

BETWEEN: **JACQUES STEVEN**
 Claimant

AND: **THE DIRECTOR VANUATU
QUARANTINE & INSPECTION
SERVICES**
 First Defendant

AND: **THE GOVERNMENT OF THE
REPUBLIC OF VANUATU**
 Second Defendant

Coram: *Chief Justice Vincent Lunabek*

Counsel: *Mr. Eric Molbaleh for the Claimant*
 The Attorney General for the Defendants

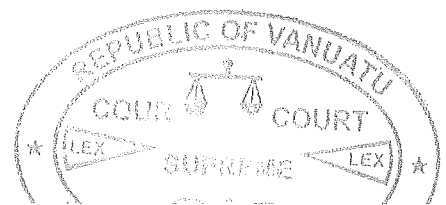
Date of Delivery of Judgment: *26 March 2019*

RESERVED JUDGMENT

Introduction

Preliminary Remarks

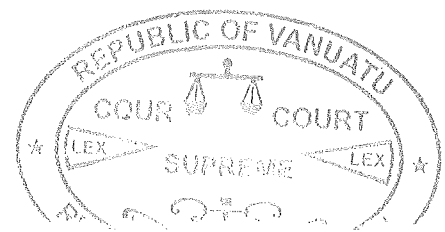
1. At a conference conducted on 2 June 2014, the Court noted that after the file for this case No.123 of 2003 had been destroyed by fire on June 2007, the case file has been reconstructed.
2. The claim, defence and sworn statement are filed and submissions are also copied and there are no notes of evidence (written notes of cross-examination of witnesses).
3. In such a situation, the Court gave two options-
 - a) Counsel to exchange and provide to the Court their respective written notes of evidence; or
 - b) If not satisfactory, then, a retrial of this matter will be ordered.



4. The Defendants forwarded their written notes of evidence to Counsel of the Claimant but they did not receive any response.
5. The Defence attached and provided to the Court their written notes of evidence previously forwarded to the Claimant's Counsel;
 - (i) The Claimant's opening address;
 - (ii) Opening submission for the First and Second Defendants;
 - (iii) Examination in chief, cross-examination and re-examination of Jacques Steven;
 - (iv) Cross-examination, examination and re-examination of Annick Steven;
 - (v) Cross- examination and re-examination of Rebecca Kausei;
 - (vi) Cross- examination and re-examination of Moses Nambo; and
 - (vii) Cross-examination of Sylvie Warimavute.
6. The Claimant provided their handwritten notes of evidence of Annick Steven and Rebecca Kausie much later.
7. I assess the reconstructed file documents and materials of this case and I am satisfied they are sufficient for a decision to be made based on them. There is no need for a retrial.

CC 123 of 2003 – The Claim

8. I return to the proceedings in Civil Case No.123 of 2003 as reconstructed. In July 2000, the First Defendant commissioned a study of Bee Hives in Vanuatu inclusive of the Claimant's Bees and Hives apiaries with the assistance of two consultants from New Zealand. The Claimant said that during the study and inspection on the Claimant's Bee Hives, the First Defendant were negligent and caused twenty three (23) of the Claimant's Bee Hives to all die. The Claimant said the Defendants owed a statutory duty of care to the Claimant by virtue of section 12 (1) of the Animal Disease (Control) Act No.29 of 1992 ("the Act"). It is said the Defendants breached this statutory duty of care by causing the death of the Claimant's Bee Hives and the Claimant suffered loss and damages. The Claimant claimed damages in the sum of VT18, 400,000, interests and costs.



