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

Case No. 21/2374 IC/CUST

IN THE MATTER OF: **SECTION 58(3) OF THE CUSTOM LAND MANAGEMENT ACT NO. 33 OF 2013**

IN THE MATTER OF: **APENDIHEN CUSTOM LAND**

AND IN THE MATTER OF A DECISION OF: **VAHAS VILLAGE LAND TRIBUNAL DATED 21 MAY 2009**

BETWEEN: **Kenneth Visai (Chief)**
Malekula
Applicants

AND: **Vahas Village Land Tribunal**
Malekula
First Respondent

AND: **George Toa**
Charlie Toa
Joel Toa
Johnsen Toa
Jack Toa
Malekula
Second Respondent

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

Counsels:
Mr Philip Fiuka, for the Applicants
Mr Sammy Aron, for the 1st Respondent
Mr Daniel Yawha, for the 2nd Respondent

DECISION ON THE APPLICATION TO STRIKE OUT

Background

1. This is an application to strike out the application for review, filed by the second respondents on 21/7/21. The application for review challenged the decision by Vahas Village Land Tribunal ("VVLT") delivered on 21/5/09.

2. The grounds for strike out are:

   a) That the application is out of time;
   b) That the matter has been heard by the Supreme Court and Court of Appeal; and

c) That the application has no merit.

Application for review is out of time

3. The application for review is made under Section 58(3) of the Customary Land Management Act[1] ("CLMA"). Section 58 allows for decisions that were made in the Customary Land Tribunal Act ("CLTA") era to be challenged under the CLMA, within 12 months after the CLMA has come into effect. This period is from 20/2/14 to 20/2/15. There is an extension of this period to 14/12/16 when the Island Court (Land) ("ICL") was established. This was seen in the case *George Tavuti v. Malo Island Land Tribunal & anor*[2]. In that case, the application was filed in 2017, which is 3 years after the CLMA came into effect. The application for review was allowed by the Island Court (Land) ("ICL") because the ICL had not been established yet. This is an exception of Section 58 and if parties can show that they have lodged complaints with the CLMO from 2014 to 2016 an application for enlargement of time can be successful. In applying this to the current matter, the application for review that was filed on 21/7/21 can be seen to be filed well out of time.

4. Now that it is established that the application for review is filed out of time, I will explore the points raised, if they satisfy the exception. The question to ask is, were there any complaints lodged with the CLMO in the period between 20/2/14 and 14/12/16? The judicial review cases[3] cited in Court is accepted as actions taken by aggrieved parties against the VVLT decision, in that period. However, the applicants were not a party in those judicial review cases and there is no trace of complaints lodged in that period. The judicial review case in the Supreme court is evidence of aggrieved parties regarding the Vahas decision. This is an alternative remedy available to the applicants but they did not make use of it. If this is a reason that this Court accepts, it will open a floodgate to other decisions in the CLTA era. The Court does not accept this excuse. The Court is satisfied that the applicants have not done anything to challenge the decision of VVLT until now.

Matter has been heard in the Supreme court and Court of Appeal

5. It was pointed out to the Court that the judicial review case[4] of 6/3/15 and 2/10/15 have addressed the same grounds that the application for review. The court stated in the judgment of 6/3/15 it was *"satisfied that the primary ground...to file their judicial review out of time cannot succeed"* and leave to pursue judicial review is declined. The judgment of 2/10/15 the addressed the alleged breaches of the processes by the VVLT, as required by the CLTA. This has been addressed in the judicial review case and it was concluded that the application for leave be dismissed on the ground that the delay was of such magnitude that substantial justice requires. The applicant cannot succeed with the same grounds in the ICL.

Application has no merit

6. Given the above, the application has no merit.

[1] No. 33 of 2013

[2] Review Case No. 17/2010 IC/CUST

[3] JR No. 10 of 2014 (dated 6/3/15) and JR No. 10 of 2014 (dated 2/10/15)

[4] Judicial Review Case No. 10 of 2014

Conclusion

1. In conclusion, this application for review was filed out of time and all the grounds raised in the application are the same grounds raised by other aggrieved parties to the VVLT decision in judicial review cases. This Court is of the same view as the Supreme court.

2. Therefore, it is adjudged that the application for review is struck out.

Dated in Lakatoro, on this 29th day of September, 2023

BY THE COURT

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B. Kanas Joshua (SM)
CHAIRLADY

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Justice Douglas Fatdal

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Justice Patisson Peter

Republic of Vanuatu — MALEKULA ISLAND COURT LAND — République de Vanuatu

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Justice Joses Lingi

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Justice Manale Simeon