

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

**Case No. 21/3900 IC/CUST**

IN THE MATTER OF: SECTION 58(3) OF THE CUSTOM LAND  
MANAGEMENT ACT

AND

IN THE MATTER OF: ATOREA CUSTOMARY LAND  
Malo Island, SANMA Province

AND

IN THE MATTER OF: MOLIVORAE JOEN VILIJ LAND TRIBUNAL  
East Malo, SANMA  
Dated 24<sup>th</sup> May 2007

BETWEEN: Leo Wari Tino of Aloraru village  
Ove Sai of Ativusa village  
Dom Vira of Avunambu village  
West Malo

Applicant

AND: Molivoraes Joen Vilij Land Tribunal  
Malo

First Respondent

AND: Tarimoiso Family  
Arohani village  
South Malo

Second Respondent

Date of Hearing: 29 June 2023

**Coram:**

Senior Magistrate B. Kanas Joshua, Chairlady  
Justice Victor Moltures Taftumol  
Justice Kaory Molivalivu  
Justice Robert Tangis  
Justice Ropey Tavulantui

**Counsels:**

Ms Mary Grace Nari, for the Applicant  
Mr Lennon Huri, for 1<sup>st</sup> Respondent  
Mr Lent Tevi, for 2<sup>nd</sup> Respondent

Date of Ruling: 30 June 2023

**RULING**



## Preliminary

1. The second respondent was only served with the Notice of Hearing the day before the hearing.
2. The Court gave them an opportunity to adjourn the matter but Counsel indicated that they were in a good position to proceed, even on short notice.

## Introduction

3. The Application for Review ("the Application") was filed on 24<sup>th</sup> November, 2021.
4. The Application challenges a decision by the Molivorae Joint Village Land Tribunal, made on 24<sup>th</sup> May, 2007.
5. The Application is made pursuant to Section 58 of the Customary Lands Management Act<sup>1</sup> ("CLMA").

## Issue

6. The grounds for review are:
  - a. That the tribunal did not comply with the process in the Customary Land Tribunal Act ("CLTA"); and
  - b. That the tribunal was not properly constituted.

## Evidence

7. In brief, the Atorea land is within the custom land boundary of Avunacae. The applicant has a claim on Avunacae and it was submitted that the claim for Atorea by the second respondent is invalid because Atorea is a parcel of land within Avunacae. It was also submitted that the claim for Atorea was unconstitutional, as it is contrary to Article 75 of the Constitution.
8. In reference to Section 58 of the CLMA, the applicant stated that it is unconstitutional as the 12 months time frame prohibits the parties to lodge their applications for review. It was submitted that the applicant did not file his application in time due to other cases he was pursuing in Court.
9. In regards to the process of CLTA, it was submitted that the notice for nakamal hearing of Atorea land was not published for parties to attend the hearing to lodge their claims. Notice was given to another person, Tambu Rovea, but not the applicant. Furthermore, in the decision the applicants in the present case were named as defendants. It is not clear if they were able to file counter claims in the case or not.
10. As to the composition of the tribunal, it was submitted that the chiefs who sat in the tribunal were not appointed as adjudicators for East Malo with the Supe Natavuitano Council of Chiefs. The decision was signed by the chairman and secretary of the East Malo Council of Chiefs ("EMCC").
11. The first respondent submitted that they will rely on the decision made by the EMCC.

<sup>1</sup> No. 33 of 2013, Amendment Act No. 12/14



12. It was also submitted by the first respondent that the time frame in Section 58 is 12 months by which aggrieved parties of decisions made under CLTA must lodge their application for review. This application was filed in 2021.
13. The second respondent supported the first respondent's submission. In addition, it was submitted that there is a case for eviction at the Supreme Court<sup>2</sup>. It was reiterated that Section 58 must be applied by the ICL

### Discussion

14. There is clear evidence that the tribunal did not follow a fair process of hearing. Parties were not given an opportunity to defend their case, nor was it recorded that the tribunal made attempts to serve parties directly, or what steps were taken when parties did not make appearance in the meeting. Proceeding with the meeting without making these attempts is unfair on those parties who are absent. There is prima facie evidence on the grounds for review.
15. Section 58 is the correct section by which to make this application. However, the time frame given of 12 months must be adhered to. This time frame is from 20/2/14 to 20/2/15. The application was 7 years after the 12 months have elapsed. This Court cannot act outside of the powers given to it by the CLMA.
16. In order for this Court to be able to proceed with the application of review, other applications should have been made that would give some space for this Court to move around in. Referencing cases that the applicant pursued in other Courts would assist this Court to show that attempts were made to challenge the decision after the CLMA came into effect. This was not done.

### Decision

17. Based on the above, the Court dismisses the application for review on the following grounds:
- That the application was filed outside of the 12 months period stipulated in Section 58; and
  - That the jurisdiction of the ICL is limited within the confines of the CLMA and the Court cannot act beyond this.

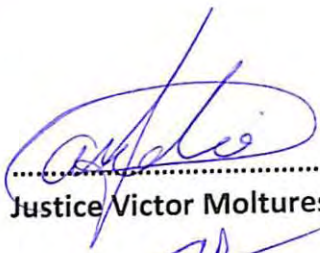
Dated in Luganville, on this 30<sup>th</sup> day of June, 2023

BY THE COURT

  
B. Kanashua (SM)  
CHAIRLADY




<sup>2</sup> Case No. 1464 of 2021

  
.....  
Justice Victor Moltures

  
.....  
Justice Tiwok Saul



  
.....  
Justice Kaory Molivalivu

  
.....  
Justice Ropey Tavulantui