

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU  
(Civil Jurisdiction)

Civil Case No. 29 of 2004

**BETWEEN: MOLIANO VUROBARAVO**

Claimant

**AND: TAMATA DUMDUM**

First Defendant

**AND: BEN TARI  
VANUA SOKSOK  
ERE SIMON**

ALBERT VIRA as Members of  
Moli TAHE NA VANUA LANDS  
TRIBUNAL

Second Defendants

Coram: Mr Justice Oliver A. Saksak  
Mrs Anita Vinabit - Clerk

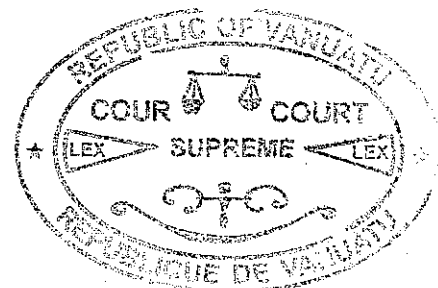
Counsel: Mr Richard Kalses for the Claimants  
Mr Willie J. Kapalu for the Defendants

Date of Hearing: 11<sup>th</sup> March, 2005  
Date of Judgment: 4<sup>th</sup> April 2005.

## JUDGMENT

### 1. Basis of Claimant's Claim

The Claimant filed a Supreme Court claim on 22<sup>nd</sup> September 2004 seeking among other reliefs that the decision of the Second Defendants made in favour of the First Defendant as custom land-owner of land known as Naone Baravu on 7<sup>th</sup> May 2004 was made in contravention of the procedural requirements as laid down in the Customary Lands Tribunal Act No. 7 of 2001 (the Act). The relevant and empowering provision under the Act is Section 33 which provides that "a decision of a land tribunal is final and binding on parties and



those claiming through them, and the decision is not to be challenged, appealed, reviewed, quashed; set aside or called into question in any Court or any ground subject to:

- (a) the Constitution, and
- (b) the rights of appeal to, and rehearing by other land tribunals provided for under this Act; and
- (c) the rights of supervision by the Supreme Court under Section 39".

## 2. Facts

The Claimant is a representative of family Vurobaravu of East Malo. The First Defendant is a resident of West Malo. The Second Defendants are members of the Moli Tahe Na Vanua Land Tribunal registered on West Malo.

On 22 March 2004 the Second Defendants issued notices to deal with the Naone Baravu land situated within the Harold Stephen Leasehold Title 04/3344/002 on East Malo.

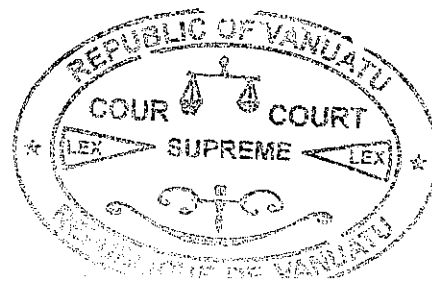
On 27<sup>th</sup> April 2004 the Second Defendants called a first meeting during which James Leodoro and Moliano Vurobaravu raised objections as to the status of the Tribunal. The objection was not addressed and the meeting was closed.

On 5<sup>th</sup> May 2004 the Tribunal held a second meeting. The Claimants James Leodoro and Joel Uriuri were not present. They having notified the Tribunal by letter dated 2<sup>nd</sup> May 2004 of their decision. Despite that notice the Tribunal proceeded with a hearing and gave a decision on 7<sup>th</sup> May 2004 in favour of Tamata Dumdum.

## 3. Reliefs Sought

The Claimant therefore comes to this Court to seek declarations and orders as follows:-

1. A declaration that Moli Tahe Na Vanua Land Tribunal registered on West Malo does not have jurisdiction to deal with land disputes on East Malo.



2. A declaration that the decision of the Tribunal dated 7<sup>th</sup> May 2004 made in favour of Tamata Dumdum is void, is invalid and of no legal effect.
3. A declaration that the dispute be dealt with afresh by a proper Land Tribunal registered on East Malo for a fair hearing.
4. An Order that the First and Second Defendants jointly be made liable to pay a fine of VT500.000 within 7 days failing which the defendants be immediately committed to prison.
5. An Order for costs in favour of the Claimant.

