

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Judicial Review Case No. 24 of 2012

BETWEEN : JOHN TASSO, EDWIN DAVID, NORMAN
WILLIE, JIMMY TOM & REUBEN JACK
Claimants

AND: CUSTOMARY LANDS UNIT
First Defendant

AND: MALMEMELI COUNCIL OF CHIEFS OF
AMBRYM
Second Defendant

AND: JOHN TAMAN, JOHN JOB, REIK JOHN,
JAMES TERRY, JIMMY JAMES, TASSO
TOMAN, KAMI TASSO, DANIEL KAMI
Third Defendants

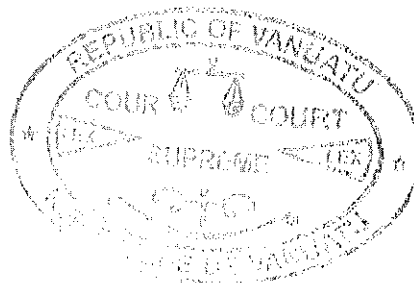
Coram: Justice Aru

Counsel: Mr. S.T. Joel for the Claimants
Mr. L. Huri for the First Defendant
Mr. G. Boar for the Second and Third Defendants

JUDGMENT

Background

1. This is a claim under section 39 of the Customary Land Tribunal Act [CAP 271] (the Act) and filed as a judicial review claim seeking declaratory as well as quashing orders.



2. The following brief chronology of events sets out the essential facts which are not in dispute:-

- 16 April 2010

The Malmeli Council of Chiefs of the Island of Ambrym (the MCC) met in Santo as a land tribunal with only a chairman, chief Eli Tewor and a Secretary chief Felix Worwokon in attendance and declared the third defendants as custom owners of Ulei Airport land;

- On the same date the Kastom Ona Blong Graon Fom was completed to that effect;
- On the same date a letter was written to the Minister of Lands advising of the declaration;

- 16 June 2010

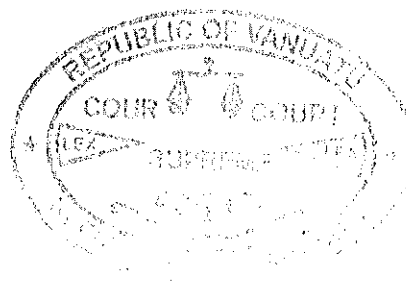
The Customary Lands Unit (CLU) under the Department of Lands by letter to the Director of Lands confirmed that the MCC decision of 26 April 2010 declared the third defendants as rightful custom owners of Ulei Airport land and that the declaration was in accordance with section 6 (1) of the Act;

- 6 July 2010

The third defendants started receiving land rents from the Government from 6 July 2010 with a payment of VT 30, 000;

- 15 November 2011

The MCC chairman, chief Eli Tewor by letter withdrew his signature from the declaration of 16 April 2010 stating that he was given wrong information and forced to sign the declaration and to use the MCC stamp;



- 14 February 2012

The CLU by letter to the National Coordinator of Basic Education advised that following chief Eli Tewor's letter referred to above, the Ulei Airport land was still in dispute and that no land rentals should be released to any custom owners;

- 23 February 2012

The claimants by letter wrote to the CLU seeking clarification on their conflicting position as to the MCC declaration of 16 April 2010 with no response;

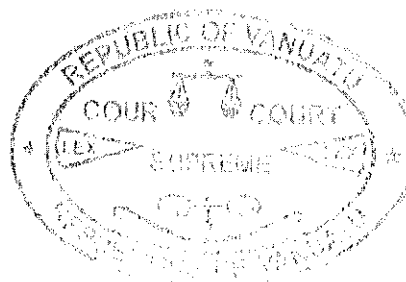
- 6 March 2012

The claimants were then informed by the Attorney General that the Government had executed a Deed of Release and an Agreement to Lease with the third defendants and that payment of the first premium installment had been made to James Terry and John Reik (representing the members of the third defendants);

- A payment of VT 1,042,500 was made on 9 December 2011.

