

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

**Case No. 20/559 IC/CUST**

**IN THE MATTER OF: SECTION 58 OF THE CUSTOMARY  
LAND MANAGEMENT ACT NO.33 OF  
2013**

**BETWEEN: Melten Tasongi  
Malekula**

**Applicant**

**AND: Family Veremaito  
Represented by Roger Veremaito  
Malekula**

**First Respondent**

**AND: Coordinator of the Customary Land  
Dispute Management  
Malekula**

**Second Respondent**

*Coram:*

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

*Counsels:*

*Mr Quensy Tasongi representing the Applicant  
Ms Mary Grace Nari, for the 1<sup>st</sup> Respondent  
Mr Sammy Aron, for the 2<sup>nd</sup> Respondent*

## **RULING**

### **Background**

1. This is an application for review, filed on 6/3/20. This review was made pursuant to Section 58 of the Customary Land Management Act<sup>1</sup> ("CLMA"). Counsel for the applicant is Mr Stephen Joel Tari, who filed a written submission. Ms Nari also filed a written submission and Mr Aron opted to make an oral submission. This was agreed by all counsels as a way to move the case forward.
2. An application for strike out was also filed; however, Ms Nari agreed to proceed with the application for review instead.
3. There are 7 grounds in the application for review. They are:
  - a. That a certificate of recorded interests was issued by the coordinator of land disputes and management, dated 24/11/16 to Roger Veremaito in respect of Retelemb custom land on Central Malekula, pursuant to Sections 19 and 27 of the CLMA wrongly without any proper due process of the law.

<sup>1</sup> No. 33 of 2013



- i. Particulars of wrong
    1. The decision of the Malekula Island Land Tribunal ("MILT") dated 16/12/11 which was referred to in the certificate of recorded interest in land (green certificate) was a decision and declaration in favour of the applicant in respect of custom ownership of Tenevun and Tembogo land during which time Retelemb land was not really subject of the hearing.
    2. The sketch map attached to the decision of the MILT on 16/12/11 did not cover any of the Retelemb custom land's boundary.
    3. The decision specifically stated that the dispute over customary ownership of Retelemb is to be the subject of a separate hearing of the decision.
  - b. The respondent filed a judicial review case<sup>2</sup> seeking the following orders:
    1. A declaration that the decision of the MILT on 16/12/11 is of no effect.
    2. An order for the MILT to rehear the dispute over Tenevun and Tembogo.
    3. An order quashing the decision of the MILT on 16/12/11 which declared the applicant as custom owner of Tenevun and Tembogo.
  - c. In 2013 Parliament enacted the CLMA, which commenced on 20/2/14.
  - d. The Custom Land Tribunal Act<sup>3</sup> ("CLTA") was repealed on the same date as when the CLMA came into effect.
  - e. There was no sitting of the MILT to rehear claims over Tenevun and Tembogo land.
  - f. There was no order by the Supreme Court on review or otherwise quashing the decision of the MILT on 16/12/11 which declared the applicant as custom owners of Tenevun and Tembogo before commencement of the CLMA.
  - g. When the CLMA commenced on 20/2/14, the Supreme Court and all other courts were precluded from further deliberation and decisions on all matters related to land ownership and disputes by Section 47(4) of the Act.
4. Section 58 of CLMA allows for existing decisions of single/joint village customary land tribunal and single/joint sub-area customary land tribunals to be challenged on four grounds only. They are that the decision was:
    - a. Made in a meeting that was not properly constituted;
    - b. Made in breach of the authorized process;
    - c. The decision was procured by fraud; or
    - d. The decision was wrong in custom or law.
  5. Section 58 sets out the powers of the ICL for existing decisions under the CLTA era, as seen in (4) above. The 7 grounds in the application must be deduced into the 4 grounds specified under Section 58. This exercise will assist the Court to assess the application properly. The grounds that do not fall within any of the grounds under Section 58 will not be discussed as a ground, however, reference can be made to them to assist the Court. These grounds are:
    - a. A certificate of recorded interest in land was wrongly issued by the National Coordinator to Roger Veremaito, without any proper due process of law.
    - b. The respondent filed judicial review case seeking orders that contradict the MILT decision of 16/12/11.
    - c. The enactment of CLMA on 20/2/14.
    - d. The CLTA was repealed to make way for the CLMA.
    - e. There was no order by the Supreme Court on review or otherwise quashing the decision of MILT on 16/12/11, which declared the applicant as custom owners of Tenevun and Tembogo before the CLMA.

