

**IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU**
(Civil Appeal Jurisdiction)

Civil Appeal Case No. 39 of 2012

BETWEEN: JOE ANTAS

Appellant

AND JANET BOEDOVO

First Respondent

AND: DIRECTOR OF LANDS

Second Respondent

Coram: *Hon. Chief Justice Vincent Lunabek
Hon. Justice Bruce Robertson
Hon. Justice John Mansfield
Hon. Justice Oliver A. Saksak
Hon. Justice Daniel Fatiaki
Hon. Justice Dudley Aru*

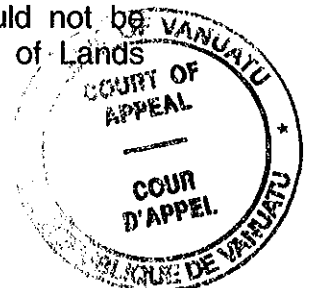
Counsel: *Mr. Saling Stephens for the Appellant
Mr. Britten Yosef for the First Respondent
Mr. F. Gilu for the Second Respondent*

Date of Hearing: 23 October 2012

Date of Decision: 25 October 2012

JUDGMENT

1. This was a case of competing applications for the registration of a lease over the same piece of land and which was refused by the Director of Lands. In form, the claim by the first respondent in the Supreme Court was an application to judicially review the Director's refusal to register the first respondent's lease on the basis that the first respondent had a better claim for registration than the appellant. There was no dispute that the Antas family were the custom owners of the Jingonaru land, on the mainland, and that the Boedovo family were the custom owners of the Venui land on the mainland. The two areas were next to each other.
2. The competing leases were over Venui island, just off the main land.
3. The appellant's lease was based on a Negotiator Certificate dated 18 May 2010 that named the "family Antas" as the custom owner of Venui Island. The first respondent's lease is based on much earlier Negotiator Certificate dated 8 August 2008 that named her father, "Moli Boedovo", as the custom owner of Venui Island. Both custom owners could not be correct and it was perhaps understandable that the Director of Lands

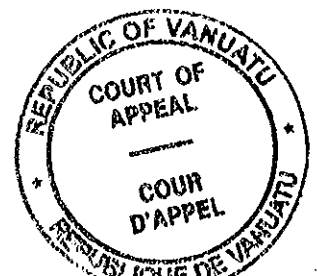


refused to register either lease preferring instead, to await the outcome of Court proceeding between the competing claimants.

4. The primary judge after considering the evidence adduced by the parties in support of their respective claims, concluded that:-

"the evidence clearly establishes that the question of custom ownership of Venui Land was lawfully determined back on 18 February 1983 by the declaration of the Minister of Lands that Molivatilu Boedovo was the custom owner ... (and subsequently) ... by the certificated of registered negotiator issued to Peter Morris in 1988 and reconfirmed by the certificated of registered negotiator to Janet Boedovo twenty years later in 2008".

5. This appeal is against a judgment of the primary judge directing the Director of Lands to accept and register the first respondent's lease over Venui Island off the coast of South Santo in preference to the appellant's lease over the same island which was lodged earlier in time.
6. The grounds of appeal although numerous may be summarized as a complaint against the primary judge's finding that the first respondent had demonstrated on the evidence produced and accepted, that she had a better claim for registration of her lease.
7. In light of the specific grounds of appeal it is necessary that we identify the nature and limits of the judgment appealed against. It was a judgment between competing claimants for registration of a lease. It was **not** a judgment in rem and does not and cannot bind any tribunal that may be appointed under the Customary Lands Tribunal Act to determine customary ownership of Venui Island.
8. Recognizing the limitations of his jurisdiction, the primary judge at the commencement of the hearing broached with counsel the possibility of a reference of the matter to a customary land tribunal for clarification and determination. Unfortunately, the appellant did not agree with the proposed referral and the primary judge was constrained to find that the appellant's evidence *"does not assist with a resolution of the issue as to whether Jingonaru land does or does not include Venui Island"*.
9. This latter finding was the subject of the grounds of appeal. When asked what was the best evidence the appellant had in support of his claim, counsel referred to the sworn statement of the Acting Director of Lands to the effect that the appellant's lease was lodged with the Department first in time. Counsel also drew attention to the hand-drawn sketch map which accompanied the declaration of the Joint Village Land Tribunal of South Santo, Fanafo, Canal and Malo Land Tribunal which declared the



appellant's family custom owners of Jingonaru land and which showed Venui island off the coast from Jingonaru land.

