

BETWEEN: BOETARA FAMILY represented by
John Tari Molbarav, Jerome Natu,
Matthew Tamata, and Lauren
Solomon
First Claimants

AND: ZEBEDEE TARVUI MOLVATOL
Second Claimant

AND: REPUBLIC OF VANUATU
Defendant

Coram: *Mr. Justice Oliver A. Saksak*

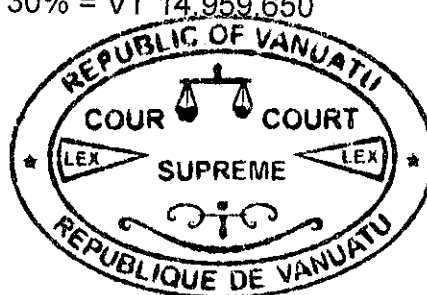
Counsel: *Mr Felix Laumae for the First Claimants
Mr Frederick Gilu for the Defendant
No appearance by Second Claimant*

Date: *4th July 2014*

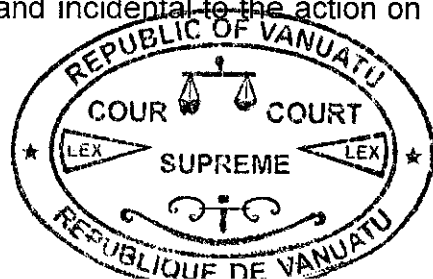
JUDGMENT

Background

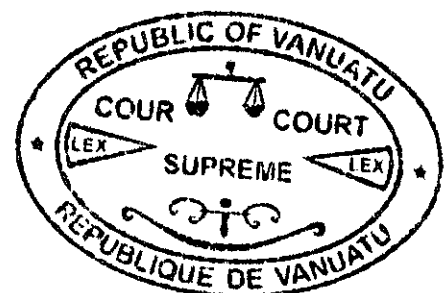
1. This proceeding was initially filed on 4th November 2011 styled as "***Urgent Claim for Judicial Review***" together with a sworn statement in support deposed to by Tele Harry. Service was effected on the State law Office by Mr Harry on 4th November 2011 and proof of service was filed on 7th November 2011.
2. The Claimant seeks the following Orders-
 - a) An Order pursuant to section 14 of the Land Acquisition Act [Cap.215] requiring the Director of Finance to forthwith pay the full determined value of compensation of VT 49,865,500 to the Claimants being for compulsory acquisition of the Claimants land upon which the Luganville water source is situated.
 - b) An Order requiring the Director of Finance to pay the said determined amount of compensation in the following manner:
 - I. Boetara Family (Claimants) – 50% = VT 24.932.750
 - II. Trans-Melanesian Lawyers Trust Account – 30% = VT 14.959.650
 - III. Zebedee Molvatol – 20% = VT 9.973.100



- c) An Order that the Defendant pays the Claimants outstanding rentals for use of their land since 1980 to date as agreed or assessed, and
- d) An Order that the Defendant pays the Claimant's costs of and incidental to this proceeding on an indemnity basis.
3. Subsequently, on 30th January 2012 the Claimants filed an urgent application seeking the following interlocutory Orders-
- a) An Order pursuant to Rule 3.2 (1) of the Civil Procedure Rules adding Zebedee Molvatol as Second Defendant to the proceeding for the purpose of the application and the proceeding.
- b) An Order directing the First Defendant (The State) to pay the full amount of the determined compensation for the Luganville water source land to the custom owners as follows:-
- I. Boetara Family – 50%
 - II. Zebedee Molvatol- 20%
 - III. Trans Melanesian Lawyers – 30% to be held in Trust.
- c) An Order that 30% of the compensation sum be held by the Trans-Melanesian Lawyers Trust Account until the dispute between the Claimants and Second Defendant in relation to sharing of benefits/ processes in respect to Belbarav customary land is determined by the Verondali South East Santo Village Lands Tribunal.
4. On 30th March 2012 the Court Registry in Luganville issued a Notice of Hearing of the application returnable on 16th April 2012.
5. On 16th April 2012 when the Court convened Mr Godden Avock appeared for the State and referred the Court to Civil case 18 of 2012 filed by Thompson Wells as Claimant against the Republic, Boetara Family and Zebedee Molvatol as First, Second and Third Defendants. Pursuant to that proceeding the Court had issued an Order restraining the Government from paying out any money as claimed by the Second and Third Defendants until the resolution of the proceeding. In light of that Order this Court issued an Order staying this proceeding CC 40 of 2011 pending the hearing and determination of Civil Case No.18 of 2012.
6. On 3rd May 2012 the Claimants filed an Amended claim for Judicial review seeking two Orders that:-
- a) Pursuant to section 14 of the Land Acquisition Act [Cap 215] requiring the Director of Finance to immediately pay the full determined value of compensation of VT 49.865.500 to the Claimants, and
- b) The Defendant pays the Claimants costs of and incidental to the action on an indemnity basis.



