

BETWEEN: JAMES TURA

Claimant/Applicant

AND: JOSEPH RIRI

First Respondent

AND: FAMILY VATARVIMOLI

Second Respondent

AND: JAMES SURAI

Third Respondent

**AND: THE CLERK OF SANTO/MALO
ISLAND COURT**

Fourth Respondent

AND: BENUEL TABI

Fifth Respondent

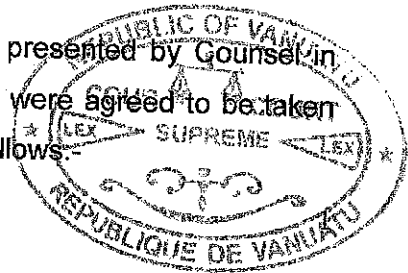
Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Mr. Tom Joe Botleng for Claimant/Applicant
Mr. Fredrick Gilu for First, Fourth and Fifth Respondents
Mr. Lent Tevi for Second and Third Respondents*

Date of Hearing: *8th August 2013*
Date of Oral Decision: *9th August 2013*

DECISION

1. This Court heard Counsel's arguments and submissions in relation to an interlocutory application for injunctory orders filed by Mr. Botleng on 8th August 2013.
2. I have considered all submissions and arguments presented by Counsel in light of all the evidence by sworn statements which were agreed to be taken as read yesterday. The decision of the Court is as follows.



- (a) The application is dismissed.
- (b) Parties are close family and relatives. The Applicant has chosen to take his dispute to Lands Tribunal while 2nd and 3rd Defendants have taken theirs to Island court. These actions indicate clearly that the ownership of the these lands are still in dispute. That is so unfortunate but somewhere and somehow these parties need to come to terms and agree to which Court should deal ultimately with their customary land dispute.
- (c) As it is, it appears the Applicant's claims before the Lands Tribunal is valid and it must remain to be dealt with there. On the other hand, the Second and Third Defendants claims filed in the Island Court in April 2013 appear to be valid and are pending hearing in that Court. Pursuant to Section 5(1) and (3) of the Customary Lands Tribunal Act; that claim must remain in that Court. Section 5(3) of the Act reads –

"Pending court proceedings:

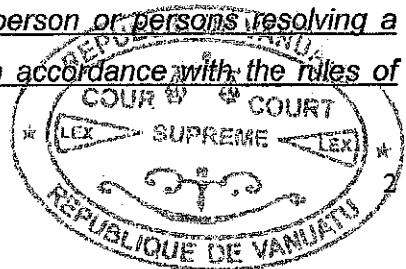
To avoid doubt, if proceedings before the Supreme Court or an Island Court relating to a dispute about customary land are pending, the dispute cannot be dealt with under this Act."

(Emphasis added).

- (d) Both Parties assert certain rights over certain lands in the disputed area. The Applicant relies on the Declaration made in 1982 by the then Minister. The Second & Third Defendants rely on the endorsement made by Supenatavuitano Council of Chiefs in 1995. Pursuant to Section 6 of the Customary Lands Tribunal Act, those assertions are now legally recognised, despite what the Court of Appeal said in Valele v. Tura. Section 6 of the Act reads:-

"Arrangements outside this Act:

1. Nothing in this Act prevent a person or persons resolving a dispute about customary land in accordance with the rules of custom or in any other lawful way.



(Emphasis added).

2. Subsection (1) applies even of the way in which the dispute is resolved is inconsistent with the procedures under this Act for resolving disputes."

(e) Under those circumstances it is my view that to accept the Applicant's application and grant the orders he seeks would place, the Parties not on equal terms or footing. I say this in view of the Application for similar orders by 2nd and 3rd Defendants in CC 24/2013. That is a case I have recused myself from and which remains to be dealt with by another Judge. It is therefore best not to issue any orders as sought by the Applicant.

3. For these reasons, the Application is dismissed.
4. The refusal of the Court to grant the orders sought must not be taken as an encouragement by anyone to take the law into their own hands and destroy gardens or properties which they know full well do not belong to them. All Parties must exercise restraint and respect for each other rights and must at all times act within the bounds of existing laws. Any breaches of the law should be brought to the attention of the Police or appropriate authorities for appropriate actions.
5. The substantive claim or action will remain on foot and will be managed in due course.
6. Having heard Counsel in relation to costs, it is ordered that costs be in the cause.

DATED at Luganville this 9th day of August 2013.

BY THE COURT


OLIVER A. SAKSAK
Judge

