**IN THE COURT OF APPEAL OF**
**THE REPUBLIC OF VANUATU** **CIVIL APPEAL CASE No. 22 OF 2013**
(Civil Appellate Jurisdiction)

**BETWEEN:** **ULUL WILLIE, BOGBOG TUEUE AND VALUOLU KALILIU**
Appellants

**AND:** **ROY SARGINSON**
Respondent

***Coram:*** *Hon. Chief Justice Vincent Lunabek*
*Hon. Justice John von Doussa*
*Hon. Justice Oliver Saksak*
*Hon. Justice Ronald Young*
*Hon. Justice Oliver Saksak*
*Hon. Justice Daniel Fatiaki*
*Hon. Justice Dudley Aru*
*Hon. Justice Marie Sey*
*Hon. Justice Stephen Harrop*

**Counsels:** *Felix Laumae for the Appellants*
*Daniel Yahwa for the Respondent*

***Date of hearing:*** *26 March 2014*

***Date of Judgement:*** *4 April 2014*

# JUDGMENT

1. The Appellants seek leave to appeal out of time against an order of Dawson J. which was made on 1 December 2008 that :

   *" 1. By virtue of the letter dated 14 December 2005 of the Land Tribunal Office it is ordered that the persons presently recorded on lease title 10/1213/01 as the lessors are to have their names removed from that title and replaced by Roy Sarginson and Leslie Sarginson as the Lessors ."*

2. The letter dated 14 December 2005 from the Lands Tribunal office read :

*Family Sakinson*
*Buruba Village*
*Vermaul Area, Epi*

*Re Kelala Kraon on Epi*

*We advise, our office had received the copy of the declaration which the highest chiefly body on Epi, the Tarpumamele council of chiefs made in favour to the family Sakinson on the re above caption.*

*As such we recognize the declaration. Should any parties opposing it should seek the lands tribunal to reconsider that decision.*

*But as it is, we see the family Sakinson as the sole owner of the Kelala kraon starting from sea to the inland*

*Yours faithfully*

*Alicita VUTI*
*Acting Coordinator lands tribunal*

3. The grounds in support of the Application are : First, that the Appellants were never served with the Respondent's claim and notice of conference which led to the making of the order under challenge. Secondly, that as the order involves custom land, it is a matter of public interest that time be enlarged to allow the appeal to be heard. Thirdly, that the making of the order was wrong in law and fact and was a breach of natural justice to the Appellants whose names appear as registered lessors on lease title 10/1213/001 (the 001 lease). Fourthly, that the Supreme Court was not competent to make the order as it determined custom ownership.

**Background**

4. The background to this matter is that the Respondent and his family filed a claim in the Supreme Court on 5 September 2006 seeking to enforce a decision of the Epi Island Taripumamele Council of Chiefs made on 18 July 2000. This decision declared the Respondent and his family as custom

owners of Kalala land which is custom land comprised in the 001 lease. Following this declaration, the Land Tribunals Office subsequently by the letter dated 14 December 2005 advised that they recognised the declaration.

5. The relief sought by the Respondents in their claim was firstly for an order that by virtue of the decision of the Taripumamele Council of Chiefs the Respondents are custom land owners of the 001 lease title 10/1213/001. Secondly, that the Appellants remove their names on the lease title as lessors and the Respondent and Leslie Sarginson be named as lessors and finally that their sons Patrick and Stephen Sarginson be named as lessees of this lease title.

6. At that time the Appellants were the registered lessors under the 001 lease and the Respondent and his brother were the lessees. This lease had been executed by the parties on 12 October 1982. The lease was entered into by the Appellants as custom owners, and in later litigation between the parties over a breach of the terms of the lease by the lessees the Appellants evidence that his family were the custom owners seems to have been accepted as common ground by the parties, and by the Supreme Court in its judgment dated 28 April 2000. The 001 lease was for a term of 30 years and expired in 2012.

7. On 1 December 2008, in what appears to be a conference, the only party present was the Respondent's Counsel. The Appellants were not in attendance when Dawson J made the order which is now the subject of this appeal.

8. In his sworn statement in these proceedings the Appellant Ulul Willie says he first learned that the Respondent and his family were claiming to have their names registered on the 001 lease as custom owners in April 2013 when he attempted to register a new lease. He learned of these proceedings at that time. There is a dispute about when the Appellant learned of the proceedings. The Respondent has sworn that the

proceedings were served on Ulul Willie on 27 October 2006. Ulul Willie denies that he was served with the proceedings.

