

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

**Civil Case
No. 20/2502 SC/CIVL**

BETWEEN: Peter Orah and Families
Claimants

**AND: Valia Nuguna, Saling Pakoa, Abel
Marcellino, William Jimmy, Henry
Jimmy, Wilsen Jimmy, Jack Maite
Jimmy, Jojo Jimmy, Willie Tanmanok
Jimmy, Rolland Jimmy**
Defendants

Date of Trial: 2 May 2023
Before: Justice V.M. Trief
In Attendance: Claimants – Mr E. Molbaleh
Defendants – Mr F. Tasso
Date of Trial: 25 March 2024

JUDGMENT

A. Introduction

1. This was a claim for eviction in respect of Lumuwi custom land, alleged to be a parcel of land inside Lamén Bay area on Epi island.

B. Pleadings

2. By the Claim filed on 14 September 2020, it was alleged that the Claimants Peter Orah and Families are the declared custom owner of Lamén Bay on Epi island pursuant to the Epi Island Court judgment dated 17 October 2003. The Defendants Valia Nuguna, Saling Pakoa, Abel Marcelino, William Jimmy, Henry Jimmy, Wilsen Jimmy, Jack Maite Jimmy, Jojo Jimmy, Willie Tanmanok Jimmy and Rolland Jimmy are alleged to be residents of Lamén island who are gardening and settling at Lumuwi custom land which is a parcel of land located inside Lamén Bay area. It is alleged that the Defendants are trespassing onto Lumuwi land and threatening and



intimidating the Claimants' family and people inside Lumuwi village and communities.

3. It is alleged that despite several notices to vacate, the Defendants are continuously trespassing into Lumuwi land and threatening the Claimants' people, disturbing the peaceful enjoyment of their land and causing them to suffer loss.
4. The orders sought are for the eviction of the Defendants, their agents, employees and families from the Claimants' custom land or alternatively, a restraining order against the Defendants from further dealing with that land and from threatening the Claimants. Costs also were sought and any other order deemed necessary.
5. The Claim is disputed. By the Defence filed on 17 November 2020, it was alleged that the 2003 declaration of custom ownership of Lamén Bay was not in favour of the Claimant personally but in favour of the 4 nasara that he represented. They also denied that Lumuwi land is within Lamén Bay area but that it is on the hill close to Vamaly Hospital on Epi, and denied that they do gardening and settlement at Lumuwi land. Further, that the 2003 Island Court decision has been superseded by a 2010 decision, and that the Claimants do not have standing to file for eviction against the Defendants.

C. Evidence

6. None of the parties' witnesses were required for cross-examination. Their sworn statements were tendered by consent.
7. The Claimants relied on the sworn statements of the following:
 - i. Peter Orah filed on 1 October 2020 [**Exhibit C1**]. Mr Orah deposed that he represents the four nasara at Lamén Bay community namely Lour, Lokalie, Uмба and Lumuwi. He is also the rightful custom owner of Valague and Bourgue land, attaching a copy of the Epi Island Court's judgment dated 17 October 2003 in Land Case No. 1 of 2000 [**Annexure "PO1"**]. He deposed that Lumuwi land is located within Lamén Bay area, and the Defendants are residents of Lamén island and are gardening and settling at Lumuwi land. He attached copies of several notices to vacate written to the Defendants [**Annexure "PO2"**]. Finally, that the Defendants are continuing to trespass into Lumuwi land to garden there and to disturb the people of Lumuwi land. He is seeking the Court's order to evict the Defendants from his custom land at Lumuwi village;
 - ii. Samuel Taritonga filed on 10 December 2021 [**Exhibit C2**]. Mr Taritonga deposed that he is one of the declared family members of Valague custom land, attaching a copy of the Certificate of Recorded Interest in Land dated 1 December 2021 in which he is named as one of the representatives of Lumuwi, Lokalie, Lour and Uмба nasara of Valague

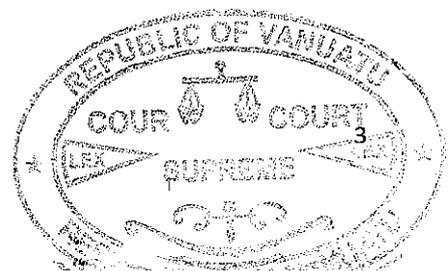


custom land on Epi island following the Epi Island Court's declaration dated 17 October 2003 [**Annexure "ST1"**]. He deposed that the defendants and their family members live on Valague custom land and have been threatening them and fishing without their authorisation. Further, that 3 years ago, the Defendants stopped the construction of the Assemblies of Church on the custom land and the materials such as the cement solidified and went bad. The Defendants also stopped the tourism project. The Claimants and the Defendants have not been on good terms for many years and so the Defendants must vacate Valague custom land;