The Defence

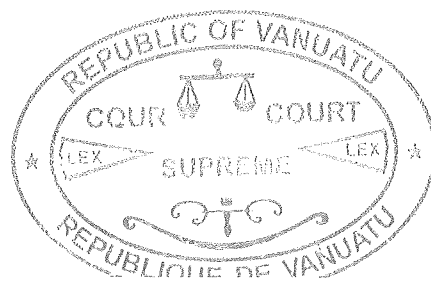
9. The Defendants admit that Vanuatu Quarantine and Inspection Service commissioned a Bee disease survey which was carried out in July 2000 to August 2000. They deny the survey was to determine the health status of honey bees in Vanuatu. They admit that the survey was undertaken by Derek Bettsworth and Dave Grueber with the assistance of VQIS officers Nambo Moses and Sylvie Warimavute ("the Consultants"). They admit the consultants inspected the beehives owed by the Claimant but not all of them as stated by the Claimant in paragraph 6 of the claim. They deny the allegation that they did not consult and inform the Claimant of such an action prior to study the Claimant's Bee Hives.
10. They say the bee hives of the Claimant were found to be in poor condition when inspected by the consultants and some of the hives were dead and others were nearly dead.
11. They deny the allegations made in paragraph 8 (1) and 8 (2) and they say that section 12 (1) of the Animal Disease (Control) Act.29 of 1992 does not create a statutory duty. They admit they owed the Claimant a duty of care when inspecting the beehives but say that that duty of care was not breached and even if it was breached, any breach did not cause any damage to the Claimant. They deny that the bees owed by the Claimant worth VT18, 400, 000.

Brief Background

12. On 2 March 2005, the Attorney General on behalf of the Defendants and Mr. Ishmael Kalsakau on behalf of the Claimant (previously) signed the following statement of disputed and undisputed facts:-

The undisputed facts in this proceeding:

1. *The First Defendant is the director and supervisor of the quarantine officers, Moses Nambo and Sylvie Warimavute.*
2. *The Second Defendant is the employer of the First Defendant and is responsible for the actions performed by the First Defendant in the course of his duties.*



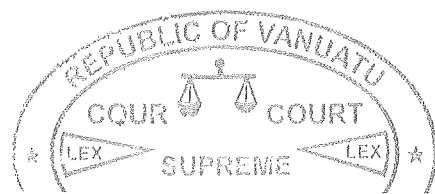
3. *On or about the period of July 24th 2000 to August 4th, 2000, the VQIS commissions a bee disease survey in Vanuatu.*
4. *The Survey is undertaken by Derek Bettsworth and Dave Grueber (consultants) with the assistance of the two VQIS officers.*
5. *The Consultants from New Zealand were commissioned by the Vanuatu Quarantine and Inspection Services (VQIS) to undertake the survey.*
6. *There was no Ministerial Order for the visitation and inspection undertaken by the quarantine officers and the two consultants.*
7. *The survey was to determine the health status of bees in Vanuatu.*
8. *There were visits to the Bee Hives belonging to the Claimant at the alleged times.*
9. *The two quarantine officers were undertaking quarantine training duties under the direct supervision of the two Consultants.*
10. *The Claimant is a ni Vanuatu and runs Bee Hives apiaries in and around Port Vila in the Republic of Vanuatu.*

The disputed facts in this proceeding:

1. *The Quarantine Officers and Consultants were negligent when handling the bee hives belonging to the Claimant.*
2. *The Defendants breached their duty of care towards the Claimant, when conducting the survey on the bee hives belonging to the Claimant.*
3. *After the visits, the bees belonging to the Claimant died.*
4. *Other bee hives belonging to the Claimant not touched by the Defendants remain unaffected.*
5. *The bee hives owned by the Claimant worth VT18,400,000.*

Evidence

13. The evidence that is relevant is the evidence that establishes that the Defendants through the Consultants are negligence when they conducted the inspection on the Claimant's bee hives. The relevant evidence must also show



that the consultants conducted the survey or inspection on the bee hives of the Claimant in such a way that it was beyond their duty of care and, thus, breach such duty of care which caused the death of the Claimant's bee hives.