Claim

3. The claimants allege in their claim that the MCC decision is unlawful as the hearing did not comply with the Act. Essentially they say that section 6, section 7, section 25 and section 27 of the Act were not complied with and as such it was wrong for the CLU to confirm the decision as a declaration of Ulei Airport Land. They now seek redress from this Court pursuant to section 39 of the Act for the decisions to be cancelled.
4. The first defendants in their defence say that the records of the decision made on 16 April 2010 show that there were only two members present at the time the MCC made its decision and that the State Law Office informed the CLU by letter on 11 October 2012 clarifying that the MCC decision of 16 April 2010 was not a Land Tribunal Decision.
5. The third defendants on the other hand deny the claim and say that the MCC decision was made in accordance with the provisions of the Act.



Evidence

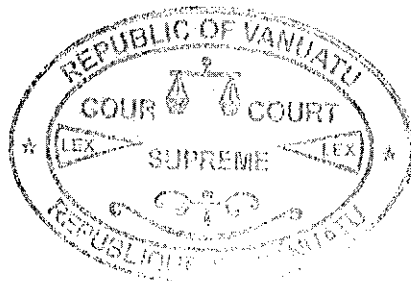
6. The claimants rely on the sworn statement of Reuben Jack filed on 25 October 2012. The first defendants on the other hand rely on the sworn statement of Alicita Vuti filed on 16 January 2013 and the second and third defendants rely on the sworn statements of James Terry filed on 11 December 2014 and 3 November 2015 respectively.

Issues

7. The two main issues identified for determination are as follows:-
 - i) whether the CLU decision of 16 June 2010 to adopt the MCC decision of 16 April 2010 was lawful ; and
 - ii) whether the MCC decision of 16 April 2010 was lawful .

Discussions

8. I choose to first deal with the second issue for the simple reason that if the MCC decision is unlawful then the CLU decision confirming it as in line with the Act must also be unlawful.
9. All land tribunals established under the Act to deal with disputes over custom land are required to function in accordance with the provisions of the Act. If there is noncompliance by a land tribunal, a party to a dispute before it may apply to this Court pursuant to section 39 of the Act to have the decision cancelled. This claim though filed as a claim for judicial review is not strictly a claim under Part 17 of the Civil Procedure Rules. As such the Act does not specify a limitation period of when a party can institute proceedings pursuant to section 39.
10. The facts which are not disputed are that the MCC is the Council of Chiefs of the island of Ambrym. Secondly it purportedly sat in Santo as a land tribunal with only the chairman and Secretary sitting to determine custom ownership of Ulei Airpport land which is on the island of Ambrym and its decision was conveyed in the Kastom Ona Blong Graon Fom as required by section 34 of the Act.



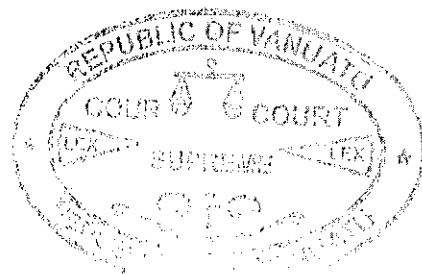
11. First and foremost if the MCC was sitting as a land tribunal, the Secretary cannot take part in the adjudication as secretaries of land tribunals are prevented by section 38 (2) of the Act from taking part in the decision making process because of their position. Therefore the purported decision of the MCC was a decision reached by the chairman alone. At all levels of Land Tribunals, the Act specifies that a chairman must sit with other members, their numbers depending on the level of the tribunal. The Act does not allow for a chairman to sit and decide custom ownership of land alone by himself without the other members. For Island Land Tribunals as specified under section 23 (3) of Act, the land tribunal must consist of the chairperson and four other members. As far as procedures outlined by the Act are concerned, there is no evidence that sections 25, 26 and 27 were complied with.
12. In addition, the claimants were not present in the meeting therefore the MCC decision could not have been made in compliance with section 6 of the Act as all the parties were not present. (see: *Willie v Sarginson* [2014] VUCA 10).
13. On 15 November 2011, the chairman chief Eli Tewor by his own admission (Annexure "CRA 8" to the sworn statement of Reuben Jack) withdrew his signature to the declaration of 16 April 2010 and said:-

"Mi Jif Elie Tiwor , chairman blong Malmeli Council of Jif blong Ambrym mi stap raetem leta ia blong withdrawem signature blong mi folem leta we mi bin saenem blong declarem se James Terry wetem family blong hem oli kamaot long nasara blong Etong olgeta nao oli custom ona blong Ulei airport long South East Ambrym.

