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

Civil Appeal
Case No. 19/3470 CoA/CIVA

BETWEEN: FAMILY IAPUT
Appellant

AND: CHIEF TOM NUMAKE
First Respondent

AND: AIRPORTS VANUATU LIMITED
Second Respondent

AND: RAKATNE TRIBE AND FAMILY KAPATANGTANG
Third Respondent

AND: FAMILY NIPIKNAM
Fourth Respondent

Coram: ***Hon. Chief Justice V. Lunabek***
Hon. Justice J.W Hansen
Hon. Justice R. C. White
Hon. Justice D. Aru
Hon Justice G. A. Andrée Wiltens
Hon. Justice V. M. Trief

Counsel: *Mr. L. Malantugun for the Appellant*
Mrs. M. G. Nari for the Respondents

Date of Hearing: *12 February 2020*

Date of Judgment: *20th February 2020*

JUDGMENT

Introduction

1. The appellant appeals against a decision of the Supreme Court dated 19th December 2019 to the following effect:-

   1) That the application by Mr. Malantugun be dismissed as having no basis;

   2) That the Claimant Chief Tom Numake is entitled to be paid all moneys held in the Chief Registrar's trust account in the sum of VT5,120,000;

3) That the First Defendant Airports Vanuatu Limited and the Chief Registrar be required to release all moneys in the sum of VT5,120,000 together with the accrued interests forthwith to the claimant and his solicitor.

2. The Second, Third and Fourth Respondents did not participate in this appeal.

Background

3. The Government of the Republic of Vanuatu signed a lease title 14/2211/001 ("Lease 001") with various custom owners representatives of Lengkowgen customary land where the International Airport of Whitegrass, West Tanna, was being built on 20th January 1997.

4. In January 1997, the Government paid out the first instalment of the compensation monies being VT10,000,000 to the various alleged custom owners which was held in an account with the National Bank of Vanuatu (NBV).

5. On 26th October 1998, the Supreme Court, among other matters, ordered NBV to transfer a total amount of VT8,866,860 held in specific accounts in the bank into the Chief Registrar's Trust Account until the custom ownership of the land on which the International Airport of Whitegrass, Tanna, is situated was determined.

6. The Government of the Republic of Vanuatu has transferred the Lease 001 to Airports Vanuatu Limited on 23rd August 2006 and it was registered on 22nd June 2007.

7. On 20th October 2016, the First Respondent (Tom Numake) filed an amended claim in CC 156 of 2015 against the Airports Vanuatu Limited seeking, among other matters, payment of outstanding land rents in Lease 001 for years 2001 to 2016 of VT5,120,000 and payment of outstanding premium in respect to the same above Lease 001.

8. The Third Respondents (Rakatne Tribe & Family Kapatangtang) joined as interested parties when the Land Appeal Case No.17/400 SC/LNDA proceeded in the Supreme Court for the second time in 2017. Land Appeal Case No. 17/400 SC/LNDA concerned applications to determine the boundary of Lengkowken land declared in the 1973 Native Court judgment in Tom Numake (Plaintiff) –v- Misak (Defendant) Civil Case No.1 of 1973 in favour of the First Respondent (Tom Numake).

9. The Appellant (Family Iaput) had also applied to be joined as a party in the same land appeal case. However, the Appellant appeared under the name of Family Niluan. The application of the Appellant to join as a party was dismissed by the Court on 16th March

2018 in Land Appeal Case No. 17/400 SC/LNDA. The Land Appeal Case No.17/400 was concluded on 18th October 2018 when the appeal was discontinued.

10. The parties in Civil Case No.15/156 SC/SCIVL requested that the proceeding for payment of monies in this civil case (under appeal) be stayed until the applications about the use of land relating to Lengkowgen custom land which covers the Whitegrass Airport be determined by the Tanna Island Court.

11. On 23rd September 2019, the Supreme Court stayed the proceeding in CC 15/156 for a period of 2 months and directed that the Tanna Island Court hear these applications during that period.

12. On 30 September 2019, the Tanna Island Court delivered its judgment with respect to the use of land relating to Lengkowgen custom land which covers the Whitegrass Airport. The appeal against that Tanna Island Court judgment on the boundary of Lengkowgen and surrounding lands was discontinued in the Supreme Court on 18th October 2018 as referred to above.

13. The Appellant (Family Iaput) filed an application to join as a party in the Civil Case No.15/156. The Court however dismissed his application on 19 December 2019 as having no basis.

