

(Civil Jurisdiction)

BETWEEN: WILLIAM SUMBWE Representing Family
Sumbwetovi

Claimant

AND: JOINT VILLAGE LAND TRIBUNAL

First Defendant

AND: JOINT AREA LAND TRIBUNAL

Second Defendant

Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mrs Marisan P. Vire for the Claimant
Mr Less John Napuati for the First and Second Defendants

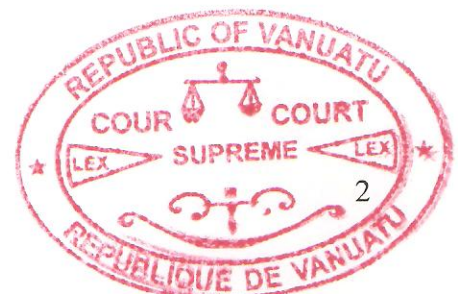
Date of Hearing: 12th October 2010
Date of Judgment: 1st February 2011

JUDGMENT

1. By a judicial review claim filed on 25th March 2010 the Claimant claims that –
 - (a) The First Defendant had failed to comply with the procedures stipulated in the Customary Land Tribunal Act No. 7 of 2001 (the Act) by proceeding erroneously to adjudicate over Vunapaka Custom Land when they carried notice specifically calling for determining customary ownership of Belbura Custom Land.
 - (b) The Second Defendant had failed to comply with the procedures stipulated in the Act by:



- (i) Not hearing or determining an appeal against the First Defendant's decision within the 21 days period as required under the Act; and
 - (ii) Holding a completely new hearing and making decision on 3 December 2009.
2. The Claimant seeks orders quashing the decisions of the First and Second Defendants, and an order to cancel the registration of the Second Defendant's decision of 3 December 2009. The Claimant invokes the provision of Section 39(2) and (3) of the Act in instituting this proceeding against the Defendants.
3. The Claimant's claims are supported by evidence contained in the four sworn statements of William Sumbe (Exhibit C1, C2, C3 and C4) as tendered, of Vira Mele (Exhibit C5) and of George Jack (Exhibit C6). The deponents of these statements confirmed their statements on oath, were cross-examined by defence counsel and re-examined by Mrs Vire.
4. The Defendants defended the action asserting the Claimant was present at all hearings of the tribunals and took part in them. The Defendants assert they had complied with the procedures laid down in the Act. They relied on the evidence of Chief Levus Tamata and of Chief James Tangis who confirmed their statements on oath, were cross-examined by Mrs Vire and re-examined by Mr Napuati. Their statements were tendered into evidence as Exhibits D1, D2, D3 and D4.



5. At the end of the hearing, Counsel requested 14 days each for filing of written submissions. Counsel for the Claimant filed written submissions on 23 November 2010. No responses have been filed by the Defendants to date. And the Court will dispense with their written submissions due to substantial delay which has contributed to the delay in delivering this judgment.
6. I deal with the issues as raised by Counsel, Mrs Vire in her written submissions as follows –

(a) Whether the First Defendant complied with the Act in issuing notices of hearing of the dispute over Vunabaka Custom Land?

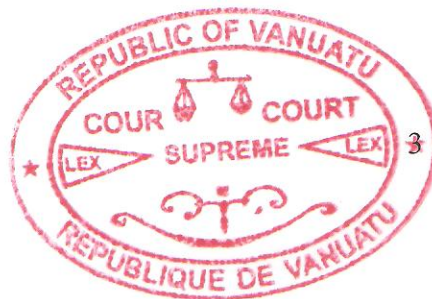
The relevant legal provision providing for notices and procedure is Section 25(1) and (2) of the Act as correctly cited by Counsel. The evidence reveals two notices were issued. The First notice was issued by Vira Mele as Chairman and Chief Levus Tamata as Secretary notifying of the date of hearing being 10 June 2008 at Mavunlevu Village Nakamal at 9 O'clock a.m. (See Vira Mele's statement of 7 May 2008). The second notice relates to hearing of land dispute over Belmol.

Section 25 of the Act provides for Notice of hearing –

"1. Within 21 days after the establishment of a land tribunal, the Secretary of the land tribunal must give notice under subsection (2) to the parties to the dispute.

2. The notice must:

(a) be in writing in Bislama, French, English or another language of the one or more of the parties to the dispute; and



(b) specify the date and time of the meeting of the land tribunal to hear the dispute; and

(c) the place of meeting of the land tribunal, being a place which is convenient having regard to the location of the land, the residences of the tribunal's members, the residences of the parties and the availability and security of meeting places; and

(d) the name and address of the Secretary of the land tribunal; and

(e) if applicable – the grounds of appeal.”

