

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

**Constitutional**  
**Case No. 21/1221 SC/CNST**

**BETWEEN: Chief Mariak Christopher Buletakak  
represented by Nancy Mabon**

Applicant

**AND: Republic of Vanuatu**

Respondent

**AND: Family Buletar Virado**

Interested Party

*Date of Hearing:* 27 April 2023  
*Before:* Justice V.M. Trief  
*In Attendance:* Applicant – Mr S. Kalsakau  
Respondent – Mrs F.W. Samuel  
Interested Party – Mr E. Molbaleh  
*Date of Decision:* 19 June 2023

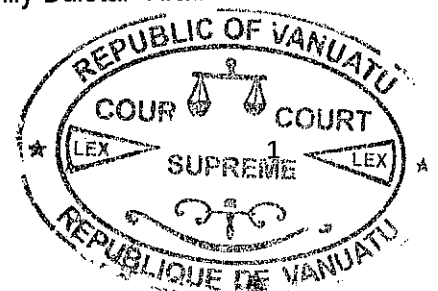
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**DECISION AS TO COSTS**

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A. Introduction

1. The Applicant Chief Mariak Christopher Buletakak represented by Nancy Mabon ('Buletakak') filed an Urgent Constitutional Application against the Respondent, the State. He alleged that his Constitutional rights were breached by the decision of the Surukavian Joint Nakamal and the decision of the National Coordinator of the Custom Land Management Office refusing to cancel a Certificate of Recorded Interest in Land relating to Lerip land within Namaram on North Pentecost. Family Buletar Virado was joined as Interested Party ('Virado').



2. By Consent Orders dated 27 April 2023, the parties agreed that the Constitutional Application was discontinued and that the parties would make submissions as to costs. The Consent Orders included the following recitals:

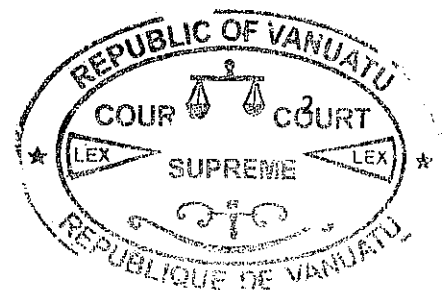
***WHEREAS** on a without admission of liability basis, the Respondent through the Custom Land Management Office, has acknowledged that the land dispute determination did not have a specific sketch map for the said land contrary to section 26(1)(a) of the Custom Land Management Act No. 33 of 2013 and on that basis has proposed to cancel the certificate of registered interest in land and have the matter remitted for rehearing;*

***WHEREAS** the Applicant and the Interested Party have both agreed and accepted the proposal put forward by the Applicant;*

3. I heard counsel as to costs and then gave the opportunity to the State to file submissions in response to Virado's application for costs. This is the decision as to costs.

B. The Applications for Costs

4. All three parties applied for costs.
5. Buletakak applied for the costs of the proceeding against the State in the sum of VT500,000. Mr Kalsakau submitted that this would not cover 100% of the Applicant's costs but would cover the costs of bringing the proceedings and 2 days' preparation for trial which would have proceeded but for the Consent Orders resolving the matter. He acknowledged that the State had not conceded any breaches of the Constitution however Buletatak had achieved some success therefore in accordance with the usual rule that costs follow the event, Buletakak is entitled to costs. Alternatively, costs to be taxed on the standard basis.
6. In opposition, Mrs Samuel submitted that this was a Constitutional Application and the Court had not made any findings. She submitted that therefore costs should lie where they fall or Buletakak should pay the other parties' costs.
7. As to application by the State for costs, Mrs Samuel submitted that costs should lie where they fall. Alternatively, Buletakak should pay the State's costs fixed at VT100,000 or as agreed or taxed as the proceeding (which had put the parties to costs) had been discontinued. The Court had not made any findings as to the matters raised in the Constitutional Application, the State had not admitted any breaches of the Constitution, the parties had agreed on a way to resolve the matter and Buletatak agreed to and had discontinued his Constitutional Application therefore Buletatak should pay the parties' costs.
8. In reply and opposition, Mr Kalsakau submitted that the Constitutional Application was brought following an administrative error that has now been conceded by the State. Buletakak has achieved success in terms of one of the items of relief sought in the Constitutional Application therefore costs should go to Buletakak as the successful party. He submitted that the quantum that the State is entitled to is VT10.



9. Virado appears to be the standard for the State's place of residence in this matter, it has conceded to be remitted to the 'Act'.

10. Alternatively, for the State

11. In opposition to the Chairman of the defended the was no sketch Virado should

12. In opposition to these proceedings breach of his declared customs the Court had conceded any addition, the party therefore Buletakak been sought by that the State proceeding even Application. Acc the day before t Buletakak (i.e. t therefore there

C. Discussion

13. This proceeding

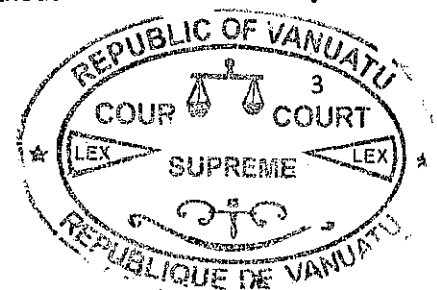
14. After a number of Constitutional Appellate Orders.

