

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

Civil
Case No. 12/26 SC/CIVL

BETWEEN: GIDEON ROCROC
Claimant

AND: SARLO ROCOS & ORS
First Defendants

**AND: TANIS LAS FRANK
LOUIS TIOME
DOMINIQUE REP**
Second Defendants

Date of Hearing: ***31st August 2018***

Date of Judgment (Published): ***4th September 2018***

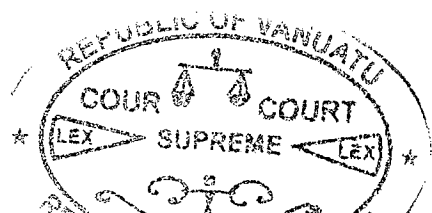
Before: ***Justice Oliver A. Saksak***

Counsel: ***Bryan Livo for Claimant***
Saling Stephens for Defendants

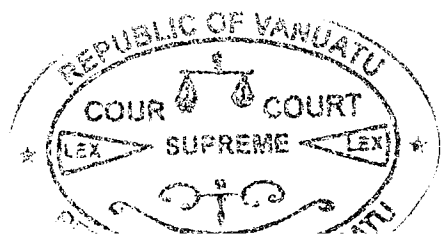
JUDGMENT

Introduction

1. This judgment provides the reasons for the oral decision delivered on 31st August 2018 dismissing the Claimant's claim in its entirety with costs.
2. When the case was called for hearing at 9.00am on 31st August 2018 Counsels had agreed and requested the Court to have a site visit to see whether the developments being carried out by the defendants are within the boundary of the land allocated to the Claimant or without. That being the only issue the Court granted leave.
3. Each party organised its own means of transport to and from Port Olry Village and each party travelled separately. A Police Officer was assigned to accompany the Court at and during the site visit.



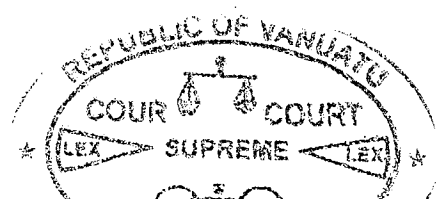
4. The Court travelled on the Vehicle RV 623 leaving the Court House at about 9.45am and arriving at Port Olry at about 11.10am The Claimant's party had already arrived and waiting on the main road adjacent to the Council House. The Defendants' party arrived shortly thereafter.
5. The site visit started with the Claimant's party leading the judge, the assistant sheriff and the police officer from the main road to the beach (Lathmav Sigon) a distance of about 100 metres or so. The Claimant relied on the colour map annexed map to the judgment of the East Santo Island Land Tribunal (The Tribunal) annexed to the sworn statement of Chief James Tangis filed on 15 September 2017.
6. The Claimant accompanied by Mr Livo and at least three other men showed me the starting point "A" on the beach (Lathmav Sigon) on the East. The boundary as shown running in a straight line crossing the road by the Council House and all the way to point "B" in the West on the Second Step Hill at L'Vatao tree.
7. The Claimant and his party then took me back to the main road where we crossed over a barbed wire fence by the Council House. We passed the Council House by about 40 metres to the left and stopped at a gentle slope. This is where the Claimant submitted was the **"hill I go long Counsel Haos mo igo antap long hill long bush long second step hill long L'Vatao long West makem B"**
8. We then returned to the main road where the defendants' party was waiting with Mr Stephens on a bus. Their site visit was a little more extensive than the Claimants and required that we travel in their bus. Included in the defendants' party was Mr Stephens, Louis Tiome, Chief James Ngisa, Chief James Tangis, Chief Shem Tho and Philip Pasvu, the assistant sheriff and the police officer.
9. First they drove us back southward to a distance of about 300-400 metres where they showed me on the left a stick planted by the fence that marks the boundary of Leasehold Title 04/1322/001 appearing on Google maps marked "PG01" and "PG02" to the sworn statement of Paul Gambetta filed on 17 February 2017 in support of the Claimant's claim. This lease was granted by the Claimant to one Matilda.



