

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

Civil Appeal
Case No. 18/1845 COA/CIVL

BETWEEN: Family Kaven

Appellants

AND: Tony Nalipus, Patrick Naliupus, Sergiou
Nalipus, Annie Naliupus, Enock Naliupus and
Saki Tito

Respondents

Coram: *Hon. Chief Justice Vincent Lunabek*
Hon Justice John von Doussa
Hon Justice John William Hansen
Hon Justice Daniel Fatiaki
Hon Justice Oliver Saksak
Hon Justice Gustaaf Andrée Wiltens
Hon Justice Stephen Felix

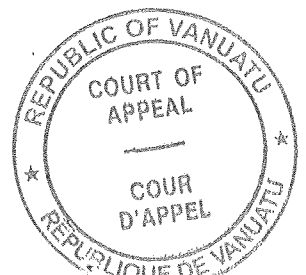
Counsel: *Willie Kapalu for the Appellants*
John Napuati for the Respondents

Date of Hearing: *13th February 2019*
Date of Judgment: *22nd February 2019*

JUDGMENT

Introduction

1. On 2nd October 2004 the Santo Island Land Tribunal (the Tribunal) declared the appellant as custom land owner of Luvuca Land. Based on the declaration the Customary Land Management Office issued a Certificate of Recorded Interest in Land (the Green Certificate) to the appellant on 7th December 2015. The appellant filed proceedings in the Magistrates Court seeking orders to enforce the judgment of the Tribunal on 21st June 2016. The appellant obtained default judgment and orders against the respondents on 19th August 2016.



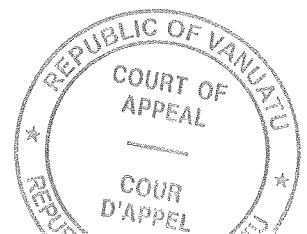
2. On 20th September 2016 the respondents applied to have the default judgment set aside. The Magistrates Court did not deal with the application. Instead on 27th June 2017 the Magistrate's Court struck out the appellant's proceeding in its entirety.
3. The appellant then sought leave to appeal to the Supreme Court on 1st September 2017. On 12th June 2018 the Supreme Court struck out the appeal in the absence of the appellant's counsel, Mr Edmond Toka.

The appeal

4. The appellant now appeals to this Court. He contends that the judge had exercised his discretion under Rule 18.11 of the Civil Procedure Rules erroneously.

Discussion

5. The main issue for the Court is whether the Magistrate's Court had jurisdiction to hear the appellant's claim and enter the default judgment.
6. This was not a ground of appeal before the Supreme Court judge. It was the respondents who raised the issue of jurisdiction in their defence and their application to set aside the default judgment in September 2016. The application was never heard or determined by the Magistrate.
7. At the outset of the hearing this Court enquired of Mr Kapalu whether the Magistrates Court had jurisdiction to deal with the appellant's claim. Mr Kapalu conceded that the Magistrates Court had no jurisdiction.
8. That concession is sufficient for the Court to dismiss the appeal on the basis that it is incompetent. It is not necessary to go onto consider whether or not the judge had exercised his discretion under Rule 18.11 erroneously.
9. The appellant's proceeding sought to enforce the decision of a land tribunal. The proper process to be followed is set out in Rule 16.25 of the Civil Procedure Rules. Counsel should have followed that process. Further, the initiating proceedings must be commenced in the Supreme Court, not in the Magistrates Court.



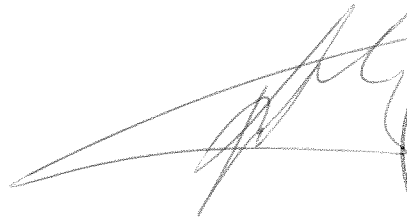
10. Mr Napuati indicated to the Court that the Luvucar Land claim is still pending before the Santo/Malo Island Court. Counsel later produced to the Court a confirmatory note from the Clerk of the Island Court dated 5th September 2008. It is open to counsel on his clients instruction to file a judicial review claim but counsel should be aware of the process where such application is made well outside the period allowed by the rules.

The Result

11. The appeal is dismissed. There is no order as to costs.

DATED at Port Vila this 22nd day of February 2019

BY THE COURT



Vincent Lunabek

Chief Justice