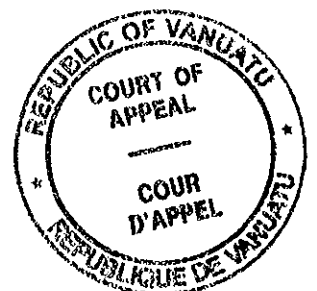
10. Nowhere in the declaration however is there any mention of Venui island either as a separate piece of land dealt with by the declaration or included within the declared boundaries of Jingonaru land. This lacuna or omission, perhaps a deliberate omission, in the declaration relied upon by the appellant contrasts starkly with the evidence adduced by the first respondent which consistently mentions and links Venui island with the Venui mainland of which the undisputed custom owner is Moli Boedovo.
11. Having considered the submissions of appellant's counsel and the particular declaration relied upon which included the hand-drawn map that showed Venui island, we find no error in the primary judge's finding. The indisputable fact remains that the declaration relied upon by the appellant's over **Jingonaru land** does not state that it includes Venui Island within the declared boundaries of Jingonaru land which appears to be confined to the mainland. The mere existence of Venui island on a map of the area around and including Jingonaru land is not persuasive.
12. Much was also made in counsel's submissions about the primary judge's treatment of the decision in **Valele Family v. Touru** [2002] VUCA 3. We see no merit in this complaint and would merely point out the following passages in the judgment which places the isolated passages relied upon by appellant's counsel, within their proper context. In particular where the Court of Appeal said:

"In summary, we consider that none of the matters relied on by Mr. Touru establish that the custom ownership claims of Mr. Valele and his family have been finally determined against them. Those claims fall within the jurisdiction of the relevant Island Court wherein Mr Valele has commenced proceedings. Until that claim is determined according to law the custom ownership dispute continues.

However, it does not follow from this conclusion that all the evidence put forward by Mr. Touru is totally irrelevant in determining who are the true custom owners of the Natinæ land. Our decision only establishes that the processes and decisions which have occurred in the past have not finally determined who are the custom owners. Much of the evidence adduced by Mr. Touru would be admissible in the Island.

It would be for the Island Court to decide whether in the circumstances of the case the alleged inactivity of Chief Titus Valele and other members of his family during the processes which occurred in the 1980's indicates that he and his family do not truly have interests as custom owners, or whether there is some other explanation for their inactivity."

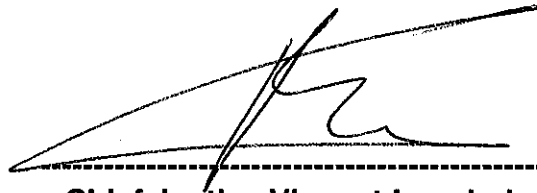
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13. In light of the foregoing whilst we accept that the several determinations and declarations of custom ownership in the first respondent's favour do not have the same conclusive or binding effect of a declaration of a land tribunal constituted under the Customary Land Tribunals Act, they were legitimate items of evidence upon which the primary judge was entitled to rely in determining which of the two competing leases should be registered by the Director of Lands.
14. The appeal is accordingly dismissed and the first and second respondents are awarded costs to be taxed if not agreed.
15. This conclusion does not conclusively determine the custom ownership of Venui island which is a determination that only a properly constituted land tribunal may find and which the appellant is free to pursue as he sees fit.

DATED at Port Vila, this 25th day of October, 2012.

ON BEHALF OF THE COURT



Chief Justice Vincent Lunabek