(emphasis by underlining)

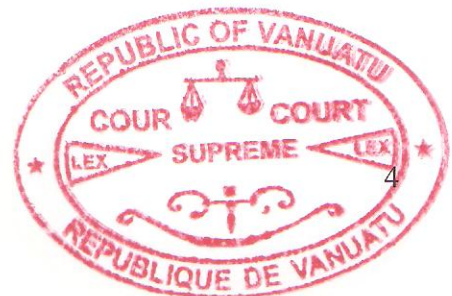
Applying the law to the facts as is clear from the evidence, both notices were defective in that –

- (a) They did not relate to Vunabaka Custom Land.
- (b) They were not issued by the Secretary of the land tribunal as required by Section 25(1).
- (c) They did not contain the addresses of the secretary; and
- (d) They were not issued specifically to the parties who disputed or lodged claims to the land.

Having found as I have, the Court now answers the first issue in the negative.

For assistance and for the purposes of avoiding further instances in future, all notices should be standardized and should be as follows:-

NOTIS BLONG LAND TRIBUNAL HEARING



- IKO LONG:
- (1) WILLIAM SUMBE, Luganville, Santo
 - (2) JOHN HARRY, Avunatari Village, West Malo
 - (3) MARK JOE, Mavunlevu Village, South Santo
 - (4) (Name)....., (Address).....
 - (5),
 - (6),

TEKEM NOTIS se bambae Joint Village Tribunal blong South Santo Area, Fanafo/Canal mo Malo bambae I sidaon blong harem Land Dispute over long Kastom Land ia VUNAPAKA long:-

Date: Namba 10 June 2008

Ples: Nakamal blong ol Jifs, Sanma Provincial
Headquarters, Luganville, Santo

Time: 9 Klok long Morning.

Sign:.....

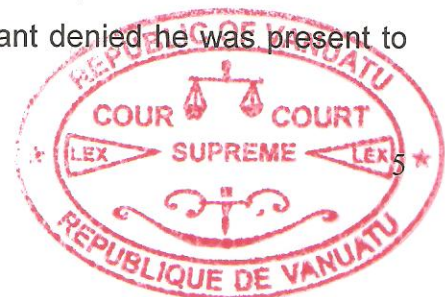
Secretary

Date: 21 May 2008. (Note: 21 days prior to hearing).

It is to be noted that the above format is for guideline purposes only for lawyers to assist their clients with. It is perhaps incumbent on the State Law Office and the Attorney General at the request of the Office of the Land Tribunals to formulate a better draft to be used throughout as a standard notice.

7. The Second issue is whether the First Defendant complied with the provisions of the Act by permitting an agreement between the land claimers to extend beyond Belbura?

The Court agrees and accepts submissions by Counsel, Mrs Vire on this issue. From the evidence, the Claimant denied he was present to

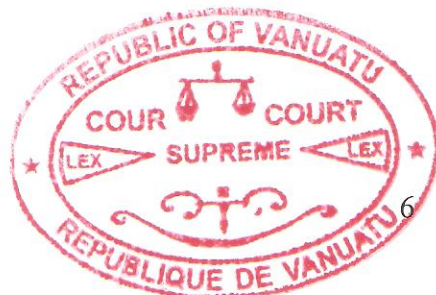


place his name on the document. It is undated. Most families or their representatives did not sign or indicate their agreement by an "X". Only Fred Antas had signed alongside his name and an "X" appears above Vombanici's name. It was the Claimant's evidence that at the time of the hearing he was in Port Vila and that was confirmed by his witness Jack George. It was also his evidence that he only joined in two weeks later when he returned to Luganville and was told about the hearing. That would explain why he did not sign the purported agreement although it had his name appearing on it. He denied it was his handwriting because that is not how he spells his second or surname. And the reason for not being present at the beginning is obviously due to either he not being served or due to the improper notice not relating to dispute over Vunabaka land but to Belbura land. The Court prefers to believe his evidence as the truth. It is common knowledge that an illegal or unlawful agreement cannot be enforced. In all respects, the purported agreement relied upon by the First Defendant is unlawful and therefore it cannot be enforced as legally binding on the Claimant. The Court accepts the submissions that the Claimant had been denied his right to an opportunity to be present at the beginning of the hearing to raise objections in line with Section 26 of the Act. The Court also accepts submissions that the Claimant was denied his right to an opportunity to ask questions in line with Section 27 of the Act, to any parties when the hearing first began.

8. The third issue is whether the election of the Chairman Levus Tamata was proper?

From the evidence by Vira Mele, he was the properly elected Chairman of the First Defendant Tribunal. Section 9 of Act provides for Joint Village Land Tribunals, their constitutions and elections of its members.

