

BETWEEN: Mckoy Marango
Appellant

AND: Wilson Ben
Respondent

Date of Hearing: 2nd February 2022
Date of Oral Decision: 2nd February 2022
Date of Written Decision: 8th February 2022
Before: Justice Oliver.A.Saksak
Justice Harry Joshua- Assessor
Justice Kaserei Jonah- Assessor
In Attendance: Mr Bruce Kalotiti Kalotrip for Appellant
Mr Philip Fiuka for Respondent

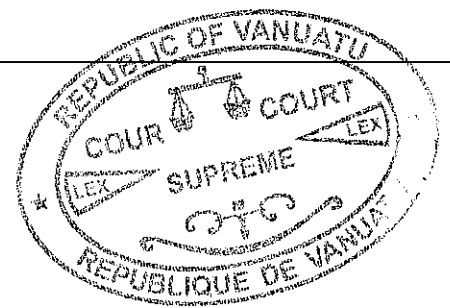
JUDGMENT

Introduction

1. This is an appeal against the decision of the Magistrates Court dated 19th May 2021 dismissing the appellant's appeal.
2. After hearing submissions from Counsel and after deliberations and discussions with the assessors, the Court allowed the appeal without costs.
3. We now provide the reasons for our oral decisions.

Background

4. This case originated from Civil Case 18/1958 filed by the appellant in the Tongoa/Shepherds Island Court in 2018 (the Island Court).
5. The dispute is over the ownership of a chiefly title of " MALESU- MATA."

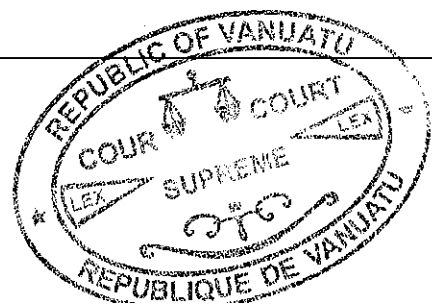


6. The Island Court heard the dispute on 20th November 2018 and decided in favour of the respondent in its judgment dated 20th March 2019.
7. The appellant appealed to the Magistrates Court.
8. The Magistrates Court heard the appeal and dismissed it on 19th May 2021.
9. The appellant appealed further to this Court. He advanced 5 grounds of appeal summarised as follows-
 - a) That he was not given enough time to prepare for trial hearing violation of Rules 2.3 and 2.4 of the Island Court Civil Procedure Rules No. 28 of 2005. (Ground 1).
 - b) That Magistrates Court had failed to consider the multiple errors of law and facts in the Island Court judgment (Grounds 2 and 3).
 - c) That his previous Counsel had misrepresented the appellant by preparing an appeal not in accordance with his instructions.
 - d) That leave be granted to adduce and present fresh evidence to show the Island Court and Magistrates Court had relied on untruthful evidence to find in favour of the respondent.

10. Relief Sought

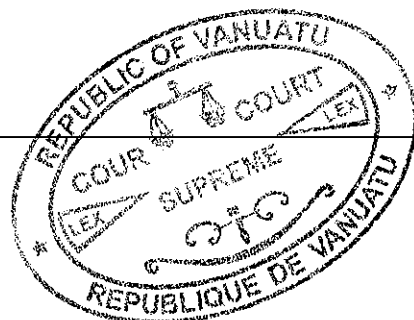
The appellant sought orders that-

- a. The appeal be allowed.
- b. The Judgments of both the Island Court and the Magistrates Court be overturned and the Court to substitute its judgment in favour of the appellant.
- c. The case be remitted to the Island Court to be differently constituted.
- d. Costs of the appeal.



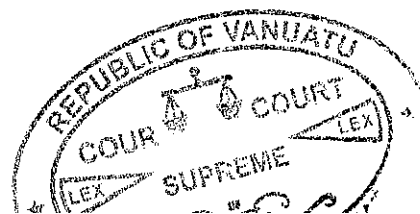
Discussion

11. The main complaints of the appellant were that-
 - a) The appellant was not given sufficient time to prepare for the trial hearing which was a violation of the rules.
 - b) His main witness who was his 85 years old mother was not afforded a translator or interpreter to translate her testimony and evidence from language to Bislama or English.
 - c) The Island Court Clerk being from another Island did not understand language but took or recorded the evidence in Bislama which could not be the exact meaning of the words given by the witness or witnesses.
 - d) Both Courts did not properly analyse the facts and evidence produced and therefore resulting in wrong results and conclusions reached.
12. Mr Kalotrip filed extensive written submissions to address those complaints and making references to relevant documents in the Appeal Book which greatly assisted the Court.
13. Mr Fiuka argued strenuously that the appeal was an abuse of process and should be dismissed with costs. Counsel too relied on written submissions filed including the supplementary submissions filed on 22nd January 2022.
14. We are grateful to both Counsel for those helpful submissions.



