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

**Case No. 19/651 IC/CUST**

IN THE MATTER OF: SECTION 53(3) OF THE CUSTOM LAND MANAGEMENT ACT

AND
IN THE MATTER OF: VUNAPAURA CUSTOM LAND
South Santo

AND
IN THE MATTER OF: Supe Natavui Tano
Santo Island Dated 16 July, 2005

BETWEEN: Family Vanuapuru
Represented by Philipson Vanuapuru
Santo

**Applicant**

AND: Supe Natavui Tano Council of Chiefs
Santo

**First Respondent**

AND: Family Salerua Poruja
Represented by Salerua Tamata
Santo

**Second Respondent**

***Date of Hearing:*** *27 June 2023*

***Coram:***
*Senior Magistrate B. Kanas Joshua, Chairlady*
*Justice Victor Moltures Taftumol*
*Justice Kaory Molivalivu*
*Justice Tiwok Saul*
*Justice Ropey Tavulantui*

***Counsels:***
*Ms Mary Grace Nari, for the Applicant*
*Mr Lennon Huri for 1st Respondent*
*Ms Marisan Pierre for 2nd Respondent*

***Date of Ruling:*** *29 June 2023*

## RULING

### Introduction

1. The Application for Review ("the Application") was filed on 21st March, 2019.

2. It first came before this Court on 20/5/19 and the matter was adjourned as the applicant's counsel had not been served. An Order directed the parties to file necessary

documents before the Court and directed the respondents' counsels to answer the following question:

> *"What is the name of lower tribunal that the Santo Island Land Tribunal agreed with and quashed since the respondent Tribunal is and exclusively appellate tribunal under the Customary Land Tribunal Act."*

3. The Application was made pursuant to Section 45 of the Customary Lands Management Act[1] ("CLMA").

## Issue

4. The grounds for review are as follows:
   a. That the nakamal or custom area land tribunal was not properly constituted;
   b. That the tribunal did not comply with the process in the CLTA; and
   c. That the decision was procured by fraud.

## Evidence

5. Counsel for the applicant directed the question posed in the Order to the respondent that they must answer the question in this hearing. Both respondents avoided answering the question and instead, addressed other points in the application.

6. The applicant submitted that the Island Court (Land)'s ("ICL") has a specific purpose, and that is to review decisions made in the nakamals or custom area land tribunals ("CALT"). There are only three areas which the ICL can review. These areas are:
   a. Whether the tribunal was properly constituted or not;
   b. Whether the process complied with the CLMA; or
   c. Whether the decision was procured by fraud.

   In stating this, they submitted that Section 45 was the relevant law to pursue this review under.

7. It was put to the Court that there are two decisions made by two different tribunals. One decision was made on 15/7/05 and the other was made on 02/4/08. The applicant seeks to have the decision of 15/7/05 be set aside because it is not properly constituted and because there was a breach of process. The 2008 decision was in favor of the applicants, and the 2005 decision was in favor of the respondents.

8. The chairman of Vaturani Area Land Tribunal ("VALT"), Levus Tamata, stated that he was chairman of VALT from 2004 to 2019. He became aware of the 2005 decision that was made to the second respondent and stated that during the site visit of the boundaries of the land, the second respondent accommodated the judges of Supe Natavui Tano, for 2 nights. The chairman confirmed that the 2008 decision is the right decision.

9. The first respondent submitted that the application made under Section 45 is wrong. Section 45 is designed to review decisions of nakamals and custom area land tribunals ("CALT"). He stated that Section 58 is the correct section by which this application should have been made, however, as there is a 12 months period given to challenge decisions made under the CLTA, this application for review was filed after the 12 months had elapsed. He stated that they relied on the 2005 decision.

[1] No. 33 of 2013, Amendment Act No. 12/14

10. The second respondent stated that the 2008 decision being referred to by the applicant has been cancelled. This decision was made by VALT and stated that Vanuapuru was the rightful custom landowner of Vunapaura land. The decision was made on 02/4/08. This decision was cancelled by the Lands officer on 06/4/08.

