

(Civil Jurisdiction)

BETWEEN: John Delwin Kalsong Manaon and Betty Amos
Claimants

AND: Dolcy Pakoa
First Defendant
The Minister of Lands
Second Defendant
The Director of Lands
Third Defendant

Date: 12 September 2018

Before: Justice G.A. Andrée Wiltens

Counsel: Mr W. Daniel for the Claimants

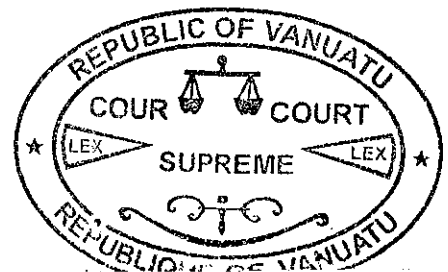
Ms M-N. Ferrieux-Patterson for the First Defendant

Mr S. Kalsakau for the Second and Third Defendants (absent)

JUDGMENT

A. Introduction

1. By judgment of 30 August 2018, I declined all aspects of the claimants' claims, and gave indications as to likely orders in respect of the counter-claim if mediation was unsuccessful.



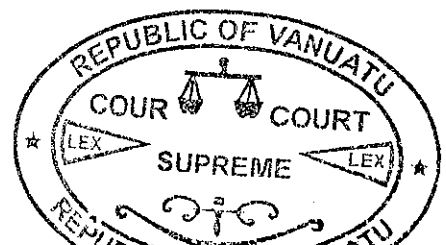
2. I am given to understand that despite my indications mediation was not attractive. At the first meeting with the Master the claimants' counsel advised they not wish to take part. At the second proposed meeting, there was no appearance by either the claimants or their counsel.
3. In the circumstances I am left with no option but to make final determinations in respect of the various counter-claim aspects.

B. The Counter-Claim

4. Ms Pakoa sought a number of orders in her counter-claim, namely:
 - (i) An order evicting the claimants and their agents;
 - (ii) An order preventing the claimants and their agents threatening, obstructing, assaulting and intimidating her and her agents;
 - (iii) An order restraining the claimants and their agents from disturbing, obstructing, assaulting, and/or threatening her and her agents;
 - (iv) An order declaring the will null and void and of no legal effect;
 - (v) VT 5 million in damages;
 - (vi) VT 275,000 recompense for rent paid by her to others between 2009 and the present;
 - (vii) VT 3,010,000 rent due to Ms Pakoa for the families' occupation of the property from 2009 to the present at VT 35,000 per month;
 - (viii) VT 1 million damages for Mr Manaon's assaults and injury to her; and
 - (ix) VT 2,184,000 loss of income.

C. Result

5. I make the following orders:
 - (i) I do not make an eviction order. The upheaval of so many family members, a large number of whom have had no part to play in this dispute, seems too drastic a remedy – and I do not think it realistic to evict only individual members of the various families involved. However, as the lease title is in the name of Ms Pakoa, it is clear that she has the pre-eminent right to decide who will occupy which parts of the various dwellings on the site. She could, within her legal rights, for example, decide to reside in one or more of the rooms occupied by either of the claimants' families, and require those displaced persons to move to another part of the land. If this leads to further conflict that cannot be amicably resolved between the parties, then I give leave to Ms Pakoa to bring this matter back to the Court for final eviction orders against those members of the family still standing in the way of her wishes. It seems to me that as the registered lease title-holder,



only she can determine where people actually occupy parts of her land – and if individuals do not agree or accept her views, they should find elsewhere to reside.

- (ii) An order preventing the claimants and their agents from threatening, obstructing, assaulting and intimidating Ms Pakoa and her agents. Ms Pakoa has the ability to show these orders to the police to ensure compliance. And if compliance becomes problematic, I encourage her to warn the offenders that continued non-compliance with this order is likely to result in her requiring them to leave the land; and, if necessary, to get an eviction order against them.
- (iii) An order restraining the claimants and their agents from disturbing, obstructing, assaulting, and/or threatening Ms Pakoa and her agents. Ms Pakoa has the ability to show these orders to the police to ensure compliance. And if compliance becomes problematic, I encourage her to warn the offenders that continued non-compliance with this order is likely to result in her requiring them to leave the land, and; if necessary, to get an eviction order against them.

(iv) I make no declaration or order in relation to the so-called will.

(v) Ms Pakoa is entitled to be paid compensated. However, I am very mindful that these orders have been many years in the making, and that they involve members of the family having to pay another member which can cause resentment. I am therefore deliberately making only moderate orders, as follows:

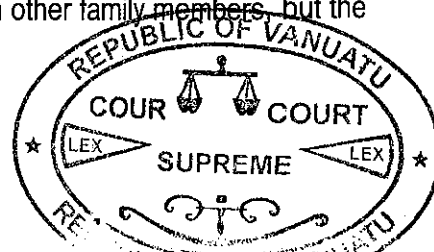
- for the treatment (physical and mental) meted out to her by Mr Manaon, VT 500,000. This is to be paid by Mr Manoan within 21 days from the date of this decision. Interest is to run on this amount from 13 July 2009 until full payment has been made at the rate of 5% per annum.

- for the rent she has paid while the family continued to reside on her land, VT 250,000. This is to be paid by the two claimants equally within 21 days from the date of this decision – they can seek contributions from other family members, but the liability is theirs solely. Interest is to run on this amount from 13 July 2009 until full payment has been made at the rate of 5% per annum.

- for loss of income, VT 1,500,000. This is to be paid by the two claimants equally within 21 days from the date of this decision – they can seek contributions from other family members, but the liability is theirs solely. Interest is to run on this amount from 13 July 2009 until full payment has been made at the rate of 5% per annum.

- for loss of rental income by the family not paying Ms Pakoa for residing on the land, VT 900,000. I would expect that if rent were expected to be paid by family members it would be of an extremely minimal amount, so I set this at VT 100,000 p.a. This is to be paid by the two claimants equally within 21 days from the date of this decision – they can seek contributions from other family members, but the liability is theirs solely. Interest is to run on this amount from 13 July 2009 until full payment has been made at the rate of 5% per annum.

- for damages, including for the protracted nature of the dispute, VT 1 million. This is to be paid by the two claimants equally within 21 days from the date of this decision – they can seek contributions from other family members, but the



liability is theirs solely. Interest is to run on this amount from 13 July 2009 until full payment has been made at the rate of 5% per annum.

6. Ms Pakoa is also entitled to her costs. If there is no agreement between counsel, then they are to be taxed.

Dated at Port Vila this 12th day of September 2018
BY THE COURT

