

**BETWEEN: FAMILY MAHE AND FAMILY
NGWELE**

Claimants

**AND: MOLI TAMATA AREA LAND
TRIBUNAL COURT**

First Defendant

**AND: NOKA AREA LAND
TRIBUNAL COURT**

Second Defendant

Coram: *Mr. Justice Oliver A. Saksak*

Date: *9th September 2013*

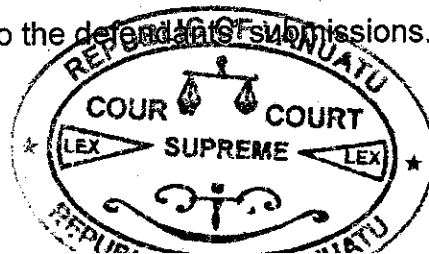
Counsel on record: *Ronald Warsal Lawyers for Claimants
Attorney General for Defendants*

DECISION

1. This proceeding commenced on 21st October 2010 when the Claimants filed a claim for judicial review together with an application to seek leave to file the claim out of time.
2. On 16th November 2010 the Court called the case for first conference hearing. Ms. Jennifer Warren was present for the Claimants and Mr. Avock was present for the defendants. Among others, the Court directed the Claimants to effect service of the Claim and application within 5 days.
3. On 3rd February 2011, when the matter was called for second conference Mr. Warsal was present and there was no appearance by defendants. Mr. Warsal sought leave orally to file a renewed claim. Leave was granted with direction that the amended application be filed and served within 5 days.



4. On 28th March 2011, Ms Warren was present and the defendants were not. Directions were issued requiring the defendants to file and serve their defences and sworn statements within 21 days and for the Claimant to file and serve replies (if any) within 7 days.
5. By letter dated 3rd August 2011, the Solicitor General informed Mr. Warsal that they had not yet been served with any renewed claim.
6. By application filed on 19th September 2011, the Solicitor General sought orders (a) for the strike out of the claimants claims in its entirety and (b) for costs of the application.
7. The application is supported by the sworn statement of Agnes Tari Siro, Clerk to the State Law Office who deposed that since 16th November 2010 to 19th September 2011, no renewed claim had been served on the State Law Office.
8. On 16th April 2012 when the matter was called for the hearing of the application for strike out, only Mr. Avock was present and the Claimants or their Counsel were not. The Court adjourned the hearing to 15th May 2012 and awarded wasted costs of VT5.000.
9. Nothing seemed to have happened on 15th May 2012 and the matter remained idle until 12th July 2012 when the Registry issued a Notice of Hearing of the strike-out application returnable for 20th August 2012. On this date, the Claimants or their Counsel did not attend but Mr. Kevin Nathan was present for the defendants. Mr. Nathan handed up a copy the defendant's written submissions filed on 17th August 2012, some three days earlier. Counsel requested an adjournment for 7 days to give the Claimants opportunity to file and serve their responses. The Court granted the adjournment and issued a clear direction in paragraph 1 of the Orders of 20th August 2012 to that effect.
10. Unfortunately, from 20th August 2012 to the date of this decision the Claimants have not filed any responses to the defendant's submissions.



11. That failure and/or omission leads me to only one conclusion: that is that the application by the Attorney General seeking a strike out of the claim stands unchallenged. All the submissions by the Attorney General are accepted.

12. Accordingly, this proceeding is hereby struck out in its entirety.

13. The Attorney General sought an order for costs. The order is granted. Costs is calculated as follows:-

(a) For attendance on 16th April 2012 – VT5,000 (wasted costs) as ordered.

- Airfares (Half only) – VT15,000. Counsel attended Court for other cases.

(b) For attendance on 20th August 2012 – VT5,000.

- Airfares (Half only) – VT15,000. Counsel attended Court for other cases.

(c) For preparations: Application, sworn statement and submissions – 2 hours x VT10,000 per hour = VT20,000.


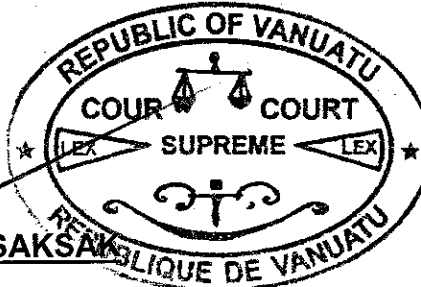
Total Costs = VT60,000.

The Claimants are hereby ordered to pay the defendants' costs of the application fixed at VT60,000 within 28 days from the date of this decision.

14. Costs are made pursuant to Rule 15.6 of the Civil Procedure Rules No. 49 of 2002.

DATED at Luganville this 9th day of September 2013.

BY THE COURT



OLIVER A. SAKSAK

Judge