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

Civil Appeal
Case No. 23/2909 SC/CIVL

BETWEEN: **Samuel James Tarisaliu**

Appellant/ Applicant

AND: **Jif Marakitatang & Family and Sime Marakipule and Family**

First Respondent

AND: **Charlie Selest Semoramat**

Second Respondent

AND: **Tom Albert Semoramat**

Third Respondent

AND; **Jimmy Alick Timatasomata**

Fourth Respondent

AND: **Willie Toa Karie Timakuramata Daniel Lukai Timakuraroto, Samson Satiamata, Pakoa Siri Timataso, Seule Siri Taripomnulap, Willie Kalo Perry Taripaku, John Tarisongoliu, John Mark Dick Tisangava, Alick Seule Atavirulima, Donal Tom Malae, Shem Kalo Timataso Tarimanu Launoa**

Fifth Respondents

AND: **Samuel Tong**

Sixth Respondent

AND: **Mariwotaliu/ Mariwotamatiatam Tribe**

Seventh Respondent

AND: **Manaroto**

Eighth Respondent

Date of Hearing: ***1st and 29th February 2024***
Date of Decision: ***7th March 2024***

Before: ***Justice Oliver A Saksak***

Counsel: ***Mr Colin B Leo for the applicant***
Mr James Tari or Fifth Respondents
No appearance for First to Eighth Respondents

DECISION

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1. The application by the applicant filed on 23rd October 2023 to stay the hearing of Land Case No. 2 of 2022 pending an appeal hearing and determination against the decision of the Chief Magistrate of 12th September 2023 is hereby dismissed.

2. The Chief Magistrate presided over the Tongoa Island Court on 12th September 2023 when Willie Calo Tipoloamata applied to have his name withdrawn as the original claimant and to substitute Moses Toa Marakitatano as the new original claimant and as representative of the Hanabanga Nakamal.

3. Mr Leo filed submissions on 26th February 2024 submitted it was wrong in practice for the Court to accept the request to substitute Moses Toa Marakitatano as original claimant in place of willie Calo Tipoloamata because they had prepared their submissions against him and not Hanabanga Nakamal which the applicant argued is not a legal and a proper person to lodge a claim in accordance with the provisions of the Island Court Act. They argued they were denied their right to natural justice. They said it was an abuse of process for the Island Court to allow the substitution made.

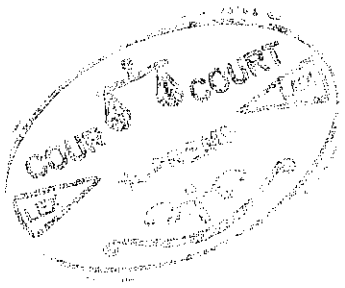
4. Mr Tari on the instrucitons of his clients notified the Court they would not actively participalte. I take that position to mean the Fifth Respondents were taking a neutral position and would abide by whatever decision or orders made by the Court.

5. No other persons named as respondents responded to the application. Contrary to what the applicant submitted or argued, the Island Court Act is silent on whether or not an Island Court has any power to make substitutions of parties. That silence does not necessarily infer the Court has no power to do what it did. In my view the Court has inherent powers to do what it did.

6. The Island Court made it plain in its decision that all it was doing was substituting Moses Toa Marakitatano as the only change which did not prejudice of other claimants as they would all have a chance to cross-examine the original claimant and his witnesses.

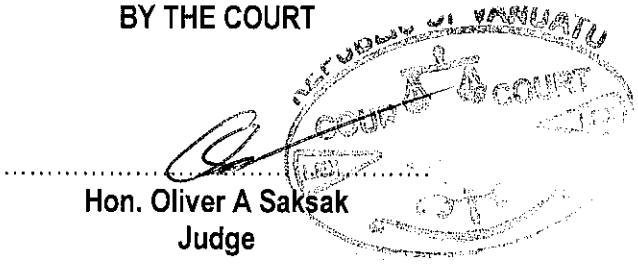
7. The Island Court was convening to hear a land case which has been unheard for 21 years. To stay the hearing further to hear an appeal that has no prospect of success is achieving nothing but adding to the unnecessary delays in bringing the case to finality.

8. I see no basis for the application. If the applicant has any complaint he should await the final outcome of the hearing and then appeal one time, not piecemeal as he has attempted to do.



9. For those reasons, the application for leave is declined and dismissed. And there will be no order as to costs.

DATED at Port Vila this 7th day of March 2024
BY THE COURT



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Hon. Oliver A Saksak
Judge