IN THE ISLAND COURT (LAND) OF THE REPUBLIC OF VANUATU – Lakatoro, Malekula
(Custom Land Jurisdiction)

Case No. 22/3424 IC/CUST

IN THE MATTER OF: **SECTION 45 OF THE CUSTOMARY LAND MANAGEMENT ACT**
AND IN THE MATTER OF: **SALTAMAS CUSTOM LAND**
AND IN THE MATTER OF: **A DECISION OF THE MALMETENVANU ISLAND LAND TRIBUNAL, DATED 14 JUNE 2006**

BETWEEN: **Sailas Mansumtete**
Malekula

Applicant

AND: **Malekula Island Land Tribunal**
Bankir village, Tisman
South East Malekula

First Respondent(s)

AND: **Family Lovis**
Family Ailap
Malekula

Second Respondent(s)

Coram:
Ms B. Kanas Joshua, Chairlady
Justice Douglas Fatdal
Justice Patisson Peter
Justice Joses Lingi
Justice Max Arnamu

Counsels:
Ms Anna Sarisets, for the Applicant
Mr Sammy Aron, for the 1st Respondent
Mr Edwin Macreveth, for the 2nd Respondent

DECISION ON THE APPLICATION FOR LEAVE TO FILE A REVIEW APPLICATION OUT OF TIME

UPON hearing Ms Sarisets, for the Applicant, Mr Aron for the first Respondent, and Mr Macreveth for the second Respondent, the Court finds that:

1. The tribunal which made the decision dated 14/06/06 is an island land tribunal, under the Customary Land Tribunal Act ("CLTA"). An island land tribunal is the highest tribunal in the hierarchy of the land tribunals in the CLTA.

2. The Application was made in pursuant to Section 45 and Section 58 of the Customary Land Management Act No. 33 of 2013 ("CLMA"). The application of the two sections is wrong. Section 45 of the CLMA provides for review of decisions of nakamals or custom area land tribunals, and Section 58 of the CLMA provides for single or joint village customary land tribunal and single or joint sub-area customary land tribunal. It must be made clear here that Section 45 of the CLMA applies to decisions made in the era of the CLMA commencing February 2014. Any decisions made under the CLTA can only be brought before the Island Court (Land) under Section 58(1) in the 12 months transition period stipulated in the Act. Although it was shown by the Applicant that

correspondences were made to appeal the decision, the Malmetenvanu Island Land Tribunal ("MILT") is not a single/joint village customary land tribunal, nor is it a single/joint sub-area customary land tribunal. The MILT is the highest land tribunal under the CLTA.

3. The correct law for existing judgments made under CLTA is Section 57 of CLMA. However, Section 57 applies to existing decisions of the Island Court, Supreme Court, single/joint area customary land tribunal and island customary land tribunal. The decision of 14/06/06 is made by an island land tribunal and Section 57 does not provide for decisions made by island land tribunals to be challenged.

4. An existing decision can be reviewed under Section 45 if it is a decision of a nakamal or a custom area land tribunal. However, Section 45 does not apply to existing decisions of the Island Court, Supreme Court, single/joint area custom land tribunal and island customary land tribunal. Section 45 applies to decisions made under the CLMA.

5. The argument the Applicant based their argument that the appeal lodged was made within the timeframe of 30 days, as stipulated in Section 45. This is an incorrect way of using Section 45, as Section 45 applies to decisions made after 2014, under the CLMA.

6. In the judgment dated 22/9/22, Saksak J stated that the different counsels who acted for the claimant (Applicant in the current case) did not assist their client in any meaningful way. This statement was made when Saksak J referred to Section 58 as an option that the counsels could have taken for their client earlier in the matter. Although we have established in (2) and (3) above that Section 58 could not have succeeded, it is derived from the statement that there were options that counsels could have taken to assist their clients, but failed to do so.

7. The rule in *Henderson v. Henderson*[1] applies in this case where a Court requires the parties to a litigation to bring forward their whole case, and will not permit the same parties to open the same subject of litigation in respect of the matter which might have been brought forward as part of the subject in contest, but which was not brought forward. The contents of the Application for Review, which was made pursuant to Section 45 of the CLMA, replicates the Application made pursuant to CLTA[2] that was mentioned in the judgment of 22/9/22 of the Supreme. In the judgment, Saksak J stated that the application was *"misconceived and is an abuse of process".*

8. The common law principle of Anshun Estoppel has been used wrongly in this context. This principle prevents a party from bringing a claim in fresh proceedings which should have been brought in the original proceedings. In the current matter, the Applicant did bring the same application in a previous proceeding, whether it was a claim or appeal. In that proceeding a judgment was reached. It is now brought to this Court for review, however, the CLMA does not give space for such decisions to be challenged under Section 45 and 58, and certainly not under Section 57.

[1] 3 Hare 100, 67 ER 313.
[2] Civil Case No. 076 of 2006.

THEREFORE, the Court

a) Denies the application for leave to file a review application out of time; and

b) Upholds the existing decision of Malmetenvanu Island Land Tribunal, dated 14 June 2006.

Dated in Lakatoro, on this 21st day of September, 2023

BY THE COURT

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B. Kanas Joshua (SM)
CHAIRLADY

.....
Justice Douglas Fatdal

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Justice Patisson Peter

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Justice Joses Lingi

.....
Justice Max Arnamu

Republic of Vanuatu
MALEKULA ISLAND COURT LAND
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