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

Land Appeal Case No. 2 of 2012

IN THE MATTER OF : TANNA ISLAND COURT

BETWEEN: FAMILY IAKUA
First Appellant

AND: FAMILY LAVAH KARETFA
Second Appellant

AND: FAMILY LESARE
Third Appellant

AND: FAMILY IRAPIA
Fourth Appellant

AND: FAMILY KIEL LOIVIA
Fifth Appellant

AND: FAMILY TAFAN
Sixth Appellant

AND: FAMILY LAVAH KEWIEVI
Seventh Appellant

AND: FAMILY NALPINI KATH
First Respondent

AND: FAMILY IOLIN
Second Respondent

AND: FAMILY IOLU
Third Respondent

AND: FAMILY KAUH
Fourth Respondent

AND: FAMILY IARIS
Fifth Respondent

Before: ***Justice Aru***

Counsel: ***Mr. R. Tevi-First Appellant (Family Iakua)***
Mr. J. Mesao Second Appellant (Family Lavah Karetfa)

Mr. J. Kapalu –Third Appellant (Family Lesare)
Mr. G. Takau – Fourth Appellant (Family Irapia)
Mr. J. Tari-Fifth Appellant (Family Kiel Ionivia)
Mr. E. Nalyal- Sixth Appellant (Family Tafan)
Ms A. Sariset– Seventh Appellant (Family Lavah Kewievi)

Mr. C. Leo-First & Second Respondents (Family Nalpini Kath) & (Family Iolin)
Mr. J. Kilu-Third Respondent (Family Iolu) no-appearance
Mr. L. Napuati - Fourth Respondent (Family Kauh)
Mr. K. Loughman for the Fifth Respondent (Family Iavis)

RULING

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1. Mr Tari applies for the matter to be remitted to the Tanna Island Court for rehearing. The application is supported by a sworn statement of Mr Tari. The grounds for applying are that the Island Court records for the fifth appellant cannot be found. Following agreement by the parties, directions were issued for Yahwa & Associates to inspect the Court file and to file the appeal book on behalf of all the appellants.

2. Ms Sariset of Yahwa & Associates inspected the Island Court file and advised Mr Tari by email on 3 February 2020 that the Magistrate's notes of evidence in relation to the 5th appellant and the 3rd respondent were missing and could not be located. She filed a sworn statement confirming her inspection of the records on 23 September 2020. Mr Yahwa supports the application to return the matter for re hearing. The respondents oppose the application and say that this is not a case were the full record is destroyed or lost where this Court has in the past returned the matter for rehearing.

3. The circumstances only concern the notes of evidence of the 5th appellant and the 3rd respondent. Otherwise the full record is available.

4. Section 22 (3) of the Island Courts Act [CAP 167] provides:-

> *"22. Appeals*
> .....
>
> *(3) The court hearing the appeal shall consider the records (if any) relevant to the decision and receive such evidence (if any) and make such inquiries (if any) as it thinks fit.*
> ....."

5. In view of s 22 (3) above, there are records and I am mandated to consider the records which are available *(if any)*. The hearing must proceed and it is up the 5th appellant as they see fit to make out a case that the Court receive such evidence *(if any)* as permissible by law (see ***LAC No 7 of 1996 Family Rasu & Ors v George Liplip & Ors***).

6. In their notice and grounds of appeal, the 5th appellant is seeking a rehearing in the Tanna Island Court. The missing notes of evidence is not a ground for seeking a rehearing.

7. For these reasons, the application to return the matter for rehearing is refused. The following orders are now issued:-

ORDERS

a) The 5th appellant's application is dismissed.

b) Yahwa & Associates are to finalise and file the appeal book as directed on 4 July 2019.

c) A further conference is listed for 9.00 am on 1 February 2021 to fix a hearing date on Tanna.

d) No order as to costs.

DATED at Port Vila this 25th day of November 2020

BY THE COURT

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D. ARU
Judge.

REPUBLIC OF VANUATU COUR SUPREME COURT LEX LEX