10. Next the defendant took me back to the village heading north and turning left westward behind the Station One driving through the football field into the plantation at the back to a creek some 400 metres away Mr Tiome showed me a creek which I understood to be point "C" at the top of the Second Step Hill. From there we returned to a clearing where we were shown the hill where L'Vatao tree stands marking the boundary point "B".
11. Next the defendants' party took be back through the village and in the middle at the ross-road looking back south they showed me the hill behind or by the Council House that runs from the beach (Lathmav Sigon) where the creek reaches the sea, being the boundary point "A" as the starting point on the East on the map.
12. The defendants' party took us into the developed part of the land which is disputed by the claimant where we stopped and walked to the end of the creek on the beach where Chief James Tangis showed me that is where the starting point "A" on the map is stated as the boundary mark of the land dividing the claimant's land from the defendants' land. That was where the site visit ended at about 12.25pm.
13. Before leaving Port Olry I reconvened on the main road with MR Livo and informed him that we had agreed with Mr Stephens that I would hear oral submissions at 2.30pm at the Court in Luganville.
14. At 3.00pm I heard oral submissions from Counsel. I heard from Mr Livo first who said:

"In 2005 the East Santo Island Land Tribunal (the Tribunal) made a decision in favour of Gideon Rocroc the claimant on behalf of Vuster Dame who was parties to the land tribunal. The other parties were Gratien Alguet and Frank Bonaventure. After the decision 2005 until 2012 when the defendants who were not parties trespassed onto the claimant's portion of the land and occupied and developed it unlawfully.

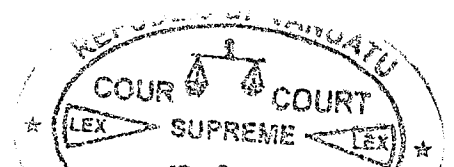
The claimant has never had a dispute with Chief Frank and Chief Alguet explaining why there was no appeal. It was only because of the trespass and the unlawful interference that in 2012 the claimant filed this proceeding.



The claimant argued that not all the defendants named were parties to the land dispute in the Tribunal and therefore not all of them have the right to be involved in the boundary dispute. The only 2 defendants who have standing are Chiefs Frank and Chief Alguet but they have never filed sworn statements to dispute the boundary. Had they done so there would have been an appeal.

In this case and on the issue the Court should focus only on the description that is on the judgment of the Tribunal. The Court should reject any new evidence that is given by the defendants, their witnesses who are the chiefs who decided in the Tribunal because of the very fact they did not show the parties after the judgment. If there is any new evidence raised by the chiefs it must be disregarded. Judgment has already been final and in favour of the claimant. The only description is the judgment and the sketch map on which the Court should focus to find where the custom boundary is. The first description of custom boundary is the main beach, not a stone, not the end of the beach. It states the main beach. The second is that it runs "West". The map states the direction S/N and E/W. The description says starting from the East at "A" going "West", there is no N/W or W/SW but "West" to the Council House and the hill at the Council House. Then going straight to the top in the bush to L'Vatao marked "B". Looking straight down from that tree you can see the Council House. That is the boundary the Court is faced up with. That is described in the sworn statement of Gideon Rocroc filed earlier in August 2018 in response to the defendants' statements. He accepts the Council House is not in the boundary but close to the boundary.

Supposing the defendants say the boundary has shifted, their description of judgment would be different and it would state "Northwest", it does not say that. The defendants have not been a party in the land tribunal. If the Court finds that this is the boundary then the claim for trespass which is the main cause of action all the defendant must deliver vacant possession of the customary land to the claimant and to remove all their animals, poultry, buildings and properties from the customary land because the judgment was entered earlier. The claimant filed 2 sworn statements on



22 August 2012 and on 10 August 2018. The Court has had a chance to see the boundary and the Court is invited to confirm that is the boundary and it is a straight boundary.

We submit that the sworn statements of the chiefs, the same chiefs who showed the same boundary is not fair and any evidence from them should be rejected by the Court. There is an apprehension of bias. That is the claimant's submissions."

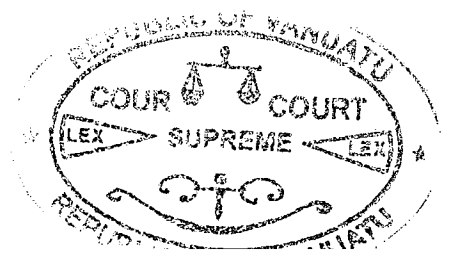
15. I asked Mr Livo at the end of his arguments and submissions whether the claimant had filed any amended claims after the claimant had succeeded on his appeal. Mr Livo confirmed there was no amended claim filed. The claimant relies on this original claim filed on 20 June 2012. There has been no change in number. And counsel confirmed it is a claim for eviction.

16. I heard Mr Stephens in response. He confirmed there is no amended claim filed. On the claimant's argument that the defendants were not parties was not pleaded by the claimant. Also the arguments that the chiefs did not show the boundary and that there was apprehended bias were not pleaded. As such Mr Stephens argued the defendants have never had a chance to respond to them adequately or at all.

Mr Stephens argued further by referring to the named defendants such as Nore Frank, Buna Frank, Nicola Frank, Krisant Frank, Tanis Las Frank are members of Chief Frank's Family and Gratien Alguet, Morris Alguet, Family Alguet are also members of Chief Gratien Alguet's Family.

