

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU 2013**
(Civil Jurisdiction)

Civil Case No. 05 of 2013

**BETWEEN: TITUS HAVO SUPE
EZEKIEL HAVO SUPE
PHILIMON HAVO SUPE**

Claimants

Claimants

AND: VARI ANLOLOS (SUPE)

First Defendant

First Defendant

AND: DIRECTOR OF LANDS

Second Defendant

Second Defendant

Coram: Mr. Justice Oliver A. Saksak

**Counsel: Mr. George F. Boar for the Claimants
First Defendant in person
Frederick Gilu for Second Defendant**

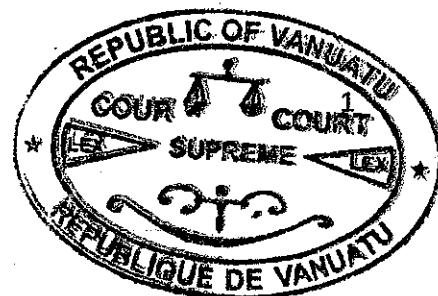
Date of Hearing: 11th September 2013

Date of Judgment: 3rd February 2014

JUDGMENT

Facts

1. On or about 26th November 2007, the Santo Malo Island Land Tribunal sat and determined that the First Defendant (Vari Supe) was the custom land-owner of Tangisi Land.
2. Following that determination the Lands Tribunal Office recorded on or about 6th December 2007 that the custom owner of Tangisi Land is Vari Supe, First Defendant.



3. Further, following that determination and declaration and official recognition as custom land owner, the First Defendant became the registered lessor of Leasehold Titles 04/2934/001 and 04/2934/002.

4. On or about 20th June 2008 a Deed of Release was executed between the First and Second Defendants for release of rentals to the First Defendant in the sum of VT1,051,207.

The Complaints of the Claimants

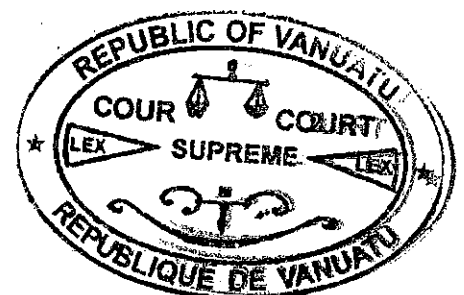
5. The Claimants claim they are the bloodline sons of Havo Supe whereas the First Defendant was only the adopted son of Supe.

6. The Claimants further complain that the First Defendant did not share the rental moneys paid to him by the Second Defendant and they allege they are entitled to a portion of that money.

The Claim

7. The Claimants therefore filed their claims in this Court claiming the following reliefs:-

- (a) A declaration that the Claimants are entitled to benefit financially from the said Tangisi Land together with the First Defendant.
- (b) An Order directing the Second Defendant to rectify Leasehold Titles 04/2934/001 and 04/2934/002 by inserting the Claimants' names as lessors with the First Defendant.
- (c) An Order that the First Defendant account for all monies received from Tangisi Land and pay the Claimants fifty percent (50%) of the monies received.



(d) Interests at 10% per annum.

(e) Costs of and incidental to the action.

(f) Further orders as the Court deems fit.

Defences

On 8th April 2013, The State Law Office filed a defence on behalf of the Second Defendant. Generally the Second Defendant states that –

(a) The Republic of Vanuatu should be the proper party as Second Defendant pursuant to the State Proceedings Act No. 9 of 2007; and

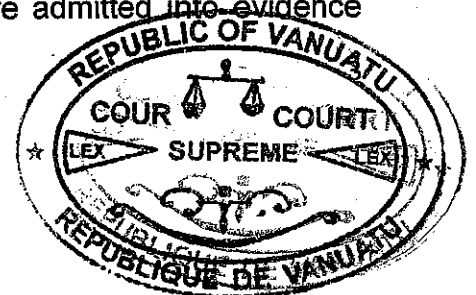
(b) The Claimants are not entitled to any of the reliefs claimed and state further that the claims do not disclose any cause of action against the Republic of Vanuatu and should be struck out in its entirety.

