMENT

Introduction

1. In this Judicial Review proceeding the Claimants challenge the First Defendant's (a) refusal to record the Claimants' customary ownership interest in Rowa Island (Reef Island); (b) initiating a process under the Custom Land Management Act (the Act) to determine the custom ownership of Reef Island.
2. The Claimants seek orders that (a) the First Defendant's decision to initiate process under the Act to determine custom ownership of Reef Island in the Banks Group of Islands be quashed, and (b) a Mandatory Order be issued requiring the First Defendant to record the Claimants' customary interest over Reef Island pursuant to the decision of the Joint Sub-Area Customary Land Tribunal dated 10 March 2012.

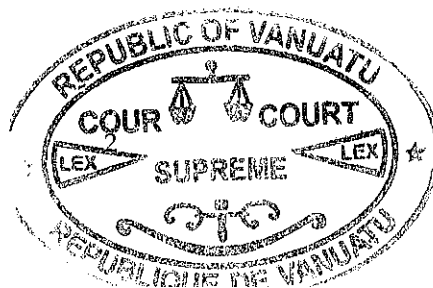


Defence

3. From the defence of the First and Second Defendants filed on 22 October 2020 the Defendants say the determination made by the Joint Council of Chiefs of Touvetam of Vanua Lava, Tovvetman Council of Motalava and Nosorlap Council of Vatop was not a land tribunal within the meaning of Section 3(1) of the Customary Land Tribunal Act (now repealed).
4. As such the Defendants say the claim is misconceived and should be dismissed with costs.

Background Facts

5. In about 2006 and 2007 Warren Welgen, Thomas Silas and John Edward of Ureparapara Island were laying claims of custom ownership of Reef Island. This resulted in a notice of sale being put up in Luganville in around 2011.
6. The Claimants sent Esrom Estapas to see the then Minister of Lands, Mr Ralph Regenvanu.
7. The Minister wrote a letter on 23 December 2011 to Chief Bara Wilfred, Chairman of the Norsolap Council of Chiefs at Vatop Village instructing him to convene or constitute a land tribunal as soon as possible to determine the custom-ownership of Reef Island.
8. As a result of the letter, a Joint Council of Chiefs was constituted and convened on Saturday 10 November 2012 consisting of Cecil Rowson, Chairman, Graham Mumurg, Secretary, Chief Dannel Golow and Chief Aiston Railey.
9. On 19 February 2012 Chief Bara Wilfred wrote to Chief Rowson instructing him to call an urgent meeting of a tribunal to determine the dispute of custom ownership of Reef Island on 10 March 2012 at 8:00am at Vatop Village.
10. The Claimants were Reuben Estapas, Collin Hopkins and Greaton Weba.
11. The Defendants were Warren Welgen, Thomas Silas and John Edward of Ureparapara Island.
12. The Defendants were served with the Notice of the tribunal sitting dated 19 February 2012 on 23 February 2012.



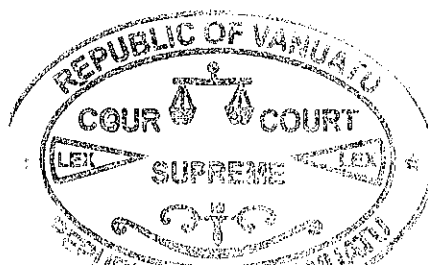
13. On 10 March 2012 Police Sergeant Maltok went to Ureparapara Island on the Police boat to collect the disputing parties to attend the Council meeting but they refused to attend the meeting.
14. The meeting proceeded and decided in favour of the Claimants as custom land owners of Reef Island.
15. The decision was recorded by the secretary of the meeting.
16. The decision was not appealed therefore the Claimants sought a certificate of registered interest from the National Coordinator.
17. The National Coordinator sought legal advice from the Attorney General who advised against issuing a certificate.
18. The claimants now challenge that decision.

The Issues

19. Was the Court that sat on 10 March 2012 a land tribunal properly constituted?

Discussions

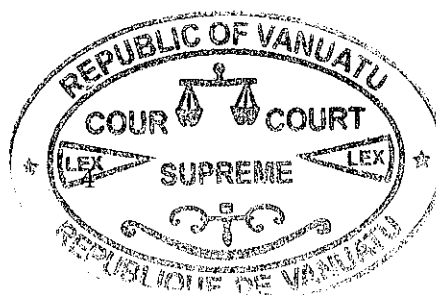
20. The meeting that sat on 10th March 2012 was a Joint Council of Chiefs Court.
21. It was constituted by Chief Cecil Rowson of Motalava, Chief Danniell Golow, Chief Aiston Railey, Chief Graham Mumurg (secretary) and Chief Wilred Bara.
22. Reef Island is situated in the middle of the sea and is uninhabited. The Claimants are resident on Vanua Lava. Three of the disputing persons are resident on Ureparapara Island. As such the dispute involved different custom areas.
23. For a land tribunal to be properly constituted to determine the dispute over Reef Island to fall within the meaning of "*land tribunal*" under Section 3 of the Customary Land Tribunal Act ("*the Act*"), a single or joint village land tribunal should have been constituted (Section 3 (1)(c)).



24. What the Joint Council of Chiefs attempted to do was to constitute a single or joint-custom area land tribunal, or a single joint-custom area land tribunal or an island tribunal (section 3(1)(b), (c) and (d) of the Act).
25. However those "tribunals" have appellate jurisdictions only from decisions of a single or joint village land tribunal (Section 3(1)(a)).
26. A single village land tribunal under Section 8 should have only 4 members (subsection (a)). The Joint Council of Chiefs that sat on 10th March 2012 had 5 members.
27. Furthermore notices must be properly issued. Section 7 of the Act requires that notices be issued to the principal chiefs of each of the villages in which disputing parties reside.
28. In the evidence of the Claimants there is no evidence a notice was issued to the principal chief of Ureparapara Island where 3 disputing parties live (see Section 7(2)(b)).
29. Further, Section 8 of the Act requires that: *"If the principal chief of a village receives a notice of a dispute about customary land under section 7(2)(a), the principal chief must, within 21 days after receiving the notice, establish a single village land tribunal to determine the dispute"* (my emphasis).
30. There is no evidence that the principal chief of Ureparapara Island had received a proper notice or was served with one. And there is no evidence showing the purported tribunal that sat on 10th March 2012 was constituted or established after 21 days notice.
31. From the evidence, Chief Bara wrote to Chief Cecil on 19 February 2012 appointing Chief Cecil as chairman and appointing 10th March 2012 at 8:00am as the sitting time and date. That was a period of only 20 days.

Finding

32. I therefore find that the purported meeting of the Joint Council of Chiefs Court that sat on 10th March 2012 was not a properly constituted "land tribunal" within the meaning set out in Section 3 of the Act.



33. As such I find also that the decision the meeting recorded was invalid and of no effect. I therefore declare and rule that the decision be set aside.


The Result

34. The claim of the Claimants therefore fail and is accordingly dismissed.

35. The defendants are entitled to their costs fixed at VT200,000 to be paid by the Claimants within 28 days from the date of judgment.

DATED at Port Vila, this 31st day of January 2023.

BY THE COURT


Oliver A. SAKSAK
Judge.

