

CF

IN THE ISLAND COURT OF THE REPUBLIC OF VANUATU **Declaration**
(Other Jurisdiction) **Case No. 17/3040 IC/DCLR**

BETWEEN: Alwin Niko
Claimant

AND: Brightly Lay
Jimmysan Sanhambath
John Andrew
Poul Matan
Defendants

Date of HEARING: 11th day of July, 2018 at 8:00 AM
Before Justices: Douglas Fadal, Luan Gaum, Alina Malapa
Clerk: Collyne Maki
In Attendance: Claimant - 'Alwin Niko
Defendant - Poul Matan
Parties absent: Defendant - John Andrew
Defendant - Jimmysan Sanhambath
Defendant - Brightly Lay



JUDGMENT

Kes ia emi bin registered long Aelan Kot follem *Island Courts ACT CAP 167 section 10*. We I talem *"Application of customary law: Subject to the provisions of this Act an island court shall administer the customary law prevailing within the territorial jurisdiction of the court so far as the same is not in conflict with any written law and is not contrary to justice, morality and good order and also;*

Guided by the Island Courts (Civil Procedure) No 28 of 2005 Rule 1 subsection 1 to 7 stated" Starting of a civil claim"

Kleimen blong kes Mr Alwin Niko blong Espigales bay long Northwest Malekula I bin filem kes ia long namba 16 August 2017 agensem ol defendants Mr Jimmysan Sanhambath blong Epalek vilij Northwest, Mr Brightly Lay blong Lecan vilij, Northwest, Mr Poul Matan blong Metcul vilij, Northwest mo Mr John Andrw blong Cleriva vilij Northwest Malekula. Ol defendants ia oli fomem ap komiti blong eria council long Northwest Malekula.

Kleim we ko agensem ol defendants ia emi follem nomo process blong gem maot tu (2) differen Judgmen long wan Jifly taetol kes long Northwest I no stret follem kastom blong Northwest. Emi talem long kleim blong em se long namba 23 March 2008 Northwest vilij court I bin readim maot decision blong Jifly taetol blong Lemak Nakamal mo I bin declarem se Mr Alwin Niko nao emi stret jif blong Nakamal ia. Long namba 24 March 2008 bakegen ol eria council of jifs ia oli gem maot second decision we I stap long favor long Amos Roy we emi party tu long taem ia.



Emi further talem se long kot hearing we I stap long vilij kot emi bin stap blong 1 wik we I stat long namba 3 March 2008 kasem namba 11 March 2008 and afta we decision ol jif I ridim maot long namba 23 March 2008 oli bin gem maot taetol ia I ko long kleima Mr Alwin Niko mo tu oli talem maot ol raets blong ol parties blong apil and long nexis dei nomo namba 24 March 2008 follem sam threatening we nara parties I mekem ol jif oli fraet mo mekem wan nara decision bakegen and oda I made I ko long nara party and emi talem se emi happen nomo follem risen se ol parties blong Mr Amos Roy oli threatenem ol jif blong mekem wan mo nara decesion. Follem emia nao I mekem se kleimen emi kam filem kes long aelan kot from wanem we ol jif oli mekem emi no stret follem kastom blong Northwest eria.

Tu defendan nomo I bin presen long kot I gat Mr Poul Matan blong Metcul vilij Northwest Malekula mo Mr John Andrew blong Cleriva vilij Northwest Malekula. Kot I bin talem maot long tufala defendans mo kleimen se follem civil procedure Rules 1984 Order 17 section 3emi talem se ***"NON APPEARANCE OF DEFENDANT "if the plaintiff appears and the defendant does not appear when called and has not in writing previously explained to the court good reason for his absence, the court may upon proof of service of the statement of claim proceed to hear the cause and give judgment upon the evidence adduced by the plaintiff, or may postpone the hearing of the cause and direct notice to be given to the defendant.***

Follem Oda 17 statement ia court emi talem se bae oli procced nomo blong harem kleim from I no gat any respons long ol defendans ia Jimmysan, Brightly Lay mo Benbi Mogeror even though oli tekem summon be oli choose no blong kam long kot. Kot I askem tu long tufala defendan whether tufala I wandem self-represented or bae tufala mit wetem ol nara defendants blong jusum wan spokesman, be tufala decide blong self-represent and jif Poul nao emi toktok on behalf blong tufala.