7. On 2nd April 2013 Zebedee Molvatol filed a Response to the urgent claim for Judicial Review. Mr Molvatol agreed to every other claims by the Claimant except to the sharing in paragraph 2 and claimed that sharing should be 50% to the Claimant at VT 24.932.750 and 50% to him at VT 24.932.750 and that no payment should be made to Trans- Melanesian Lawyers Trust Account.
8. On 3rd February 2012 Mr George Nakou filed a Notice of Beginning to Act for Zebedee Molvatol.
9. On 26th February 2013 when the case was called for mention only Mr Laumae was present and he sought directions requiring parties to file their written submissions within 7 days each. Mr Laumae filed written submissions on 12th March 2013 but the State did not. Therefore the Registry sent a reminder by letter dated 16th May 2013.
10. Mr Laumae lodged supplementary submissions under cover of his letter dated 10th May 2013.
11. On 5th August 2013 the State Law Office filed a defence to the urgent claim for judicial review. Their basic defence was that because of the restraining Orders issued in Civil Case no. 18 of 2012 remaining extant, and further that Judicial Review Claim no. 8 of 2013 was still pending determination, no money should be paid out. The Defendant filed their written submissions together with their defence.
12. On 28th March 2014 the Court of Appeal sat to hear an appeal by Timothy Molbarav, Amali Solomon, Peter Natu, James Tamata and Singo Molvatol against Thompson Wells as Respondent. The Appellants had appealed against the two interlocutory Orders made against them on 2nd April 2012 and on 6th July 2012 in Civil Case no. 18 of 2012. These Orders had the effect of restraining a distribution to the Appellants of part of the purchase price due to the custom-owners of Land known as Belbarav in the South East Santo Area following the compulsory acquisition of a portion of that land by the Second Respondent (the State).
13. Finally on 23rd May 2014 Mr Laumae filed further evidence by sworn statement of Ben Mata who deposed, among others that although he is a chief of the South East Santo Area, he is not and never was the Chairman of the South East Santo Area Council of Chiefs in 2005 when Mathias Molsakel and Rachel Molsakel alleged they lodged an appeal with him against the decision of the Verondali Village Land Tribunal dated 30th May 2005. He confirmed he did not receive any purported appeal from the Molsakels and that he is not aware of any such appeal in existence.



Discussion

14. I have, from the submissions and responses and defences filed identified the following issues:-

a) **Are the Claimants the declared custom owners of Belbarav Land that extends to the Luganville Water Source Land?**

b) **Are they entitled to compensation for compulsory acquisition of the land on which the Luganville water source is located?**

The answers to these issues are in the affirmative. The State does not dispute these facts. They made these concessions at paragraph 12 of their written submissions and paragraph 1 (a) and paragraph 3 (b) of their defence dated 5th August 2013 respectively.

c) **Whether the amount of the compensation has been validly determined?**

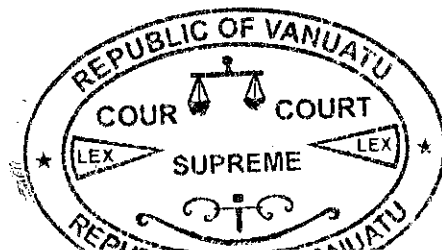
The answer is in the affirmative. The State has conceded this in paragraph 2 of their written submissions dated 5th August 2013. The amount is fixed by the Land Acquisition Act. See **Republic V.Boetara Family [2011] VUCA6 CAC 4 of 2011 paragraph 33.**

d) **Does Thompson Wells have a valid appeal?**

The State relies on the Orders of 2nd April and of 6th July 2012 issued in Civil Case no.18 of 2012. The Court of Appeal in its Judgment dated 4th April 2014 held at paragraph 31 that Thompson Wells was not a person who has any right of appeal under section 12(1) of the Tribunal Act. Then at paragraph 35 the Court of Appeal specifically said that Thompson Wells does not have any appeal on foot against the decisions of the Veriondali Lands Tribunal. For that reason the Court of Appeal specifically set aside the Orders of 2nd April and of 6th July 2012. Further the Court of Appeal held that Civil Case no.1 of 2013 which was formerly Civil Case no.7 of 2012 was now become moot and that it should be struck out. Accordingly Civil case no.7 of 2012 is hereby struck out. Further the Orders of this Court dated 16th April 2012 which stayed this proceeding are now vacated in light of the Court of Appeal decision. Further Thompson Wells is not a party to this proceeding and it is therefore irrelevant and inappropriate for the State to continue to place reliance on the Orders of 2nd April and of 6th July 2012 to delay release of moneys to which the Claimants are legally entitled. It amounts to an unjust deprivation of a legal and constitutional entitlement. Therefore the answer to this issue is in the negative.

e) **Whether, Mathias Molsakel and Rachel Molsakel have a valid appeal before the South East Santo Area Lands Tribunal?** The answer is in the negative.

