

**BETWEEN:** **Romain Sovrinmal**  
Appellant

**AND:** **Enson Nalekon**  
First Respondent

**AND:** **Alexi Naror**  
Second Respondent

**AND:** **Daniel Tamat**  
Third Respondent

**Coram:** *Hon. Chief Justice V. Lunabek*  
*Hon. Justice J. Mansfield*  
*Hon. Justice M. O'Regan*  
*Hon. Justice O. Saksak*  
*Hon. Justice V.M. Trief*  
*Hon. Justice E. Goldsbrough*

**Counsel:** *Mr E. Molbaleh for the Appellant*  
*Mr D. Yawha for the First Respondent*  
*Mr R. Tevi for the Second Respondent*  
*No appearance for the Third Respondent*

**Date of Hearing:** 11 August 2022

**Date of Judgment:** 19 August 2022

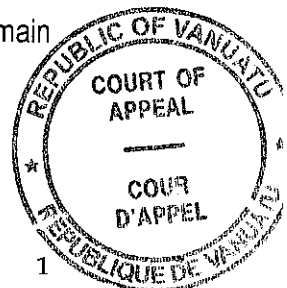
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## JUDGMENT

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### A. Introduction

1. This is an appeal of the Supreme Court judgment dated 16 February 2022 in Land Appeal Case No. 375 of 2017. The appeal in the Supreme Court was against the Malekula Island Court's judgment dated 10 August 2006 in Land Case No. 4 of 1984.
2. The sole ground of appeal is that the learned Judge erred in not accepting that the Malekula Island Court was wrong when it disqualified the Appellant Romain Sovrinmal's three witnesses from giving evidence.



3. This Court treated the notice of appeal as an application for leave to set aside the Supreme Court decision for jurisdictional error. For the reasons given, leave is refused.

## **B. Background**

4. By judgment dated 10 August 2006, the Malekula Island Court determined the custom ownership of Botvalim custom land situated at the north eastern part of Malekula island. The Island Court declared that Enson Nalekon (the original Claimant) was the custom owner of Botvalim with another party declared as owner of specified land within Botvalim land and another party as having rights of use of the land.
5. The Malekula Island Court stated as follows at paragraph 3 on page 10 of its judgment in relation to Mr Sovrinmal's (Counter Claimant 5) evidence:

*"Three of his witnesses were disqualified for using written statements made by some other families. To give him a fair chance the court had asked him to call witness, Jean Paul who only gave a confirmation statement of the claim."*

6. Mr Sovrinmal appealed to the Supreme Court. The Supreme Court stated as follows at paragraphs 17 and 18 of its judgment:

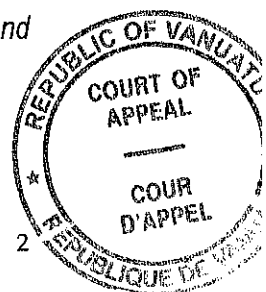
*"17. It was further contended by Romain Sovrinmal that he did not have a fair hearing as three of his witnesses were disqualified by the Court. What the Court said was:*

*"Three of his witnesses were disqualified for using written statements made by some other families. To give him a fair chance the Court had asked him to call witness, Jean Paul who only gave a confirmation statement of the claim."*

*18. The Court gave reasons for the disqualification of the three witnesses then gave Romain Sovrinmal the opportunity to call another witness and he called Jean Paul. Therefore there is no basis for Sovrinmal's assertions that his rights to a fair hearing were denied."*

## **C. Submissions**

7. Mr Molbaleh submitted that the learned Judge erred in not holding that the Island Court in disqualifying Mr Sovrinmal's three witnesses breached s. 25 of the *Island Courts Act* [CAP. 167] (the 'Act') which provides as follows:



25. *In any proceedings before it, an island court shall not apply technical rules of evidence but shall admit and consider such information as is available.*

8. Mr Molbaleh submitted that the Island Court's disqualification of Mr Sovrinmal's three witnesses was procedurally unfair. Further, that the Island Court had no power or discretion to disqualify the witnesses.
9. Mr Yawha submitted that an appeal to the Court of Appeal was prohibited by subs. 22(4) of the Act which provides as follows:

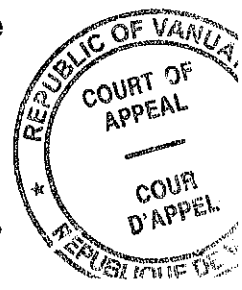
"22. ....

