

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU  
CVL/Civil

(Civil Jurisdiction)

Civil

Case No. 22/2823

**BETWEEN:** PETER PATA representing family PATA  
of North West Tanna, Republic of  
Vanuatu

Claimant

**AND: STEPHEN ETAP, TARUWAY  
SAMSON NAIES, PETER NAEIS** of  
Lakaio Village North West Tanna

First Defendants

**AND: THE REPUBLIC OF VANUATU**

Second Defendant

**AND: NORTH WEST TANNA AREA LANDS  
TRIBUNAL**

Third Defendant

*Date:* 10<sup>th</sup> October 2022  
*Before:* Justice S.M. Harrop  
*Distribution to:* Mr D. Yawha for the Claimant

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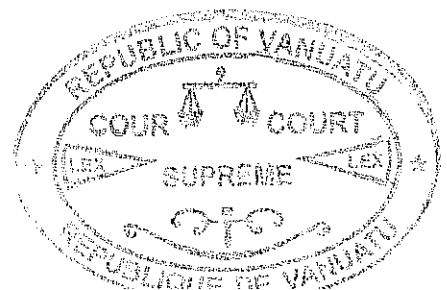
**Judgment**

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1. This proceeding, which was filed late on Friday afternoon, has been referred to me this morning. Because it includes an urgent application for restraining orders, I have given it immediate consideration.
2. I have read Mr Pata's urgent application for restraining orders, his sworn statement in support, his counsel's (Mr Yawha) sworn statement of urgency, undertaking as to damages and the Supreme Court claim.



3. Mr Pata lives in Port Vila and is representing his family at a hearing, convened under the Customary Land Management Act 2013, on Tanna, of the North-West Tanna Area Land Tribunal, relating to Namtawas Nalne customary land.
4. He alleges that during a hearing on 27 September 2022 the first defendants and their supporters burst into the Tribunal hearing room, claimed the proceedings were unlawful, interrupted the hearing, demanded it stop immediately, and made threats of violence to those present, including the Tribunal members and the customary land officer if they did not stop it.
5. Mr Pata says that those who were threatened, including himself, were scared. The hearing did not proceed further and has been adjourned part-heard without a new date arranged.
6. Mr Pata seeks an order that the first defendants and their agents be restrained from disrupting, directly or indirectly, the continuation of the Area Land Tribunal hearing and that they be restrained from threatening or assaulting the claimants or the Tribunal members or the customary land officer of Tafea, until the Tribunal completes its hearing of the land claim.
7. For present purposes, as is appropriate on an urgent application for restraining orders, I proceed on the basis that everything Mr Pata alleges is true; in any event it is difficult to imagine he would have made this application if the disruption to the hearing had not occurred.
8. The court is naturally concerned to hear about what occurred and extends sympathy to those who were frightened by their experience while attending the Tribunal hearing. It is fundamental that those appearing before any tribunal or court hearing must be able to say what they wish to say and to present their evidence without fear or interruption and then to have their cases fairly considered and determined by the court or tribunal, without interference, fear or favour.
9. That said and fully acknowledged, this application asks the Supreme Court to interfere with the processes of the Area Land Tribunal, to make orders to deal with an incident occurring at a Tribunal hearing and to try to avoid a recurrence. I am not aware of any jurisdiction for the Supreme Court to do this and consider it would be wrong, indeed arrogant, for the Supreme Court to do so, just as indeed it was wrong of the first defendants to interfere, in the very different way they allegedly chose to, with the Tribunal's processes.



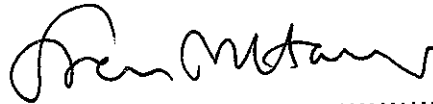
10. It is entirely a matter for the Area Land Tribunal to regulate and carry out its hearings and related processes in the way it thinks fit. If, as Mr Pata asserts the first defendants have engaged in conduct amounting to contempt of court, then it is for that "court" i.e. the Tribunal to decide what should be done about it. If there are security concerns, as there clearly have been, and as there will be at any resumed hearing, then it is a matter for the Tribunal to take such steps as it thinks fit to ensure that its hearings proceed in a safe and orderly manner for all concerned. Aside from the point of principle (the Supreme Court respecting the Tribunal as an important, independent, statutory judicial body), the Tribunal is far better placed than a Supreme Court judge in Port Vila to assess what occurred and what should be done about it.
11. On the face of Mr Pata's evidence one or more criminal offences may have been committed. If he or anyone else present wishes to lay a complaint with the police they may do so.
12. In terms of the Civil Procedure Rules, even though the claim has been filed with the other papers, the application is arguably one made for an urgent interlocutory order before a proceeding has started, under Rule 7.5.
13. I decline the application for the interlocutory orders sought because I am not satisfied that the claimant/applicant has a serious question to be tried. I emphasise this is not to suggest that there has not been a concerning and frightening incident, but rather to underline that there must be a proper cause of action, jurisdiction, for the Supreme Court to do what is asked. I am not satisfied that there is. It is a matter for the Tribunal to assess and decide what should be done as a result of the incident.
14. The uncertain nature of the jurisdictional basis for this proceeding is highlighted by the claim itself, not least because the Republic and the Tribunal itself are named as defendants.
15. It seeks damages for airfares and related expenses for travelling to Tanna for the hearing which the first defendants interrupted and damages for breach of an alleged right to a "fair and speedy hearing".
16. Also sought is an order directing that the Republic of Vanuatu and the North-West Tanna Area Land Tribunal reschedule a definite date for continuation of the hearing as soon as possible and an order restraining the first defendants and their agents from entering Tribunal hearing premises with improper intent.



17. Final determination of the claim must await a trial in due course after the filing of a Defence, any Reply, full evidence from both sides and legal submissions. However, Mr Yawha will need to clearly identify the cause(s) of action on which the success of the claim depends, in respect of each named defendant.
18. If the Tribunal is successfully able to resume the hearing and then to make a considered decision in a manner which is safe for everyone involved, then it may be that the need for this claim to be pursued will largely, if not entirely, fall away. I make no further comment at this very early stage.
19. Assuming Mr Pata wishes to proceed with his claim following my refusal of the urgent restraining orders he sought, then, once the proceeding has been served on the defendants, a first conference will be arranged.
20. I decline Mr Pata's urgent application for restraining orders against the first defendants.

**Dated at Port Vila this 10<sup>th</sup> day of October 2022**

**BY THE COURT**



Justice S.M. Harrop

