

BETWEEN: Patrick, Ruth, and Jeffrey Sarginson
First, Second and Third Claimants

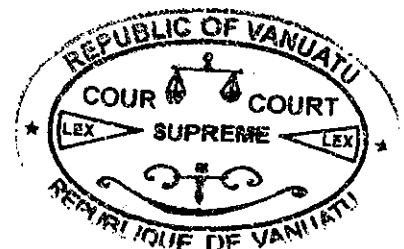
AND: Attorney General
First Defendant
Village Land Tribunal, Burumba, Epi Island
Second Defendant
Republic of Vanuatu
Third Defendant

Date: Wednesday, 16 May 2018
By: Justice G.A. Andrée Wiltens
Counsel: Mr E. Molbaleh for the Claimants (absent)
Mr H. Tabi for the Defendants

JUDGMENT

A. Preliminary Issue

1. Mr Molbaleh did not appear today. His Office advised the Court by e-mail sent at 5.04pm on 14 May 2018 that he had left earlier that day to go to Magistrate's Court cases at Tanna, and that he was not due to return until 17 May 2018 – his office sought another date depending on availability.
2. Mr Molbaleh did not attend at an earlier Conference, but I accepted that he may have received late notice – hence I re-scheduled the matter to today, with ample time for him to be prepared and to appear. Mr Molbaleh was obviously aware of the hearing, but he did nothing towards appointing an agent to argue the matter in his stead or to seek an adjournment. The e-mail sent is quite inappropriate.



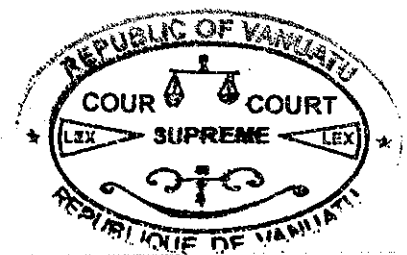
3. This matter is already much delayed. I am not prepared to further adjourn the proceedings. Accordingly, I heard submissions from Mr Tabi and reserved my decision, to be provided in writing as soon as possible. I took into account all the written material supplied by both sides. I did not think Mr Molbaleh would be able to substantially further submit the Court with oral argument, even if he had been present. I was content to proceed in his absence, and I did not see any prejudice to his clients as I had their sworn statements and Mr Molbaleh's written submissions.

B. History

4. This is an application for Judicial Review of a decision made by the Burumba Village Land Tribunal on 5 July 2013. That decision related to an area of land called Sorsumu within the land of Yemamoso in the Burumba area of south-west Epi, and which is the subject of Lease title 10/1211/002.
5. The application for Judicial Review was made on 24 August 2015 – without a sworn statement in support as required by Rule 17.4(3)(b) of the Civil Procedure Rules 2002 (“the Rules”); and well outside the time limit for filing such applications – Rule 17.5 requires such applications to be filed within 6 months of the decision challenged. In this case the time between the decision and the application for Judicial Review was over 2 years; and the application was over 18 months out of time. It is notable also, that there was no accompanying application for leave out of time.
6. As directed by this Court, an amended application for Judicial Review was filed on 1 April 2016, together with an application for leave to file the same out of time. A number of sworn statements subsequently followed, namely from:
 - Nordan, Ruth and Patrick Sarginson on 5 April 2016,
 - Weackley Sarginson on 30 May 2016, and
 - Patrick Sarginson on 1 July 2016.
7. As those statements were not filed together with the amended application, that was a further breach of Rule 17.4(3)(b).
8. The First, Second and Third Respondents have filed submissions in response on 6 May 2016 and again on 3 May 2017. The other Respondents have taken no steps in the matter.

C. The Application

9. The Application for leave to file out of time is opposed by the First, Second and Third Respondents. This was the issue for determination at today's Conference.
10. Pursuant to Rule 17.5 this Court has a discretion to grant the application by extending the time for filing beyond the stipulated 6 month period if “...substantial justice requires it”. There appears to me to be no definitive precedent authority as to the meaning of this phrase. However, it is apparent that the issue needs to be regarded solely from the claimant's perspective: *Union Electrique Du Vanuatu Ltd v Republic of Vanuatu* [2012] VUCA 2; with the primary question for consideration being why the claimant did not meet the time limit.



