

**IN THE COURT OF APPEAL OF  
THE REPUBLIC OF VANUATU**  
(Civil Appeal Jurisdiction)

Civil Appeal Case No. 01 of 2012

**BETWEEN:** PETER MOWA PARALIYU  
Appellant

**AND** CHIEF PETER NORMAN PARAKULWO  
First Respondent

**AND:** THE REPUBLIC OF VANUATU  
Second Respondent

**Coram:** Hon. Chief Justice Vincent Lunabek  
Hon. Justice John von Doussa  
Hon. Justice Bruce Robertson  
Hon. Justice Oliver A. Saksak  
Hon. Justice Daniel Fatlaki  
Hon. Justice Dudley Aru

**Counsel:** Mr. Saling Stephens for the Appellant  
Mr. Felix Laumae for the First Respondent  
Mr. Tom Loughman for the Second Respondent

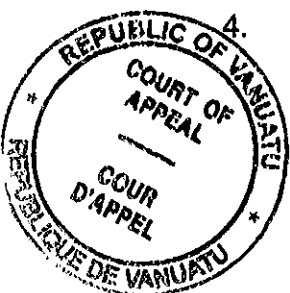
**Date of Hearing:** 12 July 2012

**Date of Decision:** 19 July 2012

**JUDGMENT**

1. This is an appeal against an interlocutory order of **Spear J.** refusing to uplift or set aside a stay of proceedings ordered unopposed by **Dawson J.** on **17 December 2010.**
2. In his judgment on 15 December 2011 Spear J. noted that the stay was ordered "*on the basis that the question of customary ownership needed to be resolved by a land tribunal. It is further complicated now by reason of the recent order of the Minister of Justice that no further claims can be received and considered by a land tribunal.*"
3. In this latter regard State counsel provided the Court with a copy of an Official Gazette notice dated 25 April 2012 which repealed the above-mentioned ministerial order with effect from 16 September 2011.

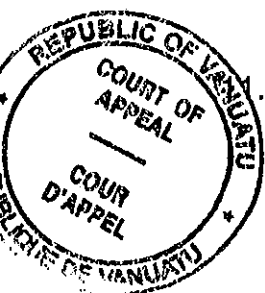
4. The Supreme Court proceeding in which the stay order had been made was brought by Chief Peter Norman Parakulwo against three defendants to have land lease No. 10/1114/001 (the lease) cancelled pursuant to



section 100 of the Land Leases Act on the ground that it had been registered by reason of fraud or mistake.

5. The first defendant named in the Supreme Court claim was the Republic of Vanuatu as the authority responsible for land registration. The second defendants were four members of the Paraliyu Family who were named as the lessors in the lease (the lessors). The third defendant was Peter Mowa Paraliyu, the present appellant (the lessee). The lessee is the son of and brother of one or other of the lessors.
6. The opening paragraph of the statement of claim alleges that the claimant (Chief Peter Norman Parakulwo) is the declared custom owner of all those lands now covered under Lease title 10/1114/001 at Wenia, North West Epi.
7. The stay order made by Dawson J. occurred at an early conference hearing. By that time pleadings and affidavits on file disputed that Chief Peter Norman Parakulwo had been declared a custom owner of the land, thus apparently challenging the very basis upon which the claim was made. Moreover, counsel for the parties agreed before the judge that the outcome of the claim depended on who was the true custom owner. If this were the correct analysis of the issues intended to be raised in the proceedings, there was every reason why the stay order should have been made, and no reason why it should be lifted at any time before there had been a determination of custom ownership made in accordance with the Customary Land Tribunal Act [CAP. 271].
8. When the matter came on for hearing before the Court of Appeal, it became apparent that both Chief Peter Norman Parakulwo on the one hand, and the lessors and the lessee on the other hand both relied on a decision of the Area Land Court of Merakup dated 18<sup>th</sup> October 2007. Extensive discussion between members of this Court and counsel occurred in an effort to understand ambiguities in the pleadings, and in the meaning and effect of the decision of the Area Land Court of Merakup. It gradually emerged that the issue in the Supreme Court proceedings was not as the Supreme Court judges had understood it to be.
9. As it was ultimately agreed by counsel that the stay order should be lifted, and that the trial of the real issues in the Supreme Court should take place as soon as possible, it is not appropriate that we discuss in detail issues of fact that may be further refined at trial. However in broad terms the issues between the parties are as follows.
10. First, the lessors and the lessee challenge the standing of Chief Peter Norman Parakulwo to bring the claim for cancellation of the lease. His status to do so is misleadingly pleaded in the first paragraph of the statement of claim, and this has contributed to the subsequent misunderstanding by counsel and the Supreme Court.