Jif Poul emi talem long court se vilij kot I bin harem kes blong jifly taetol and oli jifs long taem ia oli Mekem decision follem kastom blong Northwest blong Mekem oda se Mr Alwin Niko nao emi stret jif blong Lamak Nakamal we emi tru long ol findings we oli bin Mekem long taem blong court. Emi further talem se afta we oli Mekem fes fala decision ol nara party we oli family memba blong wan long olgeta defendants oli threatenem olgeta Mekem oli fraet afta Mekem nambatu decision we oli save se I no stret follem kastom. Emi further talem long kot se oli no gat chance blong kam long Lakatoro Polis station blong filem kes from ol memba blong nara parties ia oli surroundem olgeta mo oli hollem ol weapon olsem knife, axe, stone etc... we oli lukim mo mekem oli fraet and oli mekem namba 2 decesion we oli save se I no stret follem kastom blong Northwest blong Maleukula. Emi further talem se stret decision nao emi fes decision we I ko long Mr Alwin Niko and emi talem tu long kot se ol nara memba blong nara party oli no respectem 30 dei we vilij kot I gem long olgeta blong apil.

Afta we kot I harem ol toktok long ol parties' insaed long kot kot I faenem maot se:

COURT FINDINGS

1. Kleimen emi talem long kot se vilij kot I bin Mekem tu decision long wan semak jifly taetol kes we fes decision emi long namba 23 March 2008 and second decision I bin made next day long namba 24 March 2008. Ol Northwest council of Jifs oli Mekem wan mo secon decision afta we wan long ol party long saed blong defendan oli threatenem olgeta and emia tufala present defendans Poul mo John tu I confemem long kot se risen blong mekem namba tu decision emi from ol family memba blong Amos Roy nao oli threatenem olgeta mekem oli fraet from safety blong olgeta nao oli mekem namba tu decesion;



2. Kleimen emi talem long kot tu se fes decision Judgmen I made I ko long em and emia tufala present defendan tu I confemem long kot se ol findings blong vilij kot oli mekem follem Northwest kastom.

Afta we kot I faenem maot ol risen ia kot I mekem oda se:

COURT ORDERS

1. Fes decision blong Northwest eria vilij kot counsel we I tekem deit blong namba 23 dei blong manis March 2008 we Northwest eria court emi Mekem emi valid;
2. Secon decesion blong Northwest eria vilij kot counsel we I tekem deit blong namba 24 dei blong manis March 2003 emi null and void or dismissed;
3. Ol family memeba mo agent blong Mr Amos Roy we oli part blong jifly taetol kes blong Lamak village long Northwest Malekula oli restrain or no mas threatenem kleimen mol ol family memeba blong em;
4. Ol family memeba, agents blong Mr Amos Roy oli restrain blong no threatenem counsel blong Northwest eria;
5. Sapos kleimen emi luk se ol defendans oli no respectem oda namba 3 mo 4 emi gat raet blong kam filem kes I long long Aelan kot long foret blong Supervising Magistrate;
6. Follem Aelan Kot ACT CAP 167 section 22 I talem “ *Eni long tufala party defendan or kleimen sapos I no happy long decision ia I gat 30 dei blong I apil I ko long Magistret kot*”

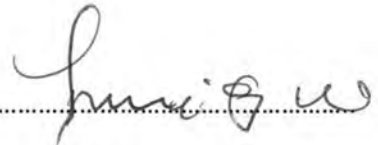


Dated at Lakatoro this 11th day of July 2018

BY THE COURT



Justice Douglas Fadal



Justice Luan Gaum



Justice Manle Simeon

