

BETWEEN: Simeon Poilapa IV Vatelapa
Claimant

AND: Emil Mael
First Defendant

The Attorney General
Second Defendant

Date of Hearing: 12 September 2018

Counsel: Mr F Laumae for the Claimant

No appearance by or for the First Defendant

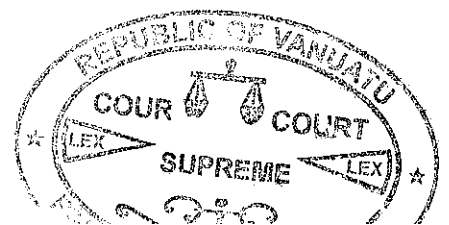
SLO for the Second Defendant

Date of Decision: 15 October 2020

JUDGMENT

A. Introduction

1. This matter was dealt with by Justice Felix prior to his retirement. A draft judgment was prepared but not perfected or published prior to Justice Felix's departure. The file has now been given me to finalize. The draft has now been perfected and follows.



2. The claimant, Mr Simeon Poilapa, representing his family, is the custom land owner of part of Malawara land on South West Efate as declared by the Efate Island Court in Land Case No. 10 of 1993 on 11th July 2011.
3. The Supreme Court, on appeal, upheld the Island Court's decision in Land Appeal case No. 2 of 2011 dated 18th April 2017.
4. Mr Emil Mael, in his capacity as Land Ombudsman of Vanuatu, has been conducting an investigation into Malawara land to the extent of investigating the proceedings and decisions of the Island Court and the Court of Appeal which has interfered with the enforcement of those judgments.

B. Application

5. The Claimant sought a review of the Land Ombudsman's acts and decisions, on the basis that they were ultra vires.

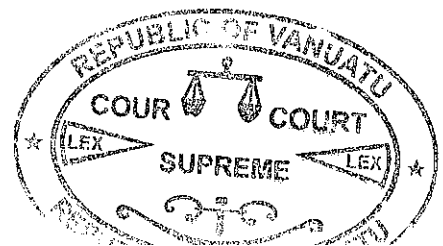
C. Discussion

6. The late Ms Bani, on behalf of the Second Defendant accepted that the Claim is correct and that the actions of the Land Ombudsman Mr Emil Mael were beyond his powers.
7. The Land Ombudsman's Powers are statutory.
8. Section 60 of the Land Reform (Amendment) Act No. 31 of 2013 provides:

"60. Functions of the Land Ombudsman

(1) The function of the Land Ombudsman is to investigate any complaint made to him or her provided that it complies with the grounds listed in section 6N.

(2) Upon receipt of a complaint the Land Ombudsman must within 21 days, or as soon as practicable:



(a) review all reports, lease documents and all other available materials;
and

(b) discuss all reports, as is necessary, with the National Coordinator or the relevant custom land officer; and

(c) investigate, as is necessary, the substance of the complaint.

(3) The Land Ombudsman must notify the Director of Lands:

(a) to place a caution on the lease instrument, where one exists, in accordance with section 95 of the Land Leases Act [CAP 163] until such time as the investigation of the Land Ombudsman is completed; or

(b) that any applications for registration of a lease instrument must not be progressed until such time as the investigation of the Land Ombudsman is complete.

(4) Upon completion of this review the Land Ombudsman must submit a report to the Chairperson of the Committee, the National Coordinator and the Director of Lands, into the complaint, and must make a recommendation as to whether the lease should be registered.

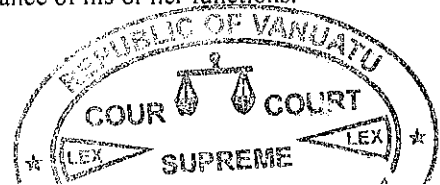
(5) If upon completion of his or her review into a complaint made by a custom owner or small proportion of the custom owners, the Land Ombudsman concludes that the complaint is vexatious or without basis and that the view of the overwhelming majority of custom owners is that the application should proceed, the Land Ombudsman may then make a recommendation that the lease should be registered.

