

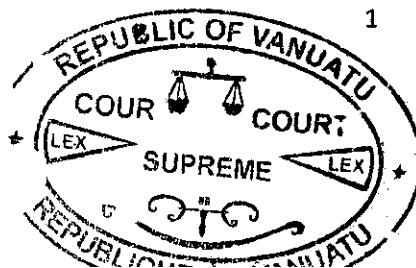
**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

Civil
Case No. 20/858 SC/CIVL

- BETWEEN:** Family Narueang Barnabas represented by
Stephen Iatika
Claimant
- AND:** Family Sam Iohnamu represented by Johnny and
Nilausau, Napip Johnny, Jean Paul and Lindi
Pateipai, Claude Teaua, Marcel Peter and
Lesabeth Peter, Anso Peter and Iasua Peter
First Defendants
- AND:** Family Nokamaha represented by Michael
Nokamaha and Lesbeth, Nimanian Sibas and
Mawina, Tikiskisi Jean Ives, Sipus Nimanian and
Karuan Nimanian
Second Defendants
- AND:** Family Joseph Faniku represented by Henry
Joseph and Rotha Johnson, Marcel Joseph and
Anne, Joseph Faniku and Single
Third Defendants
- AND:** Family Iata Pikpik represented by Noel
Nokamaha, Harry Iata and Viti, Sanel Iata and
Meriam
Fourth Defendants
- AND:** Family Poida represented by Willie Mikail and
Luci Mikail
Fifth Defendants
- AND:** Family Niplei represented by Niplei Meiake and
Wio Niplei
Sixth Defendants
- AND:** Natuan Johnson, Solomon Johnson, Noel Resu,
Albert Iokai and Iata Luata Amson
Seventh Defendants

Date: 27 July 2021
Before: Justice V.M. Trief
Counsel: Claimant – Mr A. Nalpini
Defendants – Mr G. Takau

JUDGMENT



A. Introduction

1. The Claimant Family Narueang Barnabas seeks an order for the eviction of the Defendants from Loutapunga land on Tanna island. The Claim is disputed.
2. Counsel agreed that this matter proceed by way of written submissions and the Court then make its decision on the papers. The Claimant filed written submissions as directed on 11 May 2021. The Defendants have not filed any submissions.
3. Having considered the submissions and the evidence, I now set out my decision.

B. Background

4. On 13 September 1984, the Tanna Island Court ordered in its judgment in *Nampas v Iohnamu* [1984] VUICB 1; Land Case No. 1 of 1984 in relation to Lounapas land, Tanna (English translation attached to Sworn statement of Stephen Iatika filed on 22 April 2020):

The Court declared that all the claimants, Willie Nampas, Simon Nuvour, Tom Shem and Barnabas Narueng, each had the right to the land inside the large Waisisi boundary.

The Court only set the main boundary which was in dispute but the chiefs of the area would look into the minor boundaries within the Waisisi one.

The Court declared that the defendant, Sam Iohnamu should leave the Latapunga land and return to Latapu.

5. The decision was appealed to the Supreme Court in Land Appeal Case No. 3 of 1984. The Chief Justice by judgment dated 1 September 2003 in *In re land known as Lounapas, Tanna, Iohnamu v Shem* [2003] VUSC 84 noted that the appeal was withdrawn and that the judgment of the Tanna Island Court dated 13 September 1984 was now final.
6. Proceedings in Land Case No. 1 of 1984 were then commenced in the Magistrates' Court. The parties' Consent Orders dated 28 September 2005 in that proceeding stated that:

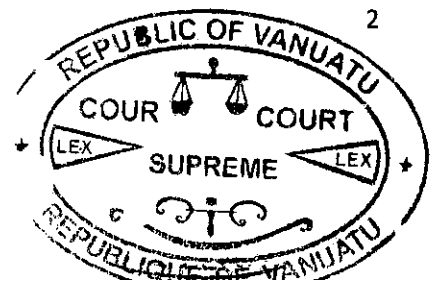
BETWEEN: WILLIE NAMPAS, SIMON NUVOU AND TOM SHEM
First Claimants

