

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU

Civil Case No. 37 of 2010

(Civil Jurisdiction)

BETWEEN: **BILL STEPHENS** representing Family
Salathiel Daniel

Claimant

AND: SANTO MALO AREA LAND TRIBUNAL

First Defendant

AND: SANTO MALO ISLAND LAND TRIBUNAL

Second Defendant

AND: PEDRO VOMULE

Interested Party

Mr Justice Oliver A. Saksak

Mr Less John Napuati for Claimants
Ms Jennifer Harders for First and Second Defendants
Mr Daniel Yawha for Intended Interested Party

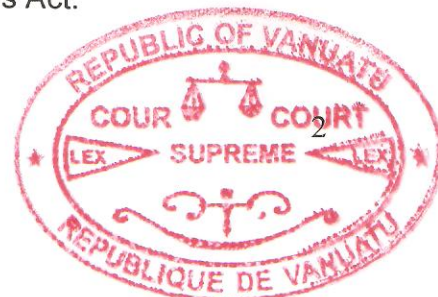
Date of Hearing: 3 December 2010
Date of Judgment: 17th December 2010

JUDGMENT

1. Two applications were before the Court on 3 December 2010. The first by Mr Yawha seeking orders to join Pedro Vomule as Interested Party to this proceeding. Ms Harders for the First and Second Defendants did not oppose the application. Mr Napuati however objected to the application on the basis that it is the decision of the First and Second Defendants that is sought to be reviewed and it does not involve Mr Yawha's clients and any other parties to the land dispute.



2. The Court was of the view that because the claim of the Claimants challenges the tribunals' findings over the whole land inclusive of Artacha land, which the tribunal decided it belonged to the Intended Interested Party, that they should be allowed to be joined as Interested Party. Accordingly, leave was granted and Pedro Vomule was joined as Interested Party to the proceeding.
3. The Second Application was filed by Mr Napuati on behalf of the Claimants to seek leave for extension of time to file a judicial review claim pursuant to Rule 17.5 of the Civil Procedure Rules 2002 (the Rules). The application was filed on 29th September 2010. The applicant acknowledged that it is roughly 8 months and some 26 days outside of the 6 months period required under Rule 17.5(2) of the Rules. However, Counsel for the applicant argued that pursuant to Rule 17.5(2) of the Rules, substantial justice requires that leave be granted. The Applicant acknowledged that they have a heavy duty to show they are entitled to leave beyond the six months period. They relied on the Court of Appeal decision in Avock v. Government of the Republic of Vanuatu [2002] VUCA. They also relied on the case of William Sumbe v. Joint Village Land Tribunal [2010] VUSC.
4. Ms Harders and Mr Yawha made submissions in objection to the leave application on the basis that –
 - (a) The applicant did not show any relevant justification for the long delay.
 - (b) There was great public interest in the case to ensure decisions of tribunals do not linger. It was argued in this case there are 20 other parties and these would be prejudiced by the applicant's claim.
 - (c) There was another remedy available to the Claimants under Section 39 of the Customary Lands Tribunals Act.



- (d) The application was an abuse of process as it was in contravention of the double-jeopardy rule.
- (e) The decision of the First Defendant has been confirmed by the Second Defendant and the Claimant is already enjoying the fruit of that decision by receiving a certain sum of moneys paid out in July 2010.
5. Having considered all those submissions, the Court accepts submissions from Ms Harders and Mr Yawha that –
- (a) Substantial justice does not require the grant of leave in the circumstances.
- (b) The Claimant has failed to provide relevant justification for the delay.
- (c) The Claimant's appeal has been resolved fully in the Santo Malo Island Land Tribunal and, for the Claimant to commence this proceeding after having benefited from the decision of the Second Defendant for some 8 months is clearly an abuse of process.
6. The conclusion this Court reaches therefore is that the application of the Claimants for leave is refused and is hereby dismissed.
7. As a result, the defendants have incurred costs. They are entitled to their costs of and incidental to the proceeding to be agreed or taxed by the Master. The Interested Party is also entitled to their costs. Costs are allowed on the standard basis.

DATED at Port Vila this 17th day of December 2010.

BY THE COURT


OLIVER A. SAKSAK
Judge