The uncertainty about this issue is now dismissed by the evidence of Chief Ben Mata in his sworn statement of 23rd May 2014. The Molsakels are also not parties to this proceeding and as such it is inappropriate and irrelevant for the State to continue to place reliance on their purported appeal to deny the Claimants the fruit of their Judgment, which they have had since May 2005.

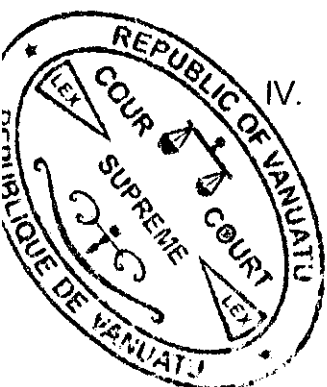


The Molsakels and their Counsel have the onus of proving their appeal to the Court. Since filing Civil Case no.124 of 2011 and Judicial Review Application no.8 of 2013 it is not apparent that they have any evidence showing such an appeal. That failure and/or omission is clear indication that the filing of those proceedings were to achieve nothing but become merely a delay tactic to deny the Claimants the fruit of their judgment. That is a gross injustice to the Claimants. Those cases should be determined and disposed of quickly in light of the Court of Appeal decision of 4th April 2014. In the meantime before those cases are heard and decided, I have seen the evidence that clarifies the uncertainty surrounding the Molsakel appeal and having done so, I am satisfied the Molsakels do not have any appeal on foot to be a bar to the Claimants being paid what is their legal and constitutional entitlement.

f) **Whether the Claimants are entitled to the Orders they seek (a) under the claim for Judicial Review and (b) their application seeking interlocutory orders?**

First, I discuss the application for interlocutory orders. Except for the Order seeking to add Zebedee Molvatol as a party to the proceeding, the rest of the Orders sought are basically these same orders sought under the judicial review claim. Therefore the application will be dismissed in respect to the Orders sought in paragraph (2). But the Order sought in paragraphs 1 and 3 is granted because Zebedee Molvatol is one of the declared custom owners of Belbarav Land and as such it is proper that he be added as a party. Furthermore, Mr Laumae does not act for him but Mr Nakou does. Accordingly Zebedee Molvatol is joined to the proceeding as Second Claimant. Secondly the Orders sought under the Judicial review claims are appropriate and should include a declaration as follows:-

- I. That pursuant to Section 14 of the Land Acquisition Act [Cap 215] the failure, omission and/or refusal by the Defendant to release the determined compensation in the sum of VT 49.865.500 to the custom-owners of Belbarav land is declared to be unlawful.
- II. That the Defendant be required to pay the determined amount of VT 49.865.500 to the custom owners in the following manner:
 - a. To Boetara Family – 25% = VT 12.466.375
 - b. To Zebedee Molvatol – 25% = VT 12.466.375
- III. A declaration that Trans-Melanesian Lawyers are not custom-owners of the Land in question and are therefore not entitled to keep 30% of the compensation moneys in their Trust Account.
- IV. Instead, the remaining 50% of the compensation money in the sum of VT 24.932.750 are ordered to be paid into the Chief Registrar's Trust Account to remain therein until the parties obtain a determination as to sharing by the Veriondali South East Santo Village Land Tribunal.

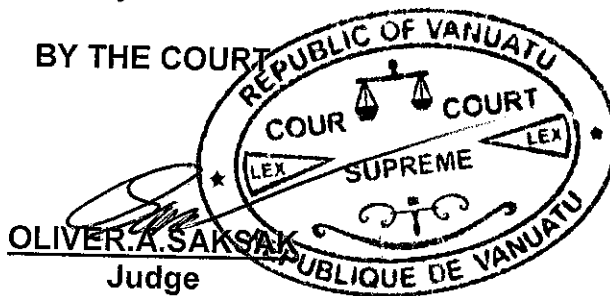


V. Finally in relation to costs, the Defendant is Ordered to pay the First Claimant's costs of and incidental to this proceeding on the standard basis as agreed or be determined by the Court. The Second Claimant is not entitled to any costs as neither he nor his Counsel took any active part in the hearings and conferences held.

15. Accordingly the Court grants Judgment in favour of the First and Second Claimants.

DATED at Port Vila this 4th day of July 2014.

BY THE COURT



OLIVER A. SAKSAK
Judge