

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

Civil Case No. 222 of 2006

BETWEEN: FAMILY NAIWAN NOMPUWO
Applicant

AND: ATTORNEY GENERAL
Defendant

Coram: Justice N. R. DAWSON

Date of Hearing: 27th March, 2009

Date of Decision: 27th March, 2009

Counsel: Applicant: Mr. Stephen Tari Joel

Defendant: Ms. Harders

AG. 15/11/3/06

JH/FB

DECISION

1. The Applicant in this matter seeks leave to file an Application for Judicial Review Out of Time. After some discussion today in Court it has been clarified by the Applicants that the only matter that is in dispute is the existence of a boundary line between the land that they say is their custom land and the neighbouring land which has been declared customary land by the Tafea Island Court. The Applicants say that when the Island Court declared the neighbouring land as customary land it did so from a map showing a straight line boundary next to the land that the Applicants say is theirs. The Applicants say that it is unusual to declare custom land by the use of straight line boundaries and that boundaries will normally follow natural contours, streambeds or physical land marks of that sort. They say that in drawing a straight line boundary the Island Court has exceeded its jurisdiction and has included some of their neighbouring customary land within the customary land that they have declared.
2. The Application is opposed by the Defendant, the Attorney General. This Court has been referred to the Decision of Loparu v. Sope [2005] VUCA 4; CAC 26/04 3rd May 2005, and in particular to the second paragraph on page 5 of that decision where it states that Judicial Review under the Rules may apply to a

decision of a statutory court where that body exceeds its jurisdiction or fails to comply with the appropriate statutory process. It goes on to say that any appeal on the merits of the case as to the factual findings can only be made under the statutory process for appeal under the Island Court's Act. The Defendant says this is sufficient to have this Application for Leave to Apply for a Judicial Review Out of Time dismissed.

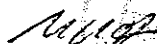
3. The second part of the Applicant's Claim which I should also mention is that they say that the assessors of the Tafea Island Court were incorrectly or inappropriately appointed in that they all came from Tanna and that had at least some of those assessors come from Erromango where the land is situated then those assessors would understand the need to follow natural boundaries rather than drawing straight line boundaries. The Applicants today have not shown any proof or evidence that the assessors were inappropriately appointed or overcome the presumption that the Island Court was appropriately constituted.
4. Rule 17.8 (3) states that "*The judge will not hear the claim unless he or she is satisfied that:-*
 - a) *the claimant has an arguable case; and*
 - b) *the claimant is directly affected by the enactment or the decision; and*
 - c) *there is been no undue delay in making the claim; and*
 - d) *there is no other remedy that resolved in that fully and directly"*
5. Whether the Applicants have an arguable case depends upon evidence which is not currently before the Court. Two maps have been produced to the Court which the Applicants say shows that the boundaries are inconsistent. However it has been pointed out to the Applicants that this Court does not have qualifications in survey and cartography and the evidence of the Applicants at this stage is insufficient. One map does show a boundary that is not straight and the other map shows a boundary that is straight. However there is no combined map or evidence to show where or how those boundaries are said to overlap and nor is there any evidence indicating what land the Applicants claim had been included in the neighbouring customary land as declared by the Island Court. At

this stage the Applicants do not have an arguable case. It is clear under subsection (b) that the Applicants would be directly affected by the decision of the Island Court if their submissions are correct. At this stage it would also seem that there is no other remedy to resolve the matter other than by having the matter considered by way of judicial review. If the Court was to make a decision today that dismissed the Applicant's application for filing a Judicial Review Out of Time it could have the effect of perpetuating a possible injustice. However the Court is not in a position to be able to grant the application at this stage because the Applicants simply fail to produce sufficient evidence to persuade the Court that it should do so. If the Applicant's submissions are correct it could well be that the Tafea Island Court has exceeded its jurisdiction as described in the Loparu v. Sope decision by declaring part of the land that belongs to the Applicants as customary land belonging to somebody else.

6. However the Court cannot make that decision today. The Applicants have asked for time to be able to obtain appropriate survey evidence to show the overlap of the boundaries in order to enable this matter to be eventually resolved in a just and proper manner. That time will be allowed to the Applicants. This matter will go through to a conference in chambers at 11:00 am on 2nd June, 2009 to enable the Applicants to take steps to try to provide appropriate evidence to enable this application to be reheard at another time. Between now and then the Applicant also need to reconsider whether the Attorney General is in fact the appropriate respondent in this matter and whether it should not be the Tafea Island Court that is named in the papers so that the appropriate respondent can be present at conference. At this stage I am making no order for costs which will remain in the cause.

Dated at Port Vila, this 27th day of March, 2009

BY THE COURT


N. R. DAWSON
Judge

