

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

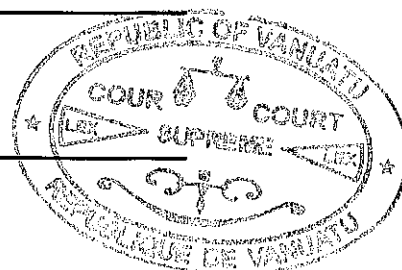
Civil
Case No. 20/3510 SC/CIVL

BETWEEN: Martin Iapatu, Noam Nisiko, Chief Willie Napuat, Willie Napuat Junior, Frank Matua, John Kalki, Lava Sam, Manu Jack, Tom Tavo, Joseph Iesul, Nakou Pitu, Tavo Numanse, Harry Kawiel, Jimmy Kawiel, Yelo Barnabas, Jimmy Nital, David Rauh, Yane Rachel, Kenneth Kawiel, Kapalu Netel and Sam Tomutu, Charley Nakoma, Willie Talai, Meriam Koniam, Liam Talai, Koniam Nuanap kai, Tes Tapase, Lui Harry, Sam Tapasei, Jack Iasu, Shem Tony, William Iasu, Naute Piak, Angela Kowas, Rema Naute, Jameson Naute, Kawas Naute, Naute Nauanapki, Kapalu Friman, Nam Talai, Talai Nauanapki, Natic Nauanapki, Sipy Naies, Willie Naies Family, Charley Maktuan Family, Kafei Sunny, Rabang Sannie, Jerolyn Lakiniaham, Jack Rowel
Claimants

AND: Republic of Vanuatu
Defendant

Date: 28 January 2022
Before: Justice V.M. Trief
Counsel: Claimant – Mr E. Molbaleh
Defendant – Mr S. Aron

JUDGMENT



A. Introduction

1. This case concerns the eviction of some 50 families from certain land in West Tanna.

B. Background

2. As a result of a 2014 Tanna Island Court decision, Tom Noam, on behalf of Family Iouniwan, was declared to be the true custom owner of Napangnapeuk customary land.

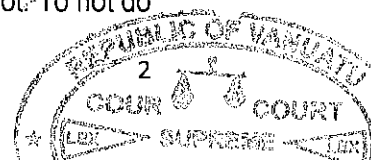
3. Although that decision was appealed, and there was intervening litigation, on 13 September 2017, the Supreme Court granted summary judgment to Tom Noam in respect of his application for orders that the 60 named defendants surrender up Napangnapeuk land on the basis they were infringing his rights as customary owner.
4. The eviction order, which issued on 19 September 2017, was executed by the Vanuatu Police Force ("the Police") the following day.
5. There was application to stay the eviction order made on 20 September 2017, but it was declined. There was an application to reconsider the matter on 24 September 2017, following the filing of an appeal to the Court of Appeal against the summary judgment, but it was declined due to lack of jurisdiction. I note this application was too late in any event.
6. The Court of Appeal allowed the appeal challenging the grant of summary judgment on 17 November 2017. It set aside the eviction orders and remitted the matter back to the Supreme Court for rehearing.

C. Issues

7. Some 51 of the 60 families evicted now claim damages on the basis that the Police acted unlawfully when executing the Supreme Court eviction order. Each has filed a sworn statement evidencing the loss or harm suffered as a result of being evicted.
8. Accordingly, what must be determined to resolve the issues between the Claimants and the Defendant State, is whether what action the Police took was unlawful; and secondly, if so, what amounts of damages, if any, any of the Claimants are entitled to.

