

BETWEEN: DONALD JAMES AROMALO

Claimant

**AND: SIVIRI AND TANOLIU JOINT VILLAGE
CUSTOMARY LAND TRIBUNAL**

First Defendant

AND: THE REPUBLIC OF VANUATU

Second Defendant

Coram: Chief Justice Vincent Lunabek

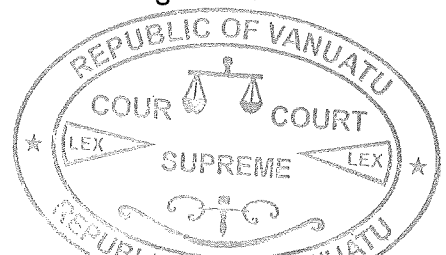
Counsel: Mr. Felix Laumae for the Claimant
Mr. Tapasei, Secretary for the Tribunal
Mr. Justin Ngwele for the Second Defendant

Date of Delivery of Judgment: 26th April 2019

RESERVED JUDGMENT

Introduction

1. This case file was destroyed by the fire which destroyed the Court house on 7 June 2007. All the Court's documents are reconstructed.
2. The Claimant, Mr. Donald James Aromalo, filed his initial Claim for Judicial Review against the decision of Siviri and Tanoliu Joint Village Customary Land Tribunal (The "Tribunal") issued on 27 May 2005 on custom land situated at Moso Mainland, North West Efate where the tribunal declared that Joel Matuele, Kalulu Taripoawia and Jimmy Meameadola were custom owners of Moso Mainland on Efate.
3. The claim was amended on various occasions and the Further Amended Claim for Judicial Review filed on 19 March 2007 is the last and final amendment of the review claim ("The Claim").
4. Mr. Donald James Aromalo, as one of the disputants, felt aggrieved by the tribunal's decision of 27 May 2005, filed this Claim to challenge that decision and declarations made by the tribunal therein.



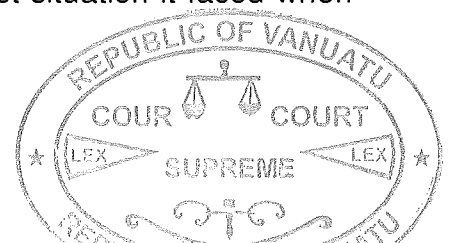
5. The Claimant claimed the following relief:

- 1) An order of certiorari to remove the decision made by Siviri and Tanoliu Joint Village Customary Land Tribunal dated 27 May 2005 in relation to ownership of customary land known as Meten land at Moso mainland on Efate to this Honorable Court and the same squashed.
- 2) An order of Mandamus requiring the Siviri and Tanoliu Joint Village Lands Tribunal comprising of a newly constituted members sit to re-hear the Claimant's land claim over Meten land.
- 3) Costs
- 4) Any other order/or orders that this Honorable Court may deem fit and necessary.

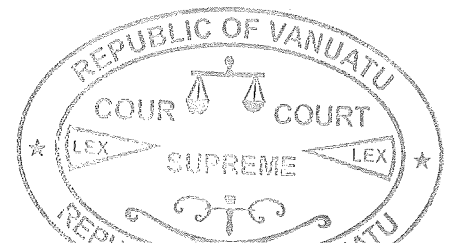
Grounds of the claim

6. The Claimant filed his Claim on the grounds that:

1. The decision made by the Siviri/Tanoliu Joint Village Lands Tribunal is biased and or there is real likelihood of the Siviri/Tanoliu Joint Village Lands Tribunal being biased.
 - a) The Respondents who were members of the Siviri/Tanoliu Joint Village Lands Tribunal are close family blood relatives of the other two (2) Claimants Chief Matuele and Kalulu Taripoawia.
 - b) The Claimant's big brother Chief Kalkawa James Laumanu and Chief Andrew Popovi have been involved in land disputes in Tanoliu Village. He does not like the Claimant's family and always go against them in almost everything.
 - c) When the secretary of Sunae Village Land Tribunal gave the Chairman the notice to serve on the Claimant, he did hid the notice from him.
2. The Siviri/Tanoliu Joint Village Lands Tribunal is unfair on how it conducted the hearing of the dispute in that:
 - a) It failed the procedure set out in the Customary Lands Tribunal Act in relation to objection section 26 (3) and (4);
 - b) It failed to stop the meeting for ten (10) as required by section 28 (3) of the Act to resolve the conflict situation it faced when hearing the said land dispute.



- c) The whole proceeding was conducted contrary to section 27 (6).
 - d) The Claimant's evidence was rejected without reason and even was not referred to in the decision of the Siviri/Tanoliu Joint Village Lands Tribunal.
3. The Siviri/Tanoliu Joint Village Lands Tribunal erred in law and facts when it failed to consider evidence put forward by the Claimant which was not challenged by the other Claimants.
4. The Siviri/Tanoliu Joint Village Lands Tribunal erred in fact and law when its reason for determining the ownership of land was based on other Claimants' story, which was not substantiated by, any custom proof-tambu sites, nakamals and old village sites.
5. The Siviri/Tanoliu Joint Village Lands Tribunal erred in rejecting evidence put by the Claimants to prove customary ownership according to the custom of the North Efate, thus coming to a wrong conclusion in giving Moso mainland to their own family blood relative when they did not record in the whole proceeding shown any taboo sites and settlement in lands in dispute and boundaries to prove their claim of ownership of the Moso mainland.
6. The Siviri/Tanoliu Joint Village Lands Tribunal erred in law in declaring Chief Meameadola as custom owner of Moso mainland when he was never a Claimant in these proceedings.
7. In summary, there are principally two grounds within the supervisory role of the Supreme Court under section 39 of the Customary Lands Tribunal Act [Cap 271] ("The Act"), namely:-
 1. That the Siviri/Tanoliu Joint Village Lands Tribunal in Land Case No.1 of 2005 in relation to those lands at Moso Mainland at Northwest Efate, is biased and had failed to comply with the requirement under the Customary Lands Tribunal Act [CAP 271] ("The Act")/
 2. That the Panel Members who sat in the Siviri/Tanoliu Joint Village Lands Tribunal are not qualified because the (Chiefs Elders) were/are



not approved by North West Efate Area Council of chiefs as required by the Act.

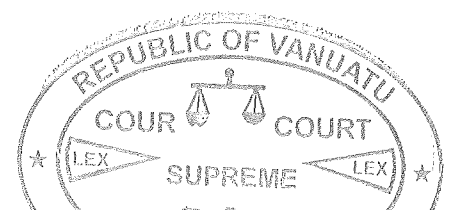
8. I treat the grounds summarized in the submissions of the Claimant's Counsel as the grounds within the supervising role of the Supreme Court under section 39 of the Act while some of the grounds in the claim concerned with the factual merit of the claim and could not be within the supervisory role of the Supreme Court.

Responses to the claim

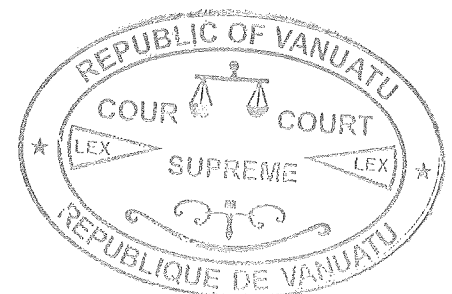
9. The First Respondent denies that the members of the panel of adjudicators are biased or there is likelihood.
10. The Tribunal denies that the Siviria and Tanoliu Joint Village Lands Tribunal conducted an unfair hearing.
11. The Tribunal disputes the claim that they did not follow the procedure set out in the Customary Lands Tribunal Act of 2001.
12. The Tribunal denies that the Joint Tribunal made irrelevant considerations or omission.
13. The First Respondent seeks orders to:
 - (1) Costs and incidentals to these proceedings; and
 - (2) Any other or further order deem fit by this Court.
14. The Second Respondent filed a Response to Further Amended Claim for Judicial Review on 19 March 2007 and says that: Section 37 (2) of the Customary Land Tribunals Act is intended to qualify members appointed to a Land Tribunal so that any decision they make is impartial, and otherwise denies each and every allegation contained therein.
15. The Second Respondent says that members of any Land Tribunal understand fully that the provisions of Part 6 of the Act are mandatory and must be complied with; and otherwise denies each and every allegation contained therein.
16. The Second Respondent says that the Claimant is not entitled to the relief sought in Further Amended Claim for Judicial Review.

Backgrounds

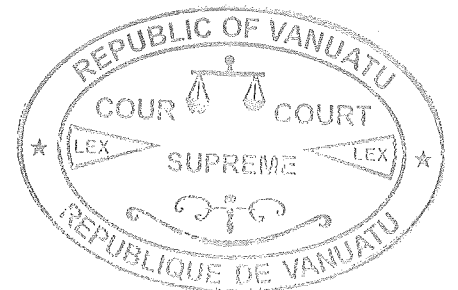
17. The Claimant claimed the customary ownership of a land inside the Moso mainland on Efate, known as "Meten" land.
18. The proceedings over the customary dispute of "Meten" land were commenced before the Sunae Village Land Tribunal.



