

BETWEEN: Jenneck Patunvanu and Brian Patunvanu
representing the family Patunvanu, and George
Meltegrory

Applicants, and Counter-Claim Defendants

AND: Kerebea Salyor, Gregoir Salyor, Gilbert Salyor and
Anatol Emak

Respondents, and Counter-Claim Claimants

Date of Hearing: Friday, 28 May 2018

Before: Justice G.A. Andrée Wiltens

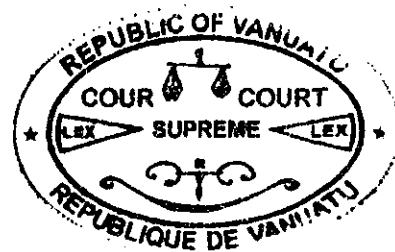
In Attendance: Mr E. Molbaleh for the Counter-Claim Defendants
Ms C. Thyna for the Counter-Claim Claimants

Decision: 28 May 2018

JUDGMENT

A. Introduction

1. This has to be one of the least prepared cases I have ever tried. The main dispute between the parties was resolved back in December 2017; and the only remaining issues centred on the counter-claim, which was to be defended.
2. The sworn statements filed were inadequate; but of course that could and should have been ameliorated by competent further questioning once the witnesses were called. Unfortunately, that did not occur.



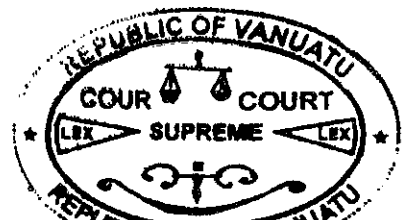
3. Counsel were not only ill-prepared for trial, but both also appeared to not appreciate what the case was all really about.
4. Things did not start well when Mrs Thyna appeared 25 minutes late.
5. There was no opening statement, setting the scene, explaining who was to be called and for what purpose and identifying the issues the Court would be asked to determine.
6. Then Ms Thyna called her first witness and was surprised to learn that a Bislama interpreter was required – and should have been provided by her. Hence the witness was hampered in having to give evidence in English. Mrs Thyna thought she might interpret, but alas the Court did not permit that.
7. Mrs Thyna also seemed to think also that the Court, in its infinite wisdom, was able to infer matters not in evidence and accept bald statements from the bar. Again the Court was not prepared to co-operate with her on that.
8. Simply getting witnesses to confirm their poorly drafted and insufficiently detailed sworn statements was never going to be an adequate presentation of the counter-claim, but that's all Mrs Thyna attended to. I have no doubt the witnesses were able to give far more evidence, far greater detail; and as result been far more convincing. However, while I flirted with the idea, I realised that was not my role and it would unfairly impact on Mr Molbaleh's clients.
9. Mr Molbaleh, on the other hand, made it obvious that he was seeing the first witness' sworn statement, filed and tendered in support of the counter-claim, for the very first time after he had commenced cross-examination – so much for pre-trial preparation! He went about challenging the witness on the basis of the main dispute (earlier decided), and did not focus on the only matters of significance, namely the counter-claim. At one point I had to remind him whom he was acting for as his proposed question would have improved the counter-claim, not undermined it.

B. The Counter-Claim

10. The main dispute alleged a claim of trespass on Patunvanu family custom-owned land and sought an injunction to stop the Salyor family logging on that land. That application failed.
11. The counter-claim suggested that the Patunvanu family had taken things into their own hands and had interfered with the Salyor family's logging operation on Salyor family custom-owned land such that they had suffered losses, which they were seeking to recoup as loss of income, plus general damages and costs. There was also included the suggestion that despite being granted costs in the earlier hearing, the Salyor family's legal costs should also be met by the Patunvanu family.

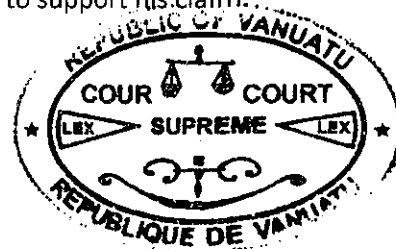
C. The Evidence

12. Mr Crepin Salyor told me he had borrowed funds to purchase the required tools and equipment to establish a timber milling business. He had a valid licence from December 2016 through to the end of 2017 to mill timber on his family custom-owned land. The milling operation was interrupted as a result of the main point of dispute, namely was the

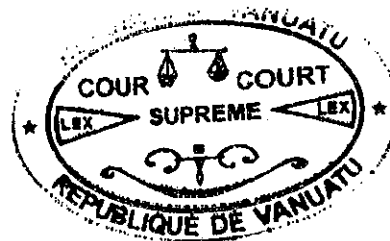


land owned by the Patunvanu family or the Salyor family. If it were the latter, then he was fully entitled to mill the logs on his own land – if it were the former, then the Patunvanu family had the right to trespass the logging operation and stop the milling.

