

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

Civil Case No. 15 of 2013

**BETWEEN: CHARLIE TAVUI**

Claimant

**AND: NELSON KARAI SALE**

First Defendant

**AND: TAMATA KARAI SALE, SILAS TAMATA AND  
ABEL GARAE SERE**

Second Defendants

**Coram: Mr. Justice Oliver A. Saksak**

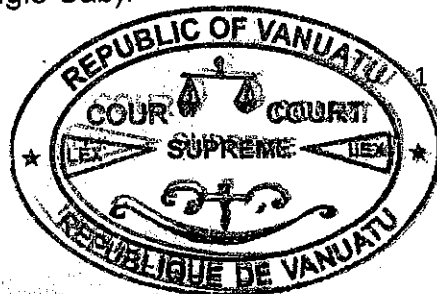
**Counsel: Mr. George F. Boar for the Claimant  
Mr. Lent Tevi for First and Second Defendants**

**Date of Hearing: 12<sup>th</sup> September 2013  
Date of Judgment: 4<sup>th</sup> November 2013**

**JUDGMENT**

**Claims And Reliefs Sought**

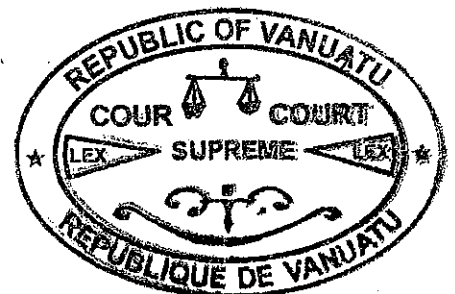
1. The Claimant filed a claim on 27<sup>th</sup> March 2013 claiming for orders that –
  - (a) The Defendants and the Manager of Bred Bank be required to release to the Claimant an amount of VT4,500,000 being the balance remaining from the VT11,013,707 paid by the Government to the Defendant in or about April 2011.
  - (b) The Police seize and detain two vehicles registered numbers 6831 (Red Toyota Single Cab) and 7340 (White Toyota Single Cab).



- (c) The Defendants be required to account for all monies derived from smol Belmoli Land.
- (d) The Defendants be required to pay 50% of all financial benefits derived from Smol Belmoli Land to the Claimant.
- (e) Costs of and incidental to the action be paid by the Defendants to the Claimant.

### **Relevant Background Facts**

2. The dispute as to the customary ownership of smol Belmoli Land was heard by the Santo/Malo Joint Village Land Tribunal (the Tribunal) in or about the year 2008. At the hearing, the Claimant was the spokesman for the Family Bulurave. As a result of his assistance, the Tribunal found in favour the Family Bulurave.
3. The decision of the Tribunal was appealed to the Santo/Malo Joint Area Land Tribunal. On 3<sup>rd</sup> December 2009 this Tribunal upheld the earlier decision of the Joint Area Land Tribunal in favour of the Family Bulurave. This decision was not appealed.
4. Smol Belmolie Land is partly leased by Milai (Vanuatu) Ltd. Land Rents from previous years were held by the Government in the Customary Owners Trust Account (COTA) to the sum of VT11,013,707).
5. The Government paid out VT11,013,707 on 19<sup>th</sup> April 2011 to an account operated by the Defendants at the Westpac Banking Corporation.
6. On 27<sup>th</sup> April 2011, the Defendant withdrew VT6,000,000 from the Westpac Account and bought two vehicles. And on 9<sup>th</sup> May 2011, the Defendants withdrew VT5,000,000 and deposited VT4,500,000 at the Bred Bank. The remaining



VT500,000 was shared between the defendants including the Claimant who received VT20,000.

7. On 7<sup>th</sup> November 2012, the Claimant and First Defendant purported to enter into an agreement about the sharing of the money derived from Smol Belmoli Land with a further term that the Claimant would become a signatory to the Bank Account operated by the Family Bulurave.
8. Those are the relevant background facts.

