

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

Civil Case No. 61 of 2011

**BETWEEN: ANDREW WELWEL AND FAMILY (FAMILY RORIRI),
JEREDLY TATAO AND FAMILY (FAMILY RORIRI),
CHIEF LEINGKON GIDEON AND FAMILY (FAMILY
RORIRI)**
Claimants

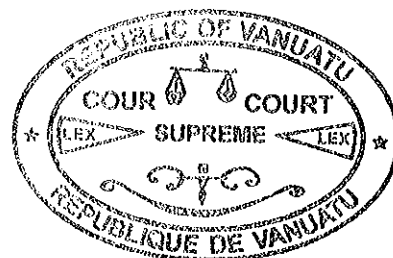
**AND: JEHU BOGNAIM AND FAMILY, JIMMY JEHU AND
FAMILY, BENJAMIN LEWA AND FAMILY, JAMES
JEHU AND FAMILY, BATO JEHU AND FAMILY,
RICKSON SAMSON AND FAMILY, LEONARD
LEINKONE AND FAMILY, JESSY HIVIR AND FAMILY**
First Defendants

**AND: WORWOR GABRIEL AND FAMILY, FREDDY
MAXWELL AND FAMILY, JONATHAN HULHUL AND
FAMILY, SARIPAN WALWAL AND FAMILY, ALILI
MOL AND FAMILY**
Second Defendants

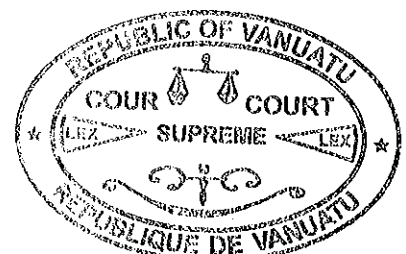
**AND: ANDREW BEONGKON, JUSTIN RAMEL, BONG
MAROM LAAN WILLIE AND ELI TIWOR**
Third Defendants

Hearing: 14 August 2012
Before: Justice Robert Spear
Appearances: Pauline Kalwatman for the Claimants
Eric Csiba for the Defendants

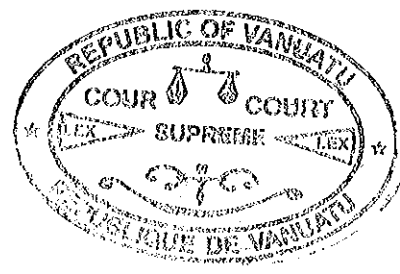
**SUMMARY JUDGMENT
(Ex Tempore)**



1. The claimants seek summary judgment on their claim. In particular, they seek orders requiring the first and second defendants to quit the Melwe/Metamali land on North Ambrym.
2. The claim seeks further orders requiring the first and second defendants to return to certain land elsewhere on Ambrym but clearly the Court cannot entertain any such order. The defendants are entitled to live anywhere in Vanuatu that they are lawfully permitted to do.
3. The claim also seeks damages that the claimants state they suffered when some of the first and second defendants forcefully chased them from their land. Ms Kalwatman accepts that it is appropriate for the summary judgment application be confined to that part of the claim that seeks orders requiring the first and second defendants to quit the Melwei/ Metamali land. Additionally, for judgment to be entered on liability only in respect of the claim for damages. That approach has significant merit as the enforcement of the Courts orders might well encounter some resistance given the troubled history to this matter.
4. It is noted that the third defendants are apparently chiefs comprising the Area Council of Chiefs of North Ambrym.
5. The basis of the claim against the first and second defendants is that they are residing on Melwei/Metamali Land within which are located both Faliliu Village and Fanjever Village. The claimants assert that they (as Family Roriri) are the declared custom owners of Melwei/ Metanmali land including the Faliliu and Fanjever Villages all in accordance with the decision of the Fanjever Land Tribunal of 18 February 2010.
6. While the first and second defendants have been residing on Melwei/ Metamali land for some years, after the Land Tribunal decision of 18 February 2010 they were repeatedly asked by the claimants to vacate that land all leading up to a formal demand by the claimants that the defendants vacate the land. This demand was met with considerable resistance all as alleged in paragraphs 12 and 13 of the amended claim. In particular, the claimants assert that, on 19 August 2010, members of the first and second defendants together with other men attacked the claimants by physically assaulting them and damaging their houses and kitchens.



