

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

Civil
Case No. 14/354 SC/CIVIL

BETWEEN: Dunstan Hilton
Claimant

AND: Family Bamboo
Defendant

Date: 28 October 2020
Before: Justice G.A. Andrée Wiltens
In Attendance: Mr L. Malantugan for the Claimant
Ms J. Kaukare for the Defendant

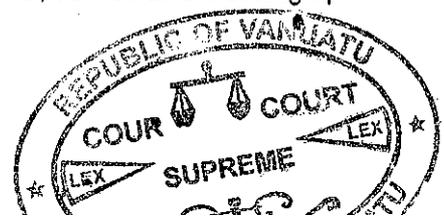
Judgment

A. Introduction

1. This case concerned the use of another's land in Gaua. There was a dispute regarding what had actually been agreed to; and a denial of the allegation of breach of contract. The owner of the land did not accept the Claimant's allegations and insisted on the use of the land being controlled by him.

B. Background

2. Mr Dunstan Hilton was a Member of Parliament in 2009. He wished to assist the people of Gaua who were part of his constituency. He arranged for the two disputing customary owners of some land in Gaua to compromise and allow the land to use for the community, with the determination of who was the true customary owner being deferred.
3. Mr Hilton and other witnesses supporting the Claim maintained that the land was to be used for a community project which involved the building of a Community Hall, as well as the setting up of an oil mill.



4. Family Bamboo was one of the disputing owners. They maintain that the community project did not ever involve an oil mill – it was only the Community Hall that was agreed to. The family did not consent to an oil factory being placed on land in which they had an interest. Accordingly Mr Alan Morris, representing the family, caused correspondence to issue indicating that the oil factory project was not agreed to and claimed back their land. He further arranged for the placing of namele leaves (as a taboo) as a signal to all that the land owners did not agree to the oil factory project occurring at that location.
5. Mr Hilton sought to enforce two “contracts” which he claimed had been breached by the reversal of consent. The real reason behind his Claim was the fact that expensive oil extraction machinery had been purchased and taken to Gaua but was rusting idle as there was no factory in which to install and use the machinery. He sought to make Family Bamboo, due to their change of mind in breach of the contracts, refund the expenses involved which he had borne personally.
6. Apart from the viva voce evidence, there were two documents relied on which were submitted to be contracts between the parties.
7. The first document was dated 26 August 2009, and reads (translated from Bislama) as follows:

10th May 2009

To: All land dispute parties, Tavlavere Supreme Court Land Disputers and all Gaua Island Chiefs

Dear All,

Re: Request for Community Hall

As the Banks and Torres Member of Parliament, I have the honour to write to you.

As an MP, I'm writing to request if we could build a Community Hall to use in such a way that it would help the Gaua people.

I am aware that there is current land dispute going on which has been at the centre of meetings you've held at major events.

As the case is currently going through court, I'm requesting of you, land dispute parties, if you could reach an agreement whereby some land would be given for the use of a community hall to benefit the community.

If the court requests that appropriate land owners be identified, a correct path would have to be followed to that end.

With this, I request of you, land disputers and all Chiefs of Gaua, to sign hereto.

Signatures:

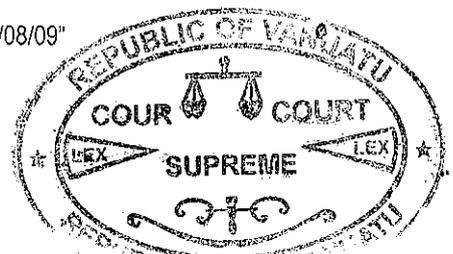
Parties to Tavlavere land dispute

Names:

Ps Salathiel Vavak	Signature	Date: 14/07/09
Fr John Aswin	Signature	Date: 14/07/09

Gaua Chiefs

Chief Victor Weteas	Signature	Date: 19/08/09
Chief John Wodor		
Chief Paul Weitgor	Signature	Date: 19/08/09"



8. The second document reads as follows:

" Declaration of Trust

Between

Torba Trading Company Limited ("the Company")

And

Pastor Salathiel Vavak, Collette Vanva and Father Jonaswin Wetelwur all of Gaua Island coconut farmers (the trustees)

Whereas

The Company is intending to operate a virgin coconut oil factory at Kaska Bay Gaua Island

The trustees represent the community at Gaua Island

The Company intends to operate at a profit with the net profit to be distributed as the Trustees see fit for the advancement in life, education and wider benefit of the women men and children of the island

Now it is agreed:

1. The Company will operate the factory with all due diligence.
2. The trustees and the company will meet at least once per year to discuss distribution of any profits
3. Each party will have one vote

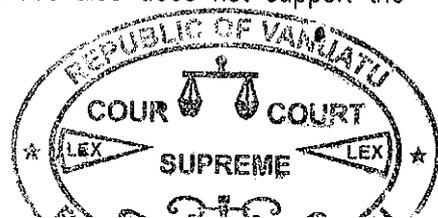
Signed by the Company Signature (witnessed)

Signed by the Trustees 3 Signatures

Dated at Gaua Island, Vanuatu this 26th day of August 2009"

C. Discussion

9. The Claim was a hopeless case.
10. Importantly, Mr Hilton was not a party (signatory) to either document.
11. Accordingly he was not in a position to attempt to enforce any of the terms of either document. In law, he had no standing to bring the Claim.
12. The second document was alleged to form part of what was originally discussed and agreed between the parties. In other words, Mr Hilton urged upon the Court that the two should be read together and complementing each other and reflecting the true and complete picture.
13. Other than the allegations by the Claimant and his supporting witnesses, there is no support for that contention - which was strongly denied by the Defendant. The absence of any mention of the oil factory project in the earlier document does not support the contention. The fact the second document was entered into between different parties also does not support the



contention. The fact that there are two documents, each supposedly only referring to part of what the parties had originally agreed, also does not support the contention.

14. The evidence that I accept is that the documents are unrelated and are to be read as separate documents – I reject the Claimant's evidence and that of his witnesses to the contrary.
15. Neither agreement is a contract at law. To constitute a legally binding contract there must be agreement between the parties to assume lawful obligations in exchange for something of value. The intention to enter into a legally binding contract must be evident.
16. Neither document comes within that definition. The dangers of not seeking legal advice are evident in this instance.
17. For these various reasons I closely questioned Mr Malantugan at the conclusion of all the evidence as to how he could maintain the Claim had merit. He was unable to satisfy me that the Claim had any legal basis.

D. Result

18. Accordingly, I dismissed the Claim.
19. I ordered the Claimant to pay the costs of the action to the defendants. I set the costs at VT 150,000 and ordered Mr Hilton to pay that within 21 days.

Dated at Port Vila this 7th day of December 2020
BY THE COURT

G.A. Andree Wiltens
Justice G.A. Andree Wiltens