D. Discussion

9. In support of the Claim, Mr Molbaleh repetitiously submitted that the Police had acted unlawfully in that:
 - The Police did not respect his clients' right of appeal (article 50 of the Constitution);
 - The Police had a duty to check first to see if an appeal had been lodged; and
 - The Police failed to take legal advice as to whether or not the eviction order should be executed, relying on the authority of *Pakoa v Republic of Vanuatu* [2018] VUCA 31.
10. Mr Molbaleh emphasizes that his clients not only had a right of appeal, but had filed an appeal against the Supreme Court decision granting the eviction order. It was his view that before executing the Supreme Court orders, the Police were obligated to search the Supreme Court and Court of Appeal records to see if an appeal was on foot. To not do

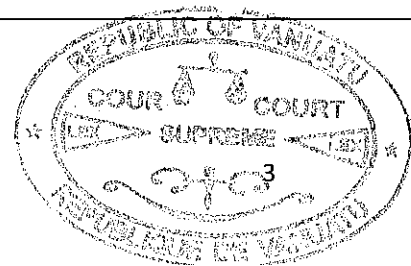


so was to disrespect his clients' Constitutional rights. He had no authority to support that view.

11. He further submitted that the Police were obligated to check first. He also had no authority to support that contention.
12. Thirdly, he submitted that the Police should have sought legal advice prior to executing the Supreme Court order. His authority is a case not on point and therefore not persuasive. The Court of Appeal dicta relating to what the Police must do before arresting a citizen is wholly different to their receiving a Supreme Court order and being asked to execute it. There is no requirement for legal advice to be taken prior to execution.
13. Mr Aron submitted to the contrary that what had occurred was lawful. He submitted that the Claimants held the onus of proof of the alleged unlawfulness of the Police action, and he submitted that they had not made out their case to the civil standard. For the reasons that follow, I agree.
14. Mr Aron pointed to the lack of evidence to establish the existence of a stay, which would have caused the Police to not execute the order. In fact, Mr Molbaleh provided evidence showing that both applications had been declined (as well as being made after the event and therefore having no utility).
15. Mr Aron pointed to the wording of the eviction order and stressed that what had occurred was sanctioned by that wording. In particular he pointed to the words "...with immediate effect" as compelling immediate execution by the Police.
16. Mr Aron further submitted that the first time the execution of the eviction order could be said to be unlawful was immediately following the Court of Appeal decision, namely on 16 November 2018. Up until that time, the Police were dealing with a valid Supreme Court order. Accordingly, when the order was executed on 20 September 2017, it was still valid.
17. In this regard, Mr Aron pointed to subsection 35(3) of the *Police Act* [CAP. 105] which provides that:

It shall be the duty of every member to promptly obey and execute all orders and warrants lawfully issued to him or her by any competent authority,...

18. Mr Aron also pointed to section 40 of the *Police Act* providing the officers who executed the Supreme Court order with an exemption from civil liability for all acts done in the performance of their duty "in good faith". He submitted there was no evidence or even suggestion of *mala fides* on the part of the Police.

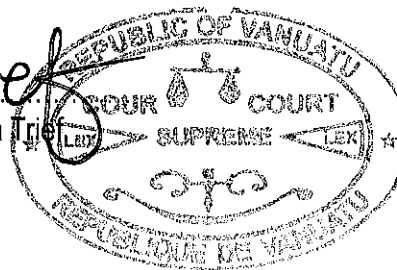


E. Result

19. When the Police executed the eviction order, they did so lawfully.
20. Accordingly, there is no civil liability on the part of the Police.
21. Given this finding, I need not consider the issue of quantum of damages.
22. Costs are to follow the event. Mr Aron sought VT300,000 costs. I consider that is high, and that more appropriately a sum approximate to VT5,000 per Claimant should be paid. Accordingly, I award costs in the sum of VT250,000, on a joint or several basis. The costs are to be paid within 21 days.

**DATED at Port Vila this 28th day of January 2022
BY THE COURT**

VM Trief
Justice Viran Molisa Trief

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a book. The text "REPUBLIC OF VANUATU" is written around the top inner edge, and "SUPREME COURT" is written across the center. Below the emblem, the words "LEI" and "LEK" are written in boxes, flanking the word "SUPREME". The bottom inner edge of the seal contains the text "REPUBLIC OF VANUATU" in a smaller font.