

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

**Civil
Case No. 17/872 SC/CIVL**

BETWEEN: STEPHEN QUINTO
Claimant

AND: NICOLAS GEORGE SIMO
First Defendant

AND: RAVU SIMOLO
Second Defendant

AND: NOEL RAV
Third Defendant

Before: Justice Saksak

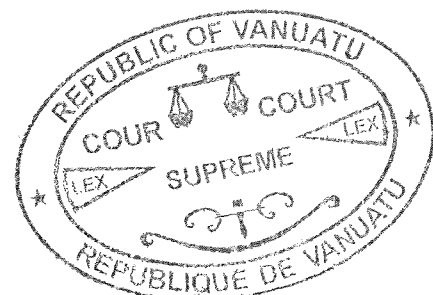
*In Attendance: George F Boar for the Applicant/ Defendants
Viska Muluane for the Claimant/Respondent*

Date of Hearing : 21st June 2019

Date of Decision: 26th June 2019

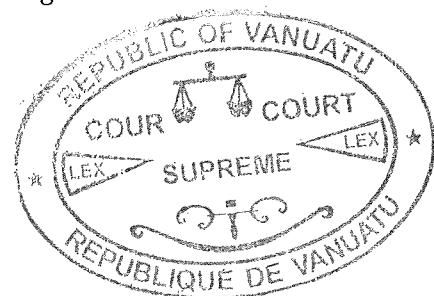
JUDGMENT

1. Mr Boar filed an application on 15th May 2019 seeking to set aside the earlier orders of this Court issued on 12th April 2017. In the course of hearing the application. Mr Boar made submissions in relation to the reliefs sought by the three named defendants for restraining orders, and for orders granting leave to add new parties as defendants to the proceedings and to grant leave to them to amend their defences and counter-claims.
2. Mr Boar relied on his own sworn statements filed on 10th and 17th June 2019, the statement of Ishmael Tari and of Britten Penod filed on 28th May 2019 and of Dick Tomker filed on 16th June 2019 in support of the applications to set aside orders of 12th April 2017, to add parties and to amend defences and counter-claims.

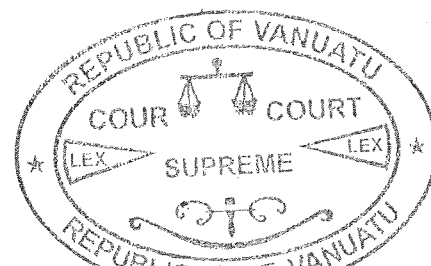


3. Ms Muluane objected to the applications and made lengthy arguments and submissions in opposition on the basis of the sworn statements filed in response by the claimant on 5th and 19th June 2019 respectively.
4. Ms Muluane's objections were made simply on the basis that (a) some earlier applications for joinder in 2017 were accepted but having failed to file their evidence as to damage, their counter-claims were struck out and they were removed as parties in March 2019 and , (b) that the defendants made earlier application for vacation of the orders of 12th April 2017 but the application was refused. Counsel relied on the judgment dated 22nd May 2017.
5. Mr Boar did clarify at the outset of the hearing that when he filed the application he was not made aware of the hearing in March 2019 when the claimant applied to strike out the defendant's counter-claim and remove them as parties. Had Counsel been notified, he would have attended and opposed the application. He had filed his notice of beginning to act on or about 4th March 2019 but was not made aware of the hearing on 19th March 2019 when the Court issued the strike out and removal orders.
6. There is strength in the argument and submissions by Mr Boar on this point as it shows unfairness and lack of affording natural justice to the defendant.
7. Further, the Orders of 12th April 2017 were ex parte orders granted with liberty to the defendants to apply on 2 days notice to vary. The third defendant represented then by Ms Jereva applied to set aside the orders on 19th May 2017. On 19th May 2017 the application was declined and the judge gave reasons on 22nd May 2017.
8. At paragraph 5 of the judgment the primary judge said that the orders of 12th April 2017 would remain in place. The reasons are given in paragraph 4 where the judge said:

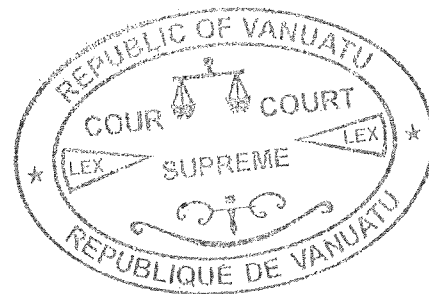
“ the defendants have not produced any evidence to cast doubt on the claimant's claim that he has permission from the appropriate custom owner or person who has rights over the land to do what he was doing....”



