

BETWEEN: CHIEF ANDIPURA LIPES

Claimant

**AND: JOINT AREA LAND TRIBUNAL OF
SOUTH SANTO, FANAFO, CANAL
AND MALO**

Defendant

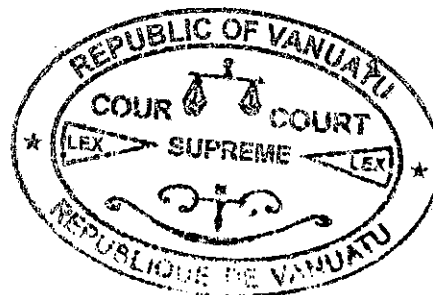
Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Mr. Lent Tevi for the Claimant*
Ms Christine Lahua for the Defendant

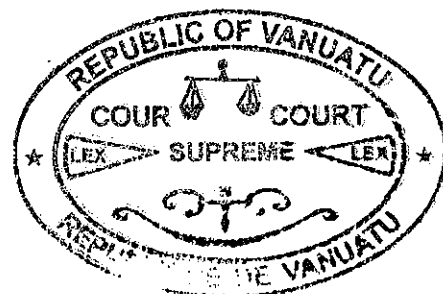
Date: *3rd February 2014*

DECISION

1. This case was initially struck out by the Court by Order dated 24th March 2010. On that date the Claimant was not present but four members of the Defendant Tribunal were present. They informed the Court that they had received only the notice but that they had not been served with any other documents in relation to the claims by the Claimant.
2. The application and the sworn statement of the Claimant filed in support were filed on 29th September 2009. When the Court sat on 24th March 2010 it had been some 5 months later. And it was the Second listing and the Claimant made no appearance on that date. The Court therefore struck out the proceedings for lack of want of prosecution.
3. The Claimant complained that he did not receive any notice regarding the hearing. He filed an application to reinstate the case on 26th April 2010 together with a sworn statement in support. Mr. Willie Kapalu appeared as legal counsel on record for the Claimant at the time. He later filed a notice of ceasing to act on 4th August 2010.




4. On 1st July 2010, the Court sat for the first time to hear the application to reinstate following the Notice dated 21 May 2010. Neither the Claimant nor the Defendants were present and the Court adjourned the case to 30 September 2010.
5. From the records, nothing transpired on that date until 24th September 2013 when the Registry issued a notice returnable for 30th September 2013. No Parties attended Court on that date and the matter stood adjourned until 1st October 2013 when the Registrar issued another notice returnable on 15th October 2013. On this date the Claimant and Chief Frankie Stevens were present in persons. Chief Stevens appeared as spokesman. Ms Lahua was present and Chief James Tangis, Chairman of the Defendant Tribunal was also present.
6. Ms. Lahua stated to the Court she had not been served with any application and sworn statement filed in support. Counsel sought a direction order for service. The Court issued a Minute in Bislama on 15th October 2013 recording amongst others, the agreement by the Claimant to effect service of his documents on the State Law Office and adjourned the hearing of the application to Monday 4th November 2013 at 10 O'clock a.m.
7. On 4th November 2013, Chief Stevens was present as spokesman for the Claimant and Ms Lahua appeared for the Defendant Tribunal. Counsel again pointed out that despite the clear agreement and undertaking of the Claimant to effect service on 15th October 2013, there still was no service. Chief Stevens explained that they had instructed Mr. Stephen Joel to act on their behalf but that Mr. Joel did not do anything for them.
8. Mr. Joel did not file any notice of beginning to act. Therefore the explanation given is questionable and lacks any reasonableness and credibility.
9. On 4th November 2013, the Court granted a further adjournment in favour of the Claimant but in clear terms in Bislama directed the Claimant to effect service on the State Law Office within 14 days. The Court fixed the returnable date to be today Monday 3rd February 2014.



10. Today the Claimant and Chief Stevens are present. Mr. Lent Tevi appears on the Claimant's behalf having filed a notice of beginning to act on 29th January 2014.
11. Mr. Tevi seeks an adjournment in order to reassess the position. Ms Lahua objects and submits that if the Court was minded to grant the adjournment, then an award of wasted costs in the sum of VT5.000 was appropriate in the circumstances.
12. Mr. Tevi does not have any issue with the application for wasted costs.
13. Having considered the request for adjournment the Court declines to grant the adjournment. Instead the Court dismisses the application of the Claimant in its entirety. The reasons being one of considerable delay in serving the application and the sworn statement on the State Law Office despite very clear directions issued first on 15th October 2013 and again on 4th November 2013.
14. The Rules are clear. A proceeding that is filed and remains un-served for 3 months is no longer effective pursuant to Rule, 5.3.
15. The application by the Claimant lacks merit and any legal basis. It has put the Defendant Tribunal to unnecessary costs. For this reasons it is necessary to award costs to the Defendant. These are costs of and incidental to the application as agreed or be determined by the Court. Accordingly, I order the Claimant liable to pay those costs.

DATED at Luganville this 3rd day of February 2014.

BY THE COURT


OLIVER A. SAKSAK
Judge

