

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

Land Appeal
Case No. 17/2169 SC/LNDA

BETWEEN: Family Kalmermer
Appellant/Applicant

AND: Family Kalmet
Respondent/Applicant

AND: Family Kalpong
Second Respondent/Appellant

AND: Family Koriman
Third Respondent/Appellant

AND: Family Kaiwatong
Fourth Respondent/Appellant

AND: Jif Kaltapu & Descendants
Fifth Respondent/Appellant

AND: Family Kalonikara
Sixth Respondent/Appellant

AND: Family Nase Kalmet Taleo
Seventh Respondent

AND: Family Fatan Kalmari
Eight Respondent/Appellant

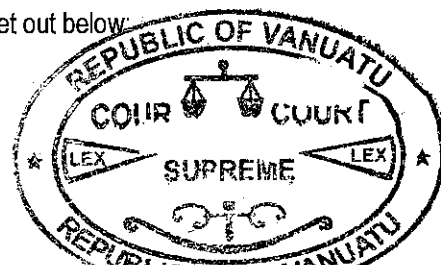
AND: Republic of Vanuatu
Interested Party

Coram: Justice Dudley Aru
Counsel: Mr. S. Hakwa for the Appellant / Applicant
Mr. J. Wells for the Interested Party (Republic of Vanuatu)

DECISION

Background

1. Family Kalmermer is applying to set aside the orders of this Court made on 17 May 2022 (the 17 May Orders) varying the Orders issued by the Chief Justice (the Stay Orders) in this matter on 18 December 2008 preventing any dealings concerning the Teuma-Rentapao land.
2. For ease of reference, the relevant orders which the State applied to vary are set out below:



"ORDERS

1.

.....

a)

b) There shall be no:

i. Survey (for purposes of the creation of any lease);

ii. Approval (as may be required by the Land Reform Act [CAP 123] as amended or the Land Leases Act [CAP 163] as amended);

iii. Rectification of any Title; or

iv. Registration of any dealing whatsoever.

In respect of the land comprising the entire land the customary ownership of which is disputed and/or claimed by family kalmermer and family kalwatong in EIC 8/93 and which dispute and/or claims are currently the subject of their respective appeals in this proceeding ("the land");

c) There shall be no sale, transfer, assignment, alienation, licence, or any other dealing whatsoever in custom law in respect of the land;

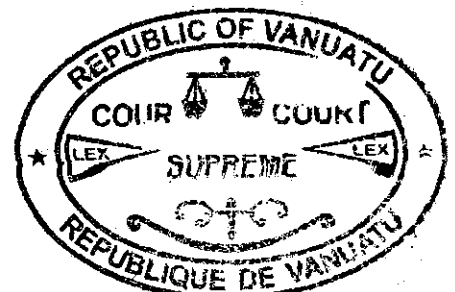
....."

(emphasis added)

3. On the 12 May 2022 the interested Party filed and served its Urgent Application seeking to be added an interested party and to vary orders 1 (b) iv) above and (c). Also filed and served with the urgent application is an application for the matter to be heard urgently. In support of both applications the applicant also filed and served a sworn statement of Urgency deposed by Andre Iapatu on 13 May 2022. A further sworn statement of Paul Gambetta was filed and served on 17 May 2022. The Solicitor General also filed an undertaking concerning damages informing the Court that the State was not required by the State Proceedings Act No 9 of 2007 to provide any undertaking as to damages.
4. Considering the urgency as set out in the sworn statement of the Andre Iapatu, the Deputy Director of Public Works Department, I heard the application ex parte on 17 May 2022 and granted the orders sought. Liberty to apply was given to Family Kalmermer upon three (3) days' notice.

Application to set aside

5. The current application by Family Kalmermer to set aside the 17 May Orders was filed on 11 August 2022 with a sworn statement of Thomas Tau in support.
6. The grounds raised in support of setting aside the 17 May Orders are that Family Kalmermer was not informed by the Solicitor General of the hearing of the State's application nor did Court staff inform Mr Hakwa of the hearing. Furthermore, the applicant says the interested party had no standing and the application to vary the Stay Orders was misconceived and amounts to an abuse of process.
7. The applicant says that no other party in the proceeding was heard other than the interested party. The applicant remains opposed to the interested party's application and relies on *Fujitsu (NZ) Ltd v International Business Solutions Ltd* [1998] VUCA 13; *Dinh v Polar Holdings Ltd* [2006] VUCA 24; *Esau v Sur* [2006] VUCA 16 and *Maltape v Aki* [2007] VUCA 5.



Discussions

8. I heard submissions from Mr Hakwa on his application and Mr Wells in response on behalf of the State.
9. The 17 May Orders were issued following consideration of rule 3.2 (4) of the Civil Procedure Rules and rules 7.3 (1) a) and liberty to apply was given to the applicant.
10. The urgency as a matter of public interest was that the existing Teuma river bridge was damaged by cyclone Pam and continued to deteriorate posing a huge risk to the travelling public using the bridge on a daily basis. The Japan International Cooperation Agency (JICA) had agreed to fund the reconstruction of the bridge. In their assessment the works will cover the surrounding areas to provide stability to the new bridge. The availability of funding was dependent on the State acquiring the full area covering the work site which included several lease titles as highlighted by Mr Iapatu and Gambetta.
11. The reconstruction works were delayed due to lack of compromise by the applicant to allow works to begin given the existence of the Stay Orders. As a result, around July 2022, the State was informed by JICA that the funding will be withdrawn if urgent steps are not taken to secure the work site.
12. Having heard Mr Aron, I was satisfied of the urgency and as a matter of public interest, the Stay Orders had to be varied. Article 80 of the Constitution allows the State to acquire land in the public interest. The Land Acquisition Act [CAP 215] sets out the requirements to be complied with by the state. This is confirmed by Mr Iapatu and Gambetta.
13. I take judicial notice of the fact that the site has now been acquired and reconstruction of the bridge has been ongoing for over 12 months.
14. The appeal concerning dispute over custom ownership of the area is still pending before this Court. The decision as to the acquisition of the site has been made and implemented. Since the issuing of the 17 May Orders some two years have now lapsed. I am of the view that this Court is now functus in revisiting that particular decision as sought by Mr Hakwa. The only available option is to appeal the decision if the appellant so desires.

Result

15. The application by Mr Hakwa to set aside is therefore declined.
16. Each party to bear their own costs.

DATED at Port Vila this 26th day of November 2024

BY THE COURT

Dudley Aron
Judge.

