

BETWEEN: GABRIEL LULU

Claimant

AND: PALO VIRIE

SUSU VIRIE

SAM VIRIE

PETER VIRIE

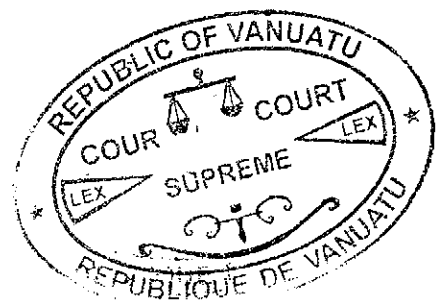
ROBINETTE PALO

Defendants

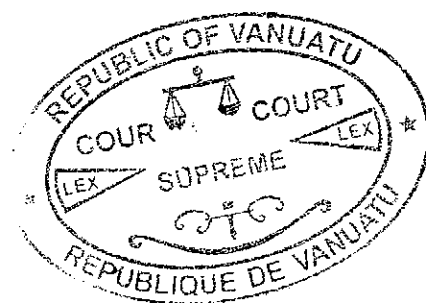
Date of Hearing: 14th May 2018
Date of Judgment: 19th June 2018
Before: Justice Oliver A. Saksak
Counsel: Jane Tari Aru for the Claimant
Lent Tevi for the Defendants

JUDGMENT

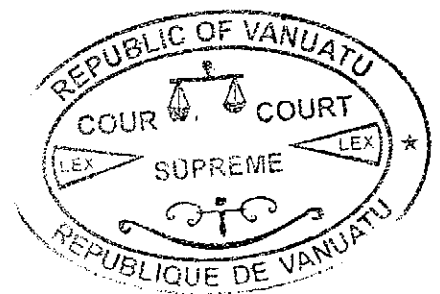
1. The Claimant filed his claims on 23rd July 2013 claiming that in 2012 and 2013 the defendants damaged his food crops and slaughtered 19 of his cattle.
2. His claims for food crops were assessed by the Agriculture Department at VT 766,860 and the animals were assessed by an officer from the Livestock Department at VT 564,000.
3. The Claimant also claimed general damages at VT 50,000 against the 5 named defendants and for punitive damages in the sum of VT 100,000.



4. The defendants filed a defence and counter-claim on 18th September 2013. While they deny liability, they assert that the dispute was solved by their Council of Chiefs who imposed fines on them. They assert however that the claimant caused an assault on a relative of the defendants and that on 14th August 2012 the Claimant led a group of his relatives and destroyed their gardens and food crops valued at VT 833.190.
5. The defendants' counterclaim is for damages in the sum of VT 1 million and interest at 5% per annum.
6. At the hearing on 14th May 2018 Mrs Aru and Mr Tevi agreed that all sworn statements filed by the Claimant and the defendants be admitted into evidence without cross-examination. As a result the Court admitted all sworn statements into evidence.
7. Both Counsel agreed the only issue was the amount of damages on the substantial claim for the claimant and on the counter-claim for the defendants.
8. The factual issues I gathered from arguments of Counsel appear to me to be-
 - a) Whether there was a space between the claimant's fence and the defendants'?
 - b) Whether the fines imposed by the Chiefs have been paid?
 - c) Whether the claimant assaulted a relative of the defendants?
 - d) Whether damage were done by the defendants to the Claimant's garden crops and by the Claimant to the defendants' garden crops?
 - e) Whether the defendants caused losses to the claimant's 19 heads of cattle as claimed?



9. On the main claim the claimant has the onus of proof on the balance of probabilities and on the counter-claim that burden shifts to the defendants.
10. First, on the issue of space I find the defendant's evidence of Robinette Palo explaining at paragraphs 10, 11 and 12 of his sworn statement dated 23rd October 2013 the reason for having a 6 metre space between fences in South Santo as sensible and convincing. He confirms there is space which the claimant misused by planting his crops in 2006.
11. Preusivsi Manis confirmed there is a space at paragraph 3 of his sworn statement dated 27th August 2014. And Chief Haolu confirmed the space in paragraph 5 of his sworn statement dated 23rd October 2013.
12. I am therefore satisfied there is space between the claimant's property and the defendant's property, used for common purpose of stray cattle to roam, and is not for gardening of any kind.
13. Second, whether the fines imposed by the village chiefs were paid by the defendants?
14. Chief Haolo confirms at paragraph 9 that the fine of VT 70.000 and 5 bags of rice of 25 Kgs were paid by the defendants. Robinette Palo confirms at paragraph 14 and 16 that for the damage done to the Claimant's crops in 1995 the Chiefs made them pay VT 40.000 and 5 bags of 25 Kgs rice. Further he confirms that for the damage caused in 2000 to the garden the claimant planted in the space in defiance of the chiefs Order



the claimant again complained to the chiefs who imposed a fine of VT 30.000 on the defendants and he paid VT 17.000 at the meeting and VT 13.000 on 22nd April 2010.