13. The fact that the application for an injunction had failed, meant that the Patunvanu family was unable to maintain their position that the land in question was theirs. To do that, they had to appeal Justice Geoghegan's December judgment – no steps had been taken to do that. Therefore, the only issues for me to determine on the counter-claim was whether there was proof of Patunvanu family interference with the Salyor family milling operation, whether losses occurred directly or indirectly as a result, and could any such losses be properly quantified.
14. Mr Salyor told me that "they", a term he frequently used and by which I assume he meant the Patunvanu family or their representatives, interfered with his logging operation by means of "threats" – he explained that to be a demand to stop milling as he was on Patunvanu family land. He said that he would simply tell "them" to leave, and they would. He alleged that Patunvanu connections went to complain about his logging operation to the police, the Lands Office, and daily to the Forestry Department. He could not explain how he knew that; and he did not understand the concept of hearsay evidence. He said he received daily letters from the Forestry Department telling him to stop – but he was not able to produce a single one. He further alleged that the police had attended his logging site on one occasion – which led to a week's stoppage of logging. He told me that the Lands Office did not attend the site.
15. When pressed further as to the "threats", how often they occurred and who had made them, Mr Salyor's evidence devolved to "pressure" being put on him and his 8 staff to stop. That was as explicit as the evidence became. When asked who was doing this, he proffered four names: Louie Bourgogne, Earnest Chokae, Presley Silas and Edward Farrage (the spellings are questionable). For reasons that remain unclear to me, I was the only one who asked what connection, if any, these named individuals had with the Patunvanu family. The answer that I received, was that they "might have been" relatives.
16. Mr Salyor, at one stage seemed to suggest that for the whole of the 2017 year his work operation had "not operated as it normally would have", due to the threats and pressure applied. He was unable, despite being questioned closely about this, to say whether that meant one day a week was lost, one week a month was lost, or any such percentage. He told me that there were staffing records kept, but they were not at Court. What it came down to, was that he had earned income for only 5 months in the 2017 year. It was not put to him that the sole reason for that was due to the threats or pressure applied – and when I later queried other possible causes with Ms Thyna, she had to accept there are any number of reasons why that could have been so.
17. Mr Salyor sought to quantify his claim by comparing his actual cash flows for 2017, at Appendix "CS-06", with his projected cash flows for 2017-2018, at Appendix "CS-05". How he then calculated a loss of the order of VT 6 million, was not part of the evidence led before me. It just seems to me to be invalid and unjustifiable to compare projections with actuals, and to then arrive at a figure said to be the loss occasioned. Much better evidence is required to support a claim such as this. I want to stress, that is not a criticism of Mr Salyor – he was firstly hampered in that he was unable to revert to Bislama to better explain matters; and of course he relied on legal advice as to what evidence should be led to support his claim.

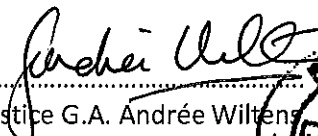


18. The second witness was Mr Natnaour, a driver for Mr Salyor in the logging operation. He too suggested there was inference. He said this occurred once, when George Toa and others, asked if they were actually working, and George Toa then angrily told them to stop as ownership of the land was under dispute. He was frightened, and as a result of this approach the logging operation was put on hold for "some months". He too was not asked what connection, if any, there was between Mr Toa and the counter-claim defendants. Tellingly, he was not asked about the police visit causing cessation of work.
19. That was the case for the counter-claimants.
20. I then asked Ms Thyna to explain, if she could, where I could find any evidence pointing to the following:
- A link between any of the five persons named as uttering threats or applying pressure and the Patunvanu family
 - The evidence of actual periods of stopped work
 - Assistance as to how any losses should be quantified.
21. As there was no satisfactory evidence addressing these fundamental points, of course Ms Thyna was unable to assist.
22. Accordingly I suggested to Mr Molbaleh that I did not need to hear from any of his witnesses. He did not wish to call any, but merely sought costs.
- D. Result
23. The counter-claimants must establish their case to the standard of "on the balance of probabilities"; or to put it another way "more likely than not". In fact, the evidence falls woefully short of even that.
24. I am not satisfied that the Patunvanu family are in any way responsible for any interference with Mr Salyor's milling operation. There is more than a glimmer to suggest that they did in fact behave in that fashion, but the evidence does not establish it to the required degree.
25. Even if the evidence had gone that far, there are insuperable issues with attempting to demonstrate any loss at all arising from that. And again, even if that were established, there is no reliable means by which I could attempt to quantify the loss arising from any such conduct.
26. It follows that the claim for loss of income must fail.
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27. Mr Salyor's attempt to claim his legal costs for the main claim are not recoverable in an action of this type.
28. His other claims for general damages and costs fall away due to my earlier determinations denying his claims.
29. Mr Molbaleh's solitary pertinent question was to ask for costs in the event the counter-claim failed.



30. Following on from the result of the counter-claim, the counter-claim defendants are entitled to costs. They are to be as agreed between counsel; but if not agreed, they are to be taxed in the usual manner.

Dated at Port Vila this 28th day of May 2018
BY THE COURT


Justice G.A. Andrée Wiltens