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<sup>2</sup> No. 13 of 2012

<sup>3</sup> No. 7 of 2001



- f. When the CLMA commenced on 20/2/14 the Supreme Court and all other courts were precluded from further deliberation and decisions on all matters related to land ownership and disputes by Section 47(4) of the Act.
6. In deducing the grounds in this way, there are 2 grounds that this ruling will address, and they are:
- a. That the decision of MILT on 16/12/11 was made in breach of the authorized process. Its particulars are,
    - i. The decision and declaration in favour of the applicant in respect of custom ownership of Tenevun and Tembogo lands, and Retelemb land was not a subject of the hearing.
    - ii. The sketch map attached to the decision of MILT on 16/12/11 did not cover any of the Retelemb custom land boundary.
  - b. That the decision was wrong in law.
7. The relief sought in the application is incorrect as counsel for the second respondent pointed out. They are beyond the powers of the ICL and are as follows:
- a. That the certificate of recording interest in land that was issued to the first respondent, as custom owner of Retelemb land, be rectified by cancellation.
  - b. That the decision of the Supreme Court on 1/6/15 in Judicial Review Case No. 13 of 2012 by consent of parties declaring Roger Veremaito custom owner of Retelemb land is void.
8. According to Section 58(4) the ICL may only grant the following relief:
- a. Dismiss the application for review, or
  - b. Set aside the decision of the Customary Land Tribunal ("CLT"), and direct that the ownership of custom land be determined in accordance with the CLMA.
9. In breaking down the application in this manner, it can be seen that the application is within the jurisdiction of this Court. The applicant's pleading may not be in the proper format that is used for land review cases, however, that is a technicality that this Court has the discretion to decide on whether it can or cannot accept the matter.

## Discussion

10. The next question to ask is whether the application was filed within time according to Section 58(1). The application for review was filed on 6/3/20. On the face of it, the answer is yes. The applicant referred to Section 58(3) stating that it allows a person to challenge a decision and is not restricted by a timeframe as stated in Section 58(1). The applicant's view is incorrect on this point. Section 58(3) must be read in conjunction with the rest of Section 58. Section 58(1) provides for the types of decisions under the CLTA that can be reviewed under the CLMA. If Section 58(3) were to be read as a stand-alone section it would make reference to itself as a subsection. It does not do this. It makes reference to "this section" which undoubtedly means Section 58. This is the approach that ICL has taken with Section 58(3).
11. Now that it is established that Section 58(3) must be read in conjunction with the rest of the section it means that Section 58(1) applies and this inevitably means that the 1 year timeframe after the CLMA came into effect must apply to the application for review. On the face of it, the application was made well outside the 12-months period. However, there is an exception to Section 58(1) that this Court allows for applications to be filed out of time. Not only must the party show traces of lodging complaints or correspondences to the CLMO during that 12 months window but there is also an additional extension from 20/2/15 to 14/12/16 when the ICL had not been set up yet. This means that if an application is filed after 2016, there is likelihood that the lateness will be waived as the ICL if this exception is satisfied.



12. Given this, the Court must assess any attempts made by the applicants from February 2014 and December 2016 in the current matter. The following are the attempts by the applicants within that period:

20/6/14	Central Malekula Area Land Tribunal Case No. 1 of 2014	This is a rehearing on the disputed Tenevun Retelemb boundary. It was decided that <ul style="list-style-type: none"> <li>- Retelemb has a separate boundary that passes in the north with Tenevun and in the east with Gleng.</li> <li>- Tenevun has a separate boundary.</li> </ul>
1/6/15	Civil Case No. 13 of 2012 (SC)	By consent of the parties, it was ordered by the court that <ul style="list-style-type: none"> <li>- Retelemb custom land is not part of Tembogo custom boundary.</li> <li>- The custom owner of Retelemb boundary is family Veremaito, as declared by MILT on 16/12/11.</li> <li>- The custom boundary of Retelemb starts at Ano creek to Retef mountain, Ninibnowe to the seafront towards Tenemel near the state land.</li> </ul>
1/2/17	Letter by Custom Land Officer ("CLO") in Malampa had written to the National Coordinator	<ul style="list-style-type: none"> <li>- There was no basis for a certificate of interest in land to be issued regarding Retelemb. The CLO stated that there was an unlawful declaration on the custom land ownership of Retelemb by MILT on 16/12/11 as Retelemb was not a part of the Tembogo/Tenevun land case.</li> <li>- He further added that on 7/7/14 the Central Malekula Custom Area Lands Tribunal revoked the declaration by MILT and stated that the Retelemb custom land has never been declared by a court of law yet. Due to this no certificate of recorded interest in land should be issued for Retelemb until its ownership and boundary is declared by a competent court.</li> </ul>

13. The letter by the CLO is accepted as the ICL was only set up in December 2016. Many offices would start their work program towards the end of January to February. The significant point to take note of is the content of the letter regarding the revocation of the declaration of Retelemb custom land. The CLO is the officer on the ground that keeps record of custom land matters and informs the National Coordinator. He would be the key person to turn to for information. This information on the revocation was not supplied to SLO in the letter by the National Coordinator on 26/1/17, nor was it used in the judicial review case on 1/6/15. The decision on 7/7/16 appears to have gone unnoticed in the whole process, when it would have resolved matters many years of going back and forth with the case. This information indicates to this Court that process was not followed.
14. The first respondent raised the following points in the period mentioned above,

29/5/15	Civil Case No. 193 of 2010	The spokesman of Family Kilman advised the court that the first respondent was the custom land owner of Retelemb and its boundary is not a part of Tembogo, and they were asked to be
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		removed from the case. No objections were raised by the applicants.  This resulted in the Orders of 1/6/15.
24/11/16	Certificate of interest in land issued	Issued to Family Veremaito