9. Having heard the parties on this appeal, whilst there may be some merit in the Appellants' arguments about non-compliance with the Civil Procedure Rules as to service of the claim, the fundamental issues in this matter are legal issues as to the jurisdiction of the Supreme Court to make the order. We move on to consider them.

**Determination of custom ownership of land**

**a) Pre - Customary Land Tribunal Act [CAP 271]**

10. The Appellants submit that before the land tribunals came into existence, the only authority having jurisdiction to determine disputes over custom ownership of land was the Island Court, not the Council of Chiefs. We agree with this submission. This Court said in **Valele Family v Touru [2002] VUCA 3 that**:

> *Where a dispute over custom ownership of land arises it is to be expected that those involved will do their best to reach an agreement to settle the dispute, with such assistance as is possible from customary procedures and meetings of chiefs. However, it is clear from the Constitution and from the Island Courts Act that unless everyone who at any time claims an interest in the land is prepared to accept a settlement, the only bodies that have lawful jurisdiction and power to make a determination that binds everyone are the Courts, in the first instance the local Island Court, and if there is an appeal, the Supreme Court.*

11. The right of appeal to the Supreme Court concerning disputes over custom land only arises when there is a determination made by the Island Court. When determining an appeal from the Island Court, the Supreme Court must always appoint two assessors knowledgeable in custom to sit with the Court as required by section 22 (2) of the Island Courts Act [CAP 167].

12. In this case there were no proceedings in the Island Court. There was no appeal to enliven the jurisdiction of the Supreme Court, and on 1 December 2008 the Supreme Court was not sitting with two assessors.

**b) Customary Land Tribunal Act [CAP 271]**

13. The Respondents in their submissions argue that as there was no dispute raised by the Appellants to the Epi Council of Chiefs decision, the Office of the Land Tribunals by their letter of 14 December 2005 recognised the decision made by the Council of Chiefs and therefore the Court was clearly entitled to make the order of 1 December 2008.

Their argument is that section 6 of the Act applies and allows the Land Tribunal's Office to recognise decisions made outside of the land tribunal's framework.

Section 6 states: "Arrangements outside this Act

*(1) Nothing in this Act prevents a person or persons resolving a dispute about customary land in accordance with the rules of custom or in any other lawful way.*

*(2) Subsection (1) applies even if the way in which the dispute is resolved is inconsistent with the procedures under this Act for resolving disputes."*

14. This argument must fail. Section 6 is intended only to apply in cases where all parties to a dispute over custom land have sat together and resolved the dispute in accordance with their rules of custom. There is no suggestion in the evidence of the Respondents that this occurred. Moreover, there is no evidence that at the time the Council of Chiefs made their decision on 18 July 2000 there was any dispute over custom ownership, at least one known to the Appellants. In the Supreme Court three months earlier the parties were conducting themselves on the basis that the Appellants were the custom owners.

15. Even if the Appellants learned that the Respondent were disputing custom ownership through the service of the proceedings in the present matter on 27 October 2006 that was years after the decision of the Council of Chiefs.

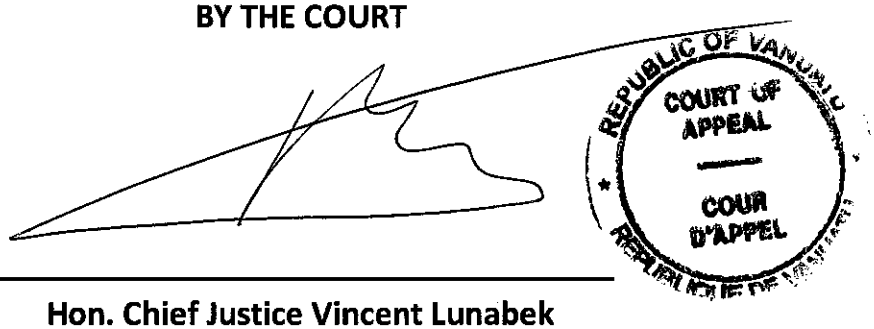
There simply is no evidence that in 2000 there was a dispute to be resolved. Plainly now there is a dispute, and the presence of the parties before this Court demonstrates that the dispute is not resolved.

16. The Appellants have established that the Supreme Court had no jurisdiction to make the order of 1 December 2008 which effectively sought to declare the Respondent's family to be the custom owners. The order cannot be allowed to stand. Leave will be granted to the Appellants to appeal, and the appeal will be allowed.

17. The Respondent is ordered to pay the Appellants' costs of the appeal on the standard basis.

**DATED at Port Vila this 4th day of April, 2014**

**BY THE COURT**




**Hon. Chief Justice Vincent Lunabek**