

BETWEEN: SOHE FAMILY
Appellant

AND: MALO ISLAND LAND TRIBUNAL
First Respondent

AND: WEST MALO AREA LAND TRIBUNAL
Second Respondent

AND: FAMILY JARAWARI
Third Respondent

AND: FAMILY VUINA VANUA
Fourth Respondent

AND: FAMILY MOLIWARI
Fifth Respondent

AND: FAMILY JARA
Sixth Respondent

AND: FAMILY MOLISINGI
Seventh Respondent

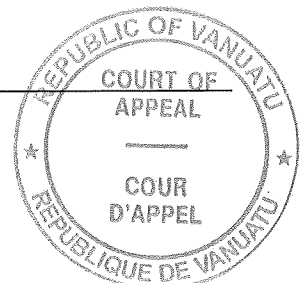
Before: Chief Justice Vincent Lunabek
Justice J. Von Doussa
Justice J.W.Hansen
Justice D.V. Fatiaki
Justice G.A. Andree Wiltens
Justice S.D. Felix

Counsels: Mrs Marisan Vire for the Appellant
Mr Tom Loughman for the First and Second Respondents
Mr Edward Nalyal for the Third Respondents

Hearing Date: 18th February 2019

Date of Decision: 22 February 2019

JUDGMENT

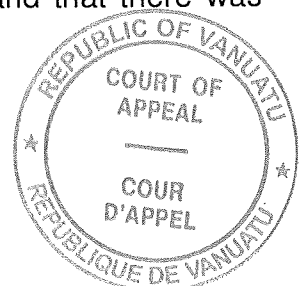


A. Introduction

1. This Court is satisfied that the Fourth, Fifth, Sixth and Seventh Respondents have been properly served with the relevant documents, including the notices for the appeal hearing, but failed to appear. The appeal proceeded in their absence.
2. The appeal was advanced on the basis that the primary Judge was wrong in refusing to allow an extension of time for the appellant to file a Judicial Review claim under Rule 17.5(1) of the Civil Procedure Rules.
3. We have not exactly followed the grounds of appeal as filed but focussed on the points relied upon by Ms Vire in the course of her submission to give a complete response to those grounds relied upon by the appellant in this court and in the court below.

B. Background

4. The Appellant was a party in a customary land dispute proceeding that started in 2004 at the Joint Village Land Tribunal level under the now repealed Customary Land Tribunal Act.
5. The proceedings continued through the appellate processes to the Second Respondent and then to the First Respondent still under the now repealed Customary Land Tribunal Act.
6. The appellant then, in September 2017, applied to the Supreme Court to allow them an extension of time to file a Judicial Review Claim for the review of the decision of the First Respondent on five grounds;
7. Firstly, it is said that the First Respondent was wrong in allowing new parties to join in the proceedings. The arguments on the second, third, fourth and fifth grounds are an attempt to challenge the findings of the tribunal in relation to the application of customary law and the evidence of the location of custom land boundaries.
8. The primary judge, in his ruling of May 14th 2018, refused the application for an extension of time on the basis that the appellant was a party in the 28th December 2005 proceeding before the First Respondent and that there was nothing prejudicial to them in this situation.

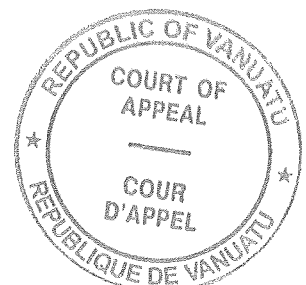


C. Discussion

9. With regards to the only reason for delay submitted by Ms Vire, we do not accept that the non-performance of the appellant's former lawyer is a valid reason for a delay of about 12 years;
10. As to the merits of the case, the issue of allowing a new party to be joined in the appeal stage of a customary land dispute proceeding has been addressed by this Court in the case of West Tanna Area Council Land Tribunal v Natuman [2010] VUCA 35; Civil Appeal 21 of 2010 (3 December 2010) in the following words:

"...The term "the parties to the dispute" is not defined. Clearly any person to the initially-notified dispute will be a party. The term is not intended to be a restrictive one. Otherwise it would not be consistent with the way the various tribunals are to operate. However, especially because section 27 provides for all parties to be given a full and fair hearing, it is clear that the "parties" may include any party whose proper interests may be affected by the resolution of the dispute. Those parties will depend on the circumstances of the particular case. In certain circumstances, as the primary judge observed, those persons may include persons who under custom law may have an interest in the land in dispute even though they are not named in the original notice of dispute...."

11. The adding of a new party to the dispute at an appeal stage by the First Respondent was therefore authorised by the now-repealed Customary Land Tribunal Act;
12. As for the other four grounds relied upon in the claim for Judicial Review before the Court below, we consider the points submitted by the appellant to be errors within jurisdiction and cannot be attacked through a judicial review claim.
13. There was nothing irregular as far as procedural rules and processes are concerned that could give the court any basis to intervene by way of a judicial review.
14. The points of custom and land boundaries are substantive matters within the jurisdiction of the land tribunals and cannot be challenged through a Judicial Review proceeding as attempted by the Appellant.
15. They can only be challenged through the appellate processes. The proposed application for Judicial Review therefore failed to disclose an arguable case under Rule 17.8(3)(a).



16. In the present case, all the appellate steps have been exhausted. The prejudice to the other parties from such a long period of delay also counts against leave being granted.

D. Decision

17. The appeal is therefore dismissed

18. The Appellant is ordered to pay costs of 50,000 VT to the First and Second Respondent and 10,000 VT to the Third Respondent.

Dated at Port Vila this 22nd of February 2019

BY THE COURT



Vincent Lunabek

Chief Justice

