

IN THE EFATE ISLAND COURT
OF THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil. Case No. 01 of 2011

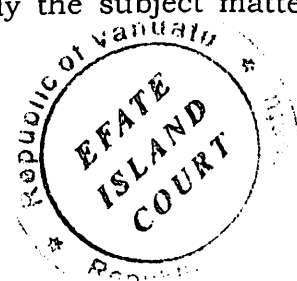
BETWEEN: **SIMO KALMALAS**
Claimant

AND: **PHILIP KALSUAK**
First Defendant

AND: **ALBERT SOLOMON**
Second Defendant

ORDER

1. This is an application for seeking interim orders to stay Island Court declaration in chiefly title Case No. 7 of 2009, in which was filed by Claimant Simo Kalmal on 6th June 2011 and sought the following reliefs.
2. An order that the declaration dated 27th May 2011, made by Efate Island Court in Civil Case No. 7 of 2009 be stayed until full determination of the Appeal filed in the Magistrates Court of the Republic of Vanuatu
3. An order that all parties keep the peace until such time as the Magistrates court makes full determination of the Appeal filed.
4. Upon the grounds that, the declaration dated 27th May 2011 made by the Efate Island Court in Civil Case No. 7 of 2009 is on appeal to the Magistrates Court of the Republic of Vanuatu.
5. Claimant also filed an application for objection on 15th June 2011 about the participation of Justice Ann Carlo and Justice Tomson Andrew on the grounds that, Justice Ann Carlo and Justice Tomson Andrew were directly involved in the Island Court decision made on 27th May 2011.
6. This interim application orders needs a full independent panel of Justices to preside upon the application as it relates to Tugulumanu chiefly title case.
7. Firstly, the Court will deal with the application of objection made upon the two assessors namely Ann Carlo and Tomson Andrew.
8. Rule 6 (b) of the Island Court Rules of 2005 provides;
If a party considers that a justice is related to any of the parties or has an interest in the subject matter of the claim that party may object to the court about the participation of that justice.,,,,,,ect
9. Firstly, the two justices namely Ann Carlo and Tomson Andrew were not related to any parties to the proceedings. Secondly the subject matter



before this proceeding is an application seeking for a relief or an available remedy for the court to consider.

10. This is not a claim in dispute that has an interest in the subject matter of the claim that claimant may object to this court about the participation of the justices. The core essence of the subject matter refer to by Claimant has decided and declared by this court on 27th May 2011.
11. We consider that the objection sought by claimant is not well founded and must be dismissed accordingly.
12. Secondly, the application seeking interim orders made by Claimant has no legal basis for the court to pursue with it. Claimant does not provide any substantive legal provision to allow the court to determine such application. The power of the court in civil proceedings is spell out clearly in section 13 of the Island Courts Act CAP 167.
13. We consider that this is not the right forum to entertain this sort of application sought by Claimant. Accordingly the application seeking interim orders from this court must struck out.
14. No order as to cost.

Dated at Port Vila, this, 20th Day of June 2011

BY THE COURT


.....
Justice Johnny Iawia [Chairman]


.....
Justice Ann Carlo


.....
Justice Tomson Andrew

