

(Civil Jurisdiction)

BETWEEN: NELSON MOLSESE & SAILAS MOLSESE

Claimants

AND: VERIONDALI AREA LAND TRIBUNAL

Respondent

**AND: TOM TAFTI, BANABAS VURO, EDISON RIRI,
THOMAS JOE, MATTHEW DAE and
EDWARD SUMBE**

Interested Parties

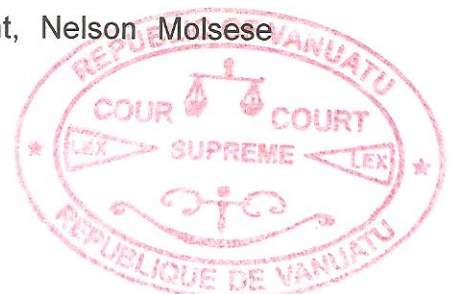
Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mr Nelson Molsese – Claimant in person
Mr Maurice Tari – Spokesman for Matthew Dae & Edward Sumbe
Chief Joseph Riri – Spokesman for Respondent

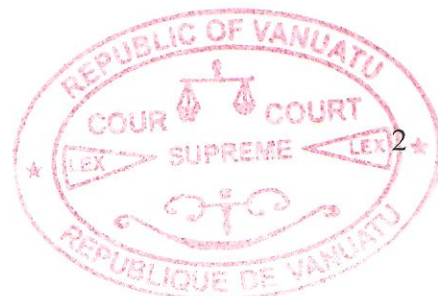
DECISION

1. This case was adjourned on 28th September 2010 to today with directions that –
 - (a) The Respondent and Interested Parties file and serve their responses and/or submissions by 4.30 p.m on 4th October 2010.
 - (b) The Applicants to pay wasted costs of VT10.000 to the Interested Parties present.

2. Today Counsel for the Applicants is not available with non sufficient explanation from his clients. The Court is informed that costs as ordered have not yet been paid. The Applicant, Nelson Molsese confirms that position.



3. Thomas Joe, one of the named interested parties filed a defence at 0800 hours today.
4. Chief Joseph Riri, Chief Samson Livo and Maurice Tari filed sworn statements in response on 1st October 2010. They all confirm that the appeal hearing sought to be restrained by the applicants will take place on 25th October 2010.
5. As such, it is clear there is no urgency in the application of the applicants. The application was filed on an urgent basis and the Court treated it as such. When Counsel for the applicant did not turn up in Court on 28th September to prosecute the application, the Court's view was that the application should be adjourned to enable Counsel to be present. Today after some 8 days, Counsel for the applicants is not in attendance. No reasonable or sufficient explanation is provided for non-attendance. This failure and/or omission is indicative of –
 - (a) Lack of courtesy for the Court;
 - (b) Lack of seriousness on the part of applicants and Counsel to prosecute their application and their judicial review claim; and
 - (c) Lack of urgency in the matter.
6. For the above reasons, the Court decides that the interlocutory application of the application must be dismissed and hereby so rules.
7. I consider also the Judicial Review Claim of the Claimants in light of the responses by the Respondent and some of the persons named as Interested Parties.
8. The Court considers the claim pursuant to Rule 17 of the Civil Procedure Rules and in particular Rule 17.4 and Rule 17.8. The Court identifies the following defects –



- (a) There is no decision that is sought to be challenged.
- (b) As such, there is no reasonable cause of action against the persons named as Interested Parties.
9. The test to be applied by the Court is set out in Rule 17.8(3)(a), (b), (c) and (d). Having perused all the documents file in support of the claims or in defence thereof, I am satisfied that –
- (a) The Claimants have no arguable case.
- (b) The Claimant are not directly affected by any decision of the respondent tribunal.
- (c) There are still available remedy for the Claimants to pursue to have the matter resolved fully and directly.
10. For the above reasons and pursuant to Rule 17.8(5), the Court declines to hear the Claim of the Claimants. Accordingly, I order that the Claim be struck out in its entirety.
11. The Claimants have given undertaking as to damages. As such, they are bound to pay the respondent's and the interested parties costs of the application and of the Judicial Review Claims. These costs must be agreed if not, taxed by the Master.

DATED at Luganville this 6th day of October 2010.

BY THE COURT


OLIVER A. SAKSAK
Judge

