IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU **Judicial Review No.17/3227 SC/JUDR**

BETWEEN: SOCOVATU HAJUJU

Claimant

AND: SOUTH SANTO AREA LAND TRIBUNAL

First Respondent

AND: JURUMOLI NOEL

Second Respondent

Hearing: ***14th May 2018***
Before: ***Justice Chetwynd***
Counsel: ***Mr Boar for the Second Respondent***
No appearances by or for any other party

JUDGEMENT

---

1. A notice was issued in this case on the 1st March warning the parties about the hearing of an application to strike out the claim for judicial review. That hearing was fixed for 14th May 2018 at 9.30 AM. As this is a claim for Judicial Review the hearing would also be the conference required by Rule 17.8 of the Civil Procedure Rules. On 13th of May counsel for the claimant emailed my associate saying she had to appear before Justice Saksak in Luganville. Counsel continued in her email saying that she would be unable to appear before me.

2. Unfortunately this is a common occurrence in this jurisdiction. Counsel seem to think that it is all right just to apologise for their inability to appear before a court. There seems to be a belief that just saying I won't be there means the hearing will be adjourned. Counsel do not seem to be able to grasp the concept of instructing an agent to appear. Whilst I accept that there are bound to be occasions when counsel is unable to appear I do not accept that it is impossible for those counsel not to instruct someone to appear as their agent or on their behalf.

3. In addition to those general occasions where it is simply good manners and common sense to ask another lawyer to appear on your behalf if you cannot appear yourself there are occasions and hearings where it is imperative you instruct an agent.

This case involves a judicial review. Judicial reviews have their own special rules in part 17 of the Civil Procedure Rules. These rules are intended to ensure that a judicial review is carried out in a timely manner. There is a requirement in Rule 17.8 that a conference must be held as soon as is practicable. That requirement is a prime example of the intention of the Rules to ensure review cases are dealt with promptly. This is one of those occasions and hearings when it is imperative an agent is instructed.

4. The decision the claimant seeks to review is one made by South Santo Area Land Tribunal on the 23rd of July 2010. The legislation dealing with such tribunals was the Customary Land Tribunal Act [Cap 271]. That act did have provisions providing for the Supreme Court to supervise the land tribunals. That would have made the decision amenable to judicial review. However, the act was repealed in 2014 by the Customary Land Tribunal (Repeal) Act of 2013. The act simply says:

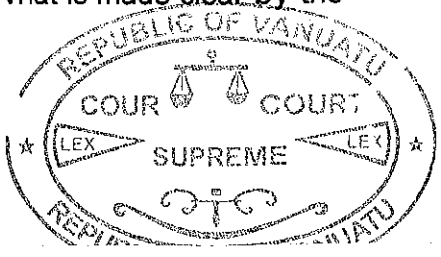
> *Repeal*
>
> *The Customary Land Tribunal Act [CAP 271] is repealed.*

5. In its place is the Custom Land Management Act of 2013 ("the Act"). It came into effect, quite naturally, on the same day that the Customary Land Tribunal (Repeal) Act took effect, namely 20th February 2014.

6. Some of the provisions of the Act (as amended) are not easy to understand or reconcile with the intentions as set out in section 1:

> *Effect and Application of this Act*
>
> *(1) The Parliament of Vanuatu has formalised the recognition of customary institutions termed 'nakamals' and 'custom area land tribunals' in this Act to determine the rules of custom which form the basis of ownership and use of land in Vanuatu.*
>
> *(2) The final decisions reached by these customary institutions, when appropriately recorded, become recorded interests in land which are binding in law and are not subject to appeal to, or judicial review by, any Court of law.*
>
> *(3) The Act allows for mediation to progress the resolution of land disputes, and for an Island Court (Land) to review the decisions of a nakamal or custom area land tribunal on grounds of an incorrect composition, improper process or fraud. These areas of review are matters of process and not substance within the meaning of Article 78 of the Constitution.*

7. There may be some discrepancy between that stated intention and the actuality of the Act following the amendments to s.58 in the Custom Land Management (Amendment) Act of 2014 but the intention does seem to be to provide for a review process by the Island Court (Lands) of existing decisions. What is made clear by the



Act is that the Supreme Court has no or at best, a very limited role in the scheme of customary land ownership. Section 47(4) reads:

> *To avoid doubt, pursuant to Article 78 of the Constitution, the Supreme Court and all other Courts have no jurisdiction to determine matters related to land ownership or land disputes.*

8. As indicated earlier, this hearing is both one dealing with the application to strike out and a conference in accordance with Rule 17.8(1) of the Civil Procedure Rules. I am required first to consider Rule 17.8(3) and then, if necessary, deal with the application to strike out. Section 47(4) set out above and the provisions concerning the review mechanisms and role of the Island Court (Land) are important in any deliberations touching on Rule17.8(3) and in particular the questions and issues raised in Rule 17.8 (3)(a), (c) and (d).

9. First, is there an arguable case (Rule 17.8(3)(a)) ? If there is no role for the Supreme Court *"to determine matters related to land ownership or land disputes"* it is difficult to see how there can be an arguable case or at least one arguable before the Supreme Court.

10. Secondly, the claimant in this case is seeking to set aside a decision made by a tribunal some 7 plus years ago. Has there been undue delay in bringing the claim (Rule 17.8(3)(c) ? Obviously there is a gap of 7 years and so there has been delay. The question is has there been undue delay ? There is no explanation by the claimant concerning the reasons for the delay. He has nowhere in his claim or in his supporting sworn statement mentioned the length of time between the Customary Land Tribunal's decision and the filing of his claim. He has not sought to explain or clarify why it has taken him seven years to bring this claim to Court. Without such explanation or clarification it is impossible to reach any conclusion other than there has been undue delay in bringing the claim.

11. Finally, the review provisions in sections 1 and 58 of the Act would seem to require cases such as the present one to be dealt with by the Island Court (Land). This would mean in turn that there is another "*remedy that resolves the matter fully and directly*"; Rule 17.8(3)(d)).

12. The use of the word "*and*" in Rule 17.8(3) require me to be satisfied about all the issues referred in the sub rule. If I am not satisfied on only one of those issues I must decline to hear the review. As set out above I am not satisfied on three and so must decline to hear the claim for a Judicial Review and strike it out as is provided for in Rule 17.8(5).

13. In view of that finding I have no need to consider the application to strike out. However I would have to say that if I am wrong with regard to Rule 17.8(3) as set out above and the matter should continue then the Second Defendant would succeed in his application. This would primarily be on the basis of need to let the Island Court (Lands) deal with the matter as is now legislated and the prejudice to the Second

Defendant of allowing the case to be re-litigated seven years on. Finality in litigation is desirable even when dealing with the ownership and use of customary land.

14. This case was filed in Luganville on 13th November 2017 and lodged in the Port Vila Registry on 17th November. A response was filed by the Second Defendant on 6th December and a defence on 19th December. I do not know if the First Defendant has been served. However, given the nature of this Claim and the conclusions I have reached I am of the view that it was open to me to deal with the Rule 17.8 conference (and the application to strike out) by consideration only of the papers filed in the proceedings (See Rule 17.8(4)).

15. The Second Defendant is entitled to costs and I order that the Claimant pays the Second Defendant's costs, such costs to be taxed on a standard basis if not agreed.

Dated at Port Vila this 15th May 2018

Chetwynd J

REPUBLIC OF VANUATU COUR COURT LEX SUPREME LEX REPUBLIQUE DE VANUATU