19. Before Sunae Village Land Tribunal, the Claimant was registered as a disputant (claimant No.2). The other disputants were chief Joel Matele and Chief kalulu Tariipoawia as Joint disputants (Claimants No.1) and Taurasongi Malamaramata (claimant No.3).
20. The Sunae Village Land Tribunal was composed of Jimmy Meanmeadola (Chairperson), Kalulu Tariipoawia (member), Kenneth Peter (member) and Willie Tapasei (secretary).
21. On 16th March 2005, the Sunae Village Land Tribunal realized that Meten land, the subject of the dispute (claim) was part of Moso land on Efate Mainland and the jurisdiction will be one of Joint Village Land Tribunal as "Meten" land covered more than a single custom area. The Sunae Village Land Tribunal, then, transferred Land case No.01 of 2005 before a joint tribunal.
22. The Sunae Village Land Tribunal also sent notices to respective principal chiefs of Siviri, Malafau and Tanoliu villages to constitute a Joint Village Customary Land Tribunal to hear all claims of Moso land on Efate Mainland, instead, of focusing its attention on the resolution of Land Case No.01 of 2005 the subject of transfer before a joint village tribunal on 16 March 2005. Further, there were not registered claims on all Moso lands on Mainland Efate at the time when the Sunae Village Land Tribunal sent its intended notices to respective principal chiefs.
23. It is noted that there is only one registered claim on a Moso land on Efate Mainland [here, Land Case No.01 of 2005] which was transferred by the Sunae Village Land Tribunal on 16 March 2005 to the joint village tribunal.
24. At that point in time, it is noted that the Claimants' claim of ownership of Moso land on Mainland Efate, was no longer the principal subject of the disputes. The Meten land ownership claim was subsumed or taken over by claims (yet to be filed) on or over all the lands of Moso situated on Efate Mainland. [See "Background blong case" Annexure "A" of the sworn statement of Willie Tapasei filed 03 November 2006 (R1)].



25. It is extraordinarily important to note that one of the principal claimants with the Joint Claimants No. 01 in Land Case No.01 of 2005 at the Sunae Village Land Tribunal was Chief Kalulu Taripoawia (He was a party). Chief Kalulu Taripoawia was also a member of the Sunae Village Land Tribunal (adjudicator) who sat on 16 March 2005 and transferred the Land Case No.01 of 2005 to the Joint Tribunal (He was also a judge in his own case!). It is therefore extraordinarily important to note that Chief kalulu Taripoawia is judging his own case before the Sunae Village Land Tribunal!
26. The Siviri and Tanoliu Joint Village Land Tribunal were formed. The two principal chiefs of the said villages appointed two elder each of the village to adjudicate and hear these cases. The two principal chiefs also appointed Jimmy Tapasei as the secretary of the Joint Land Tribunal. The Siviri and Tanoliu Joint Village Land Tribunal registered the Land case No.01 of 2005 of Moso land on Efate Mainland to adjudicate on it. The tribunal sent Notices dated 29 March 2005, into the villages where the disputes covered Moso land on Mainland Efate and asked their respective chiefs to put up the Notices of the case if there were other disputants of the disputed land too.
27. Within 21 days of the Notices, the Joint Tribunal received the same three disputants before the Sunae village tribunal, namely:-
- 1) Joint Claimants, chief Taripoawia and chief Matuele;
 - 2) Claimant, Donald James Aromalo;
 - 3) Claimant, Taurasongi Manlaemarata; and another
 - 4) Chief Jimmy Meameadola who is said to join with the Joint Claimants No.1.
28. Chief Jimmy Meameadola was the chairperson of the Sunae Village Tribunal who transferred Land Case No. 01 of 2005 before a Joint Tribunal on 16 March 2005. He was an adjudicator then in the case and he is now said to be a party in that same case before the Joint Tribunal.
29. The Siviri and Tanoliu Joint Village Land Tribunal was composed of the following:
- Chief Andrew Popovi – Chairperson;
 - Elder Philimon Pakoalaela – Adjudicator;
 - Elder Jacky Pakoa – Adjudicator;
 - Chief Peter Masongomapula – Adjudicator;
 - Elder Paul Masongo – Adjudicator; and



- Elder Shem Loc – Adjudicator; and
 - Elder Willie Tapasei – Secretary
30. On Wednesday 27th April 2005, the Joint Village Land Tribunal opened its meeting with a prayer.
31. The chairperson of the Joint Village Land Tribunal asked the parties if they objected to any or all of the members of the panel of adjudicator to sit and hear the case.
32. The joint village Land tribunal received applications of objection from Donald James Aromalo (Claimant 2) and Taunasongi D. Manleamarata (Claimant 3) that they objected to each and all members of the panel of adjudicators to sit and hear the case.
33. The tribunal adjourned its meeting and considered the objections. The tribunal reconvened and ruled that the applications of objections are not justified. As a result of this ruling, there were arguments with the Claimants 2 and Claimant 3 and the members of the panel. These two claimants, then, left the joint village land tribunal hearing. The tribunal adjourned again. The Chairman of the tribunal appointed the secretary to consult with the claimants to address their concerns. Following discussions with claimants 2 and 3, they said they agree to have a group meeting between members of claimant 2 and representative of the joint tribunal collectively. A discussion group was appointed consisting of 3 representatives each of the 3 Claimants and 2 member of the joint tribunal panel.
34. After group discussion with all panel of adjudicators, the joint tribunal met and dealt with an application requesting the tribunal to send a representative each of these claimants with the secretary of the joint tribunal to go to Port Vila and sought further advice from the land tribunal Office to clarify the objections the tribunal had ruled upon.
35. The joint tribunal pointed to the provisions of the customary land tribunal Act No.7 of 2001 (part 6 sections 27, subsection 6). The tribunal accepted the application to seek further advice from the Land Tribunal Office with the condition that two members each of the claimants with the secretary will go to



the Land Tribunal Office to seek further advice and the tribunal adjourned the hearing to Thursday 28 April 2005.

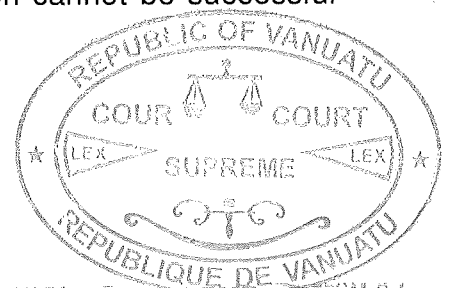
36. The group went to Port Vila and received two options:-

1. To ask the joint tribunal to appoint a new Panel member from the village which is qualified under the Customary Lands Tribunal Act?
2. The 3 claimants to discuss among themselves and resolve the issue by making an application back to the joint tribunal.

37. The group also hear advices from the Land Tribunal Office that the joint village tribunal has the power to make final decision and ruling and if a party is disappointed or aggrieved by such a decision, the party has to appeal that decision before the Supreme Court. It is said the group collectively chose option 2 for the joint tribunal to decide on these issues and the group agreed that:-

1. Both Claimants 2 and 3 asked the joint village tribunal to revoke their original decision relating to objections of the claimants 2 and 3 to all the members of the panel.
2. They collectively made a joint application that they objected to the chairperson only of the joint village land tribunal.
3. The 3 claimants will accept and respect the decision of the joint tribunal on the said objections.

38. On Thursday 28 April 2005, the joint tribunal heard applications of the three claimants. Claimants 2 and 3 asked the joint tribunal to revoke its previous original decision on their objections. The joint tribunal accepted. The three claimants submitted they objected only to the chairperson of the panel. The joint tribunal reconvened to consider the new application. The joint tribunal ruled that the objection against the qualification of the chairperson cannot be successful for the following reasons:-

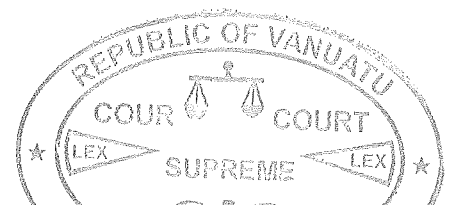


1. The joint tribunal relied on part 6 s.26 subsection (4) that if the objection is to the chairperson of the land tribunal, the other members of the tribunal must consider the objection and if they consider that the objection, is justified, they must disqualify the chairperson and adjourned the meeting to enable another chairperson to be appointed. Here, the other members of the tribunal rejected the objection.
 2. The second reason to reject the objection was based on the Customary Land Tribunal Act No.7 of 2001, part 7, section 35, subsection (2) (ii) relating to an approved list of chiefs and elders who have sufficient knowledge of the custom area to adjudicate disputes relating to the boundaries or ownership of customary land in the custom area. There, the adjudicators were of the view that the chairperson of the joint tribunal knew the custom of the custom area of the land in dispute.
 3. The last reason was that the principle chief of Tanoliu who chaired the joint village tribunal is qualified under the act and has experience to deal with land before the tribunal and the Court.
39. It was said the three claimants accepted the ruling of the adjudicators and the chairperson of the joint village land tribunal, chief Andrew Popovi, joined the joint village land tribunal and continued with the hearing of the claims before the tribunal leading up to the joint village land tribunal's decision issued on 27 May 2005 which is now challenged pursuant to section 39 of the customary Land Tribunal Act.

