

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

Civil Case No.310 of 2014

**BETWEEN:** MARALAU ARU (Snr)  
Claimant

**AND:** WARA JOSHUA & RIU JOSHUA  
representing Family JOSHUA  
First Defendant

**AND:** VIRA RONGO and JURI RONGO  
representing their NUCLEAR FAMILY  
Second Defendants

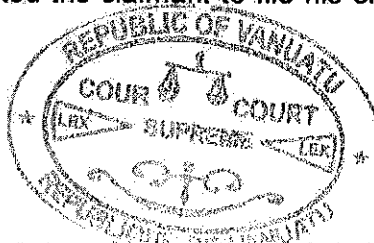
**AND:** TOA TOM and BANBAN TOM representing  
Family Tom  
Third Defendants

**Coram:** Justice D. V. Fatlali

**Counsels:** Mr. C. Leo for the Claimant  
Mr. T. J. Botleng for the Defendants

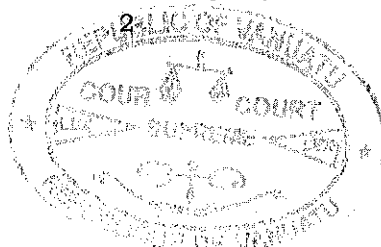
**REASONS FOR DECISION**

1. On 3 May 2016 this Court struck out the claim on an application filed by the defendants on 9 March 2016 invoking the Court's inherent jurisdiction and urging several grounds in support including non-compliance with Court orders, failure to prosecute the claim and the claim having a slim chance of success (whatever that may mean).
2. The action was first commenced by way of an urgent application on 21 October 2014 for injunctive relief. The application was granted in the absence of the defendants and the claimant was ordered to "... *file and serve on the defendants within 14 days a proper claim*". The basis of the claimant's standing to bring the proceedings was an assertion that on 17 August 2011 the West Land Area Tribunal of Malo had declared the "*Maralau family*" the custom owner of part of the customary land called "*Nanuhu*" as evidenced by a Land Certificate dated 14 September 2011.
3. Despite the order for the claimants to file a proper claim "*within 14 days*" (*ie.* by 4 November 2014) none was filed and after waiting a further 6 months the defendants filed an application to discharge the injunction on 29 June 2015. This in turn, prompted the claimant to file his claim on 23 July 2015



(*ie.* 10 months after being ordered to file the same). No sworn statement has yet been filed in support of the claim.

4. In his claim the claimant as "... *the lawful custom landowner*" sought an eviction order and damages of VT12 million for the defendants continuing occupation and enjoyment of the claimant's customary land in the Nanubu area on the island of Malo.
5. On 3 August 2015 the claimants filed an application to commit the defendants for their alleged contempt in breaching the Court's earlier injunctive orders. The application is vigorously opposed in numerous sworn statements deposed by the defendants.
6. On 26 February 2016 the defendants filed a defence denying the claimant's custom ownership of the land and advancing two (2) reasons for their right to occupy the land. Firstly they claim that their forebears had contributed financially to the purchase of the land and secondly, in the absence of any map or survey plan which it is the duty of the claimant to provide, the claim of trespass has not been established or proven and remains unsubstantiated.
7. On 17 March 2016 the injunction was dissolved for want of a map clearly showing the boundaries of the tribunal's declaration and the extent of the defendants' trespass and incursion within the claimant's boundary. The defendant's application to strike out the claim was listed for hearing on 3 May 2016.
8. On 3 May 2016 the claimant filed a belated sworn statement from Moli Vutilolo annexing a copy of the Land Certificate and a rough hand drawn sketch map purporting to show a land boundary and the area of the claimant's land that it is alleged the defendants had trespassed into. The defendants disputed the map and pursued the strike out application.
9. At the hearing of the strike out application claimant's counsel accepted that the claimant had not paid the costs of VT30,000 ordered on 17 March 2016 and counsel sought a further month to pay. Counsel also confirmed that the claimant had passed away in February 2016 and counsel sought time to regularize that. No application had been filed for representation. Counsel asserted that the claimant had a good claim and counsel drew the Court's attention to Rule 1.2 of the Civil Procedure Rules. There was also an outstanding contempt application by the claimant that had not been determined.
10. In this latter regard it needs hardly to be said that a party who is in breach of court Rules viz serving a sworn statement in support of a claim, cannot be heard to complain about breaches by other parties unless and until he himself complies with the Rules. Furthermore Rule 3.9 of the Civil Procedure Rules provides for the continuation of a claim by a "*personal representative*" if the claimant dies during a proceeding and the "*cause of*