- iii. Samuel Taritonga filed on 7 February 2022 [**Exhibit C3**]. He deposed that the Epi Island Court's 2003 decision was appealed to the Supreme Court in Land Appeal Case No. 2173 of 2017, which appeal was dismissed on 8 November 2019 [**Annexure "ST2"**]. The further appeal to the Court of Appeal in Civil Appeal Case No. 3461 of 2019 was dismissed on 20 February 2020 [**Annexure "ST3"**]. Mr Tom Harry sought clarification of the Epi Island Court's 2003 decision, which Court issued a Judgment Clarification dated 19 March 2010 in Civil Case No. 1 of 2009 [**Annexure "ST4"**];
- iv. Samuel Taritonga filed on 20 December 2021 [**Exhibit C4**] repeated evidence already given in the previous two sworn statements;
- v. Atis Joseph filed on 18 February 2022 [**Exhibit C5**]. Mr Joseph deposed that he is one of the declared family members of Valague custom land and Lumuwi (Loumuwi) nasara. Further, that he is authorised to make his statement on behalf of his family and that the Defendants must be evicted from Lamuwi (Loumuwi) nasara;
- vi. Kalo Thompson Valia filed on 18 February 2022 [**Exhibit C6**]. Mr Valia deposed that he is one of the declared family members of Valague custom land and Uмба nasara. Further, that he is authorised to make his statement on behalf of his family and that the Defendants must be evicted from Uмба nasara; and
- vii. Joel Mawa filed on 18 February 2022 [**Exhibit C7**]. Mr Mawa deposed that he is one of the declared family members of Valague custom land and Lour nasara. Further, that he is authorised to make his statement on behalf of his family and that the Defendants must be evicted from Lour nasara.

8. The Defendants relied on the sworn statements of the following:

- i. Jojo Jimmy filed on 30 March 2021 [**Exhibit D1**]. Mr Jimmy deposed that he is one of the Defendants. Further, that the Claimant is not a declared

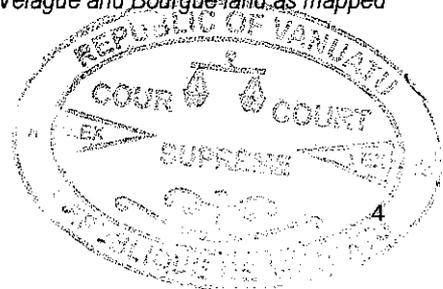


- custom owner of Lumuwi land at Laman Bay, and is not the chief of Lumuwi. He has lied on oath in making his sworn statement;
- ii. Jack Maite Jimmy filed on 30 March 2021 [Exhibit D2]. Mr Jimmy deposed that he is one of the Defendants. Further, that the Claimant is not a declared custom owner of Lumuwi land at Laman Bay, and is not the chief of Lumuwi. He has lied on oath in making his sworn statement; ;
 - iii. Apia Massing filed on 30 March 2021 [Exhibit D3]. Mr Massing deposed that he is one of the Defendants. Further, that the Claimant is not a declared custom owner of Lumuwi land at Laman Bay, and is not the chief of Lumuwi. He has lied on oath in making his sworn statement;
 - iv. Saling Pakoa filed on 30 March 2021 [Exhibit D4]. Mr Pakoa deposed that he is one of the Defendants. Further, that the Claimant is not a declared custom owner of Lumuwi land at Laman Bay, and is not the chief of Lumuwi. He has lied on oath in making his sworn statement;
 - v. Willie Tanmanok Jimmy filed on 30 March 2021 [Exhibit D5]. Mr Jimmy deposed that he is one of the Defendants. Further, that the Claimant is not a declared custom owner of Lumuwi land at Laman Bay, and is not the chief of Lumuwi. He has lied on oath in making his sworn statement;
 - vi. Valia Nuguna filed on 30 March 2021 [Exhibit D6]. Mr Nuguna deposed that he is one of the Defendants. Further, that the Claimant is not a declared custom owner of Lumuwi land at Laman Bay, and is not the chief of Lumuwi. He has lied on oath in making his sworn statement; and
 - vii. Abel Maselulu filed on 30 March 2021 [Exhibit D7]. Mr Maselulu deposed that he is one of the Defendants. Further, that the Claimant is not a declared custom owner of Lumuwi land at Laman Bay, and is not the chief of Lumuwi. He has lied on oath in making his sworn statement. Finally, that the Epi Island Court's 2003 decision has been superseded by that Court's decision [in 2010] in Civil Case No. 1 of 2009.

D. Discussion

9. It is alleged in the Claim that the Claimants Peter Orah and Families are the declared custom owner of Lamem Bay on Epi island pursuant to the Epi Island Court judgment dated 17 October 2003. Are they?
10. The Epi Island Court in its judgment dated 17 October 2003 in Land Case No. 1 of 2000 ruled as follows:

Having so ruled it is this day adjudged that Chief Orah Peter representative of the four (4) Nasara of the Lamem Bay Community is the rightful owner of the Velague and Bourgue land as mapped and marked in their claim accordingly.