### **Allegations By Claimant**

9. The Claimant alleges that –

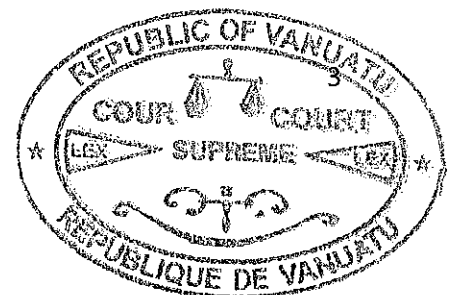
- (a) He never benefited from any of the VT11,013,707 paid by the Government to the Family Bulurave; and
- (b) The Defendants had breached the agreement of 7<sup>th</sup> November 2012.

### **Burden And Standard of Proof**

10. The Claimant has the burden of proof on the balance of probabilities. Apart from himself being the main witness, the Claimant called evidence in support of his claims by three other witnesses namely (a) Jairus Avo, (b) Chief Teles Tavui and (c) Paul Jara

### **Claimant's Evidence** (Source of)

11. The Claimant relied on his sworn statement dated 27<sup>th</sup> March 2013 (exhibit 1). Jairus Avo confirmed his statement dated 26<sup>th</sup> June 2013 (exhibit C2). Chief Teles confirmed his evidence by sworn statement dated 26<sup>th</sup> June 2013 tendered



as exhibit C3 and Paul Jara also confirmed his sworn statement dated 26<sup>th</sup> June 2013 and tendered as exhibit C4.

### **Defendants' Defences**

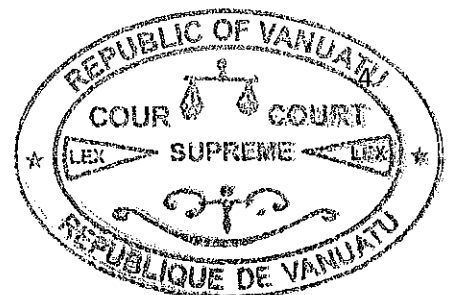
12. The Defendants filed a defence on 9<sup>th</sup> April 2013 basically denying –

- (a) That the Claimant was their only spokesman but stated there were 3 other spokesmen along with him who took turns to speak. These were Nelson Karaisale, Kevin Karai and Peter Tamata. All of them deposed to sworn statements to that effect.
- (b) That the Claimant was not a Claimant disputing ownership of smol Belmoli Land.
- (c) That the Claimant was not given any benefits because he was given the vehicle 6831 with his nephew Jairus Avo and he was paid VT20,000 out of the VT500,000 withdrawn from Westpac Bank leaving the balance of the VT4,500,000 which was deposited into Bred Bank.
- (d) Signing the agreement of 7<sup>th</sup> November 2012 on the same date but only on 10<sup>th</sup> March 2013.
- (e) Any loss by the Claimant.

### **Defendants' Evidence** (Source of)

13. In support of their defences, the Defendants produced evidence from –

- (a) Nelson Karaisale whose sworn statements dated 9<sup>th</sup> April 2013 and 6<sup>th</sup> September 2013 were tendered as exhibits D3 and D4.



- (b) Karaisale Baiajivi whose sworn statement dated 6<sup>th</sup> September 2013 was tendered as exhibit D5.
- (c) Peter Tamata, whose sworn statement dated 6<sup>th</sup> September 2013 was tendered as exhibit D6; and
- (d) Kevin Karai whose sworn statement dated 9<sup>th</sup> April 2013 was tendered as exhibit D7.

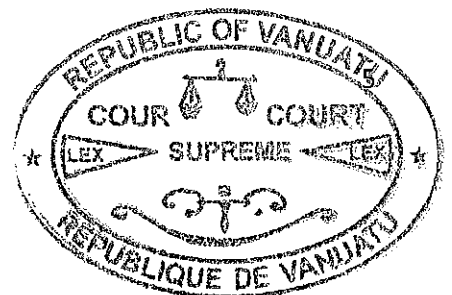
In addition, there were 2 agreed sworn statements tendered without cross-examination by:

- (a) Mary Baiamere dated 6<sup>th</sup> September 2013 as exhibit D1; and
- (b) Abraham Karaisale dated 6<sup>th</sup> September 2013 as exhibit D2.

