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

CIVIL APPEAL CASE No. 836 OF 2015

BETWEEN: **BERNARD ITAI LAUTO**
Appellant

AND: **EFATE ISLAND COURT**
Respondent

Coram: ***Hon. Chief Justice Vincent Lunabek***
Hon. Justice John von Doussa
Hon. Justice Ron Young
Hon Justice Daniel Fatiaki
Hon. Justice Oliver Saksak
Hon. Justice Mary Sey
Hon. Justice David Chetwynd
Hon. Justice Paul Geoghegan

Counsel: *Mr. R Sugden for the Appellant*
Mr L Huri for the Respondent
Mr J Ngwele, Mr W Iauma, and Mr L Malantugun for several applicants for joinder

Date of Hearing: *8 April 2016*

Date of Judgment: *15 April 2016*

JUDGMENT

Introduction

1. On the 24th February 2015 the appellant filed a claim for Judicial Review in respect of two decisions by the Efate Island Court. One of those decisions was dated 16th December 2011 in Land Case 3 of 1994. The second decision was in fact a consent order in the same land case and is dated 12th November 2014. At the same time the appellant also filed an application for time to be

extended, *"... so that the Claim for Judicial* (sic) *herein can validly seek the judicial review of the Efate Island Court decision dated 16th December 2011 in Land Case No 3 of 1994 as well as of the Consent Orders dated 12th November 2014 in the same case".*

2. A decision on the application to extend time was delivered by the court below on 2nd November 2015. The application for an extension of time was refused and the judicial review claim dismissed. As the judge pointed out, the Civil Procedure Rules (r. 17.5 (1)) require a claim for judicial review to be filed within 6 months of the decision to be reviewed. Clearly the decision in 2011 was well out of time and his Lordship so held. He went on to say that he was not satisfied that substantial justice required time to be extended. As regards the consent order in 2014, however His Lordship held that the consent order was all "part and parcel" of the earlier decision in 2011and for that reason he dismissed the whole claim.

3. There was an application in this Court by Smith Richard Lauto, Kalsev Tangrao and Rusell Bakakoto to be joined as parties to the appeal. Counsel for Mr Lauto did not object and we allowed their counsel to participate in the appeal. Given the result of this appeal we anticipate the three men will wish to be joined to the Supreme Court proceedings relating to the 2014 decision.

<u>This Appeal – The 2014 Decision</u>

4. There were two parts to Mr Lauto's appeal. First Mr Lauto said that he had only applied to the Supreme Court for leave to extend time for filing the judicial review with respect to the December 2011 decision. He said no leave was required for a review of the 2014 decision because the review was within time. Counsel for Mr Lauto said that there was no discussion at the hearing in the Supreme Court of the application to extend time regarding the 2014 decision being part and parcel of the 2011 decision. And so the Judge's conclusion was unexpected.

5. Counsel submitted there was no evidence before the Supreme Court which would have justified the conclusion by the Judge that the 2014 decision was

part and parcel of the 2011 decision. Counsel pointed out that the 2011 decision related only to part of the land in issued in the original Efate Island Court proceedings (03 of 1994). The 2014 decision involved some different parties and different land from the 2011 Island Court decision.

6. Counsel on behalf of the Efate Island Court did not dispute the factual background as outlined by Mr Lauto's counsel before this Court. However he submitted that given the judicial review related to two decisions of the Island Court under the same reference number (03/1994) they could be seen as part and parcel of the same decision.

7. We are satisfied that Mr Lauto was entitled to judicially review the 2014 decision separately from the 2011 decision for the reasons submitted by counsel for Mr Lauto. While the two orders made were both pursuant to the same Efate Island Court proceeding number (No. 03 of 1994) they concerned, in part, different parties and related to different parts of a larger piece of land .We therefore quash the order in the Supreme Court refusing leave to bring judicial review proceedings relating to the consent order of 2014 in the Efate Island Court. No such leave was required. This order does not suggest we have reached any view as to whether a consent order can in fact be judicially reviewed.

The 2011 Decision

8. As to the refusal to grant leave to bring review proceedings with respect to the 2011 decision we are satisfied the Judge in the Supreme Court was correct. Counsel for Mr Lauto submitted that there was no evidence of proper advertising of the original claim filed in 1994 in the Island Court nor was there evidence of adequate steps being taken to publicise the Efate Island Courts decision of 2011. He submitted therefore that given there was in adequate publicity of these proceedings it was hardly surprising his client had not been aware of the claim and the decision of the Court. In those circumstances the delay in bringing the review application was properly explained and an extension of time should be granted.

9. Counsel's claim of inadequate public notice was essentially based on the claim that because the appellants had not seen notification of the original claim or the Island Court decision and because there were no apparent objections to the 2011 decision there could not have been adequate publicity. However there is evidence that the claims relating to this land were advertised. An order of the Island Court of December 1994 notes that the Court considered the "Notice of Publicity" generated by the Court in claim 03/1994. Other radio and newspaper advertisements relating to the land are recorded as being made in 2005. And the decision of the Island Court in 2011 was advertised on radio.

10. Mr Lauto's claim of inadequate public notice was therefore little more than speculation based on the proposition that he did not see or hear the advertising.

11. We are satisfied there was adequate advertising of the claim and Island Court decision.

12. The other relevant fact relating to the leave application is that the successful applicants in the 2011 decision will have treated the land as theirs since that time. Given that four years have passed since the declaration of ownership it would now be unfair to them to allow them as declared ownership to be challenged in this way.

13. The appeal as to this aspect of the Supreme Court's judgment is dismissed. In the circumstances costs should lie where they fall.

DATED at Port Vila this 15th day of April, 2016

BY THE COURT

Hon. Vincent LUNABEK

Chief Justice.

REPUBLIC OF VANUATU COURT OF APPEAL COUR D'APPEL