Chief Peter Norman Parakulwo is a paramount chief of the Wenia area and settlement. As the lease covers the settlement, and the lessee, relying



on the lease, is threatening to evict people from the settlement, Chief Peter Norman Parakulwo plainly has standing, as an interested party, to bring the proceedings regardless of his custom ownership of all or part of the land. Other Wenia residents concerned with threats of eviction would also have standing to bring the proceedings. A determination by a land tribunal of custom ownership is not therefore a pre-requisite to the claimant's standing to bring the proceedings in the Supreme Court.

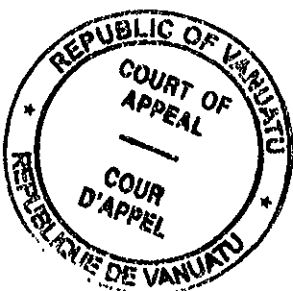
12. Central to the claim by Chief Peter Norman Parakulwo that the lease should not have been registered, is the meaning and effect of the decision of the Area Land Court of Merakup . The relevant part of the reasons of the Area Land Court reads:

"Judgement blong Tedei I rul se:

- a) *Famili blong Leyava bae I stap gohed blong wok long boundri we Parakulwo I givim.*
- b) *Family blong Mepiluva bae istap go hed blong wok mo I mas respectem boundary blong Leyava.*
- c) *Judge I askem Parakuluwo blong tekem family ia mo showem boundary we hemi givim long Leyava long Famli blong Mepiluva.*
- d) *I start tedei igo bae family blong Leyava I should faenem wan suitable taem blong mekem kastom blong pem raet ia long Jif Parkulwo."*

13. This passage from the Area Land Court's decision confirms the status of Chief Peter Norman Parakulwo as a person with a relevant interest in the land sufficient to give him standing to bring the Supreme Court proceedings.
14. The lessors and the lessee are members of the Family Mepiluva. Chief Parakulwo alleges that the judgment of the Area Land Court does not establish the lessors' right to custom ownership, or give them any legal capacity to grant the lease. Moreover, Chief Parakulwo alleges that the area of land included within the lease far exceeds the boundaries of land which were indicated by him as land to be worked by the Mepiluva Family.
15. The statement of claim also alleges procedural irregularities in the steps taken by the lessors and lessee to gain registration of the lease.
16. The Supreme Court proceedings therefore raise three issues going to the validity of the lease and in turn to its registration, namely:


- (a) Does the decision of the Area Land Court give the lessors rights entitling them to be the lessors of the leased land?

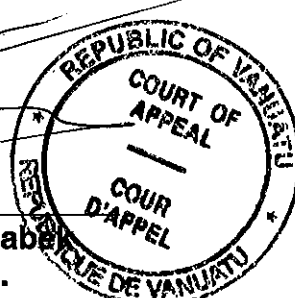


- (b) Were the lessors entitled to grant a lease extending over the whole of the surveyed boundaries of the lease? and
- (c) Were procedural requirements leading up to the execution of the lease and its registration in accordance with law?
17. The Supreme Court has jurisdiction to decide each of these issues, and the outcome of the Supreme Court proceedings is not dependent on a prior determination of a land tribunal as to the custom ownership of Chief Parakulwo.
18. The entitlement of the lessors to grant the lease will depend upon them establishing a lawful determination of their custom ownership of the land the subject of the lease. In the proceedings before the Supreme Court the lessors will be required to identify such a decision as part of their proof of title. If they cannot do so, they will fail to establish their right to be lessors.
19. At the conclusion of discussion between counsel and this Court, counsel agreed that the stay should be lifted to enable the trial of the Supreme Court proceedings to take place. In the meantime, the lessors and lessee will continue to be restrained from dealing with the leased land as there is a caution registered over the title.
20. For these reasons the appeal is allowed and the stay ordered by Dawson J. on 17 December 2010 is set aside. The matter will be returned to the Supreme Court for trial as soon as practicable.
21. On the question of costs, both parties have contributed to the misunderstanding that occurred in the Supreme Court, and will now benefit from the stay being lifted and from the trial which will take place. In these circumstances we do not consider there should be any order for costs. Each party should bear their own expenses.

**DATED at Port Vila, at 19<sup>th</sup> day of July, 2012.**

**BY THE COURT**

  
**Hon. Vincent Lunabe**  
**Chief Justice.**

  
REPUBLIC OF VANUATU  
COURT OF APPEAL  
COUR D'APPEL  
REPUBLIQUE DE VANUATU