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

Civil Case No. 872 of 2017

BETWEEN: STEPHEN QUINTO
Claimant

AND: NICHOLAS GEORGE (SIMO)
First Defendant

AND: RAF SIMOLO
Second Defendant

AND: NOEL RAV
Third Defendant

Hearing: *19th May 2017*
Before: *Justice Chetwynd*
Counsel: *Mr. Sugden for the Claimant*
Ms Jereva for the Third Defendant
No appearance or attendance for First and Second Defendants

Judgment

---

1. On 12th April I granted an ex parte application for a restraining order against the defendants. The order was to prevent the defendants (and others) from harassing, intimidating or threatening the Claimant and workers from the Edenhope Project. The order prevented the defendants and others trespassing on Pakakara land; within 200 metres of Edenhope Project property; putting Namele leaves on Pakakara or Puelvunsupe land and from the stopping the Claimant and his workers from working on the Edenhope conservation project.

2. The Defendants have made an application to set aside the order made on 12th April. The basis for the application is the order prevents the defendants from using bush tracks and roads to get to clinics, schools, churches and gardens. Unfortunately the defendants seem to have completely ignored what His Lordship the Chief Justice said in the case of *Solomon Tavue and another v Jerry Wya Subu* Civil Appeal case 03 of 2015. In that case His Lordship spoke about the usage of the same land saying the Defendant in the case,

> *"...maybe entitled to occupy the subject as a result of custom rights or as a consequence of agreements or authorisation of the custom owners. As occupiers it is not necessary for them to own the land. Although they may not own the land, they do, as a matter of custom and fact, own the trees and crops which are grown in and on the land."*

3. The order made on 12th April cannot interfere with any rights the defendants have over the land. They cannot trespass over land which they are entitled to use by reason of *agreements or authorisation of the custom owners.* It is only if they go onto land over which they have no rights that they would be guilty of trespass. The purpose of the order was to prevent the defendants from interfering with any rights the Claimant might have as a result *agreements or authorisation of the custom owners*. The order certainly prevents the defendants from physically attacking or assaulting the Claimant or those authorised by him to do what he is allowed to do on the land or from going on land that the Claimant has exclusive use of. Of course the Claimant has given an undertaking and if the defendants suffer any loss or harm as result of the restraining order they will be entitled to recover those losses, subject to proof.

4. The defendants have not produced any evidence to cast doubt on the Claimant's claim that he has permission from the appropriate custom owner or person who has rights over the land to do what he is doing. It is clear the defendants don't want him to develop the conservation project but they have not been shown to have any right to interfere with the work. If, as they say, there has been damage to gardens or grave sites then they will be able to recover damages. At the moment the evident is far from convincing.

5. In all the circumstances the order made on 12th April will remain in force. The test to apply when considering whether an injunction should be granted or when an injunction has granted whether it should continue has been known in this jurisdiction and others for some time now:-

> *"It is trite law since American Cyanamid Co. v Ethicon Ltd* [1975] AC 396, *a case concerning a threat to infringe a registered patent, that a court should only grant an interim injunction if 1) there is a serious issue to be tried; and 2) the balance of convenience, including the adequacy of damages as an ultimate remedy and other factors special to the case, favours it."* [1]

6. There is no doubt there is a serious issue to be tried namely, has the Claimant authority to do what he is doing or wants to do. The balance of convenience is in favour of the Claimant as well. The evidence about damage to gardens and grave yards is very weak, not even the defendants' own sketch maps support claims about damage to their property. There is evidence to show the defendants have no property or gardens let alone grave yards in the area where the Claimant is carrying out his conservation project. The Claimant's evidence about the authority or permissions he has to do so is far more convincing. At the end of the day, if the Claimant is shown to be wrong then damages will be an adequate remedy.

7. In the meantime the parties are free to pursue their individual claims about custom ownership or usage. The Claimant runs the risk that ultimately he will end up

[1] *Axiom KB Ltd v SMM Solomon Ltd* [2012] SBCA 22; CA-CAC 28 of 2011 (24 March 2012)

with no right to do what he says he has been given permission to do. He may end up having to pay damages. That is a matter for him. Until then the balance of convenience is in his favour and the restraining order will remain in force.

8. The costs of the application are reserved

Dated at Port Vila this 22nd May 2017

BY THE COURT

David Chetwynd
Judge

REPUBLIC OF VANUATU
COUR COURT
LEX SUPREME LEX
REPUBLIQUE DE VANUATU