Decision appealed against

14. On 19 December 2019, the Supreme Court made the following ruling:-

RULING

Pursuant to the judgment of the Court dated 23rd September 2019 and upon hearing Mr Malantugun in relation to an application that Family Iaput be joined as an interest party to this proceedings,

It is decided and ruled that –

1. *The application by Mr Malantugun be dismissed as having no basis.*
2. *The claimant is entitled to be paid all moneys held in the Chief Registrar's Trust Account in the sum of VT5,120,000.*

3. *The First Defendant and the Chief Registrar be required to release all moneys in the sum of VT5,120,000 together with its accrued interests forthwith to the claimant and his solicitor.*

15. It was this decision which is the subject of this appeal.

Grounds of Appeal

16. The appellant advances his appeal on various amalgamated grounds. We set them out for ease of reference. They are as follow:-

17. That the Learned Judge erred in law and facts to dismiss the application by Mr. Malantugun as having no basis despite the fact that all the material evidence placed before His Lordship are directly relevant to the point, are very solid and genuine.

18. That the Learned Judge erred in law and facts by not accurately, effectively or properly weighted the material evidence placed before His Lordship.

19. That the Learned Judge erred in law and facts when His Lordship refused to hear the submission of Mr. Malantugun on the issue of res-judicata.

20. That the Learned Judge erred in law and facts when His Lordship refused to hear the submission of Mr. Malantugun on the issue of ownership in respect to pre-independence titles 219 of Loanbackel and 193 Loanatuen.

21. That the Learned Judge erred in law and facts by not sufficiently giving weight to the strength of the evidence placed before His Lordship when His Lordship refused to hear the submissions of Mr. Malantugun on the issue of Res-judicata and on the issue of ownership regarding pre-independence titles 219 of Loanbackel and 193 Loanatuen.

22. That the Learned Judge erred in law and facts by not specifically stating out the reasons or the findings of the court when His Lordship refused to hear the submissions of Mr. Malantugun on the issue of res-judicata and on the issue of ownership pertaining to the pre-independence titles 219 of Loanbackel and 193 of Loanatuen.

23. That the Learned Judge erred in law and facts by not specifically stating out the reasons or the findings of the court when His Lordship refused to hear the submissions of Mr. Malantugun on the issue of res-judicata and on the issue of ownership pertaining to the pre-independence title 219 of Loanbackel and 193 of Loanatuen.

24. That the Learned Judge erred in law and facts when His Lordship did not categorically set out the findings of the court as to why His Lordship dismissed the application of Mr. Malantugun because by simply saying that the application has no basis that is not enough.

25. That the Appellant has filed all their documents in court and it was proper for the court to elect and proceed to hear the full submissions of Mr. Malantugun on the issue of res-judicata and on the issue of ownership of pre-independence titles 219 of Loanbackel and 193 of Loanatuen which the Learned Judge has not done.

26. That there is merit of this case to be dealt with by the Supreme Court.

27. That the Appellant would be prejudiced to principles of justice, given the nature of this case.

28. That the Learned Judge erred in law and facts by failing to consider that it is just and equitable that the appellant be added as a party to defend and safeguard the interest of family laput as custom owners of pre-independence titles 219 of Loanbackel and 193 of Loanatuen pursuant to Article 73, 74 75 and 77 of the Constitution.

29. That the Learned Judge erred in law and facts by failing to perceive that the inclusion of the Appellant as a party to the case will ensure that there is no other duplicity of the proceeding in respect of pre-independence title 219 of Loanbackel and 193 Loanatuen.

Appellant's submissions

30. The Appellant joined together grounds 1, 2, 5, 8, 9 and 10 and submitted that the Court erred in failing to fully hear the application of the Appellant; the Court also erred in failing to weigh material evidence placed before it; the Court further erred in failing to appreciate the merits of the case and as a consequence, it was submitted that the Appellant was prejudiced and denied justice.

