

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

Civil
Case No. 22/2550 SC/CIVL

**IN THE MATTER OF DECISION OF
NATIVE COURT CIVIL CASE NO. 1 OF
1973**

BETWEEN: Family Niluan
Applicant

**AND: Tom Numake of loune and loun Hiu Fa
Min Tribe, Tanna**
Respondent

Date: 23 January 2023
Before: Justice V.M. Trief
Counsel: Applicant – Mr W. Kapalu
Defendant – Mrs M.G. Nari

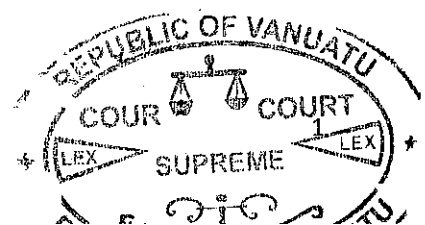
JUDGMENT

A. Introduction

1. This was an application for an order that Tom Numake and the Applicant Family Niluan are from the same tribe of loune and loun Hiu Fa Min and jointly own "Niougan" or white grass land in the judgment of the Native Court, Southern District Civil Case No. 1 of 1973.
2. The parties filed written submissions. I now set out the judgment.

B. Background

3. The Respondent Tom Numake was declared the custom land owner of Lengkowgen land covering the Whitegrass Airport on West Tanna by judgment of the Native Court dated 26 February 1973.



4. There was no appeal from that judgment.
5. The Native Court judgment was confirmed by the Court of Appeal in *Numake v Iopil* [2019] VUCA 60; Civil Appeal Case No. 1225 of 2019 on 19 July 2019.
6. The issue of the custom secondary rights in Lengkowgen land, as a custom issue, was dealt with by the Tanna Island Court on 30 October 2019. The usage rights issue is still on appeal.

C. The Application and Submissions

7. The Application, supported by the Sworn statement of Sam Sumak, is made on the following grounds:
 - a) That in the Native Court proceeding, Mr Numake appeared as representative of the Ioune, Ioun Hiu Fam Min and Naka Ioun tribes;
 - b) That Family Niluan and Mr Numake are from the same tribe, represented by Mr Numake in the Native Court; and
 - c) That Mr Numake as representative of the tribe cannot solely own the white grass land as it belongs to the tribe that he and Family Niluan are members of, citing articles 73-75 of the Constitution which provide as follows:

73. *All land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants.*

74. *The rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu.*

75. *Only indigenous citizens of the Republic of Vanuatu who have acquired their land in accordance with a recognized system of land tenure shall have perpetual ownership of their land.*

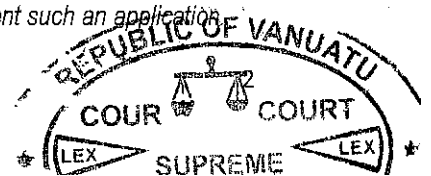
8. Mr Kapalu submitted that Mr Numake cannot claim that he is the sole owner of the subject land as that is in breach of articles 74 and 75 of the Constitution.
9. In response, Mrs Nari submitted that if Family Niluan and Mr Numake are family, Family Niluan may approach Mr Numake in custom. Otherwise, Family Niluan should proceed by way of an application in the Tanna Island Court however, it has not done so. She submitted that the present Application was misconceived and an abuse of process. Otherwise, the custom ownership issue was *res judicata* and therefore the Application should be dismissed.

D. Discussion

10. The Court of Appeal stated in *Numake v Iopil* [2019] VUCA 60 at [29]-[31]:

29. *It is important to make the point that an application based on "true bloodline" cannot be used to indirectly invalidate or contradict a lawful decision about custom ownership.*

30. *There may be cases where there is a dispute about whether a particular person or family is included in the group on whose behalf the custom owner holds certain land. That is a different sort of inquiry. This judgment does not prevent such an application.*



31. *These may be applications where the extent of the lands of a custom owner need to be sorted out. That, too, is quite proper.*

11. Whether or not Family Niluan and Mr Numake are from the same tribe raises issues of custom which must be determined in the first instance in the Island Court. That must be pursued by way of an application filed in the Island Court. Accordingly, the filing of the present Application in the Supreme Court is misconceived and an abuse of process.
12. The parties may also find alternative resolution in custom. Mrs Nari is, with respect, correct in her submission that if Family Niluan is the family of Mr Numake, it may approach Mr Numake in custom.
13. The remaining ground of the Application is that Mr Numake as representative of the tribe cannot solely own the white grass land as it belongs to the tribe that he and Family Niluan are members of and thus breaches articles 74 and 75 of the Constitution.
14. With respect, there is no breach of article 74 of the Constitution which provides that the rules of custom shall form the basis of ownership and use of land in Vanuatu. Those rules of custom must be ascertained in the Island Court and then can be applied to the matter before it. As already stated, the present Application was misconceived as instead of filing application in the Island Court, Family Niluan proceeded directly to this Court.
15. There is also no breach of article 75 of the Constitution which provides that indigenous citizens who have acquired their land in accordance with a prescribed system of land tenure shall have perpetual ownership of their land. Article 75 sets out how citizens may acquire ownership of custom land, that is, in accordance with a prescribed system of land tenure. Custom ownership of the subject land was determined by the Native Court judgment and confirmed by the Court of Appeal within Vanuatu's system of land tenure. Accordingly, the issue of custom ownership has been finally determined and the present Application cannot now be used to indirectly invalidate or contradict the lawful decision about custom ownership already made by the Native Court.

E. Result and Decision

16. For the reasons given, the Applicant's Application is **declined and dismissed**.
17. Costs must follow the event. The Applicant is to pay the Respondent's costs as agreed or taxed by the Master. Once settled, the costs are to be paid within 28 days.

**DATED at Port Vila this 23rd day of January 2023
BY THE COURT**

Justice Viran Molisa Trief