action" continues after death. Accordingly in the absence of letters of administration and/or a declaration of custom ownership in favour of the deceased claimant's representative the continuation of the proceedings based on ownership of custom land is at best, irregular or unfounded.

11. In form and essence, this was an application to enforce a Land Tribunal decision under Rule 16.25 of the Civil Procedure Rules which relevantly provides:

"(1) A person who wishes to enforce a decision of a land tribunal may file a claim in the Supreme Court.

(2) The claim must:

- (a) set out the decision, the date it was made and who made it; and
- (b) name as defendant the person against whom the decision is to be enforced; and
- (c) state in what way the defendant is not complying with the decision; and
- (d) set out the orders asked for; and
- (e) **have with it a sworn statement in support of the claim.**

(3) The sworn statement must:

- (a) give full details of the claim; and
- (b) **have with it a copy of the record of the decision;** and
- (c) state that:

(i) the time for an appeal from the decision has ended and no appeal has been lodged; or

(ii) an appeal was made but was unsuccessful'.

12. It is immediately apparent that the claim is non-compliant with Rule 16.25(2)(c) in failing to include sworn statement in support of the claim. Furthermore although the Claimant has very belatedly filed a sworn statement with a copy of a Land Certificate and map, the Certificate is non-compliant with Rule 16.25 (3) (b) in so far as the "record of decision" of a tribunal is defined in the Rule as "...a record of a decision as set out in schedule 3 of the Act."

13. Schedule 3 of the Customary Land Tribunal Act provides a Form as follows:

*"Land Tribunal  
Record of Decision Form*

- 1) Name of Land Tribunal
- 2) Name of members
- 3) Name of secretary
- 4) Place of meeting
- 5) Date of meeting
- 6) Date of decision
- 7) Description of land in dispute
- 8) Sketch plan of land




- 9) Identifying customary land marks such as roads, rivers, lakes, coast line, trees, rocks
- 10) Terms of decision certified to be a true and accurate record of the decision of the Land tribunal

Chairperson \_\_\_\_\_ Date \_\_\_\_\_  
 Secretary \_\_\_\_\_ Date \_\_\_\_\_ .”

14. Despite those breaches claimant's counsel invites the Court to ignore them because they were not included as a ground of the application. I reject the invitation which runs contrary to the clear provisions of Rules 1.6(1) and 2.1 of the Civil Procedure Rules and, if ignored, would tantamount to condoning the claimant's own wrong-doing and dilatoriness.
15. Although the Land Certificate contains most of the required information, it does not comply with the Form and is drafted as a narrative. It does not bear an official stamp nor does it contain a "Description of the land in dispute". The name(s) of the other parties or counter-claimants in the dispute is not disclosed either.
16. Additionally, the reasons advanced in the Land Certificate clearly reveals that the disputed land was purchased from Navoko Malas "the last man of that land" by Pastor Winsi who, in turn, gave it to the claimant's father for missionary purposes. As such, it is very doubtful that the claimant would have acquired customary ownership of the land.
17. Indeed it is undisputed that the claimant's father originates from **Avunaresi** village and not Nanuku area where the disputed land is located. Furthermore it appears he was buried in the area against the wishes and express instructions of the true custom landowner.
18. For the foregoing reasons the application was granted and the claim was struck out with costs of VT10,000 ordered in favour of the defendants.

DATED at Port Vila, this 6<sup>th</sup> day of May, 2016.

BY THE COURT

  
**D. V. FATIAKI**  
 Judge.