15. On 26/1/17 the National Coordinator sought the legal view of State Law office ("SLO") to revoke a certificate issued to family Veremaito. This was done a few days before the letter written by the CLO and it was done due to complaints that were raised following the MILT decision on 16/12/11. The SLO replied on 3/2/17 and stated that they are of the view that *"the matter has been determined by the Court in JR 13/2012."* They agreed that the certificate of interest in land was in order and should not be revoked. This reply may have been different if the revocation of 7/7/14 had been disclosed to him.
16. The Court finds that the above occurrences in (13) to (15) are attempts made by the applicants to resolve what was misconstrued from the decision of MILT on 16/12/11. For this, the Court finds that the application, although filed in 2020, satisfies the exception in Section 58. Based on the above alone, the evidence carries weight for this Court to make its decision.
17. However, I will now address the ground of breach of the authorized process. Firstly, the decision by MILT on 16/12/11 declared the applicant was the custom land owner of Tenevun. Custom land ownership of Retelemb was never the subject of hearing. The hearing was to determine the dispute of Tenevun and Tembogo lands. The decision of MILT was in breach of the process authorized in law as it made a declaration on a land that was not the subject of dispute. In fact, due to that decision, the Retelemb land is now a subject of dispute. In declaring land ownership of Retelemb the tribunal was in breach of the process authorized in law. If it had turned out from that meeting that Retelemb land must also be determined, then MILT should have set another date for that determination.
18. Secondly, there was only one sketch map used in the decision of MILT which had to be agreed upon to be used in the meeting. It is not shown in the evidence that a site visit was carried out and it is highly probable that that was none. The CLMO file does not contain any sketch maps used and there is no statement on oath by the assessors in MILT to confirm which sketch map was used during the meeting of 16/12/11. This is a vital piece of information that must be resolved and the only way to do this is through a site visitation of the said lands.
19. There is no need to discuss the ground that the decision was wrong in law as the above discussions have encompassed evidence that reflect this. The process used was not in accordance with the law, making the declaration of land ownership of a land that was not the subject of dispute totally wrong in law. In addition, a revocation made in 7/7/14 was not disclosed resulting in legal views and court orders that did not reflect it.
20. The purpose of this Court is not to make a new decision. The ICL's purpose is to review a decision on whether it was made according to the CLMA. The pleadings of the applicant, at first sight, appear to be unfounded in law. However, after assessing the evidence and deducing this evidence to the grounds that the ICL has the power to review, it is clear that it is not a decision of the Supreme Court that the ICL must review, nor a certificate of interest in land that the ICL must make a decision on. It is the decision by MILT on 16/12/11 that the applicant is challenging.

## Conclusion

21. The Court is satisfied that



- a. Section 58 of the Customary Land Management Act is the correct law by which this application for review is made and brought before the Island Court (Land).
  - b. The application for review, although filed on 6/3/20, is not out of time as the applicants have shown evidence that concerns were raised before and during the period of February 2014 and December 2016.
  - c. The decision in question was made by the Central Malekula Island Land Tribunal on 16/12/11. It is a competent land tribunal decision that can be challenged under Section 58.
  - d. The decision was made in breach of the authorized process.
  - e. The decision by MILT on 16/12/11 was wrong in law, in that it made a declaration on a land (Retelemb) that was not in dispute.
  - f. The Central Malekula Custom Area Land Tribunal had revoked the decision by MILT on 16/12/11.
  - g. The revocation was never mentioned in correspondences to SLO or in court proceedings, and there is no evidence that show that the revocation was invalid.
22. THEREFORE the decision by the Central Malekula Island Land Tribunal on 16/12/11 is set aside and the matter is referred to the appropriate land tribunal for the determination of Tenevun, Tembogo and Retelemb lands.
23. IN ADDITION, the Court orders,
- a) That the land tribunal determining the said lands must be newly constituted.
  - b) That all competing sketch maps that are used must be kept in the records of the Customary Land Management office and the sketch map that the land tribunal affirms to reflect the said lands, as decided by the meeting, must carry some sort of seal to show that it is the map used for certificates, claims and other transactions regarding the said lands.
  - c) That the appropriate land tribunal must carry out a sight visitation on the said lands to confirm landmarks and boundaries. A record of this must be kept with the Customary Land Management office.
  - d) That the appropriate land tribunal must also determine the land boundaries for the said lands.
  - e) That the certificate of recorded interest in land is stayed, until the matter has been fully adjudicated in the appropriate land tribunal.
  - f) That the Orders made by consent of the parties in Judicial Review Case No. 13 of 2012 must also be stayed until the appropriate land tribunal has made a determination of Tenevun, Tembogo and Retelemb lands.
  - g) That each party bears their own costs.

**Dated in Lakatoro, on this 30<sup>th</sup> day of September, 2023**

**BY THE COURT**

**B. Kanas Joshua (SM)  
CHAIRLADY**

**Justice Douglas Fatdal**

**Justice Joses Lingi**



**Justice Patisson Peter**

**Justice Manale Simeon**