

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

Civil Case No.64 of 2001

BETWEEN: KALTALIU KALPUKAI
Appellant

AND: DAVID KALMET
Respondent

Coram: *R. Marum J. MBE*

Mr. Willie Daniel for the appellant
Mr. Hilary Toa for the respondent

JUDGMENT

This was an appeal from the decision of the Magistrate's Court dated the 16th September 2000, in issuing restraining orders against the appellant not to enter the customary land Emetnai including friends, relatives; to keep 17 meters away from the boundary of the land; not to damage any property; not assaulting, threatening, intimidating the plaintiff and further extended by another magistrate on the 9th of February 2001. Orders of the court of the 9th of February 2001 set out as follows;

- 1. The orders sought by the plaintiff are hereby refused.*
- 2. That the previous court order of 16th of September 2000 be extended for a further 12 months as of the date of this order.*
- 3. That both parties are at liberty applying for variation of the order any time on notice.*

The restraining orders were made in conjunction with a Writ of Summons dated the 15th September 2000. The claim was for trespass to that land and claim for VT 800,000 as damages. The restraining orders were granted and the substantive matter was place before another magistrate. The other magistrate heard the claim for VT 800,000 and dismissed the claim on the 9th of February 2001. On dismissing the claim he extended the restraining



orders made by the other magistrate on the 16th of September 2000 for 12 months. The appeal was on the ground that the first magistrate had no jurisdiction to grant the restraining orders in the first place and also the second magistrate in dismissing the claim of Vt 800,000 had no power to extend that restraining order. *Therefor, did the magistrate have jurisdiction to grant restraining orders on the 16th of September 2000 and on extension on the 9th of February 2001?*

Jurisdiction

Section 1 (a), of the Magistrate's Court (Civil Jurisdiction) Act. 130.

States: -

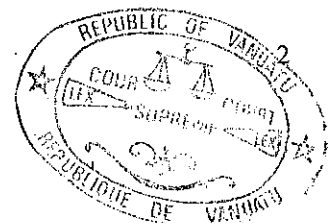
"Every Magistrate's Court ... shall have jurisdiction to try all civil proceedings

a) In which the amount claimed or the value of the subject matter does not exceed VT1.000.000 except claims for permanent physical damages to a person."

The claim in the writ of summons was VT 800,000 and was within the magistrate court limit. In addition to s.1 of the Magistrate Court (Civil Jurisdiction) Act, the Magistrate's Court also have specific prescribed civil jurisdiction under s. 4 (b) of the Court Act [CAP. 122] which s. 4 (b) states: -

"Subject to the provision of this part and of any other law every Magistrate's Court shall have jurisdiction to try ... any civil proceeding in respect of which jurisdiction is by any written law expressly conferred upon a Magistrate's Court."

By limitation under section 1 (a) of the Magistrate's Court (Civil Jurisdiction Act [CAP. 130], s. 4 (b) of the Court Act refer to certain Act of Parliament can vest a magistrate with power to hear claims beyond their civil limit under s.1. of the Magistrate Court (Civil Jurisdiction) Act, but only for certain civil matters or a class of civil matters as specified under that Act. In customary land disputes, the magistrate court has no jurisdiction to determine ownership of land accept the Island court. The object of filing the application for restraining orders together with writ of summons claim, in my view was for the court to make restraining orders first, and the claim for VT800,000 in the substantive matter was for future determination. Daniel advances that the Magistrate had no jurisdiction to issue restraining orders in



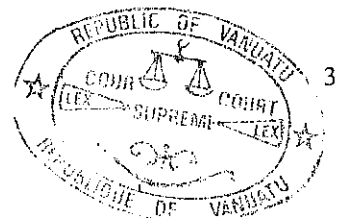
the first place, as the land was still in dispute and only the Island Court had the jurisdiction to make orders over the customary land. Section 13 of the Island Court Act states: -

“In civil proceeding an Island Court in addition to any other powers it may have may make any or combination of the following order;