15. The Consent Order attached to the para. 26(1)(a) of the record that the State basis.'

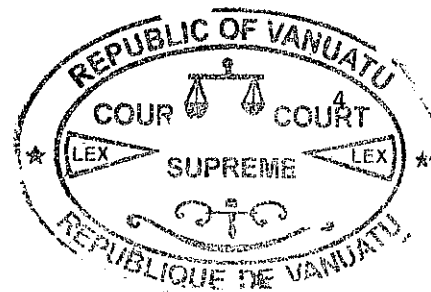
9. Virado applied for the costs of the proceeding on an indemnity basis, or alternatively on the standard basis, against the State in the sum of VT817,830. Its grounds included that the State had deliberately or without good cause prolonged the proceeding, its usual place of residence is Naparam, North Pentecost, it had retained counsel, it had filed responses and sworn statements, it had attended every conference and hearing in this matter, it had paid trial fees and had prepared and was ready for trial when the State conceded that there was no proper sketch map for Lerip land therefore the matter be remitted to the appropriate institution under the *Custom Land Management Act* (the 'Act').
10. Alternatively, Virado applied for Buletakak to pay 50% of its costs of the proceeding and for the State to pay the other 50%.
11. In opposition, Mr Kalsakau submitted that Virado filed sworn statements from the Chairman of the Joint Nakamal who made the decision in respect of Lerip land. He defended the proceeding when he should have known, and probably knew, that there was no sketch map for Lerip land as required by the Act. He submitted that therefore Virado should bear its own costs or the State pay Virado's costs.
12. In opposition to Virado's application, Mrs Samuel submitted that the starting point is that these proceedings involved a Constitutional Application which Buletakak filed (alleging breach of his fundamental rights in relation to custom land) even though it was not a declared custom owner of Lerip land (hence has no rights to the custom land). Further, the Court had not made any finding of breach of fundamental rights nor had the State conceded any breaches therefore the State should not bear the parties' costs. In addition, the parties agreed the Consent Orders on the basis of an administrative error therefore Buletakak used a Constitutional Application to get orders which should have been sought by an administrative process which is an abuse of process. She submitted that the State correcting its administrative error did not resolve the Constitutional proceeding even if what it did was what Buletakak sought in the Constitutional Application. Accordingly, to view the State's acknowledgement of its administrative error the day before trial as ending the Constitutional case and providing the relief sought by Buletakak (i.e. that it succeeded) in the Constitution Application would be erroneous therefore there should not be any costs order against the State.

C. Discussion

13. This proceeding involved a Constitutional Application.
14. After a number of adjournments, on the first day of a 2-day listing for the hearing of the Constitutional Application, the parties resolved the proceeding by way of Consent Orders.
15. The Consent Orders record the State's acknowledgment that there was no sketch map attached to the Joint Nakamal determination of Lerip custom land, contrary to para. 26(1)(a) of the Act, therefore the matter be remitted for rehearing. The Orders also record that the State's acknowledgment is made on 'a without admission of liability basis.'



16. The Constitutional Application has not been heard. The Court has not made any findings as to the matters raised in the Constitutional Application. The State has not admitted any breaches of the Constitution.
17. The State has admitted that there was an administrative error requiring that the matter be remitted to the appropriate institution under the Act for rehearing. This outcome is one of the items of relief sought in the Constitutional Application however that Application remains unheard and no findings have been made in relation to it. Instead, the parties agreed with the course proposed by the State and Buletakak discontinued the Claim.
18. I agree with Mrs Samuel that in the circumstances, therefore, there should not be a costs order against the State.
19. An observation about Virado's application for indemnity costs. On the day before trial, the State filed the Sworn statement of Linda Mala Olul setting out that a sketch map showing the boundaries of the land was not included with the nakamal decision (contrary to para. 26(1)(a) of the Act). However, that nakamal decision and the attached had been in evidence since the State filed the Sworn statement of Malcolm Sarial on 23 July 2021 [attachments "MS2" and "MS3"].
20. On any view of the map that was attached to the nakamal decision, it was not a sketch map showing the boundaries of Lerip land. Accordingly, it was open to either of the other two parties to have raised since that time that a proper sketch map was not included. However, neither party did so. It is regrettable that the State itself did not realise the error until the day before trial but on the other hand, the State is to be commended for bringing this to the attention of the parties as soon as that was realized and for setting in motion a process to correct that error.
21. For the reasons given:
  - a. I do not agree that the State deliberately or without good cause prolonged the proceeding such that indemnity costs apply; and
  - b. Buletakak and Virado's applications for costs against the State will be declined and dismissed.
22. Turning to Virado's application for costs against Buletakak, Virado as the successful party at the nakamal level could have abided the order of the Court. Instead, it defended the Constitutional Application and filed a sworn statement from the Chairman of the Joint Nakamal who should have known that there was no sketch map for Lerip land as required by the Act. I agree with Mr Kalsakau therefore that Virado should bear its own costs.
23. For the reasons given, Virado's application for costs against Buletakak will be declined and dismissed and it is to bear its own costs.



24. As for the State's application for costs, I consider that it should bear its own costs from 23 July 2021 as on its own evidence filed on that date, it should have been evident that a sketch map as required by the Act had not been included with the subject nakamal decision. However, given the discontinuance of the Constitutional Application, I consider that it is entitled to its costs for the period prior to 23 July 2021 and will so order against Buletatak fixed at VT50,000.

D. Result and Decision

25. The Applicant and the Interested Party's applications for costs against the Respondent are **declined and dismissed**.

26. The Interested Party's application for costs against the Applicant is **declined and dismissed**.

27. The Applicant and the Interested Party are to bear their own costs.

28. The Respondent is to bear its own costs for the period commencing from 23 July 2021. However, it is entitled to its costs for the period prior to 23 July 2021. Accordingly, the Applicant is to pay the Respondent's costs for the period prior to 23 July 2021 fixed at VT50,000 by 4pm on 19 July 2023.

DATED at Port Vila this 19<sup>th</sup> day of June 2023

BY THE COURT

  
Justice Viran Molisa Trief

