

**IN THE ISLAND COURT (LAND)
OF THE REPUBLIC OF
VANUATU – Luganville
(Custom Land Jurisdiction)**

Case No. 22/1972 IC/CUST

**IN THE MATTER OF: SECTION 45 OF THE CUSTOM LAND
MANAGEMENT ACT**

AND

**IN THE MATTER OF: ARTACH CUSTOM LAND
Santo**

AND

**IN THE MATTER OF: Vaturani Village Land Tribunal
Dated 9th September, 2008**

**BETWEEN: Vomule Garae
Narango Village
Santo**

Applicant(s)

**AND: Vaturani Village Land Tribunal
Santo**

First Respondent

**AND: Salathiel Stephen
Santo**

Second Respondent

Date of Review: 23 June 2023

Before:

*Senior Magistrate B. Kanas Joshua, Chairlady
Justice Victor Moltures Taftumol
Justice Kaory Molivalivu
Justice Tiwok Saul
Justice Robert Tangis*

Counsels:

*Mr Bill Bani, for the applicant
Mr Lennon Huri, for the 1st Respondent
Mr Silas Hakwa, for the 2nd Respondent*

Date of Decision: 26 June 2023

DECISION ON THE APPLICATION TO STRIKE OUT

Introduction

1. This is an application to strike out the application for review that was filed on 28th July, 2022, filed by the second respondent.



2. The application for review is made on the ground of fraud. It was alleged that sometime in 2008, the second respondent paid VT20,000 to the chairman of Vaturani, Mr Levus Tamata, to procure a decision in the favour of the second respondent.

Issue

3. The original grounds on the application for strike out were not referred to in Court, however, the second respondent argued on the following grounds:
 - a. That the Island Court (Land) ("ICL") is the same as the Island Court ("IC"); and
 - b. That a tribunal established under the Customary Land Tribunal Act ("CLTA") can make an application for review under Section 45.
4. A response by the applicant was filed on 22/6/23 and the first respondent filed their response on 20/6/23.

Evidence

5. The second respondent stated that the response filed by the applicant have not addressed the points they raised in their application for strike out on 28/7/22 and that the response did not raise any additional points or disputed facts. Due to this there is no real opposition as to the facts raised in the sworn statement of Bill Stephen.
6. The second respondent further stated that there are some misconceptions on the applicant's part. The misconceptions were:
 - a. That the Island Court (Land) ("ICL") is the same as the Island Court ("IC");
 - b. That the ICL has limited jurisdiction under the Customary Land Management Act ("CLMA")¹; and
 - c. That a tribunal established under the Customary Land Tribunal Act ("CLTA") can make an application for review under Section 45.
7. There was a lengthy discussion on the difference between the ICL and the IC. The applicant stated that the ICL is created under the CLMA and its functions are totally different to the IC. The IC is created under the Island Courts Act², with totally different functions to the ICL.
8. The second respondent also stated that the application was wrongfully made under Section 45 of the CLMA. Section 45 is only for tribunals that are established under the CLMA. The Vaturani Village Land Tribunal ("VVLT") was established under the CLTA, and as such, the application should be made under Section 58 of the CLMA.
9. The second respondent pointed out that even if Section 58 may be the appropriate section to use, Section 58(1) provides a time frame of 12 months that decision under the CLTA can be challenged in. The applicant argued that the period of 12 months should not matter if the decision is bad and that there is an issue with the decision. For this reason, the ICL should dismiss the application and rectify the situation by reviewing the decision.

¹ No. 33 of 2013

² CAP167



10. Both counsels acknowledge that this case was peculiar, in that, a decision was made, then the chairman and its tribunal members later went against their own decision. Instead of protecting their decision, they have turned against it. The applicant used the analogy of a court wrongfully convicting a person, whom later is released when the court realizes this.

Discussion

11. The ICL is not the same as the IC as it is created under the CLMA. The function of the ICL is to review decisions made by the nakamal or custom area land tribunals. The ICL does not have inherent powers. Its powers are limited to only three areas of review. These areas are:
- (i) that the nakamal or custom area land tribunal that made the decision was not constituted in accordance with the provisions of CLMA;
 - (ii) that there was a breach of process described in the CLMA; or
 - (iii) that the decision was procured by fraud.
12. Reference was made to the name of the ICL and the IC and that the name "Island Court" suggests that both courts work the same. It must be made clear that the names are not the same. One of them has "land" in brackets which differentiates it from the Island Court. It must not be confused because each of the courts function very differently to each other.
13. In addition to this, I must add that the ICL is not an appellate court. The CLMA is designed to resolve land disputes by the chiefs and people of the nakamal or area. The tribunal of first instance is the nakamal and its decisions can be appealed to the custom area land tribunal ("CALT"). Decisions from the CALT is final. The ICL can only review the decisions on one or all of the grounds stated in Section 45. The ICL may affirm or set aside the decision and refer the matter back to the nakamal or CALT, with appropriate directions.
14. Section 45 is designed for nakamals or CALT created under the CLMA. This can be inferred from the time frame given of 30 days that a disputing group has to lodge an application for review from the date of the original decision. Clearly, this section cannot be used by a decision that was made on 9th September, 2008.
15. In Court, the applicant quoted Section 58 with Section 45. Section 45 as explained above cannot be used if challenging any decisions made under CLTA. However, if Section 58 is used, it must be used correctly. Section 58 sets a time frame of 12 months after the CLMA has come into effect that parties can challenge decisions made under CLTA. This period starts from 20/2/14 to 20/2/15. Any decisions left unchallenged after this period will remain as it is.
16. With the limited jurisdiction of the ICL, it cannot go beyond the CLMA. Although the applicant stated that Article 47 of the Constitution, this is a provision made in the Constitution that describes the purpose of the Judiciary. The legislation that governs the judiciary is the Judicial Services and Courts Act³ ("JSCA"). The legislation focuses on the specifics of the judiciary, stating clearly the hierarchy of courts and its jurisdictions. The ICL does not come under the JSCA, however, Section 1(3) of the CLMA sets out the functions of the ICL.

³ No. 54 of 2000



17. While the analogy of a person wrongfully convicted is a good one, this circumstance can only occur in courts of inherent jurisdictions. The ICL is not one of those courts.
18. Additionally, if the ICL is to act beyond its powers, the proper application must be filed. For example, an application for enlargement of time. However, such applications will be scrutinized thoroughly if it is to be successful. For instance, in the case of *Chief Tarinuamata v. Forari Village Land Tribunal East Efate & Kennedy Matokuale Tariwer*⁴ this application was successful only because the application for review could not be filed within the 12 months period as the ICL had not been established yet. In the present case, there is no evidence that the application was filed after the CLMA came into effect, nor was there an application of enlargement of time.

Decision

19. Based on the discussion above, the Court is satisfied that the application for review was made under a wrong section of the CLMA. But even under the right section of Section 58, the application for review would not have succeeded because of the 12 months period specified which lapsed on 20/2/15. This Court is bound by the powers specified in the CLMA. It does not have inherent jurisdiction as the Supreme Court and the Court of Appeal. An application for enlargement of time may have succeeded if the applicant had shown that they had made attempts to file an application for review within the 12 months period after the CLMA came into effect, however, this was not done.
20. Therefore, the Court grants this application and the application for review is struck out.

Dated in Luganville, on this 26th day of June, 2023

BY THE COURT

 Justice Victor Moltures	 B. Kanas Joshua (SM) CHAIRLADY	 Justice Kaory Molivalivu
		
 Justice Tiwok Saul	 Justice Robert Tangis	

⁴ Case No. 22/2718 IC/CUST, dated 24 November 2022