- a) ...
- b) ...
- c) *An order authorizing the use or occupation of the land by one of the parties to the dispute for such purposes and subject to such conditions as are set out in the order;*
- d) *An order prohibiting where appropriate, the use or occupation of the land by any one parties to the dispute;*
- e) *An order restraining the other party to the dispute from interfering with the authorized use or occupation.”*

The Island Court has jurisdiction to issue any orders under s.13 on a registered disputed customary land with the Island court, and can even extended to unregistered dispute customary land before registration, as temporary orders, either pending the completion of the registered disputed customary land pending before the Island Court or for allowing registration of the new dispute. The policy reasons why such orders can be issued prior to registration of the new dispute is to try and stop the parties getting angry with each others, which can easily get out of hand, and for them to lay their complaint with the Island Court or if the matter is already before the Island Court to maintain the status quo of the parties involved towards settlement or decision on ownership.

This was not a registered dispute customary land before the Island Court, however, on advancement by counsels and by affidavit of David Kalmet, the Pango Erakor Council of Chiefs awarded the ownership of the land to the Respondent and his family by custom. This decision is not disputed however, the appellant appealed that decision to the new Council of Chiefs, who has the same recognize power in custom no different to the old Council of chiefs, no decision as yet. On the decision by the old Council of Chiefs dated 8th December 1999, by custom, the Respondent had all the right to enjoy and protect their interest over the usage of the land. And by that, the Respondent took out the Writ of Summons in the Magistrate’s Court. The form of the restraining order in paragraph 1, 2, 3, 4 and 7 are sufficient and



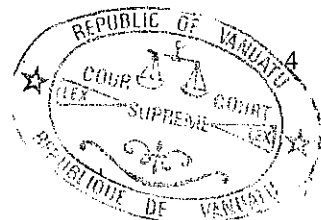
continue to reflect the right of interest and enjoyment of the said piece of land by the decision of the Pango Erakor Council of Chiefs.

I find that, for a recognized council of chief, as the Pango Erakor Council of Chiefs, when make decision in custom in awarding land to a party, the Court can accept that as proper decision made by a recognized and accepted customary authority within the community. And the party can act upon that decision as good and enforceable in custom, and the community can accept and recognized that decision giving right of ownership. However, if one party does not satisfy with such decision then the Island Court is there for him/her to register his/her dispute for the process of the law to take its course. In this case it did not occur, but was brought again to the new council of chiefs. If this was the case then the decision made on the 13th December 1999 remain a decision for the Respondent to rely upon as proper and accepted in custom, and was not open to the new Council of Chief, with the same power to make a decision on the same matter deliberated upon by the previous Council of Chief, having the same recognize jurisdiction in custom, to hear the matter again.

I find that the Magistrate on the 16th September 1999 had properly exercised her jurisdiction pursuant to her power conferred on her under s. 1 of the Magistrate's Court (Civil Jurisdiction) Act [CAP. 130] to make a restraining order in conjunction with the substantive claim for VT 800,000 and order remains an order of the court for compliance by all parties until the order is set aside or discharge by a court of competent jurisdiction.

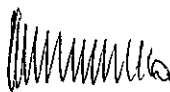
Writ of Summons

The second part of the hearing was before another Magistrate, and that was the hearing of the substantive matter of the Writ of Summons. On hearing, the Magistrate refused to award VT800,000 as sought by the plaintiff. And by then the whole restraining order should lapse, as there was no more cause of action pending before the magistrate court upon that writ of summons, after dismissal of the claim, for the magistrate to extend the restraining order upon. However, in my view the Magistrate extended the order of the 16th September 2000 to maintain the status quo of the parties for them to resolve the disputes or either for the matter to be brought for registration before the Island Court, a matter no longer to attend to by the court on dismissal of the claim, and no longer within the jurisdiction of the Magistrate's Court for



extension on dismissal of the claim. I therefore allow the appeal, and make the following orders; *order No. 1 of the Order of the 9th February 2001 remain an order of the Court and; Order No. 2 and 3 are vacated.*

Dated at Port Vila, this 18th day of October 2001.



R. MARUM MBE

JUDGE.