Evidence on the claim

14. The Claimant, Jacques Steven, filed a sworn statement. He testified the content was true and he was cross-examined on it. Mr. Jacques Steven testified that he was not in Port Vila but he was on Tanna Island on vacation when the consultants conducted the survey on some of his bee hives in Port Vila. He did not know the instruments the consultants used during the inspection. He did not know whether the instruments were sterilised or not. He was told by his wife of what happened. His wife did not observe what was happening. He accepted that whether the consultants used sterilised instruments or not he would not know because he was not present when the survey took place. He was asked and he confirmed what he said in his sworn statement of July 2000 that he had 26 bee hives. They are scattered around remote areas of Port Vila. He checked his bee hives once a month. He accepted that there were plants or bushes growing around the area by the time he made the next check on his bee hives. He said he is an experienced bee keeper. He did not attend any school or training on the diseases that affected the bees. He accepted he gained experience when he worked with one Victor Veiller, a French agronomist who worked at the Quarantine Department in 1988 – 1994. He was asked if something happened to his bees he would not know the cause of their death because he did not know of different worms of different diseases affecting the bee hives. He said no. He accepted he stated that his bees died a month after the inspection by the consultants. He was asked and he accepted he did not ask assistance from a veterinary officer to check his bees to certify the cause of death of his bee hives. He accepted he based himself on the story he heard from his wife of the inspections by the consultants. He said he did not initially own the bee hives. They were owned by one Camille Bastien and Victor Veiller and they transferred the bees to him when they left Vanuatu. He was asked and he did not answer to the question asked of him it was not true that he owned bee hives for over 16 years. He was asked about how many times he collected honey from his bee hives and the amount claimed was unrealistic because he did not even collect honey for over 1 or 2 years before the survey.



Jacques Steven was re-examined. He confirmed his evidence that Moses Nambo worked at the Department of Quarantine. Moses Nambo came to Tanna with the consultants. He was asked whether he received a notice from the Department of Quarantine. First, he said in cross-examination that Moses Nambo called him to inform him of the inspection of his bee hives but in re-examination, he said Moses came to Tanna and informed him. He confirmed he did not see the instruments used and so he did not know of the instruments used.

15. Yannick Steven, the wife of the Claimant gave evidence to this effect. She filed a sworn statement on 22 November 2004 and she was cross-examined on it. She worked at the Department of Agriculture as Food Security Officer. She lived with her husband at Tagabe. She said the context of her statement was true. She was cross-examined. She was asked she accepted she did not have any special training on bee keeping. She was specialised in the area of Food Security. She was asked and she confirmed when she saw Moses Nambo, Sylvie Warimavute and the three (3) white men came to her premises and went straight to the bee hives, she followed them. She saw they opened the frames and used their own tools. The yard she lived in with her husband was the government property. Her husband used that property to raise bee hives. She accepted that she did not know of the different diseases affecting the bee hives of her husband. She accepted also that she did not closely monitor the work of the consultants when they inspected the bee hives of her husband at Tagabe. She accepted that she did not ask them if the instruments they used were sterilised instruments. She denied that the condition of the bee hives of her husband were bad. She was asked and she denied that lots of her husband bees died showing signs of starvation even before the team of expert consultants conducted the survey at the bee hives of her husband. She was asked and she accepted that she did not see properly what the consultants did when they inspected the bee hives of her husband. She accepted she came to the conclusion that the expert consultants caused the death of the bee hives of her husband. She accepted that in her statement (at page 19) she said things to the effect that her husband and her did not know what happened to the bee hives after the consultants inspected them as they died. She was asked again and she confirmed she totally did not know what happened to the bee hives of her husband. It was put to her that she thought that the consultants caused the

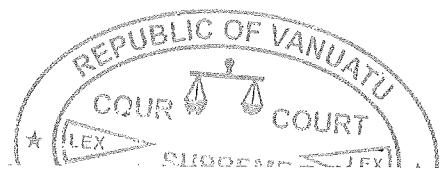


death of the bee hives of her husband. She did not answer. It was put to her that when the consultants entered her yard, although there was no notice, she was aware of their presence and what they were going to do. She did not answer. It was put to her that Moses Nambo told her that they came to inspect the bee hives of her husband before they started inspection. She did not answer. The Consultants did not stop her to see what they were doing. She did not answer. She was asked and she accepted that she failed to tell the Court what was the actual cause of death of the bee hives of her husband.