### The Issues

14. The Claimant through Counsel Mr. Boar raised five issues in his written submissions filed on 26<sup>th</sup> September 2013 as follows:-

- (a) Did the Claimant participate in Family Bulurave's claim to Smol Belmoli Land?
- (b) Can the Claimant claim ownership of Smol Belmoli Land through matrilineal line to Family Bulurave?
- (c) Was there an agreement between the parties and what is the legal effect of that agreement?
- (d) Is the purchase of vehicle registration No. 6831 given to Jairus Avo part of the terms of the Agreement signed by the Parties?

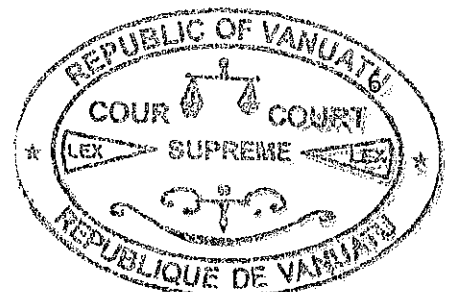


(e) Is VT20,000 given to the Claimant contemplated within the terms of the Agreement?

## Discussions And Considerations

### 15. Submissions

- 15.1. First in relation to the issue whether the Claimant participated in the Family Bulurave's claim to Smol Belmoli Land, Mr. Boar submitted that from the Defendants' pleadings in paragraphs 2 and 3 the Defendants accepted this. Mr. Tevi did not specifically respond to this issue however at paragraph 2 of his written submissions Counsel contended that the Claimant was not a Claimant but conceded that the Claimant was with the Family Bulurave when presenting their histories before the Tribunal.
- 15.2. From the evidence of the Claimant in cross-examination, he agreed there were four of them representing Family Bulurave. He said that Peter was present but he did not talk and Nelson also was present. However, from the Defendants' evidence by Nelson, Peter and Kevin they all confirmed they were all four representing the Family Bulurave and that they took turns in talking.
- 15.3. This issue is a question of fact. From the evidence presented, the Court is satisfied that the Claimant was present with Nelson, Peter and Kevin during the Tribunal hearing and presenting on behalf of the Family Bulurave. There is however no evidence by the Claimant that he took a more active part by being the only presenter. The Claimant could have easily obtained a sworn statement by the Chairman of the Tribunal or any of its members to give evidence in support of his assertion but he did not do so. The Court however accepts that from the evidence the Claimant was present during the Tribunal hearing with Nelson, Peter and Kevin and that they had equally participated in the proceeding.



15.4. The second issue is whether the Claimant can claim ownership of Smol Belmoli through matrilineal line to Family Bulurave is a legal issue.

Mr. Boar submitted the answer should be positive relying on equal rights enshrined in Article 5 of the Constitution and relying on the case of Noel v. Toto [1995] VUSC 3.

Mr. Tevi submitted that the relevant law is not Article 5 but Articles 73, 74 and 75 of the Constitution. Article 73 states:

*"All Land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendents."*

Article 74 states:

*"The rules of custom shall from the basis of ownership and use of land in the Republic of Vanuatu."*

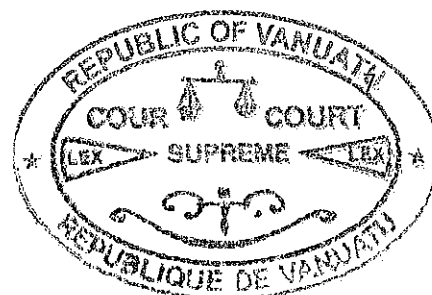
Article 75 states:

*"Only indigenous citizens of the Republic of Vanuatu who have acquired their land in accordance with a recognized system of land tenure shall have perpetual ownership of their land."*

15.5. Based on the above constitutional provisions Mr. Tevi submitted that the custom law recognized in South Santo concerning land tenure is first of all pure blood, and if there is none existing adoption. If there is no adoption and will, a woman surviving as descendant or issue will be recognized and given right of ownership.