11. In looking at this issue, the Claimants' sworn statements divulge a number of possibly relevant assertions:

- The Sarginson family was not advised of the hearing determining ownership of the land in question, despite the Second Claimant being the registered lessee;
- The Sarginson family was not served with any documents relating to the hearing;
- Patrick Sarginson attended the first morning of the hearing and repeatedly objected to the Tribunal's composition, he alleging that there were close familial ties between Tribunal members and members of the Baranagi and other claimant families. His protest was not accepted, and he was either invited to leave, or he left of his own accord to mark his disapproval of the process, and he thereafter took no further part in the proceedings;
- The Sarginson family was not given a copy of the decision of the Tribunal; and Patrick Sarginson only became aware of the decision at a subsequent date when proceedings were on foot to evict him from the land – although when exactly he became aware of the decision is not stated; and
- The Sarginson family considers the Tribunal to have been biased against it.

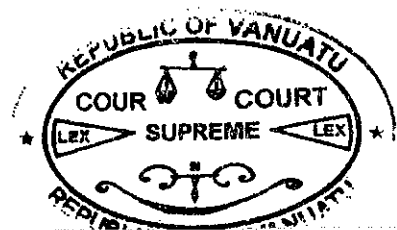
D. Discussion

12. I note that:

- Patrick Sarginson, at least, had knowledge of the hearing;
- Patrick Sarginson actually attended the hearing;
- Having either been invited to leave, or leaving of his accord, I'm not sure that Patrick Sarginson could properly claim a breach of natural justice as a result of the Tribunal not formally providing him with a copy of the decision – especially as there was no evidence before the Court to say whether anyone was provided with a written decision; and
- It is all too easy to allege bias – apart from the bare allegation, there is nothing before the Court to support that contention.

13. Given that Patrick Sarginson attended on the first morning of the hearing, there can be little doubt that he was aware that the Tribunal was making a decision relating to land that his family allegedly had in interest in. The explanations provided preclude the possibility of Patrick Sarginson, or any other member of the Sarginson family, making their own enquiries regarding the outcome of the hearing shortly after the hearing concluded, or at all.

14. This surprising lack of interest is unaddressed in the material filed in support of the application for leave to file out of time. Any enquiry at all would have resulted in the Sarginson family immediately learning of the Tribunal's decision, as it appears to have published the decision immediately at the conclusion of the hearing on 5 July 2013. The lack of action counts against granting leave.



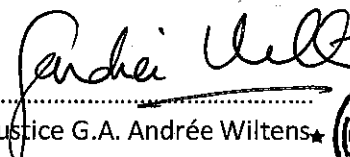
15. The First, Second and Third Respondents correctly point out that exact length of time between attaining knowledge of the decision and the application for Judicial Review remains unclear. The lack of clarity on this issue also counts against granting leave.
16. The First, Second and Third Respondents correctly submit that the Claimants' grievances ought to be advanced under section 58(3) of the Customary Land Management Act No. 33 of 2013, by an application for review in the appropriate Lands Court.
17. It is now trite law that the Supreme Court does not have jurisdiction to determine issues of land ownership: *Manasakau v Kokoru and Others* JRC 5 of 2014. The Judicial Review application is inviting this Court to determine which of the competing ownership claims should be afforded priority – that is not for the Supreme Court to determine.

E. Decision

18. The application for leave to file the Amended Application for Judicial review out of time is dismissed, on the basis that:
 - There is no satisfactory explanation as to the delay in bringing this action;
 - There is an appropriate alternative remedy available to the Claimants; and
 - While a number of the pleading insufficiencies could be overcome, in reality there is no prospect of the Judicial Review being successful – the remedy sought cannot be granted by the Supreme Court.
19. Costs are awarded to the First, Second and Third Respondents equally in the sum of Vatu 75,000 – to be paid by the three Claimants equally. As the other Respondents took no steps they are not entitled to costs.

Dated at Port Vila this 16th day of May 2018

BY THE COURT


Justice G.A. Andrée Wiltens