16. Rebecca Kausei gave evidence next. She gave evidence to the following effect. She filed a sworn statement in October 2004. She testified the context was true. She was cross-examined on it. She said she saw her bees were dead. However, she did not know the cause of their death. She was asked and she said she was informed that two expert consultants and two Quarantine officers will inspect her bee hives. She did not see what the expert consultants did on her bee hives. She did not know what the cause of death of the bee hives was. She accepted from what she heard from her family and friends, she came to the conclusion that her bee hives were died because of the visits of the expert consultants. She accepted also that her family or friends did not see the instruments used by the expert consultants. She did not seek clarifications from the Quarantine Department or the consultants as to what happened to her two bee hives. She had no training on the different types of been diseases that affected the bees hives of Vanuatu. She was asked and she said she did not know the cause of death of the bee hives of Mr Jacques Steven.

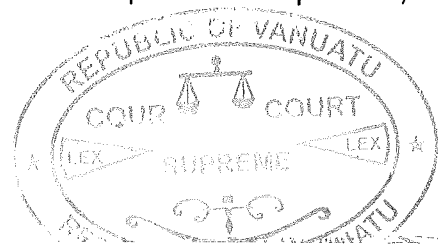
Evidence on the Defence

17. Moses Nambo testified. He worked for 15 years at the Quarantine and Inspection Services Department. He was familiar with the relevant law to Quarantine and inspection of the animals. He is also an animal health officer. He accepted when he discharged his duty under the Animal (control) Act, he must discharge his duty properly with care. He worked in a department of government which assisted the farmers like Jacques Steven. He accepted he must discharge his duty with proper care. He is specialized in every livestock – bees, poultry, cattle, piggery and goat. As to cattle, he has specialization in TB.& Brucellosis. He studied in Fiji at the Fiji School of Agriculture and in Vanuatu. With the bees, he had specialized training from New Zealand. Before



the survey was conducted, there was no proper programme the department put in place about the bee keepers in Vanuatu. There were no studies on bee keeping in Vanuatu that the Department was monitoring. The survey conducted was the first one. There were no records or information on the period to inspect the bee hives. When they made inspection of the bee hives, he knew of the procedures to follow. Then they inspected the bee hives of Mr Jacques Steven, they had smokers, gloves and hive tools. They lightened the smokers to keep the bees quiet, they removed the lid, they opened the lid with hives tool and they started to remove frame one by one. They looked at every sick comb. They realized it was a defect inside the comb. He admitted it is important to inform the bee keepers of the inspection. He said he forgot to mention that in his statement he said there was only verbal notification. The test conducted was to find out whether American foul brood disease exists in Vanuatu bee hives. The Department has no idea about that disease on the bee hives they needed to follow baseline of the disease to check if the American foul brood is in Vanuatu. There were no outside symptoms of that disease. The only way to find out was to inspect the bee hives. There was no emergency at that time. He was re-examined. In the inspection of the Claimant's bee hives, some bees are dead; others were weak and appeared to suffer.

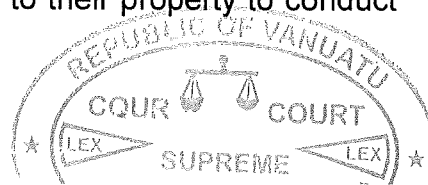
18. Sylvie Warimavute was the second and last defence witness. She gave evidence that she worked for 5 years at the Quarantine and Inspection Department. She studied biology in New Caledonia and started work at Quarantine at 2000. They are responsible on the activities of bee hives. She started work with the animal section in July 2000. It was her first time she conducted an experience. However, she confirmed that the two expert consultants conducted the inspection at the bee hives of the Claimant's bee hives. What she said at paragraph 9 of her statement was what the two expert consultants told her and she saw happening. They conducted inspections as they suspected the bee hives had diseases. There were no outside symptoms to find out if there were diseases inside the bee hives. She was with Moses Nambo when he notified the bee hives owners through the telephone. It was put to her what she said was not correct, she denied. She is familiar with Animal Protection Act. She repeated Moses Mambo made contacts with the bee keepers. She was not dealing with the bee keepers on inspection, Mr.



Moses Nambo did. The bees were sensible on the way they are handled. She added when they smoked them, the bees were blind and kept quiet.

