

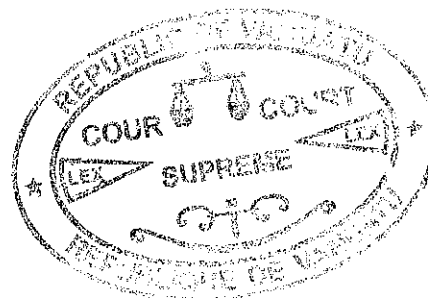
BETWEEN: Victor Moltures
Claimant

AND: Bule Packette, Livo Liniuse, Johane Lawac, Tavoue Meakey, Carolyn Atchkam, Simon Lorin, Soda Vepelov, Lapto Peto, Trief Atchkam, Kenneth Joseph, Malacky Kuku, Malacky Moses, Tom Louis, Keny Wasy, Obed Bruno, Pakoa, Rocklif Mala, Noeline Packet, Ray Packet, George Wora, Bernard Vira, Pio Tevikokone, Bertrand Tura, Steven Boe, Johnsen Garae, Fred Bulurave, Ebrahim Bulurave, Eron Bulurave, John Vira, Joseph Bulurave, Jeffrey Bulurave, Sakaraw Bulurave, Welsin Roy, Roy Navock, Tomsen Bulurave, Edmond Bulurave, Nelson Bulurave, Rolland Tura, Alfoncine Jeannot, Sergio Koroka, Eliane Koroka, James Koroka, Marco Tamata, Ismael Jimmy, Olivier Jack, Fred John, Brain Boe, Willie Boetevul, Belinda Farel, Martin Farel Bruno Farel, August Farel, Justin Farel, Sandyna Fasel, Sandyna Fasel, Richard Willie, Marco Tao, Votala Toa and Langdo Guillaume

Defendants

Date of Hearing: 9 March 2021
Date of Judgment: 18 March 2021
Before: Justice Dudley Aru
In Attendance: Mr Avock Godden for the Claimant
Mr Lent Tevi for the defendants- (no appearance)

REASONS FOR JUDGMENT



Introduction

1. This is an application for summary judgment. On 9 March 2021 I heard the claimant on his application and granted the orders sought with reasons to be provided. I now provide my reasons.

Claim

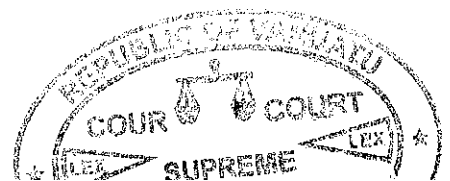
2. The claimant filed a claim on 29 September 2020 seeking orders that the defendants be evicted from their land .The claimants assert that they are the declared custom owners of the land of Tambotal, Beleru and Belmol and have never authorised nor permitted the defendants to reside on their lands . It is further alleged that the defendants are now trespassing on their land as the claimants have served them with notices to vacate but these notices were ignored and the defendants continue to remain on the land

Defence

3. The defendants filed a defence on 16 December 2020 denying the claim . Essentially the defendants position is that Family Tura was also a declared custom owner of part of the land they now reside on and they were authorised and permitted by family Tura to continue to live and work on the land

Application

4. The application for summary judgment is made pursuant to rule 9.6 of the Civil Procedure Rules. A defence has been filed but the claimant believes that the defendants do not have any real prospects of defending the claim therefore summary judgment should be granted as they are the rightful custom owners determined by the Supreme Court . It was submitted that the appeal to the Court of Appeal was dismissed for lack of jurisdiction in custom land dispute matters .
5. The application is supported by a sworn statement of Victor Moltures as the representative of family Taftumol . He says the defendants have been living on their land and using it without their consent. He says they are now finally confirmed as the declared custom owners of Tambotal , Beleru and Belmol lands . He relies on the



decision of the Supreme Court of 29 June 2020 in **Family Moltamaute & Ors v Family Taftumol & Ors** Land appeal case No 05/15 (*Moltamaute* appeal) which was appealed to the Court of Appeal in **Family Tura v Family Moltamaute & Ors** Civil Appeal Case No 20/1896 (*Tura* appeal).

6. The original decision was made by the Santo Malo Island Court on 12 June 2015. This was then appealed to the Supreme Court as the *Moltamaute* appeal. In its judgment on the 29 June 2020 the Supreme came to the following conclusions :

“Therefore, the Findings of facts, customs and declarations of customary ownership and interests of the lands which are the subjects of this dispute made on the 12th of June 2015 by the Santo Malo Island Court are confirmed except for the following corrections and amendments:

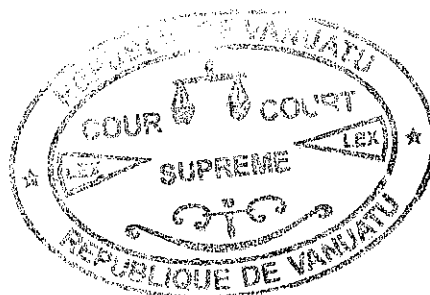
- a. Family Taftumol and their descendants are declared custom owners with primary interests over the land of Tambotal, Belmol and Beleru;*
- b. Family Loiror Lin and Family Taftumol and their descendants are declared custom owners both with primary and equal rights over the land of Sevua;*
- c. Family Warawara and Varavara and their descendants are declared custom owners with primary rights and interests over the land of Belvos;*
- d. Family Tura and their descendants are declared custom owners with only secondary rights and interests over the land of Belvos and Belmol.*

This means that their rights are not equal but subject to the rights and interests of family Vavara on Belvos;

And for the land of Belmol and Beleru, it is for Family Taftumol to decide which part of the Belmol land to allocate to Family Tura for their use in recognition of their secondary right.”

(emphasis added)

7. The decision was then appealed to the Court of Appeal in the *Tura* appeal. The Court of Appeal in dismissing the appeal said :



“When this matter was called, we raised with counsel for the Appellant whether the Appellant had a right of appeal from the Supreme Court to the Court of Appeal (section 22(4), Island Courts Act).

After consideration, counsel for the Appellant accepted that there was no such jurisdiction. In those circumstances, the Appellant consented to the appeal being dismissed. The appeal is therefore dismissed.”

(emphasis added)

8. The **Tura** appeal was dismissed with the consent of family Tura . The decision of the Supreme Court therefore gives finality to the parties . Family Taftumol and their descendants are custom owners with primary rights and interests over Tambotal, Belmol and Beleru lands. Family Tura are custom owners with only secondary rights over Belmol. Family Taftumol as the declared custom owners with primary rights over Belmol will decide which part of Belmol they will allocate to family Tura for their use in recognition of their secondary rights.
9. No secondary rights of use were given to any other party including family Tura concerning Tambotal and Beleru .For these reasons the primary custom owner of Tambotal , Belmol and Beleru is family Taftumol and their descendants . Until they decide which part of Belmol to allocate to family Tura for their use, family Tura has no rights to allow or permit any other party including the defendants to reside and work on Tambotal, Beleru and Belmol lands.
10. Unless the defendants have permission and authorisation from family Taftumol to remain on the land, they remain as trespassers.

Result

11. Accordingly the application for summary judgment was granted.

DATED at Port Vila this 16th day of March 2021

BY THE COURT

DUDLEY ARU

Judge