11. That judgment was clarified by the Epi Island Court's Judgment Clarification dated 19 March 2010 in Civil Case No. 1 of 2009 [Annexure "ST4", Exhibit C3], in which the Court stated as follows at pp 3-4:

...

Kot ia today hemi stap mekem clarification nomo folem mosen we applicant, Tom Harry I bin faelem. Blong rimaendem ol party, samary I ko olsem;

1. *Onasip blong kraon blong Velague mo Bourgue I blong ol fourfala (4) nasaras hemia Lumuwi, Lokalie, Lour mo Umba. Peter Orah nao I bin representem olgeta fourfala nasara ia long kot blong namba 17 blong manis Octoba, 2003 olsem spokesman nomo.*
2. *Ol memba blong land onasip unit (kastom ona) I kat equal interests long kraon olsem kot I explenem antap.*
3. *Olgeta non kastom ona oli kat raet long propati blong olgeta, moo li kat right blong continue occupaem ples we oli stap provided, oli mekem necessary arrangements olsem lis follem kastom o loa I ko long ol kastom ona blong ol fourfala respective kastomary land.*
4. ...

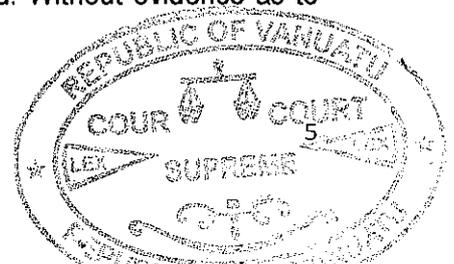
(my emphasis)

12. On the Claimants' own evidence then, they are not the declared custom owner of Lamén Bay on Epi island pursuant to the Epi Island Court judgment dated 17 October 2003. The four nasara namely Lumuwi, Lokalie, Lour and Umba nasara are the declared custom owners of Velague and Bourgue custom land at Lamén Bay area on Epi island.
13. It follows that Lumuwi custom land, referring to the Lumuwi nasara, is inside the Lamén Bay area on Epi island.
14. However, there is no evidence as to the boundaries of the custom land owned by Lumuwi nasara. The Epi Island Court in its Judgment Clarification dated 19 March 2010 at p. 2 observed that each of the four nasara had its own custom boundary, which those four nasara would determine later in accordance with their history:

2. Wanem nao right blong wanwan pipol o family follem decision blong Koti a long namba 17 blong Octoba, 2003.

Kot decision we hemi rifea long hem above I diklerem se kraon we Lamén Bay community I stap live mo occupaem hemi stap anda long olgeta four (4) nasaras. Each nasara I kat own kastom bandry blong hem. Ol bandry ia, bae ol fourfala nasara ia yet bae oli tes determaenem folem ol history blong olgeta.

15. There is no evidence that the four nasara have determined the boundary of the custom land belonging to each nasara. There is no evidence as to the boundary of Lumuwi custom land itself.
16. The Claimants' witnesses have made bare assertions in their evidence that the Defendants do gardening and settlement on Lumuwi land. Without evidence as to



the boundary of Lumuwi land, and evidence showing that one or other Defendant's garden or other 'settlement' is located within that boundary, the Court cannot determine whether or not the Defendants are gardening or have settled (as alleged) on Lumuwi land.

17. As to the Claimants' standing, Lumuwi nasara is one of the four nasara which are the declared custom owners of Velague and Bourgue custom land at Lamén Bay area on Epi island. There is no evidence that the Claimants are the authorised representatives of Lumuwi nasara for the purposes of bringing the present proceedings seeking orders to evict the Defendants from Lumuwi land. In the absence of such evidence, I conclude that the Claimants have not shown that they have standing to bring the present proceedings on behalf of the Lumuwi nasara.
 18. It was also alleged in the Claim that the Defendants are (or were) threatening and intimidating the Claimants' family and people inside Lumuwi village and communities Court. The Claimants' witnesses again made bare assertions that the Defendants are continuing to trespass into Lumuwi land to garden there and to disturb the people of Lumuwi land. However, there is no evidence identifying any individual Defendant who said particular words or acted in a particular way on one or other occasion to threaten the Claimants or otherwise disturb the people of Lumuwi land. The Claimants have not proved any threats or disturbance by the Defendants as alleged.
 19. For the reasons given, the Claimants have failed to prove the Claim on the balance of probabilities.
- E. Result and Decision
20. The Claim is **dismissed**.
 21. The Claimants are to pay the Defendants' costs of the proceeding fixed at VT50,000 within 28 days.

DATED at Port Vila this 25th day of March 2024
BY THE COURT


Justice Viran Molisa Trief

