

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

**CIVIL APPEAL CASE NO. 20 of 2013**

**BETWEEN: SOLOMON TAVUE**  
Appellant

**AND: JOINT VILLAGE LAND TRIBUNAL  
COURT, MOLITAMATA LAND  
TRIBUNAL COURT, NOKA LAND  
TRIBUNAL COURT, MEREY LAND  
TRIBUNAL COURT**

First Respondent

**AND: GABRIEL WOILOLO AND BAIS  
RAVUL**

Second Respondent

**AND: JERRY VOIYASUSU**

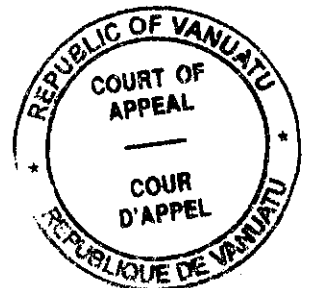
Third Respondent

Coram: Hon. Chief Justice Vincent Lunabek  
Hon. Justice Bruce Robertson  
Hon. Justice John Mansfield  
Hon. Justice Daniel Fatiaki  
Hon. Justice Robert Spear  
Hon. Justice Dudley Aru  
Hon. Justice Mary Sey

Counsel: Mr Lent Tevi for the Appellant  
Mr. Frederick Gilu for the 1st Respondent  
Mr. George Boar for the 2nd Respondent  
Mr. Kiel Loughman for the 3rd Respondent

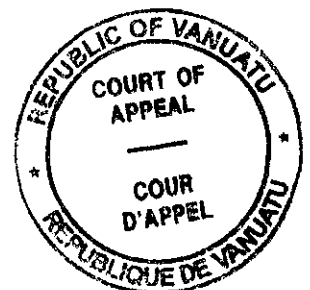
Hearing: 18<sup>th</sup> November 2013

Judgment: 22<sup>nd</sup> November 2013



## JUDGMENT

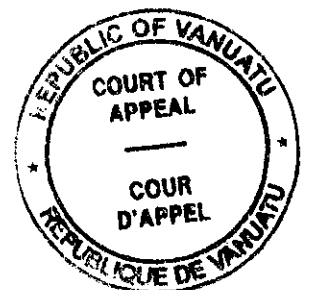
1. This appeal highlights two things:-
2. First, it is vitally important that the processes under parts 6 and 7 of the Customary Land Tribunal Act [CAP 271] are complied with so that the boundaries and lists are clear, including the annual review of lists of approved adjudicators. Furthermore, that the Department of Lands through the Customary Land Tribunals Office keeps proper records of the Land Tribunal decisions and processes and ensures that the Council of Chiefs for each custom area annually review the list of approved adjudicators.
3. Secondly, when cases like this arise, the State Law Office should be able to produce to the Supreme Court the proper records so that there will not be disputes between the parties on conflicting and largely anecdotal evidence. The State Law Office tries to assist the Court, as it should, in matters like this, but even it as the representative of the land tribunals is not able to say what the record shows.
4. If proper records were created and maintained, the number of cases like this before the Supreme Court and the Court of Appeal would, very likely drop dramatically for the benefit of all.
5. This is an appeal against the decision of Saksak J delivered on 11 October 2012 dismissing the Appellant's claim for judicial review pursuant to Rule 17.8(5) of the Civil Procedure Rules. The relief sought by the Appellant is :-
  - (i) An order that the judgment of the Supreme Court dated 11 October 2012 be set aside in its entirety;



- (ii) An order that the Judgment of the Joint Village Tribunal Court, Molitamata Land Tribunal, Noka Land Tribunal and Merey land tribunal held on 28 May 2010 be set aside in its entirety;
  
- (iii) In the alternative, and pursuant to section 23(b) of the Customary Land Tribunal Act, an Order that the Mataloi, Latore, Vulovulo and Maloviriu Land claim be reheard by another customary land tribunal to be composed of other judges or assessors and secretary other than those who made the judgment the subject of this appeal.

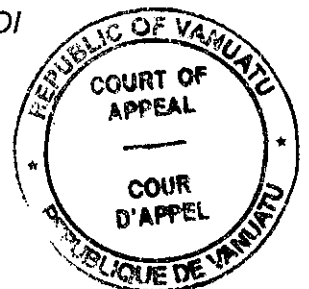
6. The appeal is made on the following grounds:-

- (a) That the court erred in deciding to give judgment based on the decision of the Joint Village Land Tribunal, Molitamata Land Tribunal, Noka Land Tribunal and Merey Land Tribunal when the persons sitting to adjudicate the land tribunals are not on the approved list of adjudicators in accordance with the provisions of the Customary Land Tribunal Act [CAP 271];
  
- (b) That the Court erred in accepting that the Appellant had withdrawn all his fees for the joint village land tribunal sitting when in fact the appellant had paid some fees and was not notified to attend the tribunal meeting;
  
- (c) That the Court erred when declaring that the appellant was not a party when in fact the appellant was a party in the other lower tribunals.