9. The State Law Office relies entirely on the decision of the Santo Malo Island Land Tribunal dated 26th November 2007 and the Deed of Release dated 20th June 2008.

10. The First Defendant did not file any proper defence but filed sworn statements containing evidence that basically deny the Claimants claims.

Evidence

11. The evidence in support of the Claimants claims are contained in the sworn statements of Vuro Langi dated 4/4/013, Teles dated 8/4/013, Vepoeuli Assual dated 8/4/013, Thompson Bebe dated 8/4/013, Tamata Anty dated 8/4/013 and of Vuro Langi in response dated 19/4/013. These were admitted into evidence



without objections on 11th September 2013. Titus Havo filed a sworn statement in support of their claims on 11th February 2013 which is not objected to.

12. Two further sworn statements were filed late on 25th September 2013 after the hearing and therefore these cannot be admitted as part of the evidence in support of the Claimants claims. These were sworn statements from Levus Tamata dated 25th September 2013 and of Aru Andfalo dated 20th September 2013.

13. The State Law Office did not file any evidence. It was agreed by Counsel on 11th September 2013 that the issues did not concern or involve the State but that the Attorney General would assist by filing written submissions to address the legal issues involved.

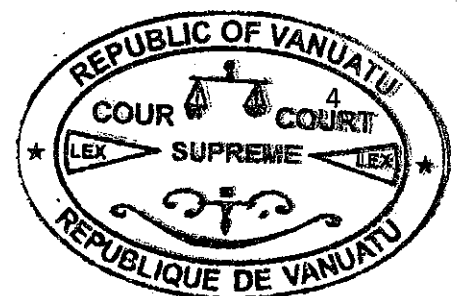
14. The First Defendant relied on the evidence contained in the sworn statements of Vari Supe dated 26th September and 30th September 2013, Jack Andfalo dated 26th September 2013 (x4) in response to the statements of Thompson Bebe, Titus Havo, Teles and Tamata Anty, Antlolos Langivoke dated 25th September 2013 and of Siro Lui dated 30th September 2013.

15. No objections were made by Mr. Boar for the Claimants and these are admitted into evidence.

16. Two further sworn statements by Vari Supe dated 28th March 2013 and 9th April 2013 were objected to on 11th September 2013 on the basis the deponent denied his signatures. These were therefore not admitted into evidence.

Submissions

17. On 11th September 2013, the Court allowed 14 days to the Claimants and the Defendants to file their written submissions. The Claimants filed written



The Defendants' submissions on 26th September 2013. The Defendants have not filed any written submissions and due to the long delay their submissions will be dispensed with.

The following 18 Counsel for the Claimants raised the following three issues:-

(a) Are the Claimants true bloodline of Supe?

(b) What rights if any does the bloodline relation of Supe have in relation to Supe Land and the benefits derived thereof?

(c) Can an adopted person like Vari Anlolos be the sole custom land owner of Supe's land and to benefit solely from that land to the exclusion of the surviving bloodline Claimants?

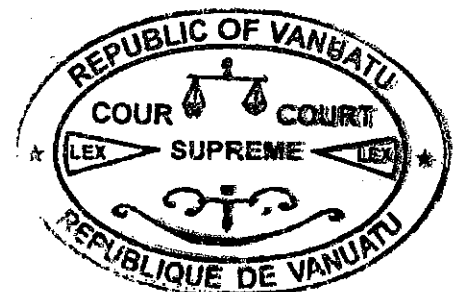
Discussions And Considerations

19. In relation to the first issue, Mr. Boar relies on the evidence showing declarations by the Village and Area Land Tribunals dated 8th August 2003 and of 30th September 2004.

20. These decisions are disclosed in the sworn statement of Titus Havo dated 11th February 2013 as annexures marked THS 4 and THS 5 respectively.

