

PUBLIC PROSECUTOR

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JEROME NALIUPUS
and
PATRICK NALIUPUS

The two defendants who are father and son are charged on a 2 count indictment with aiding a person to commit arson and arson respectively, of a tractor belonging to a logging company called Santo Veneer. They both pleaded guilty to the respective charge against them. The first defendant is and has always claimed to be the customary land owner of certain lands in north Santo. His custom ownership is not disputed by anyone. The complainants, Santo Veneers, hold certain logging licences permitting them to do logging in Santo. What the licences cannot and do not purport to do, is to permit them to enter on any persons' land to log thereon without those persons' prior consent. A prior contract with the custom owners is required in order to do that. In this case, it seems that the complainants, the loggers, hold a number of contracts to log over certain custom lands, but they hold none from the first defendant. Usually, attached to the logging contracts (blank copies of which are obtainable from the Department of Forestry) are plans purporting to delineate the land areas upon which the loggers are entitled to log. These plans, as in the present case, are no more, it seems to me, than rough sketches of bush areas over which the loggers purport to hold logging contracts. As a result of the inadequacy of these sketches, problems sometime arise as it did in this case. Some time last year it came to the first defendant's notice that Santo Veneers were logging on some part of his land and he complained to them, asking them to desist and he also complained to the Department of Forestry, who felt that there was little that they could do about it. After considerable toing and throwing between the Department of Forestry and the complainants, the first defendant decided to take the law into his own hands and together with his son, the second defendant, they decided to set fire to one of the complainant's tractors. This they should never have done. They should have come to Court and applied for an injunction. Nevertheless they did not do that. Instead, having warned the complainants not to log on their land, and finding out that the complainants had completely ignored their warning, they decided to take the law into their own hands and they set fire to the bulldozer, causing some 13 million vatu's worth of damage to the company. On the other hand it is true to say that the defendants had been seriously provoked by the complainants attitude to their warning. The least that the company could have done was to investigate the defendants' complaints before resuming the logging. Custom owners should know that there is now a special procedure whereby they can register their land through the Island Courts, even though there is no dispute over their land. This procedure was set up by myself under the Island Court Act CAP 167. The advantage is that the undisputed land would be properly surveyed and registered with the Court and at the Lands Department. The undisputed custom owner would then get a certificate showing that he is the undisputed owner of certain lands and no one could thereafter dispute his title. The procedure would take some time, but once registered it becomes proof positive of

ownership of land. I would urge very strongly all custom owners of undisputed land in Vanuatu to use that procedure. All that they have to do is call on any of the Island Court Clerks and the procedure will be explained to them. Now, coming back to this case, it seems to me that those who come here to Vanuatu in order to log, have a duty to ensure that when they obtain logging contracts over certain lands, that those lands are properly surveyed, so that there can be no dispute as to the area over which they can log. They should not rely, as they often do, and indeed as they have done in this case, on vague sketches provided to them by the Department of Forestry or the land owners themselves. They should have the land properly surveyed at their own expense in order to ensure that they know exactly where it is that they can log. It seems to me that the burden to do so lies squarely upon them. The Forestry Department should insist that the loggers do so in future as a condition of the logging contracts, copies of which they provide to the loggers. It can easily be entered into as a contractual obligation on the part of the loggers. After all, it is the loggers who stand to make the greater profit in the whole operation, and the expense of proper survey fees and the proper mapping out of logging areas is small indeed compared to the damage done to the country and the environment as a whole, by over logging. Those who wish to preserve their inheritance for future generations would also be protected by such a simple precaution. Greed, it seems to me, rather than common sense, prevailed in this case on the part of Santo Veneer. They now claim civil compensation in the sum of 13 million vatu against the defendants for their criminal act. I will not entertain this claim now. It seems to me that the defendants may well have a valid counterclaim against the loggers for the removal of trees from their land. I will therefore adjourn this claim to another date. Mrs Barlow for the defendants invite the Court to grant her clients an injunction preventing the complaints from logging on her clients' undisputed custom land. I am minded to accede to that application on the usual undertakings, namely that she will, on behalf of her clients, file a counterclaim in this case within 7 days of today and upon her clients' further undertakings as to damages and cost. I further order as follows that an injunction will issue from this Court against Santo Veneers, forthwith, and they will not log upon any of the lands claimed by the defendants until further order and in any event until they have caused to be surveyed the two plots of land that abut and appear to overlap the defendants' undisputed land, upon which they (Santo Veneer) claim to have contracts. Further they will also cause to be surveyed and properly mapped out those plots of land as well as the undisputed land in the custom ownership of the defendants upon which they are alleged to have logged without the defendants' permission. Mrs Barlow will provide Santo Veneers with copies of those sketches in her possession which show those plots of land to which this order refers. The Complainants are given liberty to apply.

In the exceptional circumstances of this case, the first defendant is fined 1,000 vatu and the second defendant is fined 500 vatu. They each have one month from today in which to pay their fines.

Dated at Luganville this 16th day of January 1996