AND: BANABAS NARUENG
Second Claimant

AND: SAM IOHNAMU
Defendant

The First and Second Claimants and the Defendant herein consent to the following orders being made:

1. *That the parties and their respective chiefs sit in a meeting to be held on or about October 2005 to decide on the boundaries of Waisisi land ('the land');*



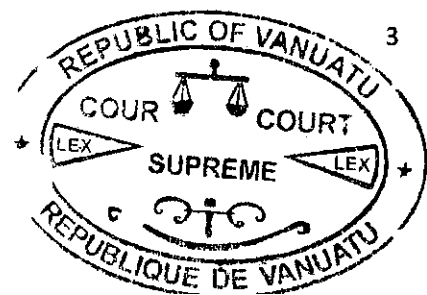
2. *That the said meeting will be considered as the final meeting to decide on the boundaries of the land;*
3. *That the minutes of the meeting be taken by one of the lawyers in this proceeding;*
4. *That in the event that the Defendant resides within the boundary of the First Claimants, the Defendant will be evicted from that boundary pursuant to the decision dated 1 September 2003 of Land Case No. 3 of 1984;*
5. *That in the event that the Defendant resides within the boundary of the Second Claimant, the Defendant will continue to freely reside on the said boundary; [and]*
6. *That each party bear their own costs of and incidental to this proceeding.*

C. Pleadings

7. By the Claim, the Claimant Family Narueang Barnabas seeks orders evicting the Defendants from Loutapunga land on Tanna island. The Claimant alleges that it is a declared custom owner of Loutapunga land pursuant to a 1984 Tanna Island Court judgment, the Chief Justice's decision dated 1 September 2003 in a Land Appeal Case and consent orders dated 28 September 2005 in a Magistrates' Court proceeding. The Defendants are alleged to unlawfully occupy the Claimant's land.
8. The Defendants' Defence denies all allegations in the Claim and states that the Defendants relies on the consent orders dated 28 September 2005.
9. In its Reply, the Claimant states that after the 2005 consent orders were signed and the subsequent custom meeting of 2005, other Defendants started to reside unlawfully on Loutapunga land without the Claimant's consent.

D. Evidence

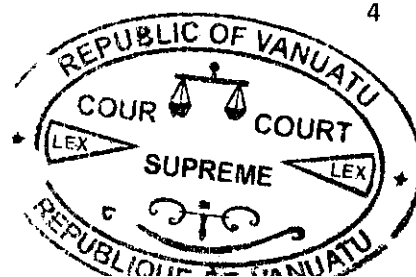
10. Mr Stephen Iatika by his Sworn statement filed on 22 April 2020 evidenced that he is authorised by his family to file the Claim on their behalf and he is the grandson of Narueang Barnabas who was party to Land Case No. 1 of 1984 in the Tanna Island Court. He also evidenced that the First Defendant should have already left Loutapunga land but for Mr Iatika's family, and the other Defendants recently moved onto Loutapunga land without Mr Iatika's family's authorization.
11. By his Further Sworn statement filed on 20 August 2020, Mr Iatika evidenced that the Nikoletan Council of Chiefs by letter dated 22 May 1986 stated that Barnabas and Tom Shem were the custom owners of Lounapuas land. Mr Iatika also attached minutes of the meeting held on 21 October 2005 at Kitow, as per the consent orders dated 28 September 2005, which minutes were taken by counsel Less John Napuati and which stated:
 1. *In accordance with the consent order of 28 September 2005 in Land Case No. 1 of 1984 it was resolved that the matter needs to go before the Island Court for proper determination as to specific boundaries of Narueang Barnabas, Simon Nivou, Willie Nambas and Tom Shem.*
 2. *The Custom Land of Lounapuas is within the Customary Boundary of Waisisi.*



