

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

Civil Appeal
Case No. 18/2913 CoA/CIVA

BETWEEN: KENNEDY MATOKOALE TARIWER
Appellant

AND: THE NATIONAL COORDINATOR OF THE
LAND DISPUTE MANAGEMENT
Respondent

Coram: Hon. Chief Justice Vincent Lunabek
Hon. Justice John von Doussa
Hon. Justice Ronald Young
Hon. Justice Oliver Saksak
Hon. Justice Daniel Fatiaki
Hon. Justice Dudley Aru
Hon. Justice Gus Andrée Wiltens
Hon. Justice Felix Stephen

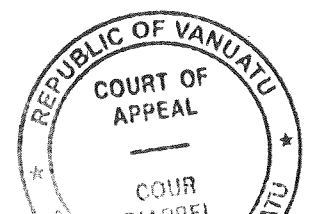
Counsel: W. Daniel for the Appellant
S. Aron for the Respondent

Date of Hearing: 29th April 2019

Date of Judgment: 29th April 2019

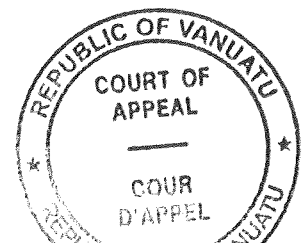
MEMORANDUM

1. In this matter Chief Kennedy Matokoale Tariwer filed a document entitled notice of appeal, naming himself as appellant and the National Coordinator of the Land Dispute Management as the respondent. In the so-called notice of appeal Mr Tariwer requests this Court to review a judgment it gave on 18th November 2016 in Civil Appeal Case No. 16/3618, Alicta Vuti Kwirinavanua v Kennedy Matokoale Tariwer [2016] VUCA 54. The appellant in that case at that time held the position as National Coordinator of Land Dispute Management and the proceedings were brought against him in that capacity.
2. By way of background, on 14th February 2014 the Forari Village Land Tribunal determined a custom land dispute in favour of Mr Tariwer. On 20th February 2014 the new Custom Land Management Act No. 33 of 2013 came into force. It



repealed the Customary Land Tribunal Act [CAP. 271] under which the Forari Village Land Tribunal had exercised its jurisdiction.

3. In March 2014 the unsuccessful parties in the Forari Village Land Tribunal proceedings filed judicial review proceedings in the Supreme Court challenging the Land Tribunal decision. Those proceedings were dismissed on 29th September 2014 on the basis that the Court lacked jurisdiction to determine the claim pursuant to the new Custom Land Management Act.
4. On the same date the aggrieved parties then prepared an application pursuant to section 58 (3) of the Custom Land Management Act to appeal to the Island Court (Land) against the Land Tribunal decision. They lodged that application with the Customary Land Management Office.
5. At the time, the new land jurisdiction of the Island Court had been established by the Custom Land Management Act, but no registrar of the new Island Court (Land) had been sworn in. The Court of Appeal was required to decide whether the application lodged with the Custom Land Management Office constituted a valid challenge to the Land Tribunal decision even though in terms of the new legislation the application had not been lodged and could not be lodged with the Island Court (Land) as no registrar of the Island Court (Land) had been sworn in to hold that office.
6. The Court of Appeal held that in the unusual circumstances of the case the application lodged by the aggrieved parties should be treated as a sufficient challenge to the decision of the Land Tribunal, and the Court directed that as soon as the relevant Island Court (Land) registrar had taken the required oath, the National Coordinator should lodge the application filed by the aggrieved parties with the Island Court (Land), and the Island Court (Land) should make arrangements to hear and determine the challenge.
7. It appears that the application was in due course sent to the Island Court (Land) and the parties were notified. However no further action has been taken by the aggrieved parties or any of them to prosecute their application.



8. Mr Tariwer is keen to have the challenge to the Land Tribunal decision disposed of so that he can obtain a recorded interest in his favour to reflect the decision of the Land Tribunal. He has applied to this Court by way of notice of appeal seeking orders to review its earlier decision and to direct the National Coordinator of Land Dispute Management to issue a certificate of recorded interest in his favour because of the inaction of the aggrieved parties.
9. The purported appeal to this Court is misconceived. The notice of appeal does not seek to challenge any lower court decision from which a right of appeal to this Court exists. The decision of the Court of Appeal in 2016 was a final decision, and the subsequent inaction of the parties aggrieved by the Land Tribunal decision does not enliven a jurisdiction in this Court to review its earlier decision.
10. The remedy for Mr Tariwer is not to come to this Court, but to go to the Island Court (Land) seeking an order from it that the challenge to the Land Tribunal decision be struck out for want of prosecution.
11. At the call over of appeals set down for the present session of the Court of Appeal we indicated to counsel for Mr Tariwer that the purported appeal was incompetent and the Court declined to entertain it. This memorandum records why that happened.

DATED at Port Vila this 29th day of April, 2019.

BY THE COURT



Hon. Vincent Lunabek
Chief Justice.

