

(Civil Jurisdiction)

**BETWEEN: TAMATA DUMDUM**

Claimant

**AND: EAST MALO ISLAND LAND TRIBUNAL**

First Defendant

**AND: NIKENIKE VUROBARAVU**

Second Defendant

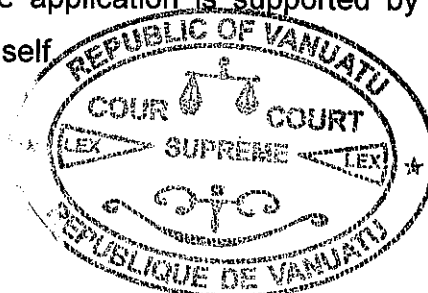
Mr Justice Oliver A. Saksak  
Mrs Anita Vinabit – Clerk

Mr Henzler Vira for the Claimant  
Mr Ronald Warsal for the Defendants

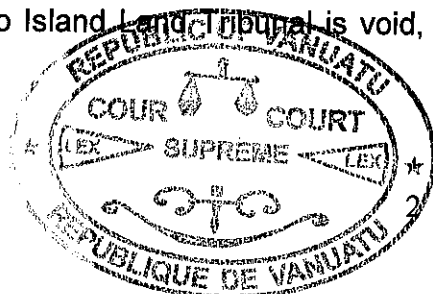
Date of Hearing and Oral Decisions: 4<sup>th</sup> June 2010.

## **DECISION**

1. This matter was to have been heard at trial on 6<sup>th</sup> May 2010. However, on that date the Claimant was personally in Court but his Counsel Mr Vira was not, due to some family commitments. Mr Warsal was not made aware and he sought costs. The Court adjourned the trial in fairness to the Claimant but awarded costs against him and Counsel in the sum of VT78.110. These costs have not been paid despite the Orders of 6<sup>th</sup> May 2010.
2. Today Mr Vira is present with his client but they make a written application for an adjournment. The application is supported by the sworn statement of the Claimant himself



3. Mr Warsal indicated that he was opposed to the application on the basis that; (a) this would now be the Second time the trial would be adjourned due to the Claimant not been adequately prepared; (b) that pleadings were already closed and no further time should be allowed to him to file statements containing new and additional information or evidence. Further, that the Claimant has not paid the costs as ordered on 6<sup>th</sup> May 2010 and has not filed responses as directed by the Court in paragraph 11 (a) of the Orders. Finally, the Claimant was a losing party in Civil Case 29 of 2004 where this Court gave judgment in favour of the Second Defendant in this case and awarded costs against the Claimant (as a Defendant at the time). Those costs have not been paid to date. That judgment was dated 4<sup>th</sup> April 2005.
4. The Court put a few questions to Counsel Mr Vira as follows:-
- (a) Whether costs as ordered on 6<sup>th</sup> May have been paid?  
Answer: No.
- (b) What the main issue in the Claimant's claim is?  
Answer: No definitive answer given. Counsel takes time and is uncertain about that the main issue is.
- (c) Was the Claimant a party in the Island Land Tribunal whose decision is sought to be challenged?  
Answer: No.
- (d) Referring to the reliefs sought at the end of the claim being declarations that –
- (i) The decision of the East Malo Island Land Tribunal is void, invalid and of no effect;



- (ii) The dispute be dealt with a fresh by a proper lands tribunal on East Malo.

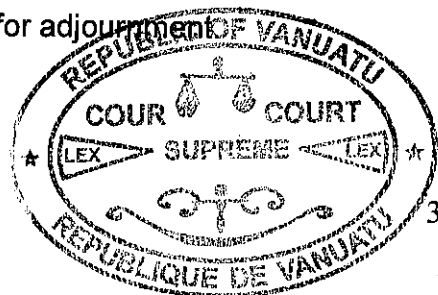
The Court then asked how a declaration could be made to favour the Claimant who was not a party in the original proceedings before the East Malo Island Land Tribunal, and how it could effectively be enforced?

Answer: There was no definitive response.

- (e) Finally, whether the Claimant had any standing to bring this claim?

Answer: Counsel hesitated to answer and did not give any definitive answer.

5. Mr Warsal submitted the Claimant could not have claimed declarations in the manner that he did and argued the appropriate course was to have filed a judicial review application but he was out of time by almost over 2 years and no leave had been sought to do that.
6. The only difficulty with that argument is that even if the Claimant had proceeded by way of judicial review, he would still face the issue of whether he has standing.
7. Based on those submissions, the Court was of the view that –
- (a) Civil Case 32 of 2009 was misconceived.
- (b) The Claimant Tamata Dumdum has no standing to bring the action.
- (c) As such, there is no need to request for a further adjournment as it would be pointless because pleadings have been closed.
- (d) To save unnecessary costs, the case must be resolved today by refusing the Claimant's application for adjournment.



(e) Civil Case No. 32 of 2009 be dismissed with costs of and incidental to the action to be paid by the Claimant to the Defendants as agreed, or taxed by the Master.

8. The Court so ruled and ordered.

DATED at Luganville this 5<sup>th</sup> day of June 2010.

BY THE COURT

  
OLIVER A. SAKSAK

Judge