Evidence

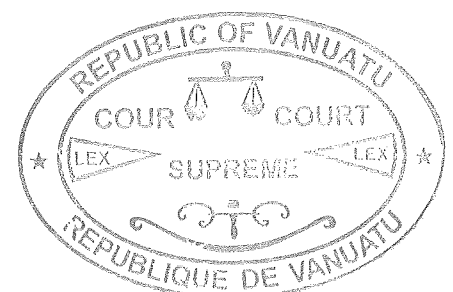
Claimant's Evidence

40. The Claimant, Mr. Donald James Aromalo, filed two (2) sworn statements in support of his claim respectively on June 2005 and 22nd October 2008. He was cross-examined. He gave evidence to this effect. He was one of the Claimants claiming customary land ownership of Moso Mainland in North Efate in the Sunae Village Lands Tribunal. The boundary of the custom land he claimed is from Worani Mala up to Marona River at Taralapa and across to vatnamanuka and up to the hill and across down the hill to Palau or Arofata River. He made

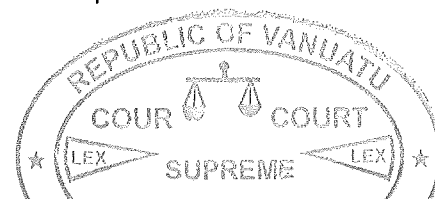


his claims on 2 December 2004 through a letter to chief Joel Matuele and chief Jimmy Meameadola. This letter was attached to the statement. It was addressed to Chief J.K Matuele and Chief J. Meameadola. The Claimant claimed through that letter in the name of Chief Mansakau, Paramount Chief of Moso Island. The big boundary of the land on Moso Mainland was between Chief Mansakau and Paramount Chief Tivate and to the boundary of Paramount Chief of Emua Village of Chief Malae Sinu. He and his family are ready to give details of the customary stories of these lands to any Court established under the law of Customary Land Tribunal to resolve the dispute. As to the land on the Moso Island, Mansakau's customary land boundary they claimed was between Chief Mansakau and Chief Siwo in the middle to Namoso. He asked them to allow each Claimant to exercise his rights to claim their customary lands and boundaries based on the custom history of their ancestors.

41. On 16 March 2005, the Sunae Village Land Tribunal ruled that the claim be referred to the Joint Village Lands Tribunal of Siviri and Tanoliu Villages.
42. The members of Sunae Village Lands Tribunal who sat as adjudicators at that hearing were Jimmy Meameadola (as chairman), Kalulu Taripoawia (member), and Kenneth Peter (member) and Willie Tapasei (secretary).
43. On 12 April 2005, he had lodged his claim to the chairman of Tanoliu/Siviri Joint Village Customary Land Tribunal chief Kalontas Popovi. In his letter of 12 April 2005, he requested that the Joint Village Lands Tribunal of Tanoliu/Siviri to look at their land case. Their claim was on the land at Moso Island and Moso Mainland. He requested the Joint Tribunal to hear their customary land case No.01 of 2005 that Sunae Village Land Tribunal transferred them before the Joint Village Lands Tribunal on 16 March 2005. He stated on Moso Mainland, their claim stated at Worani Mala up to river Marona up to Tavaralapa across to Vatnamanuka go up the hill and across down to river Palau as Kokoi Matua (Boundary) of Manasakau with Manlae Sinu of Emua Village. On Moso Island, he said the claim started at Namoso to Taslapa Kiki at Tasiriki across the Pansiko at Tasilapa.



44. He stated further he had lodged his claim to dispute the claims of other disputants, namely:
1. Chief Joel Matuele and Chief Taripoawia
 2. Chief Manaruru
 3. Taurasongi Dick Manlae Marata.
45. By letter of 29 March 2005, the secretary of Joint Village Land Tribunal of Siviri and Tanoliu issued notice that the hearing of Land claim No.1 of 2005 was scheduled on 27 April 2005 at 8.00am o'clock. The Notice was attached to his statement as "DJA 3". These Notices sent by the secretary referred to all parties but did not mention Chief Jimmy Meameadola as a party or claimant or joint claimant.
46. The members of Siviri/Tanoliu Joint Village Lands Tribunal who sat to hear the claims in Land case No.01 of 2005 were chief Andrew (Kalontas) Popovi (chairman), chief Peter Masongomapula (member), Paul Masongo (member), Shem Lock (member), Philimon Pakoa (member) and Willie Tapasei (secretary).
47. He said the members of the Siviri/Tnaoliu Joint Village Lands Tribunal are close family relatives of the other two (2) Joint Claimants: chief Matuele and Kalulu Taripoawia. Their relationships is as follows:
- (1) Kalulu Taripoawia's big sister Mina's son is chief Andre Popovi (chairman);
 - (2) Kalulu Taripoawia's other sister Eda's son is Willie Tapasei (the secretary);
 - (3) Kalulu Taripoawia cousin brothers are chief Peter Masongo Mapula and Paul Masongo. Their mothers are straight blood sisters;
 - (4) Chief Matuele's sister's son is Shem Lock;
 - (5) Shem Lock's brother in law is chief Peter Masongomapula and Paul Masongo;and
 - (6) Philimon Pakoa and Jackly Pakoa is the cousin brother of chief Andrew Kalontas Popovi
48. He stated his big brother chief Kalkawas James Lauman and Chief Andrew Popovi involved in land disputes in Tanoliu village. Chief Popovi does not like



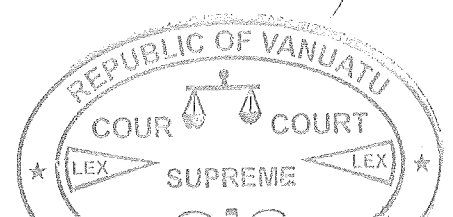
his family and always go against his family. He illustrated his point that when the secretary of Sunae Village Land Tribunal gave him notice to serve on the Claimant, Andrew Popovi hid the notice from him. He stated this was confirmed to him by the secretary of Sunae Village Land Tribunal and secretary of Siviri/Tanoli Joint Village Lands Tribunal Willie Tapasei in Port Vila when they had coffee at La Terras sometimes in early April 2005.

49. On 27 April 2005, the Sivr/Tanolu Joint Village Lands Tribunal sat to hear their claims. He stated before the hearing started, he along with other Claimant Taurasongi Manlaemarata made objections against the chairperson and the members of the tribunal. They objected on the basis that the chairperson and the members are close blood relatives of chief Matuele and Kalulu Taripoawia, the other two (2) Claimants. He annexed to his statement a copy of his objection submissions made against the chairperson of the Siviri/Tanolu Joint Village Lands Tribunal chief Andrew Popovi and others ("DJA").
50. The Claimant's objections and submissions were made on the qualifications of the chairman of the Joint Village Land Tribunal and its members. He stated he wanted to see a neutral tribunal as he wanted to see justice. He objected to the qualification of Shem Lock as a member of the Joint Tribunal. He stated Shem Lock is the nephew of chief Matuele who is the principal Claimant No.1. He said, based on their family relationship, Shem Lock is not qualified as an adjudicator. He stated also that chief Masongo Mapula and his brother Paul Masongo are the brother in laws of Shem Lock and Shem Lock is the nephew of chief Matuele. They are also the cousin brothers of Taripoawia who is the principal Claimant with Claimant No. 1 chief Matuele. Based on their family relationship, he said they are not qualified to sit as members of the Joint Tribunal. The last objections of qualifications were made against the chairperson of the Joint Tribunal, Mr Andrew Popovi. The first reason was that when the Secretary of Sumae Village Land Tribunal gave notice of the Land Tribunal on the subject land disputes, Mr Andrew Popovi had hidden the notice from him and his family not to see and be aware of it as he did not want the claimant and his families to be part of the disputes in the tribunal.
51. Mr. Andrew Popovi was involved in land disputes against the claimant's families at Tanoliu village. He stated Mr. Andrew Popovi is not qualified as chairperson of the Joint Land Tribunal. He said that Mr. Andrew Popovi, chairperson of the



Joint Tribunal is the uncle of Chief Kalulu Tariipoawia who is the principal claimant number 1 with chief Matuele. He was concerned that the chairperson will not be neutral in his decision. He asked for another Tribunal or differently composed tribunal to hear the Land Case No. 01 of 2005.

52. He stated the chairperson of the Joint Tribunal Andrew Popovi adjourned the proceedings for two (2) minutes and overruled his objections. He stated that the chairperson was not neutral because such objections require to be resolved in accordance with the Customary Lands Tribunal Act.
53. He stated further that in the whole proceedings, the other claimants Chief Tariipoawia and chief Matuele failed to show or produce any custom proof of this case.
54. The claimant further said he had requested the adjudicators to make site visit to the land so that other claimants and himself could show their respective taboo sites (shrines) and other custom proof of their claims including their custom boundaries but the adjudicators have refused to visit the land. He stated the chairperson of the Joint Tribunal requested him to produce photos. He had produced photos and chart to the adjudicators. The other claimants did not produce any evidence at all to prove their claim.
55. On 27 May 2005, the Siviri and Tanoliu Joint Village Lands Tribunal gave its decision and declarations. He received a copy of the decision on 30 May 2005 at Tanoliu village. He stated when he read the Tribunal's decision he said the Tribunal did not record the objections and submissions he made. The tribunal only recorded what chief Matuele and chief Kalulu Tariipoawia said. The customary evidence which proved his claim of ownership over Moso land on Mainland Efate was not even taken into consideration and referred to in the decision.
56. The claimant stated he was surprised as chief Jimmy Theameadola who was not a claimant in land case No. 01 of 2005 was also declared by the Siviri and Tanoliu Joint Village Lands Tribunal custom owner of Moso Mainland. He stated the decision is biased as chief Jimmy Meameadola is the straight cousin brother of the chairperson of the Siviri and Tanoliu Joint village Lands Tribunal, chief Andrew Popovi.