21. Jack Andfalo's evidence by sworn statement dated 30th September 2013 at paragraph 7 deposed that previous decisions of Land Tribunals in 2005 and 2006 were appealed. Vari Supe's statement dated 26th September 2013 confirms that position.

22. Titus Havo's evidence discloses the decision of the Santo Malo Island Land Tribunal dated 6th December 2007 as Annexure THS 6.



23. The Santo Malo Island Land Tribunal is the final tribunal and their decision which is dated 6th December 2007 by the Lands Tribunal Office is final. It overrides and supersedes earlier decisions made by tribunals in 2004, 2005 or 2006. That decision or judgment on page 2 is clear and unambiguous. It states that Vari Supe, First Defendant is the custom land owner. It does not specify or declare any other name or person.

24. As to the issue of whether the Claimants are the true bloodline of Supe, this Court has no jurisdiction to answer this issue.

25. In relation the second issue, Mr. Boar relies on Article 73 of the Constitution and the case of Noel v. Toto [1995] VUSC 3 to submit that only a tribe can own land in Vanuatu.

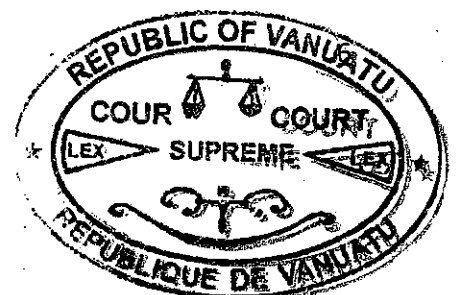
26. Article 73 of the Constitution states –

"All Land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants."

There is no mention of "tribe" in this Article. The Santo Malo Island Land Tribunal's decision of November 2007 does not determine a tribe, rather it determines the indigenous custom land owner whom they have declared to be Vari Supe, First Defendant.

27. Regarding the issue raised by the Claimants as to their rights if any as bloodline relation, this Court has no jurisdiction to answer the issue. It is an issue for the lands tribunal and they have determined that only Vari Supe has the sole right.

28. In relation to the third issue, Counsel relies again on the case of Toto. For reasons in (a) and (b) this Court again lacks the jurisdiction to decide on the issue. The Santo Malo Island Land Tribunal in 2007 decided the issue and that decision is final.



29. This Court in February 2013 dismissed Titus Havo's Judicial Review Case No. 8 of 2012 on the basis that –

(a) The matters complained of are res judicata; and

(b) He was seeking to raise matters which this Court has no jurisdiction to determine.

It now appears that Titus Havo and his two brothers have come to Court seeking the same reliefs under the normal process of a Supreme Court Claim. These claims are misconceived.

30. The Claimants seek –

(a) a declaration that they are entitled to benefit financially from Tangisi Land, however this is not a judicial review proceeding.

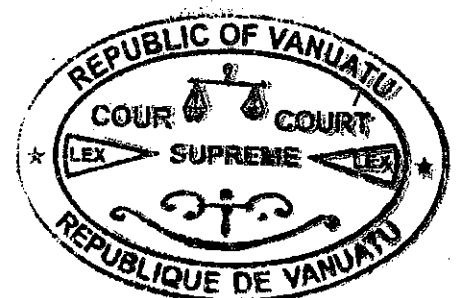
(b) an order to rectify the lease register to insert the Claimant's names as lessors, however they have not pleaded fraud and/or mistake as the basis of their claim for rectification.

(c) an order for accounting of all moneys by the First Defendant, however they have not shown any evidence that they have been declared as customary owners to be entitled to any benefits and hence the order.

(d) interests at 10% per annum, however for the reasons as stated earlier they are not entitled to this relief.

(e) an order for costs of the action, however this is declined.

Conclusions



31. For the reasons given, the Claimants are not successful. All their claims fail. It follows that all reliefs sought are rejected. All their claims are dismissed.

32. There will be no order as to costs. Each party will bear their own costs.

DATED at Luganville this 3rd day of February 2014.

BY THE COURT

[Signature]
O. A. SAKSAK
Judge

[Signature]
OLIVER A. SAKSAK
Judge

