

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

Civil Case No. 22/1449 SC/CIVL

BETWEEN: Sailas Mansumtete

Claimant

AND: Malekula Island Land Tribunal

Defendant

Date of HEARING : 25th August 2022
Date of Judgment: 22nd September 2022
Before: Justice Oliver A Saksak
In Attendance: Mr Roger Tevi for the Claimant
Attorney General for the Defendant

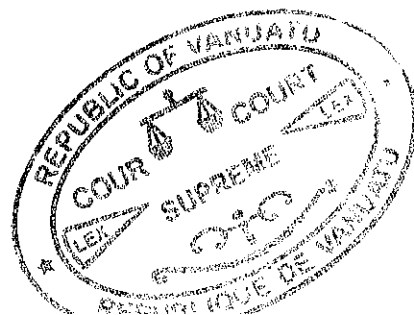
JUDGMENT

Introduction

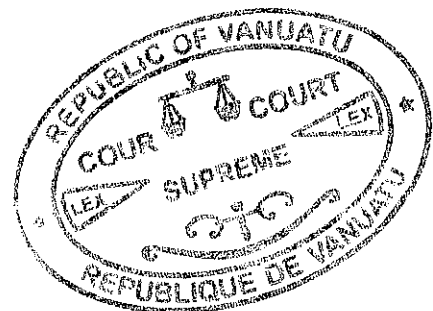
1. This is an application filed on 18th December 2006 by Edward Nalyal & Partners, pursuant to section 39 of the Customary Land Tribunal Act No.7 of 2001.
2. The claimant sought to challenge the decision of the Malekula Island Land Tribunal dated 14th June 2006 in Appeal Case No. 1 of 2006 and sought orders that-
 - a) The decision of 14th June 2006 be cancelled.
 - b) The dispute be reheard and determined by a differently constituted Malekula Island Land Tribunal.
 - c) Costs of the application.

Background

3. Land Appeal Case No. 1 of 2006 was heard and determined by the Malekula Island Land Tribunal and a formal decision was issued on 14th June 2006.

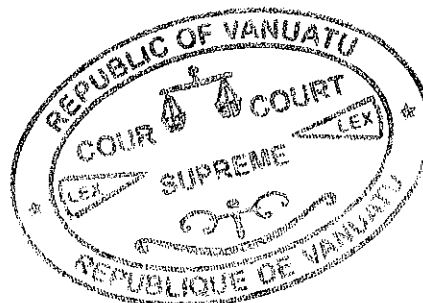


4. The Parties were Roy Ailap, Jerry Lovis and David Lovis as appellants and Sailas Mansumtete, Andrew Ambong Sandy and Isaac Massing Seriao as respondents.
5. The Island Land Tribunal decided on the evidence before the Court that Roy Ailap, David Lovis and Jerry Lovis are the landowners of Saltamas Land.
6. Sailas Mansumtete was not happy with the decision and filed an application pursuant to section 39 of the Customary Land Tribunal Act asking the Supreme Court to use its supervisory power to cancel that decision and to remit the dispute back for a rehearing before a differently constituted land tribunal.
7. Mr Nalyal who filed the application in December 2006 has ceased to act for the claimant. The claim was filed some 7 months after the decision was issued on 14th June 2006.
8. Mr Brian Livo of the Public Solicitor's Office took over the case but filed a notice of ceasing to act also on 14th May 2020.
9. Mr Tevi then took over and filed a notice off beginning to act on 28th June 2022. He filed a statement of urgency on 12th July 2022.
10. Mr Tevi filed a sworn statement in support of the application by Luan Batick on 7th July 2022.
11. On 15th July 2022 the Court listed the matter for the first time and directed that the claimant serves his documents on the Attorney General and made the matter returnable on 25th August 2022.
12. On 25th August 2022 Mr Tevi clarified further that this was not an appeal but an ordinary claim. Counsel sought leave to file written submissions within 7 days and for responding submissions within another 7 days by the Attorney General to assist the Court formulate its decision on the papers.
13. Mr Tevi filed written submissions on 2nd September and the Solicitor General filed written submissions in response on 13th September 2022.



Discussion

14. The claim was filed as an application in December 2006 some 16 years ago. And it is unfortunate and regrettable that it could not have been heard anytime sooner than in 2022.
15. Mr Tevi in his submissions appears to be blaming the Court for the lengthy delay but there is no evidence in support of that assertion.
16. What appears clear from the papers is that the claimant filed his application in December 2006 some 6 months later after the Island Court decision in June 2006.
17. Then the original lawyer Mr Nalyal ceased acting followed by Mr Livo of the Public Solicitor's Office. The question remains why did these lawyers cease to act?
18. There is then the problem of service of the original application filed in December 2006 whether it was served on the Attorney General and the other parties to the case? There is simply no evidence showing proof of service. A claim that is not served within 3 months is no longer of any effect. See Rule 5.3 of the Civil Procedure Rules (the Rules).
19. Further there is the problem of non-renewal of claim. Rule 4.15 of the Rules provides that if a claim is not served within 3 months period required by Rule 5.3, the claimant may apply to have the claim renewed and if he does not do so, the claim ceases to have any effect.
20. Mr Tevi has no evidence showing the claimant made any application for a renewal of his claim and therefore this claim is of no effect.
21. Further, there is the problem of the repeal of the Custom Land Tribunal Act No.7 of 2001 by the Custom Land Management Act No.33 of 2013 which came in to effect in 2014.
22. Under the Custom Land Management Act the supervisory power of the Supreme Court in section 39 of the repealed Act is maintained on limited, grounds in section 47 of the new Act. Mr Tevi has not addressed that aspect in his submissions.



23. Section 58 of the new Act provides for existing decisions of customary land tribunals. Again it appears Mr Tevi or any of the previous lawyers had not turned their minds to that provision to assist their client in any meaningful way.

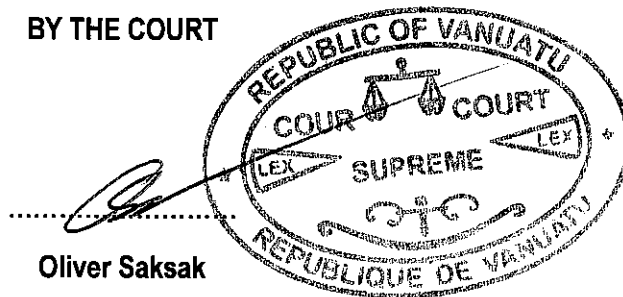
24. I therefore have been persuaded to accept the submissions by the Solicitor General that the application by the claimant filed in December 2006 was misconceived and is an abuse of process. It is ineffectual due to lack of service.

Result

25. Accordingly the application is dismissed with costs awarded to the defendant fixed at VT 30,000. The claimant must pay this cost within 28 days from the date of this judgment.

DATED at Port Vila this 22nd day of September, 2022

BY THE COURT



Oliver Saksak

Judge