57. In his further statement, he stated that when the Sunae Village Land Tribunal sat to hear his land dispute claim, the chairman of the Siviri and Tanoliu Joint Village Lands Tribunal, Andrew Poposvi was present in Court at the side of disputants chief Kalfau Joel Matuele and chief Kalulu Taripoawia. He also referred to a specific finding by the Sunae Village Land Tribunal (Finding No. 6(1)) to the effect that chief Andrew Popovi treated him unfairly when he did not serve the Notice on him (the claimant) when he knew the claimant was a disputant to the land case. He referred to the following rulings of the Sunae Village Land Tribunal:

"RULING

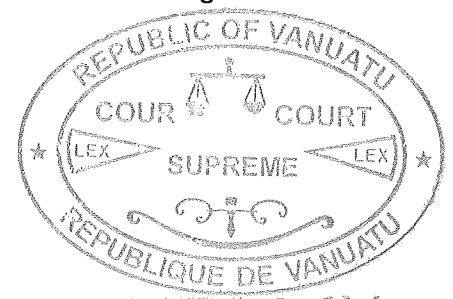
1.1. *Bambae hemi no save harem case we istap, from we hem JAS LUK SAVE sei issue/finding No. 1 hemi stap kwestenem Princibol onaship blong wan BIKFALA ground we I gat ol NARAFALA claimant tu insaed mo I kat ol members blong panel long Tribunal tu oli kat claim long hem.*

1.2. *Tribunal hemi makem ruling se respective council blong chiefs blong olketa villages ia, SIVIRI, Tanoliu mo Malafour bae oli harem case No. 01 blong 2005 blong OLKETA GRAON mo KASTOM BOUNDARY blong those Island long Efate main land.*

1.3. *Sunae Village Lands Tribunal hemi makem ruling se respective council blong ol chiefs blong Trifala Villages ia, folem part 2 paragraph 9 blong customary Lands Tribunal Act No. 7 of 2001, bae oli jusum olgeta adjudictaions, wan chariman mo secretary blong Joint village Lands Tribunal blong lukluk long case ia"*

58. He stated he was surprise of finding 1.1. of the Sunae Tribunals in his letter dated 19 December 2003 when he lodged his claim to the said land dispute, he sent that letter of claim to chief Kalfau Joel Matuele as the chairperson of North West Area Land Tribunal and to Chief Jimmy Meameadola, the chairperson of Sunae Village Land Tribunal, they knew and aware of his land disputes claims.

59. Chief Matuele responded to his letter of 19 December 2003 and referred to North West Efate Council of Chiefs as having 3 or 4 Joint Village Lands Tribunal, namely TASU, LELEMA and Siviri and Tamu.

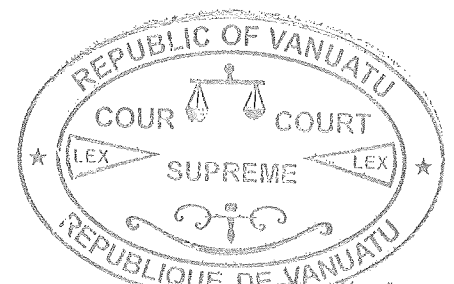


60. He gave further evidence that after the Siviri and Tanoliu Joint Lands Tribunal overruled his objections he walked out from the Tribunal in order to apply to a court for an order to direct the Joint Village Tribunal to exercise its function fairly in accordance with the Customary Tribunal Act.
61. He stated the secretary approached him and warned him to go back in as he could be punished by the Supreme Court. He stated the secretary, Mr. Tapasei walked between him, the adjudicator, and Joint claimants No. 1 and arranged for a meeting in which there were two representatives of each group in that meeting. The secretary acted as the chairperson of that meeting. Chief Peter Masongo Mapula and Philimon Pakoa represented the adjudicators, he and Kalmatak James represented his group, Taurasongi Dick Manlealaemata Kalotiti Tongolulutong represented claimant 3 and chief Kalfaul Joel Matuele and Jimmy Meameadola represented the Joint claimants. In that meeting, they maintained their objection of the formation of the panel members of adjudicators which he said it was fair to all the parties. The chairman of the Joint Lands Tribunal Andrew Popovi adjourned the proceedings of the Tribunal and directed the secretary and the parties to seek advice from the Land Tribunal office in Port Vila. They had a meeting with one George Kerby of Lands Department. There was no one from Land Tribunal Office. George Kerby advised them that when there are objections, the Tribunal should stop unless they could find a way out.
62. Chief Jimmy Meameadola and Secretary Willie Tapasei told them to go to Chief Jimmy Meameadola's house to find a solution to the issue to allow the Tribunal to continue with its hearing of the case the next day as directed by the Chairperson Andrew Popovi. He stated he left he could not accept the ruling of the tribunal as he knew his rights under the law. He followed them anyway. At Jimmy Meameadola's house, chief Memealdola told them that if they maintained their objections he would not be part of the Tribunal the next time as his boss is not going to allow him another day leave. It was then dark, chief Meameadola and the secretary Tapasei suggested that it was preferable for them to revoke their original objections of the qualifications of all panel members of adjudicators but that they could only jointly object to the qualification of the chairperson of the Joint Tribunal Andrew Popovi. He was just following the suggestion made. On 27 April 2005 in the night, Jimmy



Meameadola and secretary Tapasei told them that the joint Application will be read out by claimant 3. He felt he was not fairly treated.

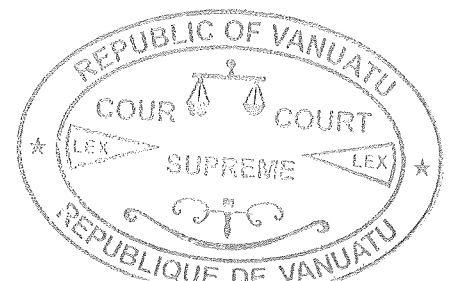
63. On 26 April 2005, before the Siviri and Tanoliu Joint Lands Tribunal sat to hear the land case on 27 April 2005, one of the adjudicators, chief Philimon Pakolaetae came to see him and advised him to the following effect: *“Formation blong Tribunal ia hemi no stret from ol adjudicators oli stret family line blong Joint claimant no. 01 chief Kalulu Tariopawia mo chief Kalfau Joel Matuele”*. Philimon Pakoa advised him to objection to their qualifications as he felt it was not fair for that tribunal to hear that case but that another tribunal will hear it
64. He stated further that the secretary of the tribunal took part in the proceedings of the tribunal as many things in the proceedings of the tribunal were not said or spoken of during the hearing of the case.
65. The claimant’s evidence was not disturbed during his cross-examination.
66. Chief Kolaumara Kaloat deposed a statement in support to the claimant application filed on 27 October 2008. He gave evidence of the family blood relationship between the adjudicators and Joint claimants chief Kalulu D. Tariopawia and chief Kalfau J. Matuele. He said the secretary of the Joint Siviri and Tanoliu Lands Tribunal Willie Tapasei is the brother of chief Jimmu Meameadola.
67. Kalomatak James, the brother of the claimant filed a statement on 23 October 2008 in support of the claim. He sated that the Siviri and Tanoliu Joint Lands Tribunal did not comply with the provisions of the Customary Lands Tribunal Act and the procedures made therein when the adjudicators heard the case of his brother, the claimant.
68. Further, he said the tribunal did not visit the land to allow the parties to show the tribunal their custom proof or evidence of the custom sites and boundaries. There were different Joint Village Lands Tribunal at the North West Efate. However, they were not set up on the basis of custom but on the basis of other grouping to support each other in any land disputes. The Lelepa/Mangaliliu Joint Village Lands Tribunal is the only Joint Lands Tribunal that could be neutral to hear land disputes between people of Tanoliu and Sunae.



69. Philmon Pakoa and Jackly Pakoa filed sworn statements on 28 September 2008 and 10 July 2009 in support of the claim. They were both members of the panel of adjudicators. They both stated they each signed the Joint Village Land Tribunal decision of 27 May 2005 but they did not read the draft judgment. They also stated the formation of the Siviri and Tanoliu Joint Village Lands Tribunal that heard the case of the claimant was biased because the majority of the panel member was the straight family relatives of the Joint claimants chief Kalfau Joel Matuele and chief Kalulu Taripoawia. They both gave the details in this statement
70. I consider their evidence. It was a mixture of what happened in the jury room leading up to the judgment of the tribunal when they say they signed the judgment but they did not read it. I refuse to admit that part of their evidence as a matter of public policy. An adjudicator like a juror may not testify concerning the effect of anything upon his or any other juror's mind or emotions as influencing him to assert or dissent from the decision or concerning his mental processes in connection with his affidavit or evidence of any statement by him indicating an effect of that kind should not be received for these purposes. It was erroneous because such practice, if sanctioned, may lead to embarrassing results, to the hindrance of justice, and to the scandal of the courts or tribunals.
71. However, I accept that part of their evidence to the effect that the members of the panel of adjudicators were family close relatives to the Joint claimants No.1, raising the issue of bias on the part of other adjudicators (jurors) as an exception to the general prohibition justifying a general prohibition on adjudicator's (juror's) testimony regarding any statement or incident occurring during deliberations.

Respondents' Evidence

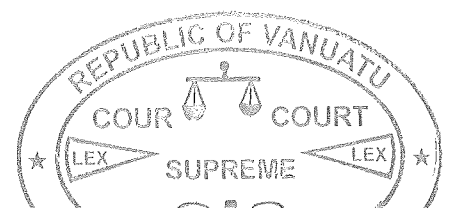
72. Alicta Vuti, Co-ordinator of the Lands Tribunal Office filed a statement on 29th October 2008. He hold that position since 2005. The Lands Tribunal Office was created in order to assist in the administrative steps that are needed to implement the customary Lands Tribunal Act [Cap 271] (the "Act"). The main objective of the Act is to provide for a system based on custom to resolve disputes relating to customary land.