(6) If the Chairman of the Committee, the National Coordinator or the Director of Lands fails to act on a reasonable or practical recommendation made by the Land Ombudsman this will allow the interested party to apply for a Judicial Review.”

9. Section 6P of the Land Reform (Amendment) Act No. 31 of 2013 provides:

“6P. Powers of the Land Ombudsman

The Land Ombudsman has power to do all things that are necessary or convenient to be done for or in connection with the performance of his or her functions.”



10. Section 6Q of the Land Reform (Amendment) Act No. 31 of 2013 provides:

“6Q. Investigative powers of the Land Ombudsman

(1) The Land Ombudsman must, if possible, by an informal request to any person, obtain evidence and information for the purposes of investigating a complaint.

(2) In addition to subsection (1), the Land Ombudsman may request evidence or information from the National Coordinator, the Director of Lands or any officer employed under the supervision of the National Coordinator or the Director of Lands. The National Coordinator or the Director must ensure that the evidence or information requested is provided to the Land Ombudsman within 14 days from the day on which the request is received.

(3) Failure to comply in a timely manner with any reasonable request made by the Land Ombudsman under subsection (2), could result in the Director of Lands or an officer of the Department of Lands who is deemed responsible being prosecuted in accordance with paragraph (7)(b).

(4) The Land Ombudsman may issue a notice in writing in the prescribed form to any person who is either:

(a) required to appear before the Land Ombudsman for examination to give evidence at a hearing; or

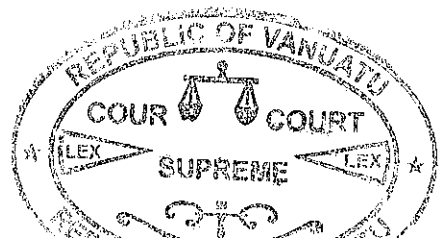
(b) required to provide any information or documentary evidence to the Land Ombudsman which is needed for an investigation.

(5) If a person is required to appear before the Land Ombudsman to give evidence in accordance with paragraph (4)(a), he or she may request that:

(a) the hearing be recorded; and

(b) the person’s legal representative or another person be present at the hearing.

(6) If a hearing has been recorded, any person who has given evidence at a hearing may request a copy of the recording from the Land Ombudsman.



(7) A person commits an offence if the person who having been served with a notice under subsection (4) or having been requested by the Land Ombudsman under subsections (1) or (2) to give evidence or information for purposes of an investigation:

(a) fails or refuses to appear before the Land Ombudsman; or

(b) fails or refuses to provide any information or documents to the Land Ombudsman.”

D. Result

11. The functions and powers of the Land Ombudsman are restricted to investigating and obtaining relevant information, and to make recommendations to the National Coordinator and the Director of Lands with regards to the registration of a property.

12. The Land Ombudsman does not have the power the resolve land ownership disputes, and does not have the power to advise on the enforcement of final decisions made by tribunals and courts of competent jurisdictions.

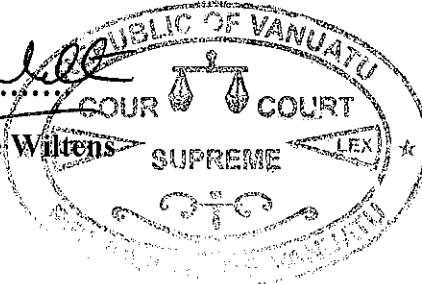
E. Costs

13. Each party is to pay their own costs.

DATED at Port Vila this 15th day of October, 2020

BY THE COURT

Janet Ull
Justice GA Andrée Wiltens

The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The words "PUBLIC OF VANUATU" are written along the top inner edge, and "SUPREME COURT" is written along the bottom inner edge. The word "LEX" is on the right side, and "COURT" is on the left side. A small star is on the far right. The word "SUPREME" is written in the center below the scale.