

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

Civil Case No. 09 of 2010

BETWEEN: TNERAN VILVIL

Claimant

**AND: PATRICK TAURE
AKI TAURE**

Defendant

Coram: Mr. Justice Oliver A. Saksak

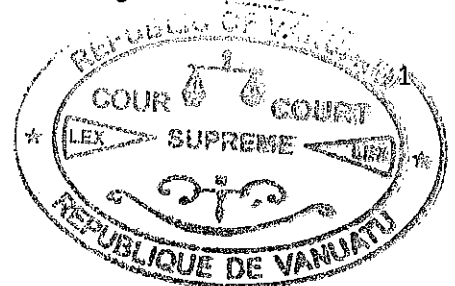
Counsel: Mrs. Marisan P. Vire for Claimant
Ms Jane Tari for the Defendants

Date of Hearing: 20th May 2013

Date of Judgment: 6th February 2014

JUDGMENT

- (1) This matter was heard on 20 May 2013. The Court heard oral evidence from the Claimant and also from the Defendant. There were no other independent witnesses who gave evidence in support of either the Claimant's claims or the Defendant's defence and counter-claims.
2. At the end of the short trial hearing, Counsel requested 14 days each for written submissions. Accordingly, the Court allowed 21 days each to Counsel and that judgment be given after 42 days. Unfortunately some 7 months have gone by and Counsel have not filed any written submissions. Due to the considerable delay, the Court will now dispense with those submissions.
3. The Claimants' claims are in tort for damages done to food crops and commercial fruits or trees. He claims a total of VT3,793,350 and VT100,000 for stress. He also claims costs. His claims relate to damage he alleges were



caused by the two defendants in April, twice in August and once in November 2009 respectively.

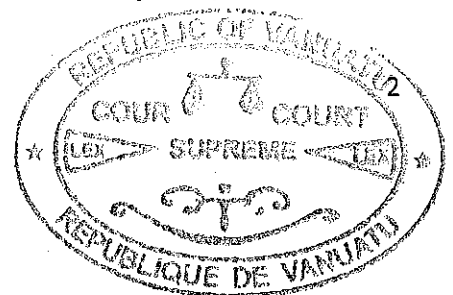
4. The Defendants filed a defence and counter-claim on 9th May 2011. They admit causing damage twice in August 2009 and once in November 2009. Against the Claimants claims for damage done in 2007 and 2008, the Defendants counter-claim against the Claimant for the damage he caused to their garden crops and fruit trees or commercial trees the sum of VT1,108,500. For damage done to a house and labour involved in rebuilding it they claim VT80,000. And for emotional stress they claim for VT450,000.

5. The Claimant filed a response to the defence and counter-claims of the defendants denying any liability for the damage claimed for.

6. At the hearing on 20 May 2013 the Claimant and defendant Patrick Taure gave evidence orally. They did not seek to rely on any of their evidence by sworn statements. And they did not seek to rely on any witness evidence by sworn statements. Ms Tari objected to the reliability of the Claimant's statement dated 1 July 2010. This is the Claimant's evidence showing damage done to 12 heads of coconuts in 2010. The Assessment Report indicates the sum of VT11,400. The maker of this report was not called to confirm it. There are no other assessment reports relating to damage alleged to have been done in 2009 or 2007. For these reasons the Court finds no basis for the Claimants' claims. And on that basis, all his claims are dismissed.

7. As for the counter-claims of the defendants, again for the same reasons stated in paragraph 6, the Court concludes there is no basis for such claims and accordingly all counter-claims are dismissed.

8. These are peculiar claims. The root cause appears to be land dispute as to ownership and boundary. There is no certainty as to which party owns which land. None of the parties have given any evidence showing they have been



declared custom-land owners of land they are claiming damages over. Until such time as that is done it is unsafe for the Court to entertain claims for damage based on tort.

9. Accordingly, all claims by the Claimant and all counter-claims of the Defendants are hereby dismissed.

10. There will be no order as to costs. Each party will pay their own costs.

11. The restraining orders issued by the Court on 20 May 2013 at paragraph 10 (a) is hereby vacated.

DATED at Luganville this 6th day of February 2014.

BY THE COURT

OLIVER A. SAKSAK

Judge

