

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

Civil
Case No. 21/1486 SC/CIVL

BETWEEN: Reith Vor Seksek

First Claimant

**AND: Ambong Vahina Aehul & Sam
Benedict Moltakes**

Second Claimants

AND: Melwe Consultancy

First Defendant

AND: Jenery Cavten

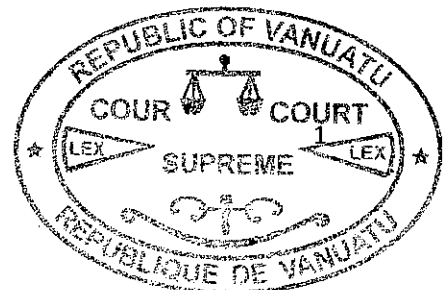
Second Defendant

Date of Trial: 2 September 2024
Before: Justice V.M. Trief
In Attendance: First Claimant – Mrs M. Manuariki
Second Claimants – in person, via video link from Luganville Court House
First Defendant – in person, via video link from Luganville Court House
Second Defendant – Mr L. Tevi, via video link from Luganville Court House
Date of Decision: 24 March 2025

JUDGMENT

A. Introduction

1. This judgment concerns claims by the Claimants Reith Vor Seksek (First Claimant) and Ambong Vahina Aelul and Sam Benedict Moltakes (Second Claimants) for

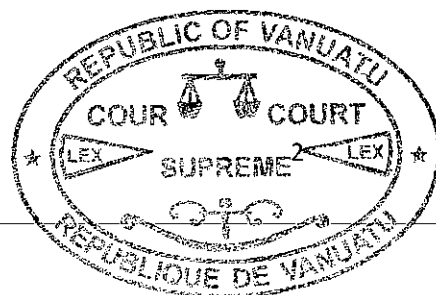


damages for emotional distress, and the Counter Claim of the Second Defendant Jenery Kavten seeking relief arising from a declaration of the custom ownership of Lorethiakarkar custom land on East Santo.

2. The Claimants, who were represented by Eric Molbaleh at the time, filed the Claim on 10 May 2021. The proceedings took an inordinate time to come to trial on 2 September 2024, mostly by reason of procedural defaults by one or more of the parties. However, the Court's own unavailability did on two occasions contribute to the delay.
3. The Claimants were represented at the trial by Mrs Manuariki whose firm had commenced acting for them on 1 September 2024.
4. The naming of the First Defendant Melwe Consultancy was irregular as it is not a legal entity which can be sued but is a business named registered under the *Business Names Act* [CAP. 211]. It is a business name owned by Boar Enterprise Limited. It is trite law that a company is required to be represented by a legal practitioner: *TCG Properties Ltd v Westpac Banking Corporation* [2010] VUCA 31; *Benard v. Vanuatu Investment Promotion Authority* [2003] VUCA 3, *Re Mannix Ltd* [1984] 1 NZLR 309. However, I gave leave for Mr Boar to appear for the First Defendant at the trial on the basis that he is the owner of both Boar Enterprise Limited and Melwe Consultancy, and as Melwe Consultancy was named as the Second Defendant, then he appeared in person for Melwe Consultancy. However, this case should not be seen as establishing any precedent for when the Court may or should permit a company to be represented other than by a legal practitioner. It is a case on its own particular facts.
5. Mr Tevi represented the Second Defendant Mr Cavten.

B. The Evidence and Submissions

6. At the trial, Ms Manuariki led evidence from the First Claimant Mr Seksek [Exhibit C1] and from Sam Benedict Moltakes, the second-named Second Claimant [Exhibit C2]. She did not lead any evidence from Ambong Vahina Aehul, the first-named Second Claimant. Both Mr Seksek and Mr Moltakes were cross-examined. The Claim describes the Second Claimants as "village people who reside and [are] cultivating crops inside Loretiakarkar customary land".
7. Mr Boar reminded the Court that Melwe Consultancy had, on 26 May 2021, filed an interlocutory application seeking the summary dismissal of the Claimants' claim against it on the grounds that, as a business name only, it was not an entity which could be sued, that the Claim did not in any event disclose a cause of action against