73. In organising and administering the setting up of Land Tribunals within Vanuatu there are procedures and guidelines which are maintained by the Office of Land Tribunals' Coordinator at all times. A copy of Land Tribunal Hearing Procedure guidelines dated 2003 is attached as ("AY2"). A copy of the Administrative Procedure guidelines for Customary Land Tribunals dated 2003 is also attached as ("AV2"). These guidelines are formulated pursuant to the Act.
74. The secretary of the Siviri and Tanoliu Joint Village Lands Tribunal, Mr Willie Tapasei, filed six statements in response to the claimant's on following respective dates: 03 November 2006 and 5 statements on 15 December 2008. The content of most of the statements filed by the secretary of the Joint Tribunal is about his understanding of the law and procedural requirements and the compliance by the tribunal with the provisions of the Act and the procedures set therein.
75. Other aspects of his evidence related to the position of parties and members of the panel of adjudicators. It is not relevant and appropriate for him to give evidence on their behalf save for the process of conducting the notices, hearing and decision of the Tribunal. He is the secretary of the tribunal it is his duty to represent the tribunal before the courts. However, he is not a representative of any party not even his own brother chief Jimmy Meameadola.

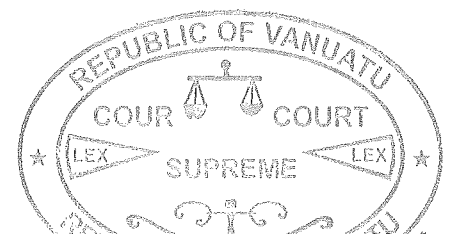
Findings

76. On the evidence, I find that the Claimant lodged two claims into one – one claim on a land on Moso Island and another on Moso Island land on Efate Mainland in his letter dated 2 December 2004 to chief Matuele and Chief Jimmy Meameadola. Again on 25 April 2005, the claimant made the same claims before the Siviri and Tanoliu Joint Land Tribunal. His letter of 25 April 2005 was addressed to the Chairperson of the Joint Tribunal, Chief Andrew Popovi. It is noted that the Sunae Village Land Tribunal on 16 March 2005 referred the Claimant's claim over the Moso land on Efate Mainland to a Joint Village Land Tribunal. There was nothing said or mentioned about the Claimant's claim on Moso Island. I find and treat that Land Case No.01 of 2005 to be about land claims of Moso Island lands situated on Efate Mainland. This includes the Claimant's land claims of ownership of customary land he described in his



statements and his two letters of 2 December 2004 and 25 April 2005 in which the Claimant gave detailed accounts of its boundaries, custom histories, sites and map.

77. I find the Siviri and Tanoliu Joint Lands Tribunal did not visit the disputed land before it made its decision on 27 May 2005.
78. I find Moso Island and Moso land on the Efate Mainland are located on the North Western Area of Efate Island. The North West Efate Area or sub-Area has a Council of chiefs. The secretary of the North West Efate Area or Sub-Area Council of Chiefs is Mr. Willie Tapasei at the time of hearing this review claim in 2009. In 2005, the secretary was Saniei Popovi. Saniei Popovi was present at the tribunal when he gave evidence for the Joint Claimants No.1 on 27 April 2005. Apart from Mr Tapasei's evidence that he believed there was a list of approved adjudicators by the North West Efate Area or sub- area council of chiefs, there is no fact to sustain Mr Tapasei's state of belief on that point.
79. I find therefore that there was no list of approved adjudicators from the North West Efate Area or Sub-Area Council of Chiefs.
80. I find on the evidence that chief Jimmy Meameadola may have an interest in the land claimed on Moso Mainland. However, he was not registered as a disputing party when the matter was before the Sunae Village Land Tribunal. Jimmy Meameadola was the chairperson of the Sunae Village Land Tribunal when the land the subject of the dispute was referred to a Joint Village Land Tribunal. Willie Tapasei gave evidence that Jimmy Memeadola was not a registered Claimant but that he was a joint Claimant with Joint Claimants No.1 namely, Chief Kalfau Matuele and chief Kalulu Taripoawia. On Mr. Tapasei's evidence, Jimmy Meameadola joined the Joint Claimants No.1 at the evidence in the trial proceedings at the time when the three individuals made submissions before the Siviri and Tanoliu Joint Village Lands Tribunal. This means in effect that chief Jimmy Meameadola was not a registered party to this land claim despite joining the Joint Claimants No.01 at the stage of evidence and submissions. As a party there should have records of his claim including records of his payment of fees before the Joint Tribunal. There is no such evidence of his claim or payment of fees provided by the secretary from the file records in Land Case no.01 of 2005 before the Joint Tribunal.



81. It is also a fact that the secretary of the Siviri and Tanoliu Joint Village Lands Tribunal, Mr. Willie Tapasei, is the brother of chief Jimmy Meameadola.
82. On the evidence, the members of the panel of adjudicators composing the Siviri and Tanoliu Joint Village Lands Tribunal are close family relatives of the Joint Claimants No.1 namely chief Kalulu Dick Taripoawia and chief Joel Matuele. Chief Jimmy Meameadola and the secretary Willie Tapasei are the cousin brothers of the chairperson of Siviri and Tanoliu Joint Village Land Tribunal, Mr. Andrew Popovi. They are also closely related to other panel members of the Joint Tribunal. That was the state of their close family relationship when they made the decision on the subject land disputes on 27 May 2005.

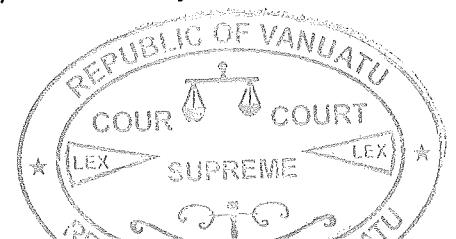
Law and Application of law on the circumstances of this case.

The Law

83. The following are the relevant provisions of the Customary Land Tribunals Act [CAP 271] and procedural requirements made therein – sections 39; 37; 38; 9 Part 6 s.25; 26; 27; 28; 29 and 30. They are set out below for ease of reference:-

39. Supervision of land tribunals by Supreme Court

- (1) If a person who is not qualified to be a member or a secretary of land tribunal participates in the proceedings of the tribunal, a party to the dispute may apply to the Supreme Court for an order:*
- a) To discontinue the proceedings before the tribunal or to cancel its decision;*
 - b) To have the dispute determined or re-determined by a differently constituted land tribunal.*
- (2) If a land tribunal fails to follow any of the procedures under this Act, a party to the dispute may apply to the Supreme Court for an order:*
- a) To discontinue the proceedings before the tribunal or to cancel its decision; and*
 - b) To have the dispute determined or re-determined by a differently constituted land tribunal.*
- (3) The Supreme Court in determining an application may make such other orders as it considers necessary.*



(4) *Subject to the Constitution, the decision of the Supreme Court or any application:*

- a) Is final and conclusive; and*
- b) Is not to be challenged, appealed against, reviewed, quashed, set aside or called in question in any court or any ground.*

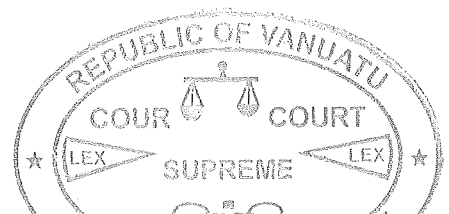
37. Qualifications of members of land tribunals

(1) *A chief or elder is not qualified to be a member of a land tribunal unless he or she is included in a list approved under section 35 or 36.*

(2) *A chief or elder must not be appointed or continue as a member of a land tribunal if he or she:*

- (a) is incapable by reason of physical or mental disability from adjudicating the dispute before the tribunal; or*
- (b) is holding any elected office in a national Parliament, local government council or municipal council; or*
- (c) is holding any office in a political party; or*
- (d) has such business or financial interests, or social, religious, political or other beliefs or associations that will prevent him or her from applying custom honestly and adjudicating impartially; or*
- (e) has been found by a land tribunal:
 - (i) to have influenced or attempted to influence the decision of a land tribunal; or*
 - (ii) to have adjudicated in a dispute before a land tribunal when disqualified from doing so; or*
 - (iii) to have appointed, or attempted to appoint, a person whom he or she knew, or ought reasonably to have known, was not qualified to be appointed as a member; or**
- (f) has been convicted of an offence against section 42.*

(3) *A person must take the following oath before he or she becomes a member of a land tribunal:*



"I swear by Almighty God that I am qualified to act as a member of a land tribunal and I know no reason why I should not adjudicate this dispute, and I promise that I will adjudicate this dispute honestly and impartially, and strictly in accordance with custom. So help me God."

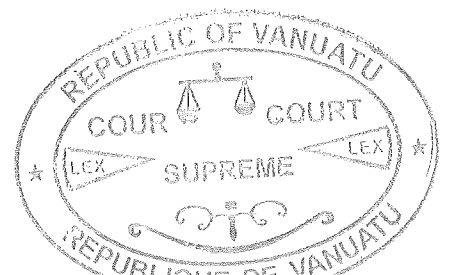
38. Functions and qualifications of secretaries of land tribunals

(1) A secretary of a land tribunal has the following functions:

- (a) to record accurately the particulars of the decision of the tribunal in the form set out in Schedule 3;*
- (b) if the decision is appealed against or there is a re-hearing of it, to forward the record of that to the secretary of the land tribunal determining the appeal or conducting the re-hearing;*
- (c) if the decision is not appealed against or there is no re-hearing of it, to send the record of the decision to the Director;*
- (d) to receive from the parties the fees set out in Schedule 1 and to pay out of those fees in accordance with the requirements of this Act;*
- (e) to do whatever is reasonably necessary to assist and facilitate an orderly, fair and expeditious hearing of a dispute;*
- (f) such other functions as are conferred on a secretary under this Act.*

(2) A secretary must not take any part in the adjudication of the dispute, and must at all times behave in such a way as to give no appearance of participating in any way in the adjudication.