Subsection (5) states –



“The principal chiefs of each village who are members of the village land tribunal and the members appointed under subsection(3)(if any) must elect one of their number to be the chairperson of the joint village land tribunal.”

The evidence of Chief Levus Tamata was that he was appointed by the Supenatavuitano Council of Chiefs. He however did not produce any documentary evidence to substantiate his assertion. Section 9(5) is very clear. Elections of the chairman of joint village land tribunals do not vest in the Supenatavuitano Council of Chiefs. The Court rejects the evidence of Chief Tamata.

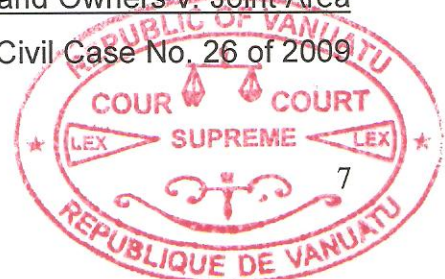
The Court therefore answers the third issue in the negative.

9. The fourth issue is whether the Second Defendant complied with the provisions of the Act by hearing a appeal?

The Second Defendant’s defence is that it heard and determined an appeal. There is however no evidence on their part to substantiate that assertion. The truth of the matter is that the Second Defendant issued a Public Notice (SW4) attached to the sworn statement of William Sumbe dated 7th May 2010. That notice gives 21 days to the parties beginning on 13 May 2003 and ending on 3 June 2009.

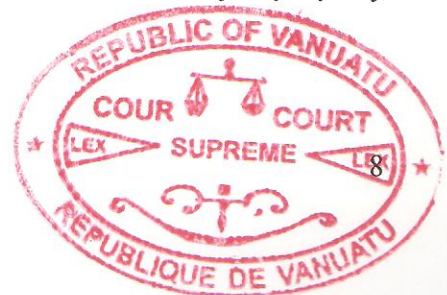
In all respects, it appears to be a notice of a completely new hearing. Nowhere does it indicate it was to be an appeal hearing because if it was, then Section 25(2)(e) of the Act requires that it states the grounds of the appeal. The purported notice is defective. The Court is satisfied the Second Defendant failed to comply with the procedures of the Act. This issue is answered in the affirmative.

10. Counsel submitted the case of Maragamba Land Owners v. Joint Area Land Tribunal for Longana Airport VUSC 58; Civil Case No. 26 of 2009



(14 May 2010) as authority for the proposition that where the Court finds that a tribunal fails to follow legal procedures as stipulated in the Act, it amounts to a breach. That is the current legal position as it stands and the Court accepts it as a binding authority.

11. There appears to be some suggestion by the Claimant in his evidence that the Court has recognized him as the custom owner of Vunapaka custom land. For that purpose, the Claimant referred to the judgment of this Court in Civil Appeal Case No. 1 of 2006 dated 14th September 2007 annexed as WS6 to his sworn statement dated 7 May 2010 (Exhibit C1). The Court made reference to the endorsement by the Santo Island Land Tribunal at the second paragraph at page 8 of the judgment. The Court there was not asked to make a judicial pronouncement or declaration. The Court was merely acknowledging the position as it stood in 2007 based on the evidence before it at the time. The Court was not aware of an earlier decision by the same tribunal back in 1998 declaring Mrs Vombanici as custom owner of Vunapaka land. The sworn statement of Suri Rongo (Exhibit D5) discloses that evidence.
12. This Court has not been asked to review those decisions and to declare which of them is null and of no legal effect. The reality of the matter is that over Vunapaka land, there are two declared custom owners. The position of Vombanici is not clear as she is not a party to this proceeding. However, the position of the Claimant is that he only is the declared land owner of Vunapaka land.
13. So where does that leave us as far as Vunapaka land is concerned? The view of this Court is that ownership of Vunapaka land is still in issue or dispute and needs to be heard and determined by a properly constituted land tribunal.



14. The conclusion reached by the Court therefore is that the Claimant has judgment given in his favour.

The following are the relevant orders –

(a) All decisions of the First Defendant concerning the ownership of Vunapaka custom lands be hereby quashed.

(b) All decisions of the Second Defendant concerning the ownership of Vunapak custom lands be hereby quashed.

(c) The registration of the decision of the Second Defendant's declaration of ownership of Vunapaka custom land by the Director of Land Records be hereby cancelled.

(d) The dispute over ownership of Vunapaka custom land be re-determined by the Joint Village Land Tribunal but with different members.

(e) There will be no orders as to costs. Each party pays their own costs.

DATED at Luganville this 1st day of February 2011.

BY THE COURT


OLIVER A. SAKSAK

Judge