#### 4. Evidence

The Court heard Oral evidence from Moliano Vurobaravu, James Leodoro and Samson Moli from the Claimant's side. All evidence were supported by sworn statements. The deponents were cross-examined by Mr Kapalu.

On the Defendants' side the Court heard evidence from Tamata Dumdum, Vanua Soksook, Albert Vira, Ben Tari, Ere Simon, and Serge Vira confirming their respective sworn statements. Each were cross-examined by Mr Kalses.

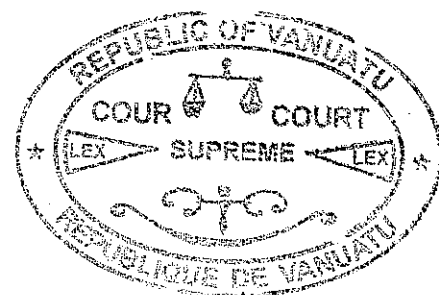
#### 5. Submissions

At the end of the hearing, Counsel were directed to lodge final written submissions. The Claimant filed his written submission on 15<sup>th</sup> March. The Defendants filed written submissions in response on 18<sup>th</sup> March.

I have considered the issues raised in the light of the evidence and the submissions made by Counsel and decide as follows:-

#### 6. Decisions

1. There will be judgment in favour of the Claimant Moliano Vurobaravu.

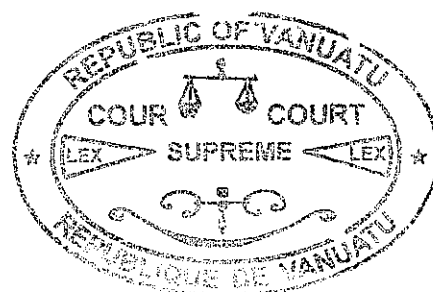


2. The Court adopts the principles in Obed Toto's Case, Land Case No. 18 of 1994, in holding that Moliano Vurobaravu has standing to bring this claim against the Defendants although he was not named as a party in the proceedings before the Lands Tribunal.

In the Ministerial Declaration dated 13<sup>th</sup> January 1982 James Leo, Tamata Dumdum and Joel Uriuri were declared as "Representatives" of the Custom Owners of lands in Titles No. 830, 831 and 832. Under the new leasehold titles the land is known as Naone Baravu land within the Harold Stephen Plantations under Leasehold Title No. 04/3344/002 on East Malo. Under the principle in Obed Toto Case individuals do not own land but they do so on behalf of a group, tribe or community.

According to the evidence before the Court, Moliano Vurobaravu's elder brother is James Leodoro, who was a claimant in the Lands Tribunal. As such James Leodoro was declared as representative of custom owners of persons who had interest in ownership of Naone Baravu. Moliano, being a brother has interest in that land as well. Therefore he has standing to bring his claim.

3. Further the Court adopts the natural justice principle laid down by the Court of Appeal in the Athanas Raupepe Case, Civil Appeal Case No. 12 of 1998 that all persons having interests in ownership of lands must be given adequate opportunity to be heard. In this case it is clear from the evidence that Moliano Vurobaravu was not given an opportunity to be heard.
4. The problem with Moli Tahe Na Vanua Land Tribunal is not that it was registered in West Malo. The Act says nothing about registration. The problem is about qualification of its members. Sections 35, 36 and 37 are relevant provisions in that regard. Those sections set out clear qualifications and procedures to be followed in appointing chiefs or elders to be members of a land tribunal. From the evidence the Court is satisfied that those procedures were not complied



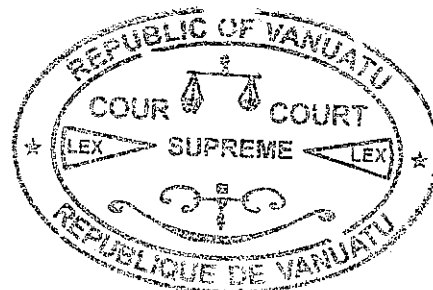
with in appointing the members of the Moli Tahe Na Vanua Land Tribunal.