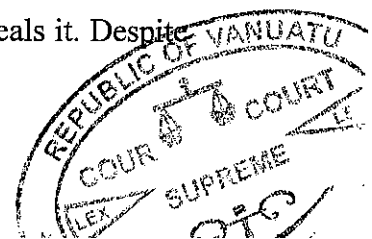
The Grounds

15. The appellant's complaints about the violation of rules and lack of interpreters/translators were complaints about process in the Island Court.
16. From paragraph 3 of the Magistrates Court judgment the appellant did not include these as grounds of appeal and therefore could not be grounds of appeal before this Court.
17. The strongest grounds of appeal were grounds 2 and 3 where the appellant complained the Magistrates Court had failed to consider multiple errors of fact and law made by the Island Court.
18. One of those errors is found in paragraph 8 which states:
" it transpired in the Family Tree of the Respondent which was presented before the Island Court that both parties are directly connected to the original title holder of Malesu."
19. In paragraph 9, the Magistrate said:
" However, the Respondent was given preference in custom to be bestowed the title of Malesu because his lineage is directly connected with Lokin who is the son of Chief Malesu with his first wife, Liesandea Sina while the Appellant is born out from Seule who is the son of Chief Malesu and his second wife Leipakoa."
20. In our view the Magistrate placed too much weight on the Family Tree of the respondent and ignored the family tree of the appellant.
21. The evidence before the Island Court as shown by the appellant's family tree was that Marango Manaroto whose first wife Leisandea Sina had only 2 daughters Leipakoa and Alice. Marango Manaroto had no son.
22. In the family tree of the respondent he presented Marango Malesu who is the same as Manaroto whose first wife was Liegandea Sina. From that family tree Marango Malesu or Manaroto had more than 2 children apart from Alice and Leipakoa, there



was also Letia Serah and Ruth. That family tree does not show Lokin to be the son of Marango Malesu or Manaroto, rather it shows he came in as the husband of Leipakoa. Therefore Lokin appears to be an outsider and not the son of Marango Malesu or Manaroto.

23. When therefore the respondent presented himself as Lokin Malesu, when he was not in fact and in law the son of Marango Malesu, he had misrepresented himself to the Court and deceived the Court.
24. It is apparent from the evidence that the respondent and his witnesses were well aware of this fact .
25. The Notes of the Court on page 3 in answer to Question 3 the appellant under cross examination said:
“ *Lokin emi talem se emi no pikinini blong Tia blong mi, emi wan honest man*”, meaning when Lokin said he is not the child of my grandfather, he is an honest man.
26. Latter in relation to Question 6 when he was asked whether Lokin had been telling everyone, the title was not his, his response was “Yes”.
27. It is apparent the Island Court and the Magistrates Court did not consider those evidence adequately or at all. The evidence of some of the witnesses for the appellant corroborated or confirmed what the appellant had said about the title being held only temporarily by the respondent to be returned.
28. And there was evidence the respondent had returned the title, however the Island Court did not adequately consider this evidence or at all.
29. The mere fact that the respondent is not named in this appeal proceeding by the title he claims or maintain he has is apparent. He is merely named as Wilson Ben whereas the appellant is called by name “Marango”.
30. It is little wonder therefore that when the appellant alleged that Lokin was an outsider there is merit in the allegation as the respondent’s own family tree reveals it. Despite



no evidence was presented before the Island Court as perhaps there was insufficient evidence, the evidence was available from the family trees that Lokin was not the son of Marango Manaroto or Malesu.

31. Whilst there are other errors, in our view this is enough to allow the appeal.

The Result

32. For those reasons, the appeal was allowed and the case is remitted to the Island Court to be differently constituted for a rehearing.

The Orders

The formal Orders are-

- a) The Judgment of the Island Court dated 20th March 2019 is hereby quashed.
- b) The Judgment of the Magistrates Court dated 19th May 2021 is hereby quashed.
- c) The matter is remitted to the Tongoa/Shepherds Island Court to be differently constituted.
- d) There is no order as to costs. Each party bears its own costs.

DATED at Port Vila this 8th day of February 2022

BY THE COURT


OLIVER.A.SAKSAK

Judge