(3) A person must not be appointed as secretary of a land tribunal unless he or she is physically and mentally competent to perform the functions of a secretary.



(4) A person must not be appointed or continue as a secretary of a land tribunal if he or she:

(a) is holding any elected office in any national Parliament; local government council or municipal council; or

(b) is holding any office in any political party; or

(c) has such business or financial interests, or social, religious, political or other beliefs or associations that will prevent him or her from performing properly the functions of the secretary of the land tribunal; or

(d) has been found by a land tribunal to have taken part, or attempted to take part, in the adjudication of a dispute before a land tribunal; or

(e) has been convicted on an offence against section 42.

9. Joint village land tribunals

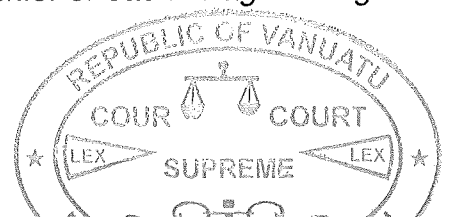
(1) The principal chief of each village who receives a notice of a dispute under paragraph 7(2)(b) must, within 21 days after the last day on which a principal chief receives the notice, together establish a joint village land tribunal to determine the dispute.

(2) The joint village land tribunal consists of:

(a) subject to subsection (3), the principal chief of each village if he or she is qualified under this Act to adjudicate the dispute and is willing to do so; and

(b) 2 other chiefs or elders of each village appointed by the principal chief of that village; and

(c) a secretary appointed by the principal chief of each village acting together.



(3) If the principal chief of a village is not qualified under this Act to adjudicate the dispute or is not willing to do so, the principal chief must appoint another chief or elder of that village as a member.

(4) A person must not be appointed:

(a) under paragraph (2)(b) or subsection (3) unless the person is qualified to adjudicate the dispute under this Act and is willing to do so; or

(b) as the secretary under paragraph (2)(c) unless the person is qualified under this Act to be a secretary and is willing to do so.

(5) The principal chiefs of each village who are members of the village land tribunal and the members appointed under subsection (3) (if any) must elect one of their number to be the chairperson of the joint village land tribunal.

PART 6 – PROCEDURE OF LAND TRIBUNALS

25. Notice of hearing

(1) Within 21 days after the establishment of a land tribunal, the secretary of the land tribunal must give notice under subsection (2) to the parties to the dispute.

(2) The notice must:

(a) be in writing in Bislama, French, English or another language of the one or more of the parties to the dispute; and

(b) specify the date and time of the meeting of the land tribunal to hear the dispute; and

(c) the place of meeting of the land tribunal, being a place which is convenient having regard to the location of the land, the residences of the tribunal's members, the residences of the parties and the availability and security of meeting places; and

(d) the name and address of the secretary of the land tribunal; and



(e) *if applicable – the grounds of the appeal.*

26. Start of hearing and objections

(1) *The land tribunal must, so far as practicable, meet to hear a dispute at the time and on the date and at the place specified in the notice given under section 25.*

(2) *Whenever a land tribunal first meets to hear a dispute, the chairperson must:*

(a) *open the meeting with a prayer; and*

(b) *introduce himself or herself, the other members and the secretary of the land tribunal; and*

(c) *ask if there are any objections to the qualification of the chairperson, any of the other members or the secretary.*

(3) *Subject to subsection (4), the chairperson must consider any objection, and if he or she considers that the objection is justified, he or she must disqualify the person concerned and adjourn the meeting to enable another person to be appointed.*

(4) *If the objection is to the chairperson of the land tribunal, the other members of the tribunal must consider the objection, and if they consider that the objection is justified, they must disqualify the chairperson and adjourn the meeting to enable another chairperson to be appointed.*

(5) *If a party to a dispute fails to follow any of the procedures under this Act, another party to the dispute may apply to the land tribunal for an order directing the party to comply with the procedure.*

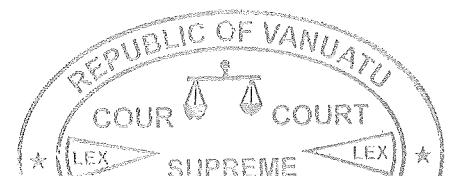
27. Hearing of dispute

(1) *The chairperson of a land tribunal must:*

(a) *invite the party who instituted the hearing to present their case; and*

(b) *on completion of that party presenting his or her case - invite the other party or parties to present their cases and specify the order in which parties are to do so if there is more than one.*

(2) *In presenting his or her case, each party must be allowed an adequate opportunity to present arguments, produce evidence and call witnesses.*



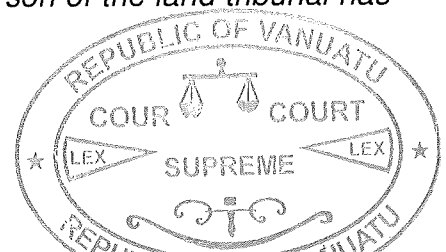
- (3) Each party and his or her witnesses may be questioned:
- (a) by each member; and
 - (b) by any other party, subject to the consent of the chairperson of the tribunal.
- (4) A person with legal qualifications, experience or training is not permitted to represent any party or witness before a tribunal, but may appear as a party or as a witness.
- (5) **A land tribunal must inspect the land in relation to which there is a dispute and, if possible, must walk around the boundaries of the land.**
- (6) Without limiting this section, **a land tribunal hearing and determining a dispute for the first time or on appeal must do so in such a way that is fair and reasonable in all the circumstances to the parties.**

28. Disputes to be resolved in accordance with custom

- (1) A land tribunal must determine the rights of the parties to the dispute according to custom.
- (2) The parties may at any time try to reach an amicable settlement of the land dispute, and the tribunal must encourage and facilitate any such attempts.
- (3) The chairperson may adjourn the hearing of a land tribunal for a period not exceeding 10 days to enable an amicable settlement to be reached.
- (3) However, if there is no amicable settlement within that time, the chairperson must recommence the hearing.

29. Decisions of land tribunals

- (1) After the hearing of a land tribunal is completed, the chairperson must adjourn the meeting of the land tribunal to enable the members to make their decision. The decision must be made within 21 days after the completion of the hearing.
- (2) Decisions of a land tribunal are to be made by consensus. However, if this is not possible each member of a land tribunal has a single vote and the tribunal is to make its decision by a majority vote of its members. If the votes are tied, the chairperson of the land tribunal has a casting vote.



(3) *The chairperson of a land tribunal must announce the decision in public and, if possible, in the presence of the parties.*

30. Orders

A land tribunal may as part of its decision make one or more of the following orders:

- (a) an order declaring the rights of the parties;*
- (b) an order that a person move out of occupation of the land on a permanent basis or for a specified period;*
- (c) an order that a person pay compensation for the use of land, or damage done to land, crops, plants, or animals, or injury caused to a person;*
- (d) an order that a person pay a fine as punishment for misconduct on the land;*
- (e) an order that a person pay a fine as punishment for misconduct at the tribunal hearing;*
- (f) such other orders as it considers necessary.*

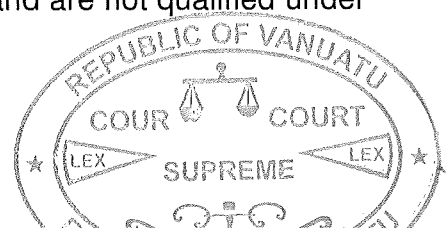
84. I now determine the two main issues rose in this case. The first is whether the Respondent Tribunal is biased in its decision of 27 May 2005; and the second, whether the Respondent Tribunal followed the procedural requirements set in the Customary Lands Tribunal Act? I propose to consider first, the second issue.

Whether the Respondent Tribunal followed the procedural requirements set in the Act.

85. On this issue, the review will focus on the questions relating to qualifications of the members of the Joint village tribunal and its secretary as set in the Act, whether the tribunal inspected the disputed land before making its decision and how it dealt with the objections rose on the composition of the Joint Tribunal on the date in question.

1. Qualification of the Joint tribunal members who sat as members of Siviri and Tanoliu Joint Village Lands Tribunal.

86. The Claimant submits that all the tribunal members who sat to hear the Claimant's land claim over Moso land on Efate mainland are not qualified under the Act as members.