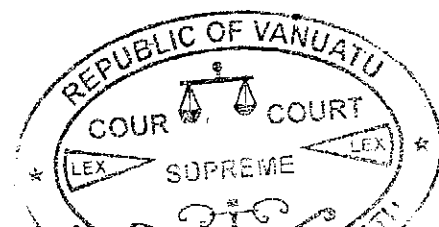
15. Further Robinette Palo has confirmed that in 2009 the claimant planted kava on land he occupies and his children removed them. The claimant reported to the chiefs who imposed a fine of VT 54,230 which he paid.

16. Altogether from those evidence the defendants have paid VT 70.000 + VT 30.000 + VT 54.230, a total of VT 154,230.

17. Third, whether the claimant assaulted a relative of the defendants? Tavuisusu Virie in paragraph 4 of his sworn statement dated 27th August 2014 confirms the claimant assaulted him on 31st July 2013 with a knife causing him some injuries to his right side of the rib cage. He annexes his medical report dated 31st July 2013 as "TV1". This evidence is not challenged.

18. Fourth, whether the defendants damaged the claimant's food crops? From the evidence of Robinette Palo it is conceded the defendants damaged the Claimant's gardens in 1995, 2000, and 2009. For these the defendants have been made to pay the sum of VT 154,230 by the Village chiefs.

19. The claimant on the other hand caused damage to the defendants garden crops and commercial crops. This is in the evidence of Robinette Palo at paragraph 27 for which an assessment report is annexed as ' RP1" to the sworn statement dated 23rd October 2013. Chief Haolu confirms this damage at paragraph 12 of his sworn statement and



that he was present with the Police and Agriculture Officer when the assessment report was made (paragraph 13). At paragraph 14 the chief confirms that since 2010 the claimant has caused and instigated problems between himself and the defendants. This resulted in the chief writing a letter to the two parties reminding them to respect each other and to exercise restraints. The letter is annexed as "H1".

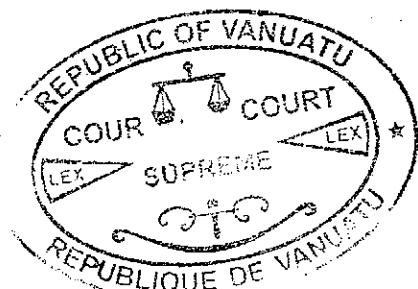
20. Finally whether the defendants caused losses to the claimant's 19 heads of cattle?

None of the claimant's witnesses is a direct eye witness to these allegations of theft or losses of cattle. Their evidence are all pure speculation that since the defendants arrived in 1988 or 1998, thefts or losses started occurring. Certainly that cannot be admissible evidence. No dates were given. And no criminal complaints were made to the police as theft is a criminal matter.

21. I am therefore not satisfied that this claim has been made out by the claimant and the claims for 19 heads of cattle must and is hereby dismissed.

22. The remaining claim is for garden crops at VT 766,860. From the evidence the defendants have already paid VT 154,230 and therefore this amount must be deducted accordingly. The balance is VT 612,630 due to the claimant. The shortfall is VT 220.560. The claimant must therefore pay this sum to the defendants.

23. In conclusion while the claimant succeeds in his claims, because the defendants' counter-claims for which the defendants are also successful, leave the claimant with nothing due to him. His claim for punitive damages are declined for reason that he



also was at fault by damaging the defendants' garden in 2012 and by assaulting one of the defendants in July 2013.

24. I therefore give judgment in favour of the defendants on their counter-claims for the sum of VT 220,560 against the claimant.

25. This claim has put the defendants to costs. I award costs in favour of the defendants against the claimant to be paid on standard basis as agreed or be taxed by the Master.

DATED at Luganville this 19th day of June 2018

BY THE COURT


OLIVER.A.SAKSAK

Judge