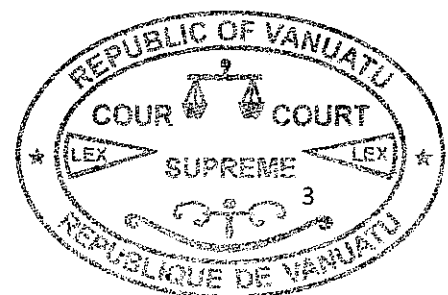


it, and that the Claim was “misconceived, incompetent and frivolous”. Mr Boar asked the Court to determine those issues in the trial judgment and said that he relied on his sworn statement in support of the strike-out application filed on 8 June 2021 [Exhibit D1], and the submissions filed on 23 June 2021 and 29 August 2024. Mr Boar later filed further submissions directed to the Claimant’s claim for damages for emotional distress.

8. The Second Defendant, Jenery Cavten, gave evidence [Exhibit D2] and was cross-examined. Mr Tevi did not lead any other evidence on his behalf.
9. Each party provided written submissions: the Claimants on 18 September 2024; the First Defendant on 19 September 2024; and the Second Defendant on 2 October 2024.

C. Factual Setting

10. The evidence discloses the following. The Claimants live on Lorethiakarkar custom land in East Santo. They had claimed to be the custom owners of that land. However, a nakamal meeting conducted on 31 October 2019 under the *Custom Land Management Act* No. 33 of 2013 recognised the Second Defendant Mr Cavten as the custom owner with the First Claimant being recognised as having only secondary rights granted by Mr Cavten to live and work there. This was confirmed by the Ser Avtor Area Land Tribunal on 9 October 2020. The Tribunal also said that persons such as the Claimants who were living and working on Mr Cavten’s land should pay rent to Mr Cavten.
11. On 27 October 2021, the Claimants filed an application in the Santo Island Court (Land) for review of the Tribunal decision. That review has not yet been completed.
12. In the meantime, Mr Cavten retained Melwe Consultancy to take action with respect to the obtaining of leases. That firm commenced surveying the custom land, apparently preparatory to the preparation of formal leases. On 19 March 2021, Melwe Consultancy sent a letter to the Claimants requiring them to pay lease premium and survey fees. On 19 April 2021, the Claimants responded to the Melwe Consultancy letter. Melwe Consultancy sent another letter to the Claimants, dated 3 May 2021, this time giving them three months’ notice of eviction if the moneys demanded were not paid.
13. On 10 May 2021, the Claimants filed the Claim as well as an Urgent Application for Restraining Order. Subsequently, the Claimants conceded that that application was not urgent. On 14 October 2021, the Court issued the restraining orders sought.



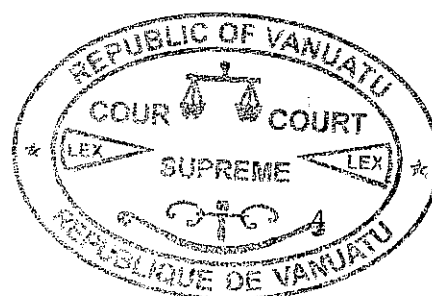
D. The Relief sought in the Claim

14. The Claimants filed the Claim on 10 May 2021. The Claim is not well pleaded. After referring to the Claimants' refusal to engage in "further lease dealings and surveying" while their appeal to the Santo Island Court (Land) is pending, and to the demands of, and notice from, Melwel Consulting (only the letter of 19 March 2021 is pleaded specifically), the Claim continues:

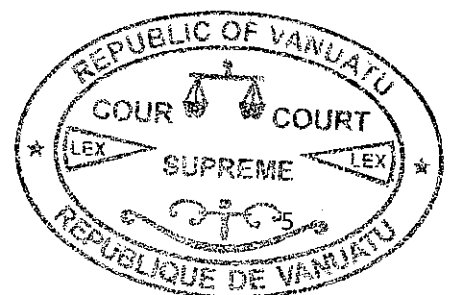
As a result of the defendant's actions, in dealings and surveying in the land the Claimant has suffered damage.