87. The First Respondent contends that the members of Siviri and Tanoliu Joint Village Lands Tribunal are qualified as they are appointed by the principal chiefs of respective villages where the disputes arose.
88. The Second Respondent submitted that the Act expressly stated that the Council of chiefs of a custom sub-area must, among other matters, approve a list of chiefs and elders of the custom sub-area who have sufficient knowledge of the custom of the sub-area to adjudicate disputes relating to the boundaries or ownership of customary land in the custom area, and send a copy of the list to the secretary of the Island Council of chiefs of the custom area in which the sub-area is situated and to the secretary of the island council of chiefs. The list of chiefs and elders who may adjudicate disputes in a custom area or a custom sub-area is one which is reviewed after the end of each year. The Second Respondent emphasized that a very important prerequisite highlighted in subsection 37 (1) is that a chief or elder must be included in the list identified and described in sections 35 and 36 in order to be qualified as a member of any land tribunal. As for the secretary of the Land Tribunal the Act clearly provides in section 38 of his or her many functions. But the most important aspect of his role as the secretary of the land tribunal is that he or she must not take any part in the adjudication of the dispute, and must at all times behave in such a way as to give no appearance of participating in any way in the adjudication.
89. I agree with the position of the law submitted on behalf of the Second Respondent (Republic).
90. In the course of trial in the present proceedings, Mr. Jackly Pakoa testified that he was told by his wife that there was a letter served on his wife inviting him to sit as a member of the tribunal. Mr. Jackly said he did not see the content of the letter. When Mr. Willie Tapasei was cross-examined in relation to his qualification along with the members of the Tribunal, he said they were appointed by the principal chiefs of Siviri and Tanoliu villages. Pursuant to section 9 of the Act. He was further questioned whether he himself and the members of the tribunal were included in a list approved under sections 35 and 36 of the Act by the North West Efate Council of Chiefs or sub area council of chiefs? He said there was no list but he believed there is a list. In 2005, Saniel Popovi was the secretary of the North West Efate Council of chiefs and he gave evidence in the proceedings on behalf of the Joint Claimants. At the time of hearing in August 2009, Mr. Willie Tapasei said he is the secretary of the North



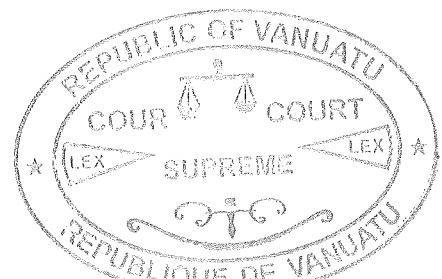
West Efate Council of chiefs. As found, there is no evidence of a list of approved of chiefs and elders by the North West Efate Council of Chiefs or sub-area council of chiefs.

91. I agree with the submissions of the claimant that the purported Siviri and Tanoliu Joint Village Land Tribunal was not lawfully composed as the chiefs or elders who composed the panel of adjudicators are not qualified to be a member of the Land Tribunal as there was no list approved under sections 35 or 36 of the Act. The composition of the Siviri and Tanoliu Joint Village Lands Tribunal was made contrary to the requirements set under sections 37 and 9 of the Act.

2. Inspection of the disputed custom land(s).

84. Subsection 27(5) of the Act requires that a land tribunal must inspect (visit) the land in relation to which there is a dispute and, if possible, must walk around the boundaries of the land. This provision is mandatory and confers on the land tribunal a statutory duty to inspect (visit) the land the subject of the dispute. This means that the land tribunal must visit the said land, and if possible, they must walk around the boundaries of the land.
85. The Second Respondent agrees with that statement of the law.
86. In the present case, there was no site visit to the disputed land. The secretary of the tribunal has confirmed this in his evidence in cross-examination. The inspection of the disputed land is a mandatory requirement and the tribunal is statutorily bound to comply with this subsection. This is the illustration of injustice that the claimant complained about in this case when he said his evidence and map of the disputed land were not considered in the decision of the tribunal on 27 May 2005. There was no site visit to the said land as a result the claimant could not show or prove to the tribunal of his taboo sites and evidence of customary ownership of the said land including the boundaries. In this case, the failure by the tribunal to comply with the requirements of subsection 27(5) renders the decision of the tribunal dated 27 May 2005, void as unlawful.

3. Statutory requirement as to objections regarding the composition of the tribunal.



87. Section 26(a) of the Act stipulates that a party has an opportunity to raise any objections regarding the composition of the land tribunal.
88. Objections in this circumstance must be in regards to the qualifications of the chairperson, any of the other members or the secretary of the tribunal.
89. The Land Tribunal Hearing Procedure guidelines and the Administrative Procedural guidelines for Customary Land Tribunals were formulated in 2003 pursuant to the Act. They are very useful procedural guide for the adjudicators and secretary of the land tribunals.
90. Rule 9 – Part 2 – of the Administrative Procedure guidelines for Customary Land Tribunals relate to objections to adjudicators or secretary.

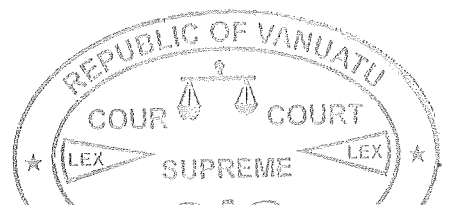
Rule 9 provides:

9.1 Chairperson must ask if there are objections The Act (section 26 (2)) requires that the chairperson of a customary land tribunal must, after the opening prayer, introduce the members of the land tribunal and the secretary, and ask if there are any objections to the members or secretary.

9.2 No objections If there are no objections, the tribunal can then proceed to deal with the dispute.

9.3 Consideration of objections to members of tribunal If there are objections to the chairperson or other member(s) of the tribunal, the remaining members must consider that objection carefully, and, if they think it desirable to do so, they should adjourn and move out of the place of hearing in order to discuss the objection more easily amongst themselves.

9.4 Objection to chairperson or member upheld If other members decide that the objection is soundly based, the chairperson should announce their decision, and announce that the chairperson or member(s) objected to will withdraw from the tribunal, and will be replaced by another approved adjudicator. The chairperson should then adjourn the proceedings to another time and place to be announced later so that a replacement for the chairperson or member who has withdrawn can be nominated by the chief or council of chiefs who set up the land tribunal.



9.4 *Objection to chairperson or members not upheld* If an objection to the chairperson or member of the tribunal is not considered by other members to be soundly based, the chairperson shall announce their decision and that the hearing will proceed.

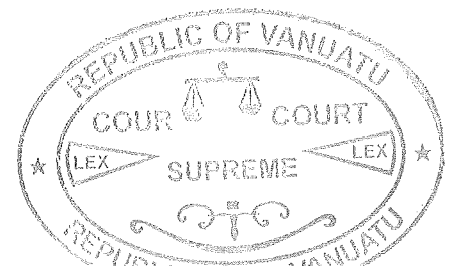
9.5 *Consideration of objection to secretary* If there is objection to the secretary, the members of the tribunal should consider the objection that that objection carefully, and, if they consider necessary, adjourn for a short time and move out of the place of the hearing, so that they can discuss the objections amongst themselves.

9.6 *Objection to secretary upheld* If the members of the tribunal decide that the objection to the secretary is soundly based, the chairperson should announce their decision and that the secretary will withdraw from the tribunal and will be replaced by another suitable person, and that the hearing will proceed when that has been done.

9.7 *Objection to secretary not upheld.* If the members decide that the objection to the secretary is not soundly based, the chairperson should announce their decision, and that the hearing will proceed.

9.8 *Objection to all or most of the members of the tribunal.* It is possible, especially where the land in dispute is claimed by many different families, or where there has been much intermarriage between families in a custom area, that objections may be raised and upheld against all, or almost all, the persons who have been approved by the council of chiefs of the custom area to act as adjudicators, so that it is not possible to obtain the required number of 3 or 5 approved adjudicators who are free from objection by one or other of the parties. If this happens, the council of chiefs which set up the land tribunal should report the situation to the Land Tribunal Office which will then have discussions with the council of chiefs and with other knowledgeable persons in that custom area to discover what kind of alternative arrangement would be acceptable and could be accepted under sections 6 of the Act as an alternative lawful arrangement for resolving a dispute about customary land.

91. Rule 9 assist the land tribunal, its chairperson, its adjudicators and its secretary as to what and how to deal with objections against the chairperson or any member of the tribunal.



92. In this case, before the Claimant started his land claim before the Siviri and Tanoliu Joint Lands Tribunal on 27 April 2005, the Claimant raised objections against the chairperson of the tribunal and almost all of its adjudicators as they were not qualified to hear the land claim No.01 of 2005. The Claimant provided his objections to the chairperson of the Joint Tribunal, Andrew Popovi its members (adjudicators) with written reasons. The chairperson took two (2) minutes to overrule his objections. That is the evidence before the Court. What the chairperson, Mr. Andrew Popovi, did to overrule objections that were also made against him as the chairperson of the Siviri and Tanoliu Joint Village Lands Tribunal, was contrary to the Act and the procedural requirements set under Rule 9 of the Administrative Procedural Guidelines for Customary Land Tribunals 2003.
93. Here, the objections were made to all or most of the members of the tribunal including the chairperson. Rule 9.8 assists the Joint Land Tribunal, its chairperson and adjudicators to resolve the matter. Because the objections were made against the chairperson of the tribunal and almost of its members, the Joint Tribunal must adjourn the Land case. The council of chiefs which set up the land tribunal must report the situation to the Land Tribunal Office (if the required number of 3 or 5 approved adjudicators is not met which was the case here). The Land Tribunal Office will have to have discussions with the council of chiefs and with other knowledgeable persons in that custom area to discover what kind of alternative arrangement would be acceptable and could be accepted under section 6 of the Act as an alternative lawful arrangement for resolving a dispute about that customary land.
94. As the evidence established, contrary to the procedural requirements of Rule 9.8, a committee headed by the secretary with two representatives of the adjudicators and respective parties went to Port Vila to seek advice from the Land Tribunal Office. The Land Tribunal coordinator was no in his office at that time. The committee met with one George Kinby of the Lands Department who provided some advice to the committee. Still the Claimant maintained the objections against the chairperson and members of the Joint tribunal. The committee for some reason met at the house of Jimmy Meameadola, the brother of the secretary of the Tribunal. Jimmy Meameadola and the secretary suggested to the claimant and claimant No. 3 chief Manleamrata to apply to the tribunal to withdraw their original decision on objections against the chairperson and all the members of the Land Tribunal and to maintain only the objections



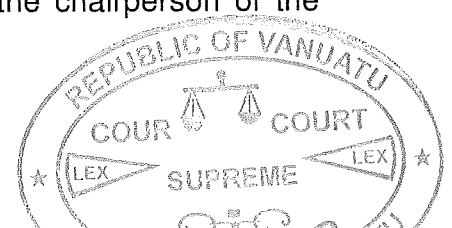
against the chairperson. This was what happened. The other members of the Tribunal overruled the objections against the chairperson and the Siviri and Tanoliu Joint Land Tribunal proceeded with the hearing of the case and delivered its decision on 27 May 2005 which is under the present review claim.

