

(Civil Jurisdiction)

**BETWEEN : TERIKI MANTOI KALSAKAU**

**(Plaintiff)**

**AND : CHARLIE KALORUS KALPOI**

**(First Defendant)**

**AND : NOEL KALUATMAN**

**(Second Defendant)**

**AND : PANGO HILL VIEW DEVELOPMENT  
COMPANY**

**(Third Defendant)**

**AND : DIRECTOR OF LAND RECORDS**

**(Fourth Defendant)**

**AND: ENTERPRISE DINH**

**(Fifth Defendant)**

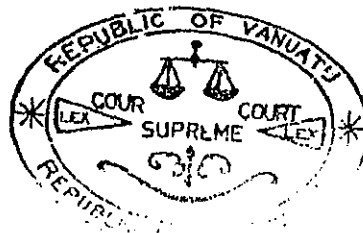
**AND: DINH VAN TU**

**(Sixth Defendant)**

**RULING CONCERNING RESTRAINING ORDER**

The history of this matter is set out in my Rulings of 24 November 2000 and 18 June 2001 and their accompanying Orders. The hearing of 20<sup>th</sup> August was refixed for 7<sup>th</sup> September.

On that day all the defendants, save the fourth, asked for removal of the restraining order. They stated they had a lease which was on its face valid, there was indefeasibility of title and money was being lost. They said there was no possibility the Island Court proceedings would be heard for several years. They offered to pay into Court, pending the outcome of this case, the proceeds from the development of the Land.



The plaintiff replied that they had complied with the Courts' orders of 18 June, the third, fifth and sixth defendants had no registrable or at least registered interest in the land. The plaintiff accepted a constitutional petition had only been lodged a few days earlier. (That was not in accordance with the Order of 18<sup>th</sup> June). Counsel for the plaintiff stated in Court that if the plaintiffs were found to be the true custom owners they "would develop the land, the reason they have not said this as this is a representative action on behalf of numerous other custom owners. The plaintiffs and their community are involved in considerable development of land in the centre of the Port Vila area"

I must look to the balance of convenience of the parties. The first and second defendants granted and the third defendant held a lease which appears to be valid on its face. Money has been expended and is ready to be expended on the development of this land. This dispute over the true custom ownership is not likely to be resolved in the near or middle-term future. Had a speedy resolution to that question been possible then the balance might have tipped towards continuing the restraining order. The plaintiffs themselves are looking to develop the land if they are found to be the true custom owners. The first and second defendants have stated their willingness, if the Court so orders, for the proceeds of development to be paid into Court.

By the Order of 18<sup>th</sup> June the restraining Order of 24<sup>th</sup> November 2000 was continued until 20<sup>th</sup> August. The plaintiffs were required to lodge their customary land ownership claim in the Island Court by 25 June. This they did.

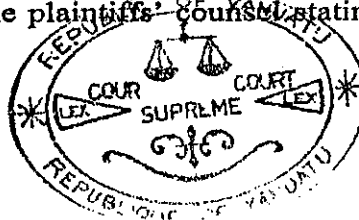
It was known that the Island Court has not sat to hear land cases for a number of years as a result of a "zero budget allocation" for that jurisdiction. The suggestion was put forward that if the parties paid equally the full costs of the Island Court sittings then the case could be heard. In my Ruling of 18<sup>th</sup> June I found that that suggestion could not be accepted, attractive though it might at first appear.

The Order therefore stated at paragraph 4 (a)

"If the plaintiffs or defendants are considering any other proceedings concerning any claim lodged in the Island Court, and if and when that will be heard, then it must be filed with full supporting evidence with the appropriate Court by 3 p.m. on 2<sup>nd</sup> July". Sub- paragraphs (b) and (c) set out directions and time limits for the speedy progress of any such action, and requirement for lodging of full supporting evidence with the petition.

The possibility of a constitution petition in this regard had been mooted in argument.

No petition or other proceeding was lodged by 2<sup>nd</sup> July. On 17<sup>th</sup> August the Chief Registrar received a letter from the plaintiffs' Counsel stating the Island



Court proceedings had been lodged and attaching a draft constitutional petition dated 2<sup>nd</sup> July 2001, but not signed.

By letter of 29<sup>th</sup> August the Chief Registrar answered in detail, the points raised in the letter of 17<sup>th</sup> August. The lack of funding was pointed out and the suggestions in the plaintiffs' letter rejected as if accepted they "could be viewed as a bias decision when there are over 220 cases registered and ready to go for trial and several others still on the Clerk's desk for consideration."

A Constitutional Petition was filed on 10<sup>th</sup> September requesting relief which would, if granted, enable the Island Court land case to be heard. No supporting affidavits were filed. That Petition must now be enquired into and the parties whose actions are complained of summonsed before the Court. Even when heard expeditiously that will take several months.

In the mean time I must look to this restraining Order.

It is clear from my Ruling and the Order of 18<sup>th</sup> of June the plaintiffs had to work quickly and in compliance with the Order. At paragraph 1 page 4 of the Ruling I stated "... a restraining order should be made... However, it will be limited in time and dependent upon the plaintiffs pursuing vigorously their claim in the Island Court and all available lawful measures to have that claim heard there and heard expeditiously." This they failed to do. The Island Court claimed was lodged, but the Constitutional petition was filed over two months after the time set and without the supporting evidence which would facilitate its speedy progress.

In all these circumstances set out above I find the balance has tipped in favour of removing the restraining order. I will Order the proceeds from the land to be paid into Court until further Order.

As I stated in my Ruling of 20<sup>th</sup> November 2000 there is lurking in the back ground the possibility of violence. If either side acts in a violent way or interferes with the actions of other parties then the Court will deal with it. The Court will look to releasing money paid into Court should violence occur.