**Discussion**

11. VALT is an area land tribunal and SILT is an island land tribunal. Under the CLTA there is a 3-tier structure of tribunal which land disputes are resolved in. The first tier being the village land tribunal, the second being the area land tribunal and the third being the island land tribunal. All land disputes must first be dealt with in the village land tribunal and decisions can be appealed to the area land tribunal then on to the island land tribunal. SILT is the last tribunal an aggrieved party can appeal to and evidence showed that SILT held a meeting and made a decision before the area land tribunal made a decision.

12. The applicant bases their argument on the point that there was no decision from a lower tribunal that was appealed the SILT. Due to this the 2008 decision is still valid and the 2005 decision should be set aside. The evidence in Court shows that there was a cancellation of the 2008 decision made 4 days after the VALT made a decision in favor of the applicant. The cancellation was based on a Supreme Court decision[2] which struck out the claim by Family Vanuapuru as they had not served their claim within 3 months of the date the claim was filed.

13. The respondents did not answer the question posed in the Order. Counsel for the second respondent stated that the name of the tribunal is not an issue as it is not uncommon for chiefs to use names of the tribunals simultaneously. The land tribunal forms show specifically the different land tribunals that made the decisions and the 2005 decision was made by the highest tribunal of appeal, before the lower area land tribunal in 2008. This clearly shows that there was no decision from a lower tribunal that was appealed to the SILT.

14. Having said this, I will add that at this stage whether the question is answered or not, focus is given on the dates at which the application for review was made and what the law provides and allows for such applications to be made. The CLMA came into effect on 20/2/14 when the CLTA was repealed. Section 58 of the CLMA allows for aggrieved parties of decisions made under the CLTA to apply for review of those decisions. However, any such applications must be made within 12 months after the CLMA has come into effect. Twelve months after the CLMA is in force lapses on 20/5/23. The application for review was filed on 21/3/19.

15. In the case of *Chief Tarinuamata v. Forari Village Land Tribunal East Efate & Kennedy Matokuale Tariwer*[3], an application for enlargement of time was successful to allow the Court to hear their application for review. It was put to the Court that an application for review could not be filed in the ICL within the 12 months because the ICL had not been established in that period. However, there was a trace of correspondence in that period that showed attempts to file an application. A successful application for

[2] Civil Case No. 20 of 2007

[3] Case No. 22/2718 IC/CUST, dated 24 November 2022

enlargement of time would give this Court reason to act outside of its powers stipulated in the CLMA.

16. It is agreed that the three areas in Section 45 are the areas by which aggrieved parties can apply to the ICL to review decisions of a tribunal. However, Section 45 also states that an application for review may be lodged within 30 days of the date of the original decision. This implies that the decision to be challenged must be from a tribunal set up under the CLMA. In this case, the decision being challenged is one that was made under the CLTA, so Section 45 cannot be used.

17. The law governing the ICL is CLMA. This means that the ICL does not have unlimited jurisdiction. Its powers are limited by the CLMA and procedures are adopted from the Civil Procedure Rules[4] for the time being. On the face of the case, there is strong evidence that would have succeeded had the case been reviewed. An application for enlargement of time would have been a better route to take before hearing the application for review, however, this was not done. To act outside of these powers will allow room for appeal.

## Decision

18. Based on the above, the Court dismisses the application for review on the following grounds:
    a. That Section 45 was the wrong section to lodge this application for review;
    b. That even if the application was made under Section 58, it was made 4 years too late, after the 12 months period had lapsed;
    c. The jurisdiction of ICL is limited within the confines of the CLMA and the Court cannot act beyond this.

**Dated in Luganville, on this 29th day of June, 2023**

**BY THE COURT**

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

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**Justice Victor Moltures**

.....
**Justice Tiwok Saul**

Republic of Vanuatu
Santo / Malo
ISLAND
COURT
LAND
République de Vanuatu

.....
**Justice Kaoru Molivalivu**

.....
**Justice Ropey Tavulantui**

[4] No. 49 of 2002