3. *Chief Iarakei perform a custom ceremony that the Defendant Sam Iohnamu does not reside on Tom Shem customary boundary but Narueang Banabas. The custom was a pig and a kava. It was accepted by Lautapunga Nakamal by Chief Iatamil Daniel and other parties to be the correct decision but Song did not agree.*
 4. *The meeting acknowledges and agrees with the decision by the Nikoletan Council of Chiefs dated 22 May 1986 confirming that Narueang Barnabas and Tom Shem are the custom owners of Lounapuas but the decision as to their specific boundaries will need to be determined in another proceeding in the Island Court between themselves only.*
 5. *The issue of whether Sam Iohnamu reside on the boundary of Narueang Banabas is subject to paragraph 4 above.*
 6. *In the meantime all parties agree that Sam Iohnamu and family residing at Lounapuas must be evicted in accordance with the Island Court Decision in Land Case No. 1 of 1984.*
12. Iatamil Daniel by his sworn statement filed on 21 September 2020 evidenced that he is a chief and has spoken with Sam Iohnamu and family about moving to Latapu as ordered by the Island Court but they have not.
 13. Christina Thyna and Less John Napuati evidenced by their sworn statements filed on 10 September 2020 and 21 September 2020 respectively that as counsel they signed the Consent Orders dated 28 September 2005 and after that, Mr Napuati attended and took the minutes of the 21 October 2005 meeting held at Kitow.
 14. The Defendants on 16 July 2020 filed the sworn statements of Jean Pierre Tom and Michael Nokamaha.
 15. Mr Tom and Mr Nokamaha evidenced that the 1984 decision of the Tanna Island Court only gave rights over the land at Waisisi, Whitesands, Tanna to the four claimants (Willie Nampas, Simon Nuvou, Tom Shem and Barnabas Narueang) but did not declare the custom ownership of that land.
 16. Mr Tom further evidenced that there was no proper confirmed map and boundaries of the Claimant's land where the Defendants are residing. Finally, that the Claimant is yet to identify its boundaries and identify the Defendants residing within the Claimant's boundary.
 17. Mr Nokamaha further evidenced that custom ownership not having been determined, the Claimant is not the rightful custom owner of the subject land.

E. Discussion

18. By the Claimant's own evidence, as set out in paragraphs 4 and 5 of the minutes of the 21 October 2005 meeting:
 - a) The decision as to Narueang Barnabas (the Claimant) and Tom Shem's specific boundaries within Lounapuas land will need to be determined in another proceeding in the Island Court between themselves only; and
 - b) The issue of whether the First Defendants Family Sam Iohnamu reside within the boundary of Narueang Banabas is subject to the Island Court's decision



as to Narueang Barnabas and Tom Shem's specific boundaries within Lounapuas land.

19. Accordingly, it will not be clear whether or not the First Defendants Sam Iohnamu and/or other Defendants are residing within the boundary of the Claimant's land until such time as the Tanna Island Court has determined what Narueang Barnabas and Tom Shem's specific boundaries within Lounapuas land are.
20. There is no evidence that the Tanna Island Court has already determined Narueang Barnabas and Tom Shem's specific boundaries within Lounapuas land. I must conclude then that the Tanna Island Court has not yet identified the boundaries of the Claimant's land and it is therefore impossible to know whether or not any of the Defendants are residing on the Claimant's land.
21. The Defendants' evidence is accepted that there is no map in evidence showing the boundaries of the Claimant's land and where the Defendants are residing.
22. Further, the Claimant seeks an eviction order in relation to Loutapunga land. However, the 1984 Tanna Island Court judgment and the 2003 Chief Justice's judgment relied on relate to the land dispute over Lounapuas land. There is no explanation in the evidence as to the relationship between Loutapunga land and Lounapuas land, and the difference or indeed similarity, if any, between them.
23. I must conclude therefore that the Claimant has not proven on the balance of probabilities that it has custom ownership or other rights over Loutapunga land for its Claim in trespass against the Defendants. Accordingly, judgment must be entered for the Defendants.

F. Result

24. Judgment is entered for the Defendants.
25. The restraining orders dated 27 May 2020 are discharged.
26. The Claimant is to pay the Defendants' costs as agreed or taxed by the Master. Once set, the costs are to be paid within 28 days.

DATED at Port Vila this 27th day of July 2021

BY THE COURT

VM Trier
Justice Viran Molisa Trier