15.6. The Claimant's witness Chief Teles is the Claimant's brother. In cross-examination, Chief Teles accepted the proposition by Mr. Tevi that in South Santo inheritance to land follows blood and adoption. And he accepted the four ways in which inheritance to land can be achieved or made being –

- (a) Pure blood through patrilineal line.
- (b) Adoption
- (c) Will



(d) Matrilineal (woman) if no surviving descendants or issues.

15.7. From the evidence before the Court, it is clear that the defendants are the surviving descendents or issues of late Bulurave by pure blood. Adoption and will have not been pleaded as issues. Even if they were pleaded they are not issues which this Court has jurisdiction to determine. They are issues for the Tribunal.

15.8. It is also clear from the evidence that the Claimant's mother is the daughter of the late Bulurave. These facts are accepted and are not in issue.

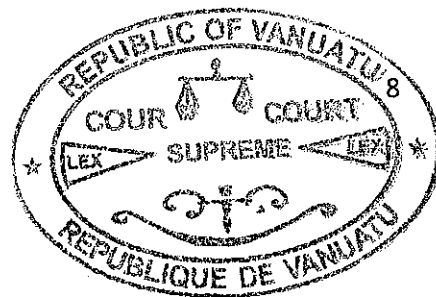
15.9. I need not go further to answer the issue as in my considered opinion, this Court lacks the jurisdiction to answer the issue. It is an issue for the customary lands tribunal. Counsel have raised constitutional arguments based on Articles 5, 73, 74 and 75 of the Constitution. However, the Claimant did not plead breaches of any constitutional rights regardless he particularized Article 5 at paragraph 4 of his pleading. This is not a claim founded upon the constitution. It is rather a claim for breach of agreement. The Court therefore declines to answer the second issue raised by the Claimant for the reasons provided.

15.10. The third issue is whether there was an agreement between the Parties and if so, what was the legal effect of the agreement?

Mr. Boar submitted that it should be answered in the affirmative. Mr. Tevi submitted that the Defendants did not agree to the contents of the agreement and that they did not sign it on the date that appears on the agreement.

15.11. The agreement is annexed as "D" to the sworn statement of the Claimant dated 27<sup>th</sup> March 2013 (exhibit C1).]

Nelson Karaisale said in evidence in cross-examination that he signed it on the road and only on 10<sup>th</sup> March 2013.





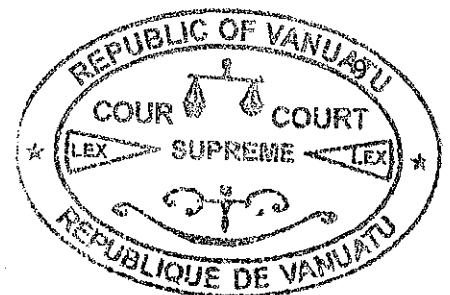
The Claimant in cross-examination accepted that some parts of the agreement were crossed out. That a pastor by name of Amos witnessed it. As to why they were crossings on it, the Claimant said that because there were some disagreements over those parts of the agreement.

15.12. From those evidence, the Court draws the inference and conclusion that there was no meeting of the minds of the parties to the agreement. The Claimant did not produce any evidence from Pastor Amos to support his assertions. It is abundantly clear that Nelson Karaisale signed the agreement some 5 months later on 10<sup>th</sup> March 2013. That is accepted by the Claimant. The terms of the agreement are so uncertain that they are not capable of being enforced as having any legal effect.

15.13. From those evidence, the Court comes to the conclusion that the purported agreement relied on by the Claimant is invalid, void and of no legal effect. And I so rule and declare.

15.14. The fourth issue is whether the purchase of vehicle Reg. No. 6831 given to Jairus Avo part of the terms of the agreement signed by the parties.

