

IN THE MAGISTRATES' COURT
OF THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil Case No. 2656 of 2023

BETWEEN: JACKLINE TAMATA MIN

Claimant

Claimant's Lawyer:

Mr. Jim Vohor of Erick Molbaleh Lawyers
Luganville, Santo
Republic of Vanuatu

AND: MICHEL TAMATA
MATHEW TAMATA
JOSEPH TAMATA
ANDREW TAMATA

Defendant

Defendant's Lawyer:

Mr. Rollanson Willie of Rollanson Willie
Lawyers
Luganville, Santo

Appearances: Mr. Jim Vohor for the claimant
Mr. Rollanson Willie for the defendant

JUDGMENT

A. Introduction

1. The claimant filed proceedings against the defendant and sought for permanent orders to restrain the defendants from trespassing onto her land.

B. Background

2. The claimant is the eldest sibling of the defendants who are all residing with her in different parcels of customary land allocated to each of them by their deceased father at Teproma area in Santo.
3. The claimant happened to bring his husband who is from another village to her father's land and remained in the said parcel of land for a number of years with their children.
4. In the course of developing the land they have occupied for many years, the defendants intervened in year 2022 and again in September of 2023 by entering their residence and told the claimant not to continue with the development in the said parcel of land.
5. The claimant having been affected by the defendants' actions filed this proceeding against the defendant for trespassing into her land.
6. The defendants maintained that the land occupied by the claimant belong to their father and that their father had shared the land amongst his children and the claimant and her sister were given land uphill while the males occupied the land below the flat area.
7. The defendants said they intervened to stop the claimant from developing the land because that they would assist her in building a house on the actual land that was allocated to her by their father.

C. Agreed facts

8. The claimant and the defendants are biological brother and sisters.
9. The claimant is the eldest of all his defendant siblings.
10. The land occupied by the claimant is a customary land located along the coastline at Teproma area.
11. The defendants live in their respective parcels of customary land most of which are located further inland.

D. Issue

Whether the defendants' actions of preventing the claimant from making further development on her parcel of land constitutes a trespass?

E. Discussions

12. In the case of **Fittlers Investment Ltd v David Abel and Others Civil Case No.234 of 2006 dated 14th March 2008**, the learned Judge Tuohy referred to an extract from a New Zealand case called **De Luxe Confectionary Ltd v Warrington [1958] NZLR 272**, which saw the court referring to another case called **Rewiri v. Eivers [1917] NZLR 479** where he made the following remark:

“The judge said that that person in possession of the land under an unregistered lease was in possession with a complete title in equity...he had by virtue of this complete equitable right, the right to sue for any wrongful injury sustained by him as fully as if he was holding the property under the registered instrument. “

13. It is a common ground that the land occupied by the claimant is a customary land.
14. Nonetheless, she has by virtue of the statement quoted above, the right to file proceeding in respect of trespass.
15. As helpfully submitted by both counsels the case of *Kukry v Republic of Vanuatu* [2015] VUSC 73, Civil Case 111 of 2018 the Court outlined 5 elements that must be proven in order to succeed in an action for trespass.
 - a. The defendants entered their property directly or indirectly;
 - b. The defendants did so by some intentional act;
 - c. The defendants had no authority;
 - d. The claimant had lawful possession of the land; and
 - e. The claimant’s enjoyment of the land was interfered with.
16. The claimant confirmed that the defendants who are his biological brothers entered her residence in year 2022 and again on September of 2023 and stopped her from further developing the land she resided on.
17. This was confirmed by Michel Tamata when cross-examined by counsel for the claimant.
18. The evidence appears to show that the claimant had occupied the coastal land many years ago when her siblings (defendants) were still little.
19. Since she was the eldest in their family, she had to take care of her younger siblings at the time.
20. As they were growing up and during their father’s passing two years ago, the defendants began to interfere with her enjoyment of the land as they claimed their father had shared land uphill to the female siblings including the claimant while the male siblings are given the right to settle along the coastal land.
21. The evidence of the claimant and as confirmed by defendant Michel Tamata that he approached the claimant in year 2022 and again in September of 2023 in her residence and told her not to further develop the land.
22. Michel Tamata told her that he would assist her in purchasing iron sheets and timber for her house and that he would assist her to build in her allocated parcel of land up on the hill.
23. On the question of whether the defendants had no authority, the Court found it quite absurd because this is a family dispute which should be resolved privately between the parties but they had to take it to Court.

24. The claimant in her evidence showed she had been given the land by her father when the defendants were little. Her husband cleared the land and build their house. The kitchen they had had concrete floor.They also dug a well to draw water from.
25. When their father died, the defendants think they are males and had more rights in custom to occupy the coastal land while the female siblings including the claimant are given land uphill to settle on.
26. No evidence was produced to show that was the intention of their father when he gave the land to the claimant to settle on.
27. The evidence given by their mother (Ruth Bobro) was that the defendants never disputed the land with the claimant until her husband had died. When he was still alive, no one disputed the land with the claimant.
28. The claimants began to intervene with the claimant's enjoyment of the land when their father had passed away because they felt they had more rights in custom as male to occupy the land than their female siblings.
29. The claimant despite being a female is the eldest of all her siblings and the right to remain in the land was given to her by their father. The claimant has constructed a permanent building up to the stage of completion but was stopped by the defendant when they went and erect a namele leave on the entrance of the house.
30. This resulted in the claimant filing this proceeding and obtaining a restraining order which was issued against the defendants on 6 October 2023.
31. Based on the evidence received the Court considered the claimant as a trustworthy and a reliable witness as she remained consistent in her oral evidence.
32. The defendants on the other hand have failed to substantiate their defence with evidence to show they had more right in the land than the claimant.
33. The questions are therefore answered as follows:
 - *Did the defendants entered the claimant's property directly or indirectly? Yes;*
 - *Did the defendants did so by some intentional act? Yes;*
 - *Did the defendants had no authority? Yes;*
 - *Did the claimant had lawful possession of the land? Yes;*
 - *Did the claimant's enjoyment of the land was interfered with? Yes.*
34. I further answer the issue before this trial as follows:
35. *Whether the defendants' actions of preventing the claimant from making further development on her parcel of land constitutes a trespass? Yes*

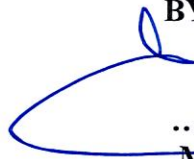
F. Order

36. The Court therefore finds for the claimant, and hereby orders that:

- a. The defendants are permanently restrained from trespassing into the claimant's land nor interfering with the claimant's enjoyment of her land given to her by her father.
- b. Cost for the claimant to be taxed failing agreement.

Dated at Luganville, this 29th day of August 2024

BY THE COURT



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MOSES PETER
Senior Magistrate