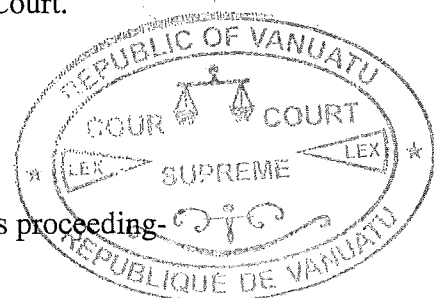
9. The judge then relying on the test in the well known Cynamid case [1975] AC 396 finding the claimant has a serious case to be tried and that on the balance of convenience, the orders sought by the claimant should be granted.
10. The reality of the case is that the Orders of 12th April 2017 remain on foot. They are not permanent orders. The liberty to the defendants remain the same. The defendants and intended interested persons have filed new evidence that with the existence of the orders, the claimant and his workers continue to use the orders to their advantage and to gain an upper hand against the simple village people.
11. The claimant has not progressed his case to obtain final judgment of securing permanent orders and to getting damages against the defendants. And it has been some two years since April 2017. And further complaints and developments have arisen and come to light in the evidence filed in support of the applications by the defendants. These complaints would not have arisen and these applications would not have been necessary had the claimant advanced his case to obtain judgment earlier.
12. But the matter goes further. It now connects to the issue of landownership of the two portions of land the subject of this claim, Puelvunsupe and Pakakara Lands. Initially in December 2016 the Nakamal meeting found 7 landowners namely: Solomon Tavue, Tavue Tarihi and Family, Nicolas and Family, Wycliff Karae and Family, Rose Samuel and Family, Alfred Raupepe and Family and Donald and Family. See statement of Tarihi Tavue of 18th May 2017.
13. Out of these 7 families only Solomon Tavue has given permission to the claimant to do what he is doing on these lands. The claimant says in his statement that Job Thomas has already given him permission but Job Thomas has no evidence by sworn statement before the Court. And clearly he is not a declared landowner in the December 2016 Decision.
14. Solomon Tavue acknowledges this Decision in his statement of 11th April 2017 at paragraph 1. And at paragraph 2 he says he has challenged that decision in review case No. 17/342.



15. I heard Counsel informing the Court that in March 2019 when the Court was hearing the claimants' application to strike out the counter-claims of the defendants and to remove some of them as parties, Mrs Patterson was attending the Court in Luganville and consenting to the dispute being referred back to a properly constituted tribunal to determine the ownership of Puelvan supe Land.
16. One of the declared custom landowners is named in this proceeding by the claimant as the First Defendant (Nicolas George and Family). And the majority of evidence before the Court show the majority of the custom owners are opposed to what the claimant is doing on the lands in dispute.
17. In these circumstances justice requires that all parties must exercise restraint while waiting for the determination of the land dispute between the disputing parties.
18. The Orders of 12th April 2017 must therefore be vacated and replaced to accommodate the interests of all the parties concerned and not just the claimant's interests. The order extends to protect Solomon Tavue and Job Thomas but they are not the claimants in this proceeding.
19. For the reasons given the application by the defendants to vacate the orders of 12th April 2017 is allowed. The application to add new defendants is also allowed. And the application giving leave to the three defendants and new defendants to amend their defences and counter-claims is allowed. The orders striking out the counter-claims of the defendants in March 2019 is also vacated.
20. The formal orders therefore are-
1. The orders of 12th April 2017 are vacated and replaced by the following-
 - a. The first, second, third and all named defendants herein be restrained from harassing, intimidating, threatening and coming within 100 metres of the claimant, his immediate family members and workers under the Edenhope Project.



- b. All the defendants and their relatives be restrained from trespassing within 100 metres from the premises of World Vision and any other buildings and equipment of Edenhope Conservation Project
 - c. The Claimant by himself, his family, workers and agents be hereby restrained from creating any new road to the Pakakara Land.
 - d. The Claimant by himself, his family, workers and agents be restrained from clearing Pulrus and Pakakara Lands until further orders of this Court or until the determination of custom ownership of those lands by the competent Court or Land Tribunal.
 - e. The Claimant, his employees, servants and agents and their relatives and families be hereby restrained from harassing, intimidating and threatening or coming within 50 meters of the homes of the First, Second, Third and any other defendants joined to this proceeding.
 - f. The claimant, his employees and agents shall remove all their equipment and machinery from Pulruas and Pakakara Lands within 7 days from the date of this order.
 - g. The Claimants and his employees shall allow free access to all people of Narata Village and Malcher Village to Silimauri Health Centre, church services and schools at Visioro Village or another location.
 - h. The Claimant and all the defendants named herein shall have mutual respect for each other and shall ensure that these orders are complied with at all times until the final determination of this proceeding.
 - i. Any breaches of these orders will amount to contempt of Court.
2. The Orders of 19th March 2019 be hereby vacated.
 3. The following persons shall be joined as Fourth Defendants to this proceeding-




Wcliff Karae, Abraham Lulu, Dorothy Alie, Nicol Ravupeu, Bruno Tinoi, John Will, Lino Ravu, Ferdino Eric, Emmie John, Noel Malau, Christian Maliu, Dambo Karae, Tavuet Marchal, Tori John, Beno Britten, William Tavovet, Marco Malau, Martino Jimmy, Narsis Daniel, Linbos Supe, Francis Rap, Rudolf Tavue, David Aru, Malau Samuel, Timothy Malau, Nicola Sielo, Jean Baptiste, Supre Ravoline, Sethy Jevi, Joel Rav, Pitor Rav, Mark Rav, Abraham Rav, Teddy Tavue, Jackey Rav, John Kara, Arnold Rav, James Rav, Merelyne Ambae, Emmie Vitiro, Jacob Uson, Malau Ambae, (Mali) Laylinbos, Leon, Meriam Francisco, Julie Ambae, Easter Samuel, Timothy Sanbae, Seli Timothy, Frank Timothy, Arlvi Aru, Marinester Sanbae, Roderic Marco, and John Tavue.

4. The First, Second, Third and all persons named as Fourth Defendants be given leave to file and serve their Amended Defences and counter-claims within 21 days from the date hereof (by 15th July 2019).
 5. The following persons shall file and serve their sworn statements as to their counter claims within 21 days (by 15th July 2019)- Malau (or Mali) Ambae, Timothy Sanbae and Rudolf Tavue.
 6. The Claimant be given 21 days after service of the Fourth Defendant's sworn statements to file and serve responses.
21. Costs be in the cause.

DATED at Port Vila this 26th day of June 2019

BY THE COURT


OLIVER.A.SAKSAK

Judge

