

IN THE SUPREME COURT **Civil**
OF THE REPUBLIC OF VANUATU **Case No. 17/624 SC/CIVL**
(Civil Jurisdiction)

**BETWEEN: Jeffrey Weul , Mofresher Wemanar, Family
Wemal, Sawon Family, Harold Nais
Hopkins, Keith Sawon, Frank Bollen**

Claimants

**AND: Rodrick Tula, Danstan Tula, Donald Tula,
Vira Jack, Basil Frank, Joseph Saltons,
Atkin John, Godden Fanai, Patrick Ventul,
Andrea Salvemal, Jonas Philip, Robert
Wengel, Laisa Marau, Timothy Fanai,
Marian Roquailis & Hillary Frazer**

First Defendants

**Donald Tula, Basil Frank, Joseph Salto,
Atkin John, Jonas Philip, Robert Wengel**

Second Defendants

Jonas Philip

Third Defendant

Coram: *Justice Oliver A. Saksak*

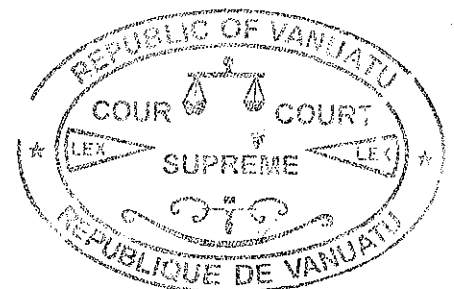
Counsel: *Bruce Kalotiti Kalotrip and Anna Sarisets for Claimants*
No appearance for First Defendants (Tom Joe Botleng)
No appearance or Second Defendants (Eric Molbaleh)
No appearance for Third Defendant

Date of Hearing: *3 October 2018*

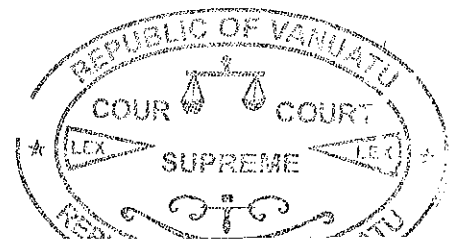
Date of Judgment: *10 October 2018*

JUDGMENT

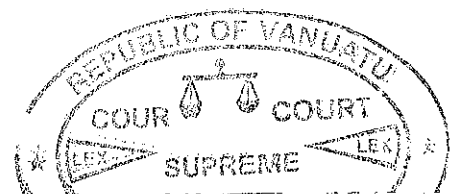
1. The claimants filed their claim on 15 March 2017 claiming –
 - (a) An eviction order against the defendants
 - (b) An order for mesne profits to be assessed
 - (c) And order for costs



- (d) Any other order the Court deems just.
2. The basis of the claims are that –
- (a) The claimants were declared custom land owners of land known as Nbeklav Aworwor situated on East Gaua by the Banks and Torres Island Court in Land Case No. 3 of 2000 on 4 November 2005.
- (b) The defendants appealed to the Supreme Court against the judgment of the Island Court in Land Appeal Case no. 2 of 2007 heard in 2010. The appeal was dismissed.
- (c) The defendants appealed further to the Court of Appeal in Civil Appeal Case No. 17 of 2010. Their appeal was dismissed by the Court of Appeal.
3. The defendants filed a defence on behalf of Timothy Fanai by Vire Lawyers denying that he was in occupation of the said land and that where he resided was not within the boundary of the said land.
4. On 19 July 2017 Mr Molbaleh filed a statement of some of the defendants namely Donald Tula, Vira Jack, Basil Frank, Joseph Saltow, Atkin John, Godden Fanai, Patrick Ventul, Robert Engel and Laisa Marau.
5. Their main defence are that Frank Bollen and John Hopkins sold lands to each of them which they now occupy for over 20 years. They say they cannot be evicted unless compensation is paid for all their properties and developments done on the land.
6. They indicated they would be filing counter-claims but have not do so.
7. The first defendants filed a defence on 24 October 2017 denying that they occupy Aworwor land and that the claimants have not provided any maps showing exactly where eviction should be carried out.
8. The third defendant has never filed any defence and have never actively participated in this proceeding. I note he is included with the first defendants and also with the second defendants. I am not sure he is the same person.