Mi bin saenem leta ia folem wrong informesen we olgeta oli givim long mi mo oil bin fosem mi blong saenem leta ia mo usum official stamp blong council.

"Hemia now ol risen blong withdrawem ol signature blong mi :

- 1) From ineva gat wan village court long South East Ambrym we I declarem se James Terry wetem family blong nasara blong Etong we olgeta nao oli custom ona blong Ulei airport long South East Ambrym*



- 2) *I nogat wan area council of jif blong South East Ambrym we I declarem se James Terry wetem of family long nasara blong Etong, olgeta oli custom ona blong Ulei airport long South East Ambrym;*
- 3) *Mo Malmaeli Council of Jif blong Ambrym I neva sitdaon blong declarem se James Terry wetem family long nasara blong Etong oli custom ona blong Ulei airport long South East Ambrym.*

Actually of infomesen we mi kasem I talem se James Terry wetem family long nasara blong Etong oli no original claimant blong Ulei airport long South East Ambrym.

Leta is mi raetem long 15/11/2011

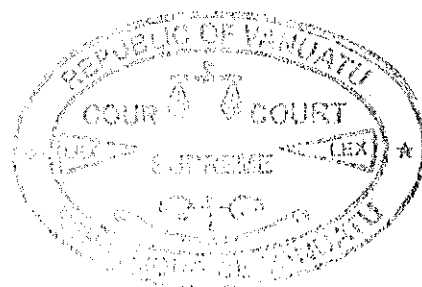
(signed)

Jif Elle Tiwor

Malmeli Council of Jifs

(emphasis added)

14. This evidence has not been challenged despite James Terry asserting in his sworn statement filed on 15 December 2014 at paragraph 23 that *"..Jif Eli ibin saenem report mo leta long fri will blong hem.."*
15. Even if the MCC sat as the Ambrym Council of chiefs, it had no jurisdiction then to determine custom ownership of Ulei Airport land. (see: **Valele Family v Touru** [2002] VUCA 3). The second issue must therefore be answered in the negative. The MCC decision was not lawful as it did not comply with the provisions of the Act. As a council of chiefs, it had no jurisdiction to determine custom ownership of land. Given my answer to the second issue, the first issue must also be answered in the negative. The CLU decision accepting the MCC decision of 16 April 2010 as a decision made pursuant to section 6 of the Act cannot stand otherwise it would be upholding a decision that is unlawful.
16. The orders are:-
 - a) the decision of the MCC dated 16 April 2010 in respect of Ulei Airport land is declared unlawful and is hereby quashed.

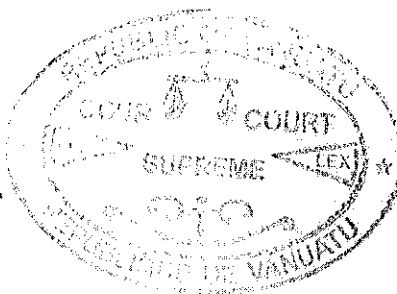
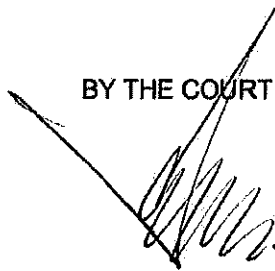


b) the decision of the CLU on 16 June 2010 confirming the decision of the MCC as a declaration of custom ownership of Ulei Airport land in favour of the third defendants pursuant to section 6 of the Act is declared unlawful and is hereby quashed.

c) The claimants are entitled to costs on a standard basis to be taxed failing agreement.

DATED at Port Vila this 23rd day of August 2016

BY THE COURT



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D. Aru

Judge