

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

Case No. 23/788 IC/CUST

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

AND

IN THE MATTER OF: TASAKAU CUSTOMARY LAND  
Big Bay Santo

AND

IN THE MATTER OF: The NOKA Village Land Tribunal & Molitamata  
Village Land Tribunal, sitting as Joint Village  
Land Tribunal  
Dated 8<sup>th</sup> December, 2009

BETWEEN: Florian Ngwele  
Representing Family Ngwele and Family Mahe  
Port Olry  
North East Santo  
Applicant

AND: NOKA Area & Moli Tamata Area Joint Village  
Land Tribunal  
Santo  
First Respondent

AND: John Pune  
Sukalato  
Big Bay bush, Santo  
Second Respondent

Date of Hearing: 30 June 2023

Coram:

Senior Magistrate B. Kanas Joshua, Chairlady  
Justice Victor Moltures Taftumol  
Justice Kaory Molivalivu  
Justice Tiwok Saul  
Justice Ropey Tavulantui  
Registrar Anthony Lessy

Counsels:

Mr Edwin Macreveth, for the Applicant  
Mr Lennon Huri, for 1<sup>st</sup> Respondent  
Ms Julieth Kaukare, for 2<sup>nd</sup> Respondent

Date of Decision: 1 July 2023

**DECISION ON THE APPLICATION TO STRIKE OUT**



HAVING heard counsels for each party, the Court strikes out the application for review, on the following grounds:

1. That the application for review was filed after the 12 months period stipulated in Section 58(1) of the Customary Lands Management Act<sup>1</sup> ("CLMA"). The 12 months period was acknowledged and accepted by the applicant.
2. That the application for review was filed in 2023 and not in the period of between 20/2/14 and 20/2/15, which is the 12 months period after the commencement of CLMA. This Court must be seen to apply the law and not what it thinks. Its powers come from the law that created it.
3. That the applicant had ample time to challenge the decision of the tribunal after 2009 but did not do so. They became aware of the decision made in 2009, in 2010. In 2013, the applicant became aware of the case of *Solomon Tavue v. Joint Village Land Tribunal Court*<sup>2</sup>. The date of the judgment is 22/11/13, just 3 months before the CLTA was repealed on 20/2/14 and the CLMA came into effect.
4. That Part 17 of the Civil Procedure Code<sup>3</sup> ("CPR") can only apply to cases that are not customary land matters. The The Island Court (Land) ("ICL") adopts procedures from the CPR every now and again to assist with its function, however, not all procedures of the CPR can be accepted. This Part of the CPR is one of those parts as it is designed for decisions made in other areas. The ICL is established by the CLMA and its function is to review determinations of custom land owners by nakamal or custom area. The CLMA gives power to this court to carry out its functions thus Part 17 does not apply.

Dated in Luganville, on this 1<sup>st</sup> day of July, 2023

BY THE COURT

B. Kanas Joshua (SM)  
CHAIRLADY

Justice Victor Moltures

Justice Tiwok Saul



Justice Kaory Molivalivu

Justice Ropey Tavulantui

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

<sup>2</sup> Civil Appeal Case No. 20/2013

<sup>3</sup> No. 49 of 2002