9. On 22 September 2017 Mr Molbaleh filed an application to strike out the claimant's claim.
10. On 8 November 2017 Mr Botleng filed an application to strike out the proceeding.
11. These applications have never been prosecuted by Mr Molbaleh and Mr Botleng.
12. The Court has fixed the dates for the hearing of these applications but counsel have not attended or have attended and sought adjournments in order to file sworn statements.
13. On 25 May 2018 the Court fixed the hearing date for these applications for 4 June 2018 and awarded wasted costs against the first and second defendants in the sum of VT10,000.
14. On 4 June 2018 the defendants and their counsel were not present in Court. Mr Kalotrip sought further wasted costs of VT5,000 in addition to the VT10,000 awarded on 25 May 2018. The Court accepted the request and ordered that VT15,000 be paid by the Defendants by 29 June 2018, the next returnable date.
15. On 29 June 2018 only Mr Kalotrip and Mr Botleng appeared. Mr Botleng apologized that costs had not been paid. Counsel sought an adjournment and urged the claimants to produce a map before the applications could be heard. The court adjourned with direction that counsel should file submissions and that hearing be held in Luganville on 31 August 2018. A further wasted costs order was issued in the sum of VT5,000 against the defendants.
16. On 31 August 2018 I sat in Chamber in Luganville. No counsel appeared except Mrs Jane Tari Aru who appeared as agent on behalf of Mr Botleng and sought a further adjournment. I therefore adjourned the hearing back to Port Vila for 3 October 2018.
17. On 3 October 2018 only Mr Kalotrip and Ms Sarisets appeared on behalf of the claimants. Neither Mr Botleng nor Mr Molbaleh were present.
18. I heard Mr Kalotrip and Ms Sarisets in their absence seeking judgment against the defendants on the basis of the evidence by sworn statements filed by the claimants in



support of their claims and in response to the strike out applications. Counsel for the claimants relied on their written submissions filed on 27 August 2018.

19. Neither Mr Botleng nor Mr Molbaleh have filed any written submissions. And neither have their clients paid any wastage costs as ordered against them.
20. I have read the submissions filed on behalf of the claimants. I agree with them and accept them in its entirety. The claimants have a valid judgment in the Island Court as confirmed by the Supreme Court and the Court of Appeal in 2017. The claimants are entitled to enjoy the fruit of their judgment. It has been some 8 years since the judgment was upheld by the Court of Appeal in 2010.
21. The defendants are making excuses and causing delays which cause great prejudices to the claimants. They appear to be demanding a map showing the boundary. That map has been provided in the sworn evidence of Harold Naise filed on 4 April 2018. The defendants have no other map rebutting the evidence of Harold Naise.
22. On the basis of all the evidence before me, I am satisfied that all the defendants named in this action are illegally occupying the claimants' declared customary land of Nbeklav Aworwor. As such they all trespassers.
23. All their applications to strike out are an abuse of process and are hereby struck out with costs.
24. I therefore enter judgment in favour of the claimants against the all the persons named as First, Second and Third Defendants in this proceeding.
25. I grant and issue the following orders –
 - (a) All the First, Second and Third Defendants by themselves, their family members and relatives, agents or representatives be hereby evicted from the claimants' customary land within a period of 30 days from the date hereof (by 10 November 2018).
 - (b) The Order in (a) is stayed for a period of 30 days from the date hereof to allow all the named defendants to vacate the claimants' land voluntarily and amicably.



- (c) In the event of failure by the defendants or any of them to voluntarily vacate the claimants' land in the period specified, the Sheriff with the assistance of the Police Officers (including the Vanuatu Mobile Force) be hereby authorised to evict all the defendants named in this action after receiving a Warrant of Enforcement endorsed by the Court, upon formal application with sworn statements filed by the Claimant.
- (d) The assessment of mesne profits of the claimants be adjourned to a date to be fixed at the request of the claimants after the eviction has been completed.
- (e) The claimants are entitled to their costs of VT20,000 awarded as wasted costs, and to the costs of and incidental to this action on the standard basis and agreed or be taxed by the Master.

DATED at Port Vila this 10th day of October, 2018.

BY THE COURT

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OLIVER A. SAKSAK

Judge