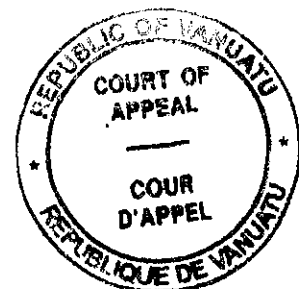


- (d) That the Court erred in finding that the second and third respondents are declared custom owners when in fact their fathers had asked the appellants father to give permission for them to settle in the land.
7. If Mr. Tavue is successful on ground 1, then it will not be necessary for this Court to deal with the other grounds.
8. At the first conference the judge in the Court below was required to be satisfied of the matters listed in Rule 17.8 (3). Firstly, whether there was an arguable case. The judge found that there was overwhelming evidence by Judah George that the Claimant had notices of the tribunal hearings on at least four occasions therefore the claimant could not disprove or rebut the evidence. On the question of whether Mr. Tavue was directly affected by the decision, the judge found that there was overwhelming evidence that he was not a party to the dispute. Mr. Tavue had paid his fees but then withdrew his fees. For that reason it was considered that he had basically withdrawn himself as a party.
9. On the third and fourth questions the judge found that Mr Tavue's claim was filed more than two years after the decision was made. The judge found that Mr Tavue had no other remedy as it was the result of his own decision by not being a party.
10. The evidence before the Court below which Mr. Tavue relies upon but was not considered by the Court is his own evidence dated 11 May 2012 where he says the following:-

*"2. Mi wantem talemout long kot se samtaem long year 2008, land tribunal I bin sidaon blong harem case blong MATALOI KASTOM GRAON.*



3. *Taem mifala I bin sidaon, mi nao mi bin object long Chief Juda George mo Chief Treny Linkot, Chief Jondy mo Chief Tony. Tribunal I bin agri se mbae Chief Willie Mara nao I mekem ol arrangement mo singaotem next land tribunal blong harem case ia.*
4. *Taem ia mifala I bin stap wait. Ibin stap tekem longfala taem be mifala I biliv se ol wok blong ol land tribunal oli plante be mbae oli singaotem mifala yet.*
5. *Long wan taem long January 2011, mi bin kam long Canal.*
6. *Taem ia mi bin luk Mr. Benuel Tabi we I work long lands department mo hemi stap lukluk long ol case blong ol land tribunal.*
7. *Mr. Tabi I bin talemout long mi se I gat wan decision finis long Mataloi kastom graon we I register long Lands Department.*
8. *Mi tekem wan copy blong decision ia mo mi just save long taem ia se ol defendants oli bin mekem wan fasin we I no stret blong holem wan land tribunal blong harem case blong Mataloi be mifala I no bin save nomata we oli well aware se mifala tu ol claimer.*
9. *Taem mi luk se who olgeta ol judge mi luk nem blong Judah George mo Treny Linkot we emi secretary.*
10. *Ol man ia nao mi bin object long olgeta and mi biliv se oli minim blong mekem kot ia haed haed from oli save se Judha George hemi no qualify."*



11. Other evidence relied upon which confirms what Mr. Tavue said, is the evidence of William Johnty, Malon Lulu, Bil Tavue, Kenneth Puerede, George Tavui and Ezra Tavue. Despite the clear objections of Mr. Solomon Tavue, Chief Judah and Terry continued to issue notices for tribunal hearings concerning Mataloi land on the following dates:-

- 2 November 2009;
- 26 November 2009;
- 4 January 2010 and
- 23 February 2010.

12. Eventually on 28 May 2010 they sat on the tribunal that decided that the custom owners of Malatoi land were the second respondents. By dismissing the appellant's judicial review claim, the Court below relied on a decision of a tribunal whose members were objected to by Mr Tavue at the initial tribunal hearing from sitting in the first place and there is no evidence before the Court that those objections were ever dealt with pursuant to section 26 of the Customary Land Tribunal Act [CAP 271].

Section 26 (2) c), (3), (4) and (5) provides:-

***"Start of hearing and objections***

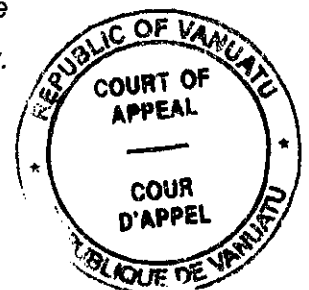
26. (1) .....

(2) *Whenever a land tribunal first meets to hear a dispute, the chairperson must:*

(a) .....

(b) .....

