

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

Civil Appeal Case No. 17/26 CoA/CIVA

**BETWEEN: JIMMY TOARA**  
*Appellant*

**AND: VANUATU PROJECT MANAGEMENT UNIT**  
*First Respondent*

**REPUBLIC OF VANUATU**  
*Second Respondent*

**Coram:** *Hon. Chief Justice Vincent Lunabek*  
*Hon. Justice Ronald Young*  
*Hon. Justice John Mansfield*  
*Hon. Justice David Chetwynd*  
*Hon. Justice Paul Geoghegan*  
*Hon. Justice Dudley Aru*  
*Hon. Justice Mary Sey*

**Counsel:** *Mr Eric Molbaleh for the Appellant*  
*Mr Sakiusa Kalsakau for the Second Respondent*  
*No appearance for the First Respondent*

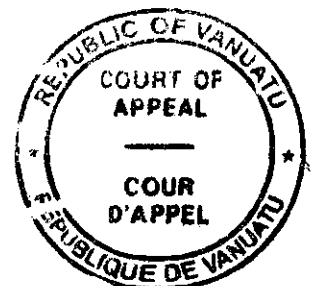
**Date of Hearing:** *Wednesday March 29<sup>th</sup> 2017 at 2 pm*  
**Date of Judgment:** *Friday April 7<sup>th</sup> 2017 at 4 pm*

---

**JUDGMENT**

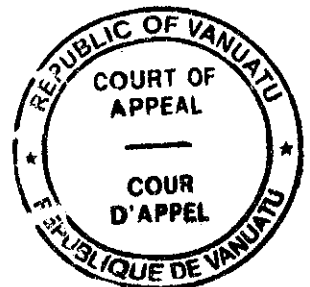
---

1. This appeal is in respect of a judgment given in the Supreme Court delivered on December 12<sup>th</sup> 2016. The dispute between the parties was in respect of an invoice dated July 6<sup>th</sup> 2010 for the amount of Vt 864, 750,000 issued by the late Toara Seule to the First Respondent in respect of coral or limestone extracted from the Epule Quarry. The claimant alleged that in 2010 Mr Seule had entered into an agreement with the First



Respondent to facilitate the extraction of materials from the claimant's property and that the First Respondent would pay for the material extracted. The contract was alleged to be partly oral and partly written. It is clear from the material before the Supreme Court that the details of the alleged agreement were not placed in evidence.

2. It is also clear that Mr Seule's claim rested on him having an interest in the land either as the lessee of lease 12/0431/001 over the land where the quarry is located or as custom owner at the time of the agreement and whilst the materials were extracted.
3. Mr Seule died on December 13<sup>th</sup> 2014 and the claim was continued by Mr Toara as the administrator of the late Mr Seule's estate.
4. The Supreme Court Judge found as an undisputed fact that the late Mr Seule was not the lessee of lease 12/0431/001 at any relevant time. Mr Seule had been granted the lease in 1998 and had transferred the lease to a company called Tropical Sea Breeze Estate Ltd in 2006. He owned shares in that company and was one of the directors of the company. Tropical Sea Breeze Estate Ltd had surrendered the lease in 2007.
5. The Supreme Court Judge determined that if the claimant was to succeed in his claim evidence must be given to establish that the late Mr Seule was custom owner of the land as he was no longer the lessee at the time of his death. He found that the evidence established that a decision of the Efate Island Court in Land Case No. 3 of 1985 had declared the custom owner of the land to be Chief Manukat and Family. The custom



owners had, in fact, been paid a substantial sum in January 2013 by way of royalties arising from the excavation of the Epule Quarry.

6. The Judge referred to section 67 (1) of the Mines and Minerals Act which requires the holder of a mining license to pay royalties to the Republic in respect of any mineral recovered in the mining area and subsection 6 which provides that the custom owners of the land shall receive an amount not exceeding 40% "out of the revenue received" by way of royalties.

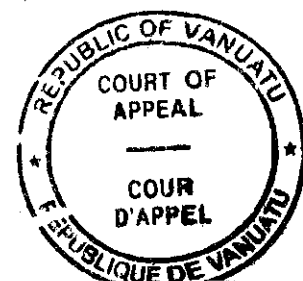
7. Section 72 of the Act defines custom owners as meaning:-

*"The person or persons who in the absence of a dispute, the Minister responsible for land is satisfied are the custom owners of land".*

8. The Judge found that as the claimant was not the custom owner of the land no royalties were payable. The finding as to custom ownership is not challenged on appeal.

9. It is absolutely clear from the relevant legislation that only custom owners may receive royalties from the mining of land. A "lawful occupier" such as a lessee of the land is also entitled to compensation, however that is limited by Section 75 to compensation for "disturbance of the rights of the lawful occupier or damage to any crops, trees, buildings, stock or works thereon" caused by the holder of the Mining Right.

10. In this appeal, Mr Molbaleh, for the Appellant accepted that an agricultural lease in respect of the subject land was granted to Mr Seule in 1998. He accepted also that the lease was transferred to Tropical Sea Breeze Estate Ltd. on October 17<sup>th</sup>, 2006 and that



the company then surrendered the lease in 2007, some three years prior to the mining which occurred at Epule Quarry.

11. In such circumstances Mr Seule could never have had any interest in the land which could provide a basis for any claim to royalties, let alone the sum which he alleged was owing. His claim was doomed to failure from the start.

12. For these reasons the appeal is dismissed.

13. For the State Mr Kalsakau sought costs in the sum of VT 25,000. We consider that to be modest in all the circumstances and the Appellant is to pay costs in the sum of VT 25,000 within seven days.

**DATED at Port Vila this Friday 7<sup>th</sup> day of April 2017**

**BY THE COURT**



**Vincent LUNABEK**  
Chief Justice

