

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

Civil Appeal
Case No. 18/2028 CoA/CIVA

BETWEEN: PETER MOWA PARALIYU
First Appellant

AND: WILLIE MOWA PARALIYU, WILLIE
PARALIYU, TASSO PULPE PARALIYU and
MOWA PARALIYU
Second Appellants

AND: PETER PARKULWO
First Respondent

AND: THE REPUBLIC OF VANUATU
Second Respondent

Coram: Hon. Chief Justice Vincent Lunabek
Hon. Justice John von Doussa
Hon. Justice Ronald Young
Hon. Justice Oliver A. Saksak
Hon. Justice Daniel V. Fatiaki
Hon. Justice Dudley Aru

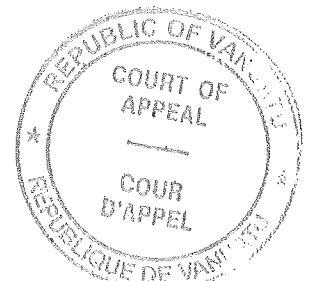
Counsel: S. Stephens for the Appellants
J. Tari for the First Respondent
S. Kalsakau for the Second Respondent

Date of Hearing: 3rd May 2019

Date of Judgment: 10th May 2019

JUDGMENT

1. In 2010 the First Respondent brought proceedings in the Supreme Court seeking to have Land Lease Title 10/1114/001 cancelled based on fraud or mistake. The Second Appellants were the lessors of the lease, the First Appellant the lessee. The Supreme Court stayed this action on the basis there was a dispute about the customary ownership of the land. It said this dispute first needed to be resolved before an appropriate land tribunal. The stay was appealed to this Court and heard in 2012.



2. This Court allowed the appeal and lifted the stay. It concluded there had been a decision of the Marakep Area Land Tribunal in 2007 regarding the customary ownership of the land.

3. This Court said:

"17. The Supreme Court proceedings therefore raise three issues going to the validity of the lease and in turn to its registration, namely:

- (a) Does the decision of the Area Land Court give the lessors rights entitling them to be the lessors of the leased land?*
- (b) Were the lessors entitled to grant a lease extending over the whole of the surveyed boundaries of the lease? And*
- (c) Were procedural requirements leading up to the execution of the lease and its registration in accordance with law?*

The Supreme Court has jurisdiction to decide each of these issues, and the outcome of the Supreme Court proceedings is not dependent on a prior determination of a land tribunal as to the custom ownership of Chief Parakulwo.

18. The entitlement of the lessors to grant the lease will depend upon them establishing a lawful determination of their custom ownership of the land the subject of the lease. In the proceedings before the Supreme Court the lessors will be required to identify such a decision as part of their proof of title. If they cannot do so, they will fail to establish their right to be lessors.

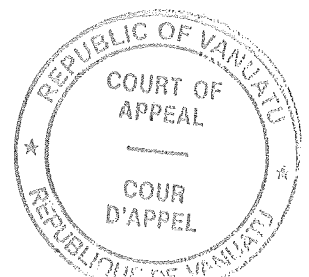
19. At the conclusion of discussion between counsel and this Court, counsel agreed that the stay should be lifted to enable the trial of the Supreme Court proceedings to take place. In the meantime, the lessors and lessee will continue to be restrained from dealing with the leased land as there is a caution registered over the title."

4. This Court said that the Supreme Court should hear the case as soon as practical.

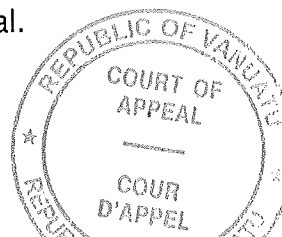
5. In June 2018 the Supreme Court cancelled the lease. In doing so it said:

"2. There is still no concrete and acceptable evidence before the Court that there is a valid appeal on foot involving the Second and Third Defendants – all the Court has is their averments that they have appealed and served the necessary papers on the Claimant. The Court has attempted again and again to have some evidence presented so that the averments can be confirmed and the appeal be progressed. All attempts have been thwarted by inaction - absolutely nothing has been done to give the Court the information/material sought for far too long."

6. And made the following orders:



- “5. Accordingly, I direct the Director of Lands to forthwith cancel Lease 10/1114/001 thereby rectifying the Register, under section 10 of the Land Leases Act [Cap 163] and restoring the Claimant onto the title.
6. The Second and Third Defendants are to pay costs to the Claimant. That can either be on an agreed or taxed.”
7. Counsel for Mr Paraliyu filed ten grounds of appeal plus a catch-all ground of any further grounds advanced by counsel.
8. After discussion between the Court and counsel for Mr Paraliyu it became apparent that the real concern of the appellant was the second part of the Supreme Court order in paragraph 5 (see at 6). The Court made an order after cancelling Lease 10/1114/001, “*restoring the claimant (Mr Parkulwo) onto the title*”.
9. Mr Stephens submitted Mr Parkulwo was not entitled to be restored “*onto the title*”. We agree, as did counsel for the respondents.
10. In our decision of 2012 we made it clear Mr Parkulwo’s entitlement to challenge the lease was based on his rights as an occupier of the leased land, not on any declared customary ownership.
11. We said:
- “Chief Peter Norman Parakulwo is a paramount chief of the Wenia area and settlement. As the lease covers the settlement, and the lessee, relying on the lease, is threatening to evict people from the settlement, Chief Peter Norman Parakulwo plainly has standing, as an interested party, to bring the proceedings regardless of his custom ownership of all or part of the land. Other Wenia residents concerned with threats of eviction would also have standing to bring the proceedings. A determination by a land tribunal of custom ownership is not therefore a pre-requisite to the claimant’s standing to bring the proceedings in the Supreme Court.”*
12. In these proceedings in the Supreme Court Mr. Parkulwo did not ask the Court to declare him to be the owner of the leased land. The proceedings asked the Court to declare the lease between the appellants as invalid for fraud or mistake. Beyond that issue Mr Stephens did not press the other grounds of appeal.



13. We therefore allow the appeal in part. The order of the judge “*restoring the Claimant onto the title*” is set aside.
14. Otherwise the orders of the Supreme Court are confirmed. The Lease Title No. 10/1114/001 is cancelled.

Costs

15. We see no reason to disturb the order for costs in the Supreme Court.
16. In this Court given the result we consider there should be no orders as to costs.

DATED at Port Vila, this 10th day of May, 2019.

BY THE COURT



Hon. Vincent Lunabek
Chief Justice.

