

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

**Civil  
Case No. 24/718 SC/CIVL**

**BETWEEN: Kennedy Matokuale Tariwer**  
*Claimant*

**AND: Forari Village Land Tribunal**  
*First Defendant*

**AND: Chief Tarinuamata**  
*Second Defendant*

**Date of Hearing of  
Application:** *29th day of October, 2024*

**Before:** *Justice E.P Goldsbrough*

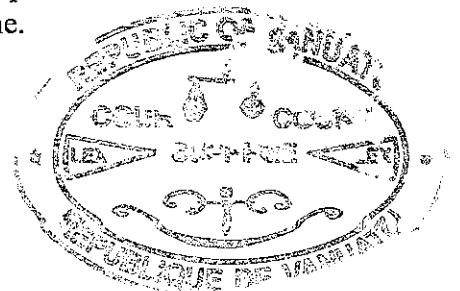
**In Attendance:** *Tevi, R for applicant  
Huri, L for 1<sup>st</sup> respondent  
Aron, S in person on behalf of 2<sup>nd</sup> respondent*

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**DECISION**

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1. This application was brought under section 47 of the Custom Land Management Act No. 33 of 2013, seeking the intervention of the Supreme Court and its supervisory powers to consider a decision of the Efate Island Court (Land) in 22/2718. The sole ground for bringing this issue is the composition of that Tribunal because of the alleged disqualification of a panel member.
2. With the consent of all the parties, an order is made as agreed, setting aside the Island Court (Land) decision of 2 December 2022 and remitting the matter to be reheard.
3. Whilst this Court was not required to hear the application on a contested basis, given that all parties agreed upon the outcome, it is essential that this Court sets out why the order made is appropriate.
4. Of the panel constituting the Island Court (Land) for the hearing on 2 December 2022, one of its members had been involved in the earlier Efate Island Court case 04 of 1995, which led to the decision now under review. He was one of the four justices of the Island Court selected to make up the five-member tribunal. Under the relevant legislation, s26 of Island Courts [Cap 167], if a justice or an assessor has any personal interest or bias in any proceedings, he shall be disqualified from hearing the same.



5. The presiding judicial officer recorded nothing in her hearing notes specifically that this issue had been raised before her and the other panel members. Whether or not the matter was raised before her, the panel's composition, and, in particular, the question of disqualification of a member, is an issue that goes to jurisdiction. For that reason, the matter must now be dealt with regardless.
6. It could be the case that the parties are unaware of any interest that would disqualify a justice or assessor. That is dealt with in the Island Courts (Civil Procedure) Rules 2005, which provides in Rule 6 (3) (a) that a justice who is or becomes aware of an interest must inform the other justices and the parties. Whilst that rule allows for the parties to agree to the continued participation of that justice, s26 of the Island Courts [Cap 167] is not so forgiving.
7. It may be even more important that a justice discloses any interest to colleagues and the parties in cases where no lawyers are present to represent them. When sitting as an Island Court (Land), the tribunal is still an Island Court and subject to the same Island Court (Civil Procedure) Rules 2005, – see Section 2 of Custom Land Management Act No.33 of 2013.
8. Counsel is to file a draft memorandum setting out the terms of the consent order, which will be signed following filing.

DATED at Port Vila this 29<sup>th</sup> day of October, 2024

BY THE COURT

*E.P. Goldsbrough*

E.P Goldsbrough

Judge of the Supreme Court