Findings on Evidence

19. On the period of 24 July 2000 to 4 August 2000, the VQIS commissioned a bee disease survey in Vanuatu.
20. The survey was undertaken by Derek Bettsworth and Dave Grueber (Consultants) with the assistance of the two VQIS officers.
21. The consultants from New Zealand were commissioned by the Vanuatu Quarantine and Inspection services (VQIS) to undertake the survey.
22. The survey was to determine the health status of bees in Vanuatu.
23. There were inspections made to the Bee Hives belonging to the Claimant at the alleged times. The two quarantine officers were undertaking training duties under the direct supervision of the two consultants.
24. The Claimant has not attended to any specialized training in bee keeping and does not know about the different diseases that affect bees and bee hives. The Claimant admitted he was approached by Nambo Moses in Tanna asking about the location of his other bee hives, in which he told Nambo Moses about the location of his bee hives. Yet the Claimant maintained he was not aware of the defendant's surveying on his bee hives. There is a contradiction in the Claimant's evidence. Despite the claim, there is no evidence put by the Claimant and his witnesses as to the cause of death of the Claimant's bee hives. There was no direct evidence put before the Court by the Claimant as to what caused the death of his bee hives. The evidence of the Claimant as to what caused the death of his bee hives was based on what another person (his wife) stated. The Claimant said there was no prior consultation before the Defendants conducted the survey on his bee hives. However, he said in cross-examination that he was called by Moses Nambo when he was in Tanna and was made aware of the visits by the Defendants.
25. Annick Steven admitted she had no training in bee keeping. She is a food security officer which has nothing to do with bee keeping practices. She saw the quarantine officers and the consultants coming to their property to conduct



the survey on her husband's bee hives. The bee hives were located on the government's premises at Tagabe. Her husband used the government premises to raise his bee hives. She does not know about the different diseases that affect the bee hives. She did not ask the quarantine officers whether or not the instruments that they used were sterilized. She did not know what happened to her husband's bee hives and she did not know what caused their death.

26. Rebecca Kausei admitted she did not know the cause of death of the Claimant's bee hives.
27. The evidence of Moses Nambo that the Claimant's bee hives were overgrown with vegetation was not contested by the Claimant. The content of the sworn statement of Moses Nambo was unchallenged and are accepted as fact. Most part of the sworn statement of Sylvie Warimavute was not challenged. They are accepted as facts.

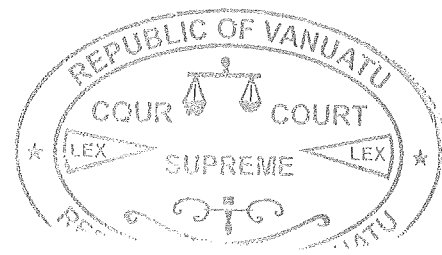
Submissions and considerations

28. The Claimant seeks compensation in the form of damages in what he claims to be a negligent act of the Defendants on his bee hives when conducting a survey on his bee hives in July to August 2000. The Claimant relies on section 12 (1) of the Animal Diseases (Control) Act No. 29 of 1992 which states that:

"COMPENSATION

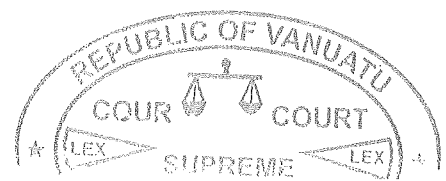
11. (1) Subject to subsection (2), no compensation shall be payable for –

- (a) any animal slaughtered, impounded or isolated under the provisions of this Act;*
- (b) the death, loss or production or devaluation of any animal or the destruction or devaluation of any animal product consequent to any detention, examination, test, sampling or treatment carried out under the provisions of this Act;*
- (c) trespass or damages to any property or premises caused by any veterinary officer, or any person working under his authority and responsibility, in carrying out his duties and obligations under this Act;*



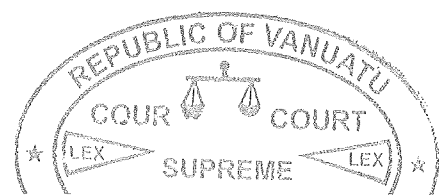
Provided that at all times due care was taken and that the owner or stock holder as the case may be, was first, except in the case of emergency, consulted or informed of such action."