Mr Stephens in short relied on the evidence of Louis Tiome by sworn statements filed on 15 September 2017 and of Chief James Ngisa filed on 30 April 2018 and invited the Court to consider them. Mr Stephens referred to the map annexed by Chief James Tangis to his sworn statement and submitted the boundary does not follow a straight line but follows the creek that exists ending at the beach running parallel with Malmas Island which falls within the land coloured "Green" on the map.

Mr Stephens referred to paragraph 6 of Louis Tiome's sworn statement which states that the claimant's boundary mark is about 100 to 200 metres away from the Council House. Finally Mr Stephens submitted the claimant had not proved his claims on the



balance of probabilities and should be dismissed with costs as it had dragged on too long from 2012.

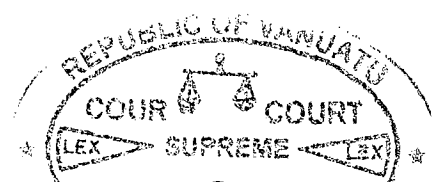
17. Mr Livo had the final replies. First in relation to Malmas Island that it was never an issue as to who owns it. It should be disregarded by the Court. Secondly counsel submitted the Court should disregard the 100-200 metres evidence of Louis Tiome on ground that it was never in the judgment. It is new evidence and therefore should be disregarded. Finally as to pleadings, the issue of trespass arose after it was pleaded the defendants are developing in the boundary. And finally counsel sought costs.
18. In my oral decision I dismissed the claimant's claim in its entirety with costs in favour of the defendants on the standard basis as agreed or be taxed by the Master. I gave the following reasons –

“(a) That the claim of the claimant was badly pleaded. An amended claim should have been filed after the decision of the Court Appeal to better identify issues which the defendants should have been given a chance to properly respond to.

(b) The claimant pleaded at paragraph 9(i) of his claim that he was not able to develop his customary. The pleading is incomplete. And the claimant fell short of showing any plans for such development.

(c) The claimant did not explain or give any evidence why he did not develop the land in 2005, 2006, 2007, 2008, 2009, 2010 or 2011 and only after 2012 when the defendants moved in and started to develop it that he filed his proceeding on 20 June 2012.

(d) The best judges to judge whether the development being carried out by the defendants are within the boundary as decided by them in the Tribunal are the chiefs who sat on the appeal and decided it in 2005. Today two of those judges Chief James Ngisa and Chief James Tangis who have sworn statements before this Court have confirmed that the boundary in the sketch map is



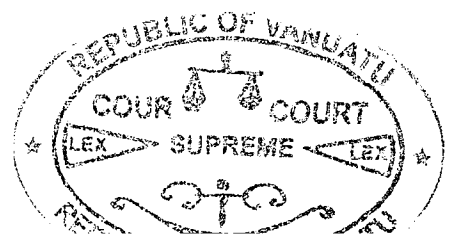
correct and that the developments are within the middle part allocated to Chief Frank and Chief Alguet. This Court can do nothing more than accept their evidence in support of the defence case.”

19. I now elaborate and expand on the reasons as follows –

- (a) First looking at the claims filed by the claimant on 20 June 2012. I agreed with Mr Stephens that it lacked pleadings about the standing (or lack thereof) of the other named defendants not members of the Frank Family or the Alguet Family. I also agreed with Mr Stephens that the claims lacked pleadings about the Chiefs being biased and their lack of not showing the boundary to the parties. It was therefore unfair and unnecessary that counsel for the claimant should raise these as issues for the Court at the hearing.
- (b) The claimant filed a sworn statement in support of his claim dated 20 June 2012 some 7 years after the Tribunal decided in November 2005. The claimant did not annex any sketch map. He filed a sworn statement again on 22 August 2012 annexing a “GR1” the decision of the Tribunal of 3 November 2005. The sketch map attached to the decision was drawn by the Secretary of the Tribunal, Philip Pasvu. It is not the claimant’s sketch plan so his reliance on it cannot be valid and reasonable. His reliance on it can only be presumption.
- (c) The claimant relied on the judgment of the Tribunal on page 4 at paragraph 2 which states:-

RAET BLONG JIF GIDEON ROCROC

I state long main beach (Lathmav Sigon) long East Makem A mo iron
West folem hill igo long Counsel Haos mo igo antap long hill long bush
long second step hill long L’Vatao long West Makem “B” mo folem second
hill igo long South kasem OBA hill makem E. long point E ikam taon long
Easterly kasem Yeth Sing Pakul I continue easterly kasem natora stone
markem F, mo long point F igo long aelan Malvuel G. mo igo Northerly
direction stret long point A long beach (Lathmav Sigon) starting point.
 (Underlining for emphasis)