*(4) An appeal made to the Supreme Court under subsection (1)(a) shall be final and no appeal shall lie therefrom to the Court of Appeal;"*

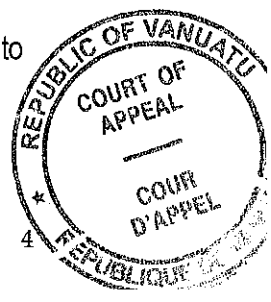
10. Mr Yawha submitted that Mr Sovrinmal had not filed any application for leave to appeal. However, even if he had, the sole ground of appeal did not fall within the circumstances identified in *Matarave v Talivo* [2010] VUCA 3 for an appeal to be made to this Court.
11. Finally, Mr Yawha submitted that it was procedurally unfair for Mr Sovrinmal to exclude six parties from the Supreme Court proceedings from the present proceedings. He submitted that it was hypocritical to do so and then appeal on the ground of procedural unfairness to overturn a valid declaration. Accordingly, leave to appeal should be refused with VT80,000 costs to Mr Yawha's client.
12. Mr Tevi submitted that there was no procedural unfairness as the Supreme Court set out that the Malekula Island Court had given reasons for why it disqualified Mr Sovrinmal's three witnesses. Further, the Island Court allowed Mr Sovrinmal to call another witness. Accordingly, the appeal should be dismissed with costs.

#### **D. Discussion**

13. It is well settled that there is no right of appeal to the Court of Appeal from the Supreme Court's decision in a land appeal case: subs. 22(4) of the Act.
14. Accordingly, an appellant wishing to appeal against a Supreme Court judgment as to custom ownership of land must file an application for leave to appeal to this Court. In the absence of such application by Mr Sovrinmal, we treated the notice of appeal as an application for leave to set aside the Supreme Court decision.



15. In *Matarave v Talivo*, this Court held that the Supreme Court would not be validly exercising its statutory function (to hear an appeal as to ownership of land) if the court was not validly constituted or if the court properly constituted purported to decide custom ownership of land which was not subject to the dispute submitted to the Island Court. We would add that this Court may also interfere with a Supreme Court decision as to ownership of land in other instances of jurisdictional error including where there was such a complete lack of procedural fairness shown in the circumstances of the case that it cannot be said there has been a valid hearing of the appeal by the Supreme Court. This must be assessed on a case-by-case basis, but it can be expected that such cases will be rare.
16. It was submitted for Mr Sovrinmal that the Island Court's disqualification of his three witnesses constituted procedural unfairness which the Supreme Court did not take into account. However, this submission flies in the face of paragraphs 17 and 18 of the Supreme Court judgment where the learned Judge explicitly dealt with Mr Sovrinmal's ground of appeal as to the disqualification of his three witnesses. Accordingly, no jurisdictional error by the Supreme Court has been demonstrated.
17. Even if the Supreme Court was wrong (which it was not), that would be an error of law but not a jurisdictional error by the court.
18. Mr Molbaleh submitted that the Malekula Island Court's disqualification of Mr Sovrinmal's three witnesses constituted a breach of s. 25 of the Act. With respect, we cannot agree. The Island Court did not apply any technical rules of evidence in disqualifying the three witnesses. Its stated reason for disqualifying the three witnesses was that they were using written statements made by some other families. The Island Court had the power to do so. It was entitled to require the witnesses to use their own statements, not statements from other persons.
19. In addition, none of the written statements that the three witnesses used were in the material filed in this Court. Mr Sovrinmal therefore could not show that any relevant evidence was excluded or that the Island Court erred in disqualifying the three witnesses for using other persons' written statements.
20. A party in Island Court proceedings is allowed to call five witnesses. Having excluded Mr Sovrinmal's three witnesses, the Malekula Island Court went on to give him the opportunity to call another witness. Mr Sovrinmal did so, calling the witness Jean Paul who gave evidence. In the circumstances, no procedural unfairness and no error by the Malekula Island Court has been demonstrated.
21. For the reasons given, the ground of appeal fails and the application for leave to set aside the Supreme Court decision must be declined and dismissed.



**E. Result**

22. This Court treated the notice of appeal as an application for leave to set aside the Supreme Court judgment dated 16 February 2022 in Land Appeal Case No. 375 of 2017. That application is declined and dismissed.
23. The Appellant is to pay the First and Second Respondents' costs of the appeal of VT30,000 each.

**DATED at Port Vila, this 19<sup>th</sup> day of August 2022**

**BY THE COURT**



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**Hon. Chief Justice Vincent Lunabek**