(c) *ask if there are any objections to the qualification of the chairperson, any of the other members or the secretary.*



*(3). Subject to subsection (4), the chairperson must consider any objection, and if he or she considers that the objection is justified, he or she must disqualify the person concerned and adjourn the meeting to enable another person to be appointed.*

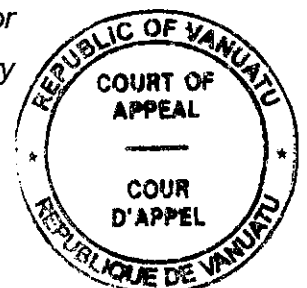
*(4). If the objection is to the chairperson of the land tribunal, the other members of the tribunal must consider the objection, and if they consider that the objection is justified, they must disqualify the chairperson and adjourn the meeting to enable another chairperson to be appointed.*

*(5). If a party to a dispute fails to follow any of the procedures under this Act, another party to the dispute may apply to the land tribunal for an order directing the party to comply with the procedure."*

13. This Court in **Taliban v. Worworbu [2011]VUCA 31** said:-

*"8. When a Court is faced with such an objection to the constitution of a land tribunal, it is necessary to have regard first and foremost to sections 35, 36 and 37 of the Customary Land Tribunal Act.*

*9. By those sections, the council of chiefs for a particular area (whether a custom area or custom sub-area) is required first to determine the boundaries of the area under its customary regulation (to adopt the terminology employed by s.3 of the Act). That council of chiefs is then required to approve a list of those chiefs and elders who are considered qualified (as defined) and acceptable to adjudicate on disputes as to the boundaries or ownership of custom land within that area. These are mandatory*



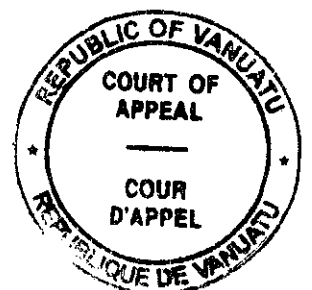
*requirements preliminary to but also essential to the establishment of any village land tribunal under ss 7 - 9.*

*10. There are other requirements on the council of chiefs including: (1) to forward the list of approved adjudicators to the Secretary of the Island council of chiefs (for a custom sub-area, a copy is also to be sent to the secretary of the council of chiefs for the custom area to which the sub-area belongs); and, (2) the annual revision of that list. The importance of those two steps to the legitimacy of a particular land tribunal will depend on the circumstances of the individual case.*

*11. In order to determine whether the land tribunal was lawfully constituted , and accordingly whether its decision was valid , it will be necessary for the Supreme Court first to ascertain which particular council of chiefs had customary regulation over the land in question . Once that is established, it will then need to determine whether the members of the land tribunal in question were, in each case drawn from the list of approved adjudicators compiled by that particular council of chiefs. Finally it must be satisfied that the necessary procedural steps (the giving of public notice and such like) have been taken pursuant ss 7 – 9.”*

14. Although the objection to Mr. Judah George and others was pleaded in the claim with the evidence filed in support, the judge did not take this into account when deciding whether or not there was an arguable case.

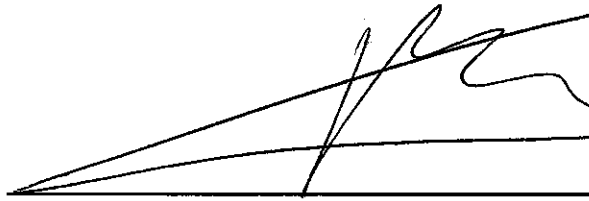
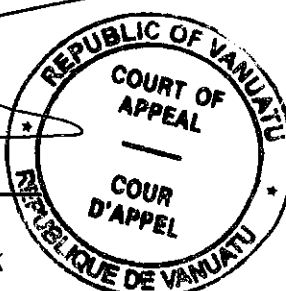
15. It also appeared during the hearing of this appeal that there was no approved list of adjudicators for the Big Bay area where the land in dispute is located. This was confirmed by counsel on behalf of the first respondents. None of the other parties could identify any such list for the Court.





16. The effect of non compliance with legislation in this way is that a purported decision cannot be lawful or effective. The land tribunal framework is unworkable if there are no lists. This defeats the purpose of the legislation as intended by Parliament.
17. There is no need to deal with the other grounds raised. The appeal must be allowed and the decision quashed. The matter is remitted to the Supreme Court to complete the hearing of the claim for judicial review. But on the material before us it appears that there may be an urgent need for a new customary land tribunal hearing which is properly constituted and in respect of which there are no conflicts of interest.
18. Mr. Tavue is entitled to costs to be taxed if not agreed. These costs are to be paid by the First Respondent.

**FOR THE COURT**

**Hon. Chief Justice Vincent Lunabek**