WHEREFORE THE CLAIMANTS SEEK:

- A. *Damage for Emotional Stress*
 - B. *Costs*
 - C. *Such Further orders as the Court deems just and necessary.*
15. As is apparent, the principal claim of the Claimants is for damages for "emotional stress".
16. What is equally clear is that the Claimants did not plead any basis on which the Defendants could be held liable in damages to them for the emotional stress the alleged conduct is said to have caused, That is to say, they have not pleaded the necessary material facts to support a cause of action. By way of example only, the Claimants do not plead a breach of a contract between themselves and one or more of the Defendants giving rise to an entitlement to damages. Nor do they allege that the Defendants owed them a common law or statutory duty of care, let alone a breach of such a duty. The omission of a plea of the material facts to support a cause of action on which an award of damages could be based is a fundamental defect in the Claim.
17. The Claimants have been on notice of the assertion that the Claim did not disclose a cause of action since Mr Boar filed the strike-out application on 26 May 2021, and which he elaborated on in the submissions filed on 23 June 2021 and 29 August 2024 in support of that application. As already noted, Mr Boar told the Court during the trial that he continued to rely on those submissions of 23 June 2021 and 29 August 2024. Yet the Claimants have not made any attempt to seek leave to amend Claim.
18. Nor did the written submissions of the Claimants' counsel seek to redress the omission. Counsel submitted only the following:



9. *Emotional Stress is a tort liability. There are two types of stress, economical stress and non-economical stress [sic]. This case falls within the latter of the two types of stress. That means it does not have evidences of financial losses. It usually occurred where a person is emotionally affected by the actions of others and that those actions are outrageous and intentional.*
19. With respect to her, this submission reveals a misunderstanding by counsel. While there are limited circumstances in which the law does allow recovery of damages for emotional stress, it is not, and has never been the case, that defendants are liable in damages to another by reason only that their conduct caused emotional stress to that person. There has to be a proper legal basis for the defendant to be found liable, for example breach of an express or implied term in a contract of employment or breach of a common law duty of care.
20. Even if I assume favourably to the Claimants that they intended asserting a breach of a common law duty of care, they do not, in the circumstances of this case, show that they have suffered injury or loss entitling which could be the subject of a duty of care. They have not shown that they have suffered some recognisable form of mental illness or psychiatric injury of the kind to which the High Court of Australia referred in *Jaensch v Coffey* [1984] HCA 52; 155 CLR 549 to which the Court of Appeal referred in *Vanuatu National Provident Fund Board v Aruhuri* [2001] VUCA 16.
21. Given my finding that no cause of action is disclosed in the Claim, I need not consider whether or not emotional distress has been proved.
22. For the reasons given, the Claim must be struck out.
- E. The Relief sought in the Second Defendant's Counter Claim
23. Mr Cavten pleaded in his Counter Claim filed on 30 June 2022 that he was declared the custom owner of Lorethiakarkar custom land by the nakamal meeting held on 20 January 2020. That nakamal meeting also declared that Mr Cavten had given the First Claimant secondary rights to live and work on Lorethiakarkar custom land. The decision of the nakamal is pending review in the Santo Island Court (Land). It was also alleged that he has not authorised the Second Claimants to occupy and live on Lorethiakarkar custom land. He sought eviction orders against the Second Claimants.
24. No defence has been filed in response to the Counter Claim.
25. It is undisputed that the Second Claimants have been permitted by Mr Seksek to occupy the part of Lorethiakarkar custom land which he has secondary rights over.



26. Given that there is an application for review of the Tribunal decision on foot, it would be premature to evict anyone from Lorethiakarkar custom land when the final determination as to its custom ownership has not yet been made. Further, even though Mr Cavten has been declared the custom owner, Mr Seksek has been declared to have secondary use rights over Mr Cavten's land. Whether or not Mr Seksek's secondary rights over Lorethiakarkar custom land include the ability to permit others (such as the Second Claimants) to occupy Lorethiakarkar custom land is a matter which this Court cannot determine in the present proceeding but is a matter for a further nakamal meeting if not agreed by the parties.
27. For the reasons given, the Second Defendant's Counter Claim must be dismissed.
- F. Result and Decision
28. The Claim is **struck out**.
29. The Second Defendant's Counter Claim is **dismissed**.
30. As the First Defendant was not represented by a legal practitioner, it is not entitled to costs hence there is no order as to the costs of the First Defendant.
31. Given the result of the Claim and the Second Defendant's Counter Claim, the costs of the Claimants and those of the Second Defendant are to lie where they fall.
32. The restraining orders dated 14 October 2021 are **discharged**.

DATED at Port Vila this 24th day of March 2025
BY THE COURT


Justice Viran Molisa Trief

