

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Appellate Jurisdiction)

Civil Appeal
Case No. 16/4037 SC/CIVA

BETWEEN: John Tawia Kaloran
Appellant

AND: Samuel Rolland
Respondent

Date of Judgment: 17 March 2022
Before: Justice D. Aru
Counsel: Mr D. Yahwa for the Appellant
Mrs C. T. Gesa for the Respondent

RESERVED JUDGMENT

Introduction

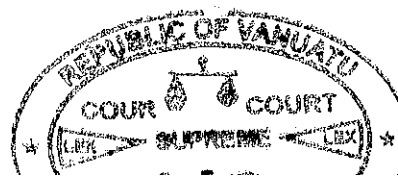
1. This is an appeal from a decision of the Magistrate Court concerning a chiefly title dispute within Utanlang village on the island of Nguna. The chiefly title in dispute is Mari Wota Matua Tapu.

Background

2. On 19 April 2013 the Efate Island Court declared the appellant John Taiwia Kaloran as chief Mari Wota Matua Tapu and declared Samuel Rolland as Holi Holi of the title (to be acting) whenever Mr Tawia is absent.
3. Following these declarations, each party was allowed 30 days to appeal if they disagree with the decision. Mr Rolland and a Kaltakae Kalpi appealed the decision to the Magistrate Court on 13 August 2013.
4. On 13 June 2016 the Magistrate Court allowed the appeal and ordered that :
 - a. The appeal is allowed;
 - b. The judgment of the Island Court dated 19 April 2013 be quashed;
 - c. The case be remitted to the Efate Island Court for rehearing by a differently constituted Court, taking into consideration questions raised;
 - d. Parties to meet their own cost.

Appeal grounds

5. John Taiwia Kaloran now appeals the decision of the Magistrate Court. The notice of appeal contains three grounds namely that the Magistrate erred in fact and in law:
 - a. in deciding that the Appellants' family tree was not clear and specific and has discrepancies that it ought to have the judgment set aside;



- b. to ponder on that issue which was not a matter of argument and consideration during hearing in the Court below; and
 - c. to adjudicate an issue not part of the argument or litigation in the appeal and for the Court to go into and decide without any pleading and opportunity on the appellant to rebut in response is unfair as it did not give adequate opportunity to the appellant to argue that point in the Court below.
6. In response, Samuel Rolland says that the appeal should be dismissed and the judgment of the Magistrate Court be upheld. He says that the chiefly title system of Utanlang is patrilineal. Second, the Court identified discrepancies in the appellant's family tree and thirdly, the Magistrate Court was correct in confirming that the Missionary cannot change the chiefly title ordination process in custom.

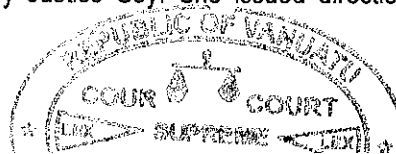
Discussion

7. Section 30 of the Judicial Services and Courts Act [CAP 270] provides for appeals from the magistrate Court to this Court and states:

"30. Appeals from Magistrates' Court

- (1) *Subject to the provisions of any other Act, the Supreme Court has jurisdiction to hear and determine appeals from judgements of the Magistrates' Court on all or any of the following:*
 - (a) *a question of law;*
 - (b) *a question of fact;*
 - (c) *a question of mixed law and fact.*
- (2) *The Supreme Court in hearing an appeal:*
 - (a) *is to proceed on the face of the record of the Magistrates' Court; and*
 - (b) *may exercise such powers as may be prescribed by or under this Act or any other law; and*
 - (c) *has the powers and jurisdiction of the Magistrates' Court; and*
 - (d) *may review the procedures and the findings (whether of fact or law) of the Magistrates' Court; and*
 - (e) *may substitute its own judgement for the judgement of the Magistrates' Court; and*
 - (f) *may receive evidence.*
- (3) *(Repealed)*
- (4) *The Supreme Court is the final court of appeal for the determination of questions of fact. However, an appeal lies to the Court of Appeal from the Supreme Court on a question of law if the Court of Appeal grants leave."*

8. Following the filing of the notice and grounds of appeal, the appellant failed to take steps to pursue the appeal. The matter was initially managed by Justice Sey. She issued directions for the



appellant to file the appeal book in April 2017. By July 2018 no appeal book was filed and Justice Felix again directed the appellant to file the appeal book. On 30 September 2018 the appeal book was filed and served and the respondent requested time to respond. On 15 June 2020 the appellant was directed to appear to inform the Court whether they intended to proceed with the appeal.

9. On 25 September 2020 the appellant was directed to file his written submissions. A pre-trial conference was also listed for the 19 October 2020. The submissions were not filed as directed and there was no appearance from the appellant. A further 7 days was allowed for the written submissions to be filed. Wasted costs were ordered against the appellant in the sum of VT25,000 inclusive of costs previously ordered to be paid within 7 days. Judgement was to be issued on the submissions filed. On 30 April 2021 the respondent informed the Court by memorandum that the appellant failed to pay the wasted costs ordered despite reminders to Mr Yahwa and no written submissions were filed by the appellant as directed. Counsel sought judgment to be entered against the appellant.
10. The appellant's main complaint is the Court below was wrong to find that the Appellants' family tree was not clear or specific or that it has discrepancies that that the Court ought to have the judgment set aside. The Court below noted that there were gaps in the respondent's family tree as it did not specifically outline how the title Mari Wota Matua Tapu was inherited through the matrilineal system. This was particularly in relation to Chief Manapanga. No evidence identified how he inherited the title.
11. The Court further noted that Chief Manapanga had a son by the name Mansavi. Mansavi was taken to the Missionary, Rev Peter Milne who then ordained him chief and bestowed on him the title Mari Wota Matua Tapu. Rev Peter Milne then changed the chiefly system from matrilineal to patrilineal system (father to son).
12. The question posed by the Court below is whether *"the missionary upon changing the entire system rightfully ordained someone from a generation down to be the chief or that a person from the original generation through patrilineal should be ordained chief Mari Wota Tapu, moreover whether the change made by the Missionary is accepted custom?"*.
13. In the absence of submissions to the contrary, these are matters which require determination by the Island Court.

Result

14. The appeal is allowed. The matter is returned to the Island Court for rehearing by a differently constituted Court as determined by the Magistrate Court.
15. The respondents are entitled to costs which are fixed at VT80,000 to be paid within 28 days.

DATED at Port Vila, this 17th day of March, 2022

BY THE COURT

D. ARU
Judge.