95. On the evidence, the secretary participated actively in the proceedings of this land case leading to a compromised resolution or position which is adverse to the interest of other disputants contrary to the procedural requirements set under the Act. I now deal with the First issue.

Whether the First Respondent Tribunal, through its chairperson and members, is biased towards the claimant in relation to those lands at Moso Mainland in Land Case No. 01 of 2005?

96. The claimant submitted that the composition of the tribunal who are close blood relatives of the successful Joints claimants, the conduct of the chairperson of the tribunal and its members (adjudicators) overruling objections in relation to members of the panel of adjudicators, the conduct of the secretary of the tribunal, Mr. Willie Tapasei, satisfy the test of bias – appearance of impartiality to a reasonable and fair minded observer and real likelihood of bias – reasonable suspicion to the reasonable observer.
97. It is noted that the Second Respondent is cautious as if upheld, it would undermine altogether the intention and enforcement of the Act which envisages that village, and custom sub area and custom area land tribunals have the jurisdiction to determine land ownership disputes in accordance with custom.
98. The caution expressed by Counsel for the Second Respondent (Republic) is a genuine and relevant one, however, what is important in cases such as the present, is the understanding and proper application of the Customary Land Tribunals Act provisions by the chiefs and members of the Lands Tribunals which require the attention of the court in its supervisory role to ensure that fairness and justice according to law prevail at all times in their handling of disputes on customary lands.
99. Here, the successful Joint claimants referred to a Joint claimants chief Matuele and Kalulu Taripawia are close blood relatives of the Tribunal members including the chairperson. The uncontested evidence of their relationship is as follows:

- (i) Kalulu, Taripoawia's big sister Mima's son is the chairperson of the Tribunal, Andrew Popovi;



- (ii) Kalulu Taripoawia's other sister Eda's sone is the secretary, Wille Tapasei and Jimmy Meameadola;
- (iii) Kalulu Taripoawia cousin brother are tribunal members chief Peter Masongo Mapula and Paul Masongo. Their mothers are straight blood sisters;
- (iv) Chief Joel Matuele's sister's son is Tribunal member Shem Lock; and
- (v) Shem Lock's brother-in-law is chief Peter Masongo Mapula and Paul Masongo.

100. Also the claimant's big brother chief Kakaua James Laumanu and Chief Andrew Popovi (the chairperson) have been involved in land disputes at Tanoliu Village. The Chairperson of the Joint Tribunal Mr. Andrew Popovi has direct conflictual interest or situation with the claimant and his family. This was illustrated when he hid the notice from the claimant in early April 2005.

101. Further, Mr. Willie Tapasei, the secretary of Sunae Village Lands Tribunal is also the secretary of Siviri and Tanoliu Joint Village Lands Tribunal. He is the brother of Chief Jimmy Meameadola. Chief Jimmy Meameadola was the chairperson of Sunae Village Land Tribunal when Land Case No. 01 of 2005 between the Joint Claimants: Chief Kalulu Taripawia and Chief Joel Matuele, the claimant Donald James Aromalo and Taurasongi Malaemarka, was transferred to Siviri and Tanoliu Joint Village Land Tribunal. He was then the leading adjudicator/judge in the Sunae Village land tribunal on that Land Case No.01 of 2005. He has somehow involved also in the Joint Tribunal but this time as a party in that same land case (Land Case No.01 of 2005) and was declared one of the custom owners of the said Moso Lands on the Efate Mainland despite the fact that he was not a registered party. Chief Jimmy Meameadola is a judge of and in his own case which is contrary to basic common sense, fairness and justice according to law.

102. Finally, Chief Kalulu Taripoawia, one of the successful parties before the Joint Tribunal on 27 May 2005, was a party in Land case No. 01 of 2005 before Sunae Village land Tribunal and an adjudicator/judge at the same time in that case before the Sunae village land tribunal. Chief Kalulu Taripoawia is a judge of and in his own case which is also contrary to all precept of common sense and justice according to law.

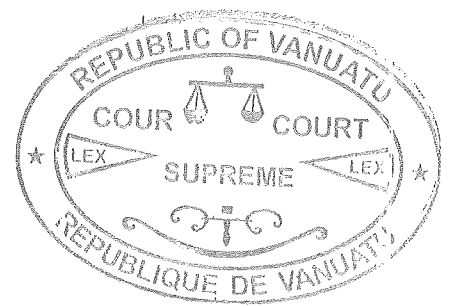
103. The purpose of providing for objection under section 26 of the Act is to maintain the integrity of the process, proceedings and decision of the lands tribunals against those chiefs or elders who have interest in land claims but at the same



time because of their status as chiefs or elders in their local villages, they also sit as adjudicators in the lands tribunals around the country. It is intended not to stop bias but conflict of interest. The Court of Appeal in **Ifira Trustees Ltd v. Family Kalsakau [2006] VUCA 23** states: “*It is fundamental precept that no man can be a judge of and in his own case*”. In that case, Mr. Barak Sope issued a Negotiator Certificate and a lease to LTL when he had a disqualifying interest and whilst acting as the Minister of lands. I agree that Parliament enacted the customary Land Tribunals Act with section 26(2) to stop bias or conflict of interest. The Administrative Procedure guidelines for Customary Lands Tribunal Office are made to further section 26(2) to ensure and maintain the integrity of the process and decision of the Lands Tribunals.

104. In this case, the objections of the claimant and claimant 3 were not considered in accordance with the requirements of the Act and Administrative Procedure Guidelines 2003. Further, the suggestion made by secretary Willie Tapasei and Jimmy Meameadola for them to ask the tribunal to withdraw their decision on the original objections against all the members of the tribunal compromised unjustly and unfairly the position of the claimant and claimant 3 in this case when the evidence is overwhelmingly in support of their objections. It is a clear indication of the participation of the secretary of the tribunal in the proceedings of this case which is contrary to section 38 (2) of the Act.
105. The decision which discussed the appropriate test to apply in respect of the rule against bias is the case of **Kalo v. Public Service Commission [1987] 1 Van LR 305**. In that case, the Supreme Court referred to Lord Hewant CJ's statement in **R V Sussex Justices, Ex-parte MC Carthy [1924] 1 KB 256** which states “*that justice must be seen to be done*”. In Kalo's case, the Public Service Commission confirmed the decision of the Public Service Disciplinary Board. The Supreme Court held that the Commission's decision was invalid and set it aside under a statutory power of appeal on the ground that the chairman of the Public Service Disciplinary Board was also the chairman of the Public Service Commission, and so there was a real likelihood of bias.
106. I consider the test as applied in the Kalo's case and I accept the claimant's submissions that the tests of “real likelihood of bias” and “reasonable suspicion to the reasonable observer” is satisfied, and the decision of the Joint Tribunal dated 27 May 2005 must be called up and cancelled.

Conclusion



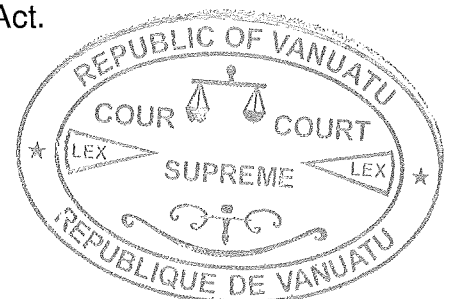
107. Based on the evidence, I am satisfied of the following:

- (1) That the persons who sat as Tribunal members and secretary of Siviri and Tanoliu Joint Village Lands Tribunal that determine the dispute in respect of the custom ownership of Moso Mainland on Efate on 27 May 2005 are not qualified because they are not chiefs or elders approved by the North West Efate Area or sub-area Council of Chiefs as required by Sections 9, 35, 36 and 37 of the Act.
- (2) That the Siviri and Tanoliu Joint Village Lands Tribunal had failed to properly consider objections rose as to qualification of members to the said Joint Tribunal in line with the requirements of section 26 of the Act and Administrative Procedure Guidelines made by the Lands Tribunal Office in 2003 pursuant to the Act.
- (3) That the Siviri and Tanoliu Joint village Lands Tribunal had failed to comply with the mandatory requirements to inspect the disputed land in the course of the hearing of the land case No. 01 of 2005 as required by Section 27 (5) of the Act.
- (4) That there is real likelihood of bias in relation to the decision made by the Siviri and Tanoliu Joint Village Lands Tribunal on the customary ownership of Moso Land on Efate Mainland dated 27 May 2005.

108. In conclusion, the Court makes the following orders:-

ORDERS

1. The decision made by the Siviri and Tanoliu Joint-Lands Tribunal dated 27 May 2005 in relation to ownership of customary land known as Moso Mainland on Efate is called up and cancelled.
2. Ownership of the same customary lands of Moso Mainland on Efate is subject to the current Custom Land Management Act.



3. The claimant is entitled to his costs on the standard basis against the respondents. Such costs shall be determined failing agreement.

Dated at Port-Vila, this 26th April 2019

BY THE Court

Vincent LUNABEK
Chief Justice

