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

Judicial Review
Case No. 16/1120 SC/JUDR

BETWEEN: Tom Numake
Claimant

AND: The Tanna Island Court
First Defendant

AND: Dalida Wilson, Benjamin Kuao, Ernest Kenoho, Blandine Tepi
Second Defendants

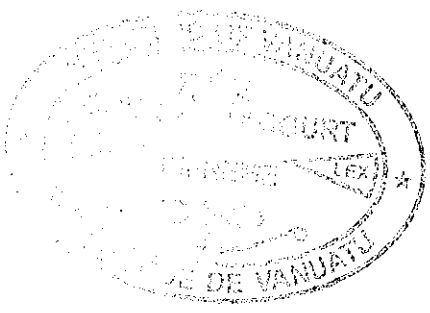
Coram: Justice Aru

Counsel: Mr. W. Iauma for the Claimant
Mr. L. Huri for the Defendants

REASONS FOR DECISION

Introduction

1. The claimant Tom Numake filed this claim for judicial review against a decision of the Tanna Island Court (the TIC) in Civil Case 23 of 2015 dated 1 April 2016 (CC23 of 2015). The main relief sought is an order quashing the entire decision of the TIC.



2. Being a judicial review claim, on 5 September 2016 after hearing the parties at the first conference, the claimant's claim was struck out. I now provide my reasons for doing so.

Discussion

3. The claimant's main ground for seeking quashing orders of the TIC decision is he alleges that his customary rights over *Lengkowgen* land have already been determined by the Native Court and confirmed by the Supreme Court and the TIC. He therefore submits that the TIC decision of 1 April 2016 in determining ownership of the custom name ***Numake Tuan*** was not only a nullity but is also res judicata as the matter had already been determined.

4. In judicial review proceedings, Rule 17.8 (1), (2) and (5) of the Civil Procedure Rules requires that a judge after a defence has been filed must at the first conference consider matters in subrule (3) and *"... If the judge is not satisfied about the matters in subrule (3), the judge must decline to hear the claim and strike it out."*

5. Subrule (3) requires that the judge must be satisfied that:-

   (a) the claimant has an arguable case; and

   (b) the claimant is directly affected by the enactment or decision; and

   (c) there has been no undue delay in making the claim; and

   (d) there is no other remedy that resolves the matter fully and directly.

6. The main reason the claim was struck out is that the claimant has no arguable case. There is no dispute that the claimant was first declared custom owner of *Lengkowgen* land by the Native Court in Civil Case No 1 of 1973. That Native Court judgment was later held to be binding on the Island Court on 6 September 2013 by the Supreme Court in **Family Nissinamin & Ors v Family Nipiknam & Ors**. Land Appeal Case NO 8A of 2009. The Court at paragraph 6 and 7 of its judgment said:-

> *"6.The particular pre-independence judgment was delivered on 26 February 1973 by the Native Court in Civil Case No. 1 of 1973 between Tom Numake v. Nisak. The comprehensive judgment which had a hand-drawn map attached to it declares inter alia that Tom Numake is the rightful owner of customary land entitled: "NIOUGAN" situated at Whitegrass, Tanna. Although spelt differently, the parties in the present appeal accept that the pronunciation and the hand-drawn boundaries coincides with the land boundaries in the present appeal.*
>
> *7.Such a Native Court judgment constitutes "res judicata" [see: Kalotiti v. Kaltabang (2007) VUCA 25] and, unless it can be avoided or limited in its application, is binding on the Island Court and constitutes a complete bar to the present proceedings which seeks to answer the question: "Who of the competing claimants is the true custom owner of the customary land known as "Lengkowgen" situated at Whitegrass, Tanna?".*

7. On 25 September 2014 the claimant relying on what the Supreme Court said as cited above successfully applied to the TIC in **Numake v. Rakatne Tribe & Ors** Land Case No 4 of 1997 and obtained orders that the TIC can only determine ownership of lands outside of *Lengkowgen* land.

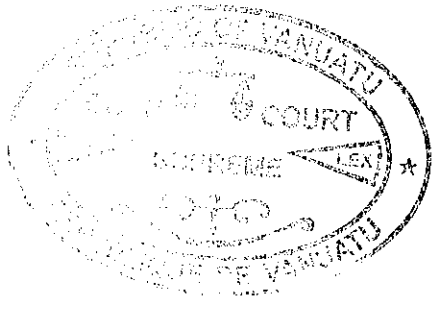
8. This brief background illustrates that the declared custom owner of *Lengkowgen* land is the claimant. The issue before the TIC in CC23 of 2015, is not a dispute over custom ownership of *Lengkowgen* land at all. The dispute was over the customary right of ownership of the custom name *Numake Tuan* between the claimant Katanak Mei Numake Tuan and Mr. Numake, current claimant and the TIC made the following declaration:-

> *"Declaration:-*
> *Kot hemi declarem Plaintiff katanak Mei Nemake Tuan hemi customary right ownership long name Nemake Tuan. Follem ol descendants blong hem kam kasem today we village hemi Louiawakitan hemi long Lenkowgen or whitegrass."*

9. The effect of the declaration is that Katanak Mei Numake Tuan owns the custom name Numake Tuan. The TIC in my view was not redetermining custom ownership of *Lengkowgen* land.

10. Furthermore, the claimant has not shown that the TIC in CC23 of 2015 has exceeded its jurisdiction or failed to comply with the appropriate statutory processes to warrant a challenge of its decision by judicial review. In **Loparu v Sope** [2005] VUCA 4, the Court of Appeal said:-

> *"**Judicial review** under the rules may apply to a decision of a statutory court where that body exceeds its jurisdiction or fails to comply with the appropriate statutory process. In an appropriate case there could be a basis for an application for **judicial review** of a decision such as this, but*



any appeal on the merits of the case as to factual findings can only be made under the statutory process of appeal under the Island Courts Act."

11. Given the above reasons the only way the claimant could have challenged the decision in CC23 of 2015 was to have appealed the judgment as a *"person aggrieved by an order or decision of an Island Court."*.

DATED at Port Vila this 7th day of September, 2016

BY THE COURT

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D. ARU

Judge