In evidence Serge Vira appeared not to know very much due to his age. He is not even an elder and that did not qualify him to be appointed as a judge of the land tribunal. The other judges were not approved in accordance with Sections 35 (2), 36 (2) and 37 (1) of the Act and the Court is satisfied with that evidence and submission.

5. On the question of notices issued to the Claimant and/or Other Parties, the Court is satisfied that the Notice issued was insufficient and inadequate.

There was an objection raised by letter dated 2 May 2004. The Second Defendants did not respond to the letter. It appears from the evidence that they simply ignored the objection. By that letter of 2 May 2004 James Leodoro and Joel Uriuri had notified the Second Defendants that they would not be present at the hearing on 5<sup>th</sup> May 2004 until that objection was considered and addressed properly. However it is clear that the objection was ignored and the Tribunal on 5<sup>th</sup> May sat despite the Notice and gave judgment in favour of Tamata Dumdum. That is clearly wrong in the view of this Court. The objection raised was so fundamental that the Tribunal could not have sat on 5<sup>th</sup> May to take a decision. They could adjourn to seek further advices from relevant and appropriate authorities or come to this Court to seek a ruling, but they did not. They proceeded to sit and made a decision which is wrong in law.

6. On the question of the Tribunal deciding on ownership of lands not included or specified in the Notice, upon the evidence presented the Court is of the view that it was wrong for the Tribunal to make decision on or concerning lands which were not specified in the Notice. Again the Court adopts the principles in Athanas Raupepe Case.
7. On the question of the Second Defendant issuing notices to Claimant and others to vacate land or pay compensation,



the Court is satisfied on the evidence that such notices were issued and that they were not valid notices as not all parties or persons interested in ownership of those lands were given the opportunity to be heard.

8. On whether or not parties aggrieved should appeal? It has always been open to James Leodoro and Joel Uriuri to appeal the decision they being parties in the Tribunal. But this is not an appeal. It is a claim seeking the Court exercising its powers under Section 39 of the Act on the basis of a Tribunal failing to comply with legal procedural requirements under the Act.
9. Finally on whether or not the Defendants should be punished by imposing a fine of VT500,000 under Section 42 of the Act?

The Court is of the view that the penalty could only arise where there is a criminal proceeding. This is a civil proceeding and it is not appropriate to impose a penalty.

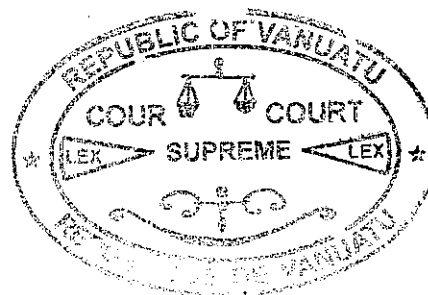
#### **7. Decision on Reliefs Sought**

For the foregoing reasons the Court decides as follows:-

1. The declaration sought by the Claimant in paragraph one of his amended claim is refused.
2. The declaration sought in paragraph two is granted.
3. The declaration sought in paragraph three is granted.
4. The Order sought in paragraph four is refused.
5. The Order for costs sought in paragraph 5 is granted.

#### **8. Declarations and Orders**

The declaration and Orders are as follows:-



1. The Court hereby declares that the decision made by the Second Defendants on 7<sup>th</sup> May 2004 in favour of the First Defendant is null and void and is of no legal effect. Similarly all Notices issued subsequently by the First Defendant or the Second Defendant in respect to and in relation to that decision are hereby declared null and void and of no legal effect.
2. The Court hereby Orders that the dispute of the parties in this case be heard afresh by a proper Land Tribunal registered on East Malo for a fair and proper hearing.
3. The Court Orders the Defendants to pay the Claimant's costs of and incidental to this proceeding on a party/party basis to be taxed failing agreement.

**DATED at Luganville this 4<sup>th</sup> day of April 2005.**

**BY THE COURT**

*Oliver A. Saksak*  
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**OLIVER A. SAKSAK**  
**Judge.**