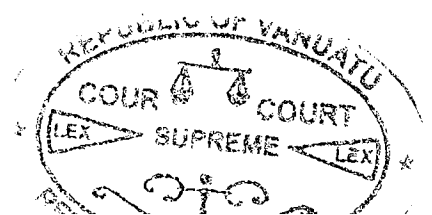
- (d) From that description the claimant submitted that there is a hill behind the Council House which he took me to. From where we stood one cannot tell that it is a hill, rather it is a gentle slope. The hill can be clearly seen though standing at the cross-road in the middle of the village looking south as shown by the defendants' party. It begins at the end of the beach (Lathmav Sigon) marked point "A" on the map, "A" was at the middle of the beach. From that angle it is true the hill gently sloping towards the Council House is some 100 or so metres away. It runs through the coconut plantation on the right side of the main road (looking south) and begins to rise higher as one goes further up ultimately to the Second Step Hill at the top.
- (e) The claimant read the boundary line drawn on the map in a straight line. But that is incorrect and in error. He submitted that reading the boundary in a straight line from point B at L'Vatao on the Second Step Hill down to the hill behind the Council House and down to Point "A" at the main beach. Reading the boundary as such would mean the boundary line cuts through a couple of property in half with one half on the claimant's land and the other half on the defendants' land. In my view that is an incorrect reading the boundary line. The relevant words of the Tribunal are –

Istat long main beach (Lathmav Sigon) long East markem A mo iron West follem hill igo long Counsel Haos....."

The relevant and important words of the judgment are translated into English as –

"Starting from the main beach (Lathmav Sigon) on the East Marked as "A" and going West following (folem) (along) the hill going (igo) to the Council House and going up the hill in the bush on the Second Step Hill at L'Vatao on the West Marked "B"..."

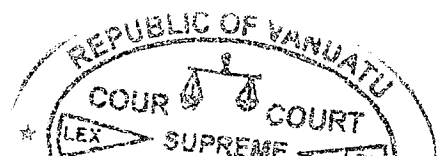
The word "folem hill" means literally going along the hill, following where the hill starts and ends. This indicates the boundary does not necessarily go in a straight line



as interpreted by the claimant according to the sketch plan which is only a rough sketch drawn by the Secretary and is not drawn to scale.

(f) Chief James Tangis and Chief James Ngisa, the two chiefs who sat in the Tribunal in 2005 confirmed to me in the physical visit that point A marked on the map is the end of the main beach (Lathmav Sigon) which is the end of the creek and the beginning of the hill they describe in the judgment as the hill going in the westerly direction of the Council House and up the Second Step Hill at the top. That confirms that the current developments being done by the defendants on the beach are within the boundary of land the Tribunal declared in favour of Chief Frank Bonaventure and Chief Alguet and Family.

20. I rejected the Google Maps annexed as "PGO1" and PGO2 to the sworn statement of Paul Gambetta as evidence in support of the claimant's case because these were only produced in 2016. They could have been produced in 2005 in support of the claimant's claim but were not.
21. I also rejected Mr Livo argument that the sworn statements of Chief James Tangis and Chief James Ngisa should not be admitted into evidence on the basis of bias. Their evidence was necessary as the Chiefs who sat and decided the boundary in November 2005. As the boundary was in issue between the parties only these chiefs were the best witnesses to confirm and clarify the boundary. The claimant's counsel requested for a site visit to see the boundary. That could not have been possible without the two chiefs being involved as witnesses. It was therefore unreasonable and untenable submission that their evidence should be disregarded.
22. I referred to in my oral decision the Recorded Decision of the Tribunal dated 3 November 2005 in particular paragraph 9 and 10. Paragraph 9 requires a rough sketch plan [Drawn sketch plan long empty pepa provided behind]. Paragraph 10 requires specific land marks such as roads, rivers, lake, sea, trees and stones. Here the Tribunal specified the various land marks that mark the boundary of this disputed custom land. The claimant did not show me any of his land marks. At the starting point "A" on the map the claimant did not show me any tree or stone. The defendants showed me the end of the beach marked by a big tree and stones which show the end of a creek that



begins at the top and the beginning of a gentle hill that runs up westward at the back of the Council House by about 100 metres along the coconut plantation on the left of the main road (going north) slowly rising at different levels and ultimately reaching the top (Second Step Hill).

23. I found that was and is consistent with the boundary line drawn by the Tribunal which is not drawn to scale, but is only a rough plan for the purposes of the Tribunal's boundary and declaration.
24. For those reasons the claimant's claim could not succeed and accordingly I dismissed it with costs. I also ordered that orders made interlocutory were vacated.

DATED at Luganville this 4th day of September, 2018.

BY THE COURT