29. The legal issues before the Court that were pleaded in the claim are:
- a. Whether section 12 (1) of the Animal Diseases (Control) Act No. 29 of 1992 created a statutory duty on the defendants.
 - b. If there was such a duty owed by the Defendants to the Claimant, whether or not such duty is breached.
 - c. If the duty is breached, whether the Claimant suffered damages.
30. I now consider the first legal issue:-
- (a) Whether section 12 (1) of the Animal Diseases (Control) Act No. 29 of 1992 created a statutory duty on the Defendants.
31. The Claimant submitted that the VQIS and overseas consultants conducted surveying, sampling and examinations of Mr Jacques Steven's bees without the Claimant's prior knowledge and or consultation including the training of staff which the bees hives experienced devastation and damage to his commercial venture where the majority of the Claimant's bees died immediately after the visits conducted by the VQIS. The inspections conducted were such that they contravened the statutory duty of care owed by the Defendants under Section 12 (1) of the Act. This amounted to a breach of this statutory duty under the Act which resulted in direct consequence for Mr Steven's commercial bee keeping venture.
32. The Defendants submitted that section 12 (1) of the Act does not create a statutory duty of care on the Defendants but that subsection (1) of section 12 refers to compensation to be paid in the event the Defendants do not exercise due care and where the owner or stock holder of an animal as define in the Act, is not notified in advance.
33. The evidence in this case is that the Claimant was informed by Mr. Moses Nambo when the Claimant was in Tanna and he was asked of the location of



his other bee Hives and he provided the locations of his other bee hives to Moses Nambo.

34. I agree that the Claimant's failed to establish the elements of negligence of the Defendants. The Claimant also failed to give detailed explanation as to whether or not the facts in this case fall within section 12 (1) of the Act and whether or not it created a duty on the Defendants. The Defendants conducted the survey on the Claimant's bee hives in search for diseases. There was nothing in evidence showing or indicating that the Defendants intended to destroy the claimant's bee hives.
35. It is also accepted that even if section 12 applies to this case, section 12 (1) of the Act does not create a statutory duty on the Defendants but rather this is a general duty of care that does not necessitate a statutory provision because such a duty is already in existence in such circumstances. The Defendants owe a duty of care when inspecting the bee hives of the Claimant but here, that duty was not breached because such an exercise of inspection was carried out with due care and executed within the Act. There is no evidence to the contrary.
36. The evidence show that due care was always maintained by the quarantine officers and the bee consultants. The fact also indicates that the Claimant was made aware of the inspection of his bee hives at the time of inspection. The Claimant admitted in evidence that he was approached by Nambo Moses when he was in Tanna asking about the location of his other bee hives and the Claimant told him of their locations.
37. There was no direct evidence put before the Court by the Claimant as to what caused the death of the Claimant's bee hives. The Claimant suggested that there was no prior consultation before the Defendants conducted the survey on his bee hives. This was contrary to the Claimant's own evidence. The Claimant is and must be estopped to claim that he was not notified or made aware of the survey.
38. Mrs. Annick Steven evidence does not assist the Claimant's case. She did not know about the different diseases that affect bee hives. She did not monitor whether the instruments used in the survey were sterilized or not. Finally, she admitted she did not know what caused the death of her husband's bee hives.



Conclusion

39. I answer to the legal issue 1 in the following manner:-

(a) Section 12 (1) of the Animal Diseases (Control) Act No. 29 of 1992 does not create a statutory duty of care on the Defendants; but the Defendants when they inspected the bees hives of the Claimant owed the Claimant a general duty of care to conduct the inspection within section 12 (1) of the Act.

(b) Between 22 July to 4 August 2000, the Defendants conducted the survey of the Claimants bee hives with due care within their duty of care. The survey was properly conducted under the Act.

40. As to legal issues 2 and 3, I answer them in the following way based on the evidence:

- Issue 2: there is no breach of duty of care by the Defendants in the inspection of the Claimant's bee hives between July and August 2000.
- Issue 3: There is no damage caused by the Defendants that is established on evidences.

41. The Claimant failed to prove his claim on the balance of probabilities.

42. The claim is dismissed. The Defendants are entitled to their costs; such costs shall be determined failing agreement.

Dated at Port-Vila, this 26th March 2019

BY THE COURT



Vincent LUNABEK
Chief Justice