7. The Police were called in to assist. They arrived from Luganville on 8 September 2010. However, rather than recognise the lawfulness of the claimants' position, the Police advised the claimants that they should leave Ambrym and seek refuge on neighboring islands until the position was resolved. Clearly, this was to reduce the risk of serious violence which was a reality. Unsurprisingly, in the prevailing circumstances, the claimants then left Ambrym and they have since been residing on Malekula and Efate where they have remained since September 2010.
8. Some of the first and second defendants have been charged by the Public Prosecutor with the offences of unlawful assembly, assault, and intentional damage to property arising out of the disturbances of 19 August 2010. That criminal case is still to reach trial (CRC 78-11).
9. Since the claimants left Ambrym in accordance with the Police advice, they have maintained their demand for the eviction of the defendants from their land on Ambrym. They have also formulated a claim for damages for the assault and property damage that occurred in August 2010. They seek further expenses incidental to their forced and temporary accommodation on Malekula and Efate.
10. The confined summary judgment application depends entirely upon whether the claimants are indeed the lawful declare custom owners of Melwei/ Metamali land. In this respect, the claimants point to the decision of the Fanjever Land Tribunal of 18 February 2010 which declared that Family Roriri was indeed the custom owner of Melwei/ Metameli land.
11. Ms Kalwatman submits that the Fanjever Land Tribunal decision is one arising out of the application of the Customary Land Tribunal Act CAP 271 and reference is made to s.1 of that Act which provides, "*the object of this Act is to provide for a system based on custom to resolve disputes about customary land*".
12. The evidence before me is that the decision of the Fanjever Land Tribunal has not been challenged on appeal or review and the decision must accordingly be accepted as the final determination of any custom ownership issues in respect of Melwei/ Metameli land. That means that the first and second defendants can only reside on Melwei/ Metameli land with the permission of the claimants. In short, as the first and second defendants have refused to



leave despite repeated demands for them to do so, they have become trespassers on the land and the claimants are entitled to seek the assistance of the Courts to evict them.

13. Mr Csiba referred to a sworn statement from James Tari which confirms that the first and second defendants did not challenge the decision of the Fanjever Land Tribunal of 18 February 2010. Indeed, Mr Csiba had to acknowledge that the claimants had accurately explained the decision as declaring Family Roriri to be the custom owner of Melwei/Metameli land. However, Mr Csiba argued that James Tari's evidence establishes that the decision of the Fanjever Land Tribunal of 18 February 2010 has no legal standing or effect as the "*Land Tribunal has not yet been set up on the Island of Ambrym in accordance with section 44 of the Customary Land Tribunal Act [CAP 270]*".
14. Essentially, Mr Csiba's argument (supported by the evidence of James Tari) is that a land tribunal only has legal currency under the Customary Land Tribunal Act if it is set up in accordance with regulations made pursuant to s. 44 of the Act

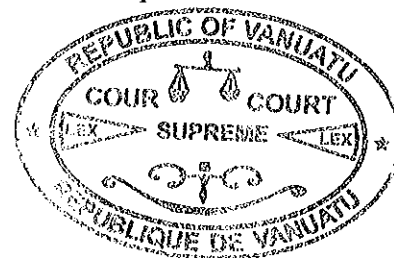
Regulations

44. The Minister may make regulations not inconsistent with this Act:

(a) for or with respect to any matter that by this Act is required or permitted to be prescribed; or

(b) that is necessary or convenient to be prescribed for carrying out or giving effect to this Act

15. James Tari produces copies of orders purportedly made pursuant to s.44 that appear to approve certain people to "*adjudicate disputes relating to boundaries or ownership of customary land*". Mr Tari's evidence is that his search of the State records does not reveal any land tribunals as having been set up on Ambrym.
16. The immediate difficulty with that argument is that the Act does not require anyone to be so approved or for land tribunals essentially to be gazetted or otherwise receive some form of ministerial recognition.
17. The Act defines the system which initially requires notice of the dispute being provided to the principal chief of the village or villages concerned. It is then for that chief (or those chiefs in the event of a joint village dispute) to establish the land tribunal pursuant in particular to Part 2 of the Act.



18. While Part 7 of the Act defines an approval process for members of a land tribunal where the island is divided in to more than one custom area, that is not in issue before me and it certainly has not been argued.
19. I am accordingly unable to see how any orders or regulations purportedly made under s.44 of the Act can have relevance or effect here. Any such regulations are required to be consistent with the Act. Ministerial approval of a land tribunal, an area for land tribunals or members of a land tribunal is not part of the statutory scheme established by the Act.
20. In these circumstances, and on the basis of the evidence before me, the claimants must be considered at law to be the custom owners of the land in question. Furthermore, the first and second defendants have become trespassers on the land.
21. Summary judgment is entered for claimants as follows:
- a. The first and second defendants are to leave Melwei / Metameli land on Ambrym within one month AND they are not to re-enter that land except with the express permission of Family Roriri;
 - b. The first and second defendants are liable for the damage suffered by the claimants as a result of the physical assaults and property damage on 19 August 2012 and of being forced to leave their lands with the quantum of such damages still to be determined;
 - c. Costs for the claimants against the first and second defendants on a standard basis to be agreed or taxed.

BY THE COURT