31. Grounds 3, 4, 6, 7, 11 and 12 are also joined as they relate to the same issues raised and submitted upon by the Appellant to the following effect that:

    i) In the present case, the principle of res-judicata can apply to other parties but cannot apply to the Appellant (Family laput) on the basis that the First Respondent (Tom Numake) has his judgment given by the Native Court while the judgments on which the Appellant relied originated from the Joint Court of the New Hebrides which is superior to Native Court in the hierarchy of Courts in the Condominium era;

ii) The learned judge erred in law and facts by failing to consider that it is just and equitable that the Appellant be added as a party to defend and safeguard the interest of family laput as custom owners of pre-independence titles 219 of Loanbackel and 193 of Loanatuan pursuant to Articles 73, 74, 75 and 77 of the Constitution;

iii) The judge erred as there is no specific reasons stated for his findings;

iv) The learned judge erred in law and facts by failing to perceive that the inclusion of the Appellant as a party to the case will ensure that there is no other duplicity of the proceeding in respect of pre-independence titles 219 of Loanbackel and 193 of Loanatuan.

First Respondent's submissions

32. The First Respondent submitted in essence to the following effect:

i) The appellant has no standing to bring his application. The appellant has no custom ownership right and cannot pursure any claim for customary ownership of Lengkowgen land because the land appeals relating to this matter concluded in 2018;

ii) The appellant's application for usage rights over Lengkowgen land has failed as well;

iii) The appellant had no standing and the Supreme Court was correct in dismissing the appellant's application to join as a party in Civil Case No. 15/156 on 17 December 2019.

Discussion

33. We considered each and every ground of appeal and related submissions. We see no merit in any of these grounds and the submissions on this appeal.

34. The appellant recognizes that the First Respondent (Tom Numake) was declared custom land owner of Lengkowgen land covering the Whitegrass Airport on West Tanna by the judgment of the Native Court dated 26th February 1973. It was confirmed by the Court of Appeal in Civil Appeal Case No. 19/1225 CoA/CIVA on 19th July 2019 in line with previous judgments of the Court in Kalotiti v Kaltabang [2007] VUCA 25 and others.

35. It is said that the position of the Appellant is that he has interest in two parcels of land which were sold by their ancestors and purchased by one Mr James Barron and Mrs Elizabeth Worthington with regards to title 193 of Loanatuan and title 219 of Loanbuckel or One Bucket. It is said the Appellant and his brothers are the true custom owners of these two titles.

36. We note that the registration of these two titles in the names of these two purchasers (Mr Barron and Mrs Worthington) was the subject of two judgments made by the Joint Court of the New Hebrides on 1st December 1933 and 20th December 1934. These two judgments of the Joint Court of the New Hebrides are concerned with the registration of the leasehold interest in the names of the two purchasers. They did not deal with the custom ownership of Loanatuen and Loanbuckel lands which are inside Lengkowgen land.

37. When the Court enquired as to the location of those two (2) parcels of land, Mr Malantugun informed the Court that they were inside the Lengkowgen land that was declared to the First Respondent (Tom Numake) by the Native Court of the New Hebrides in 1973.

38. Mr Malantugun accepted further that the decision of ownership of Lengkowgen land in favour of the First Respondent in 1973 also covered these two parcels.

39. It was pointed out to Mr Malantugun that if the Appellant pursues this case, it will be contrary to the decision of the Native Court of 1973 in favour of the First Respondent. He was asked to show the legal basis to go behind the decision of 1973 about the customary ownership of the Lengkowgen land declared in favour of the First Respondent. Mr Malantugun could not show any legal basis to revive the declaration of customary ownership of Lengkowgen land in favour of the First Respondent in 1973. He appeared to understand the difficulty faced by the appellant and accepted it.

40. This was when Mr Malantugun changed his submissions on the issue of customary ownership of the two parcels inside Lengkowgen land. He submitted that the Appellant would be entitled to customary secondary rights inside Lengkowgen land without further clarifications.

41. We note however that the issue of the custom secondary rights in Lengkowgen land, as a custom issue, was dealt with by the Tanna Island Court on 30th October 2019. The appellant's application to be joined as a party in the Land appeal against the Tanna Island

Court judgment of 30 October 2019 has been dismissed and the Land Appeal case in the Supreme Court has been discontinued.

42. In the light of these matters, we consider that the Learned Judge correctly dismissed the application of the Appellant on 19 December 2019 as having no basis.

43. This matter is not a bar to the payment of money paid out. The First Respondent, as the declared custom owner of Lengkowgen land by the Native Court, is entitled to the money as ordered by the Supreme Court on 19 December 2019.

Result

44. We dismiss the appeal.

45. The First Respondent is entitled to his costs in the appeal assessed at VT50,000 to be paid by 28 February 2020.

DATED at Port Vila this 20th day of February, 2020

BY THE COURT

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Hon. Chief Justice
Vincent Lunabek