Mr. Boar did not address this issue at all in his written submissions. Instead he addresses another issue of whether the Defendants failed to perform to the terms of the agreement. The Claimant's pleading at paragraph 11 of the claim states clearly that there was a withdrawal of VT6,000,000 on 27<sup>th</sup> April 2011. Two vehicles were bought with this money. One of those vehicles (No. 6831) was given to Jairus Avo. The evidence was that the vehicle was for the Claimant but because he did not drive, his nephew Jairus Avo took the keys and drove it. The purported agreement was dated 7<sup>th</sup> November 2012 some 1 year and 7 months later. There is no evidence by the Claimant that he had any complaints within that period of time. That infers that he accepted the vehicle, the cost of which according to Nelson Karaisale's evidence in cross-examination was VT2,900,000. That evidence was not challenged or rebutted



by the Claimant. The Defendants admitted the Claimants' pleading in paragraph 11 in paragraph 7 of their defence dated 9<sup>th</sup> April 2013. Therefore is no issue here. Even if there was, the Court answers it in the negative.

15.15. The fifth and final issue is whether the VT20,000 given to the Claimant contemplated within the terms of the agreement?

Mr. Boar submitted that it was not.

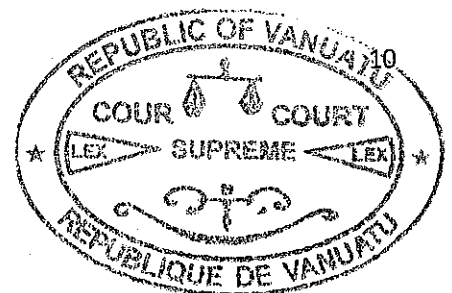
And for the same reasons the Court gives in relation to the fourth issue above, the answer to this issue is also in the negative.

Further, the Court finds the Claimant did not disclose the VT20,000 in his claims in his pleading under paragraph 12. This indicates some degree of dishonesty on his part. Further the Claimant failed to disclose that on 7<sup>th</sup> November 2012 when he drafted the purported agreement to include that he was offered VT1,000,000 by the Defendants but he refused to accept it. Ps. Amos made statement in support of the Claimant's application for interlocutory orders dated 9<sup>th</sup> April 2013. He was the Chairman of the meeting held on 7<sup>th</sup> November 2012. He deposed that at that meeting the Defendants agreed to give VT1,000,000 to the Claimant and offered also to build him a house, but the Defendants did not agree to share or divide equally the money paid to them as custom owners of Smol Belmoli Land.

15.16. In summary from the evidence before the Court the Claimant has benefitted from the payment of VT11,013,707 paid by the Government to the Family Bulurave by –

- (a) being part beneficial owner of the vehicle registered No. 6831 at the cost of VT2,900,000 on 27<sup>th</sup> April 2011;
- (b) VT20,000 he received on 9<sup>th</sup> May 2011; and
- (c) VT1,000,000 offer made on 7<sup>th</sup> November 2012.

In total he had benefitted directly to the sum of VT2,920,000 and had he accepted the VT1,000,000 offered the amount would have increased to VT3,920,000. That represents about 30 percent of the total amount paid to



the Defendants. What more could he get or want when by law he is not even entitled to any of those benefits. His allegations under paragraph 9 (a) and (b) of this judgment are therefore baseless and misconceived and must be dismissed.

### Conclusions

16. The claims by the Claimant are misconceived in that –


- (a) The Bred Bank is not a party to the proceeding.
- (b) There is no cause of action against the Second Defendants.
- (c) The Claimant raises constitutional arguments when the claims are not founded under the Constitution.
- (d) The Claimant has not established any claim of ownership to Smol Bemoli Land.

16.1. For all the reasons given above, the Court concludes that all the claims of the Claimant fail and are hereby dismissed.

16.2. Under those circumstances, the Defendants are entitled to their costs but which costs are limited to costs of preparation and trial which ran from 9.20 am to 11.30 am and 2.00 pm to 4.30 pm, as agreed or be determined by the Court.

DATED at Luganville this 4<sup>th</sup> day of November 2013.

BY THE COURT

  
OLIVER A. SAKSAK  
Judge

