

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

Civil Case No. 27 of 2012

BETWEEN : SIZA WAIANE

First Claimant

AND: THIERRY MARCEL RABIN GRANDIDIER

Second Claimant

AND: GLEN & SIMONE AUGUST

Defendants

Coram: Justice Aru

Counsel: Mme. M.N. Patterson for the Claimants  
Mr. B. Yosef for the Defendants

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## JUDGMENT

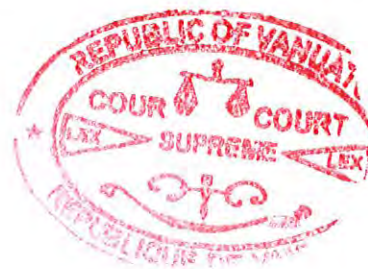
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### Introduction

1. The first claimant is from Erakor village on Efate and her de facto partner is the second claimant. The defendants are her uncle and aunt, Mr. and Mrs. August. The claim arises out of land dealings between the parties over lease title No. 12/0913/590 and Elaknap land which are both at Erakor village.

### Background

2. The defendants own custom land at Erakor. Initially they registered lease title No. 12/0913/213 over part of that land with Mr. August as the lessor and Mrs. August the lessee. Subsequently this lease was surrendered and a subdivision was created with



three new titles on the water front, one of which is the subject of these proceedings, lease title 12/0913/590 which was acquired by the claimants.

3. Following the claimants' acquisition of this lease, a dispute arose over the access road to their property. As a result of the dispute, the defendants planted 'nalalas' plants across the access preventing the claimants from accessing their property. This is what prompted the claimants initially to file an ex parte urgent application seeking restraining orders against the defendants. Later the defendants voluntarily removed the barrier. On 13 March 2012 the claimants filed their claim which was amended on 14 November 2012 to add the second claimant as a party. This resulted from a further dispute between the same parties over arrangements to acquire part of the defendants' custom land known as Elaknap by the second claimant Mr. Grandidier. A further amendment of the claim was made on 27 March 2013.

#### Claim

4. The claimants case is that:-
  - a) the defendants were obliged to construct a road access onto their property lease title 12/0913/590 according to the survey plan;
  - b) as a result of being denied access to their property they suffered damage;
  - c) the claimants also seek a refund of VT 1 million for the plot of land at Elaknap;
  - d) and seek damages for failure to make the refund.

#### Relief sought

5. The claimants seek the following relief:-
  - a) special damages in the sum of VT 10,000 per day for denial of access to the property lease title 12/0913/590 since 1 March 2012;



- b) VT 150,000 for damages suffered;
- c) VT 1 million or specific performance for the grant of a lease on plot No 5 on lease title No 12/0913/213 and the claimant paying the difference of VT 500,000 at settlement;
- d) rectification of the access road according to the survey plan.

## Defence

6. The defence case is that:-

- a) the current access road leads to the defendant's property;
- b) they deny that the claimants are entitled to any damages;
- c) there was no proper contract for the repayment of VT 1 million;
- e) the claim is frivolous and vexatious and should be struck out.

7. Regarding relief d) for rectification of the access road, Consent Orders were entered by the parties on 12 August 2013 prior to the hearing of the claim which the defendants consented to the following terms:-

### "CONSENT ORDERS

1. The defendants will apply to rectify the official survey plan of the road access to lease 12/913/590 by changing the access road as shown on the attached plan in yellow (Annexure A) and to pay all costs involved including the surveyor and costs of the survey and Lands department.
2. the new road will situated on the existing presently used by the parties as shown in yellow on the attached map.
3. the defendant Glen August confirms that he is the custom owner of the land on which the roads are situated , the road on the official plan and the proposed existing road .





*4. if the defendants do not proceed with all the applications to rectify the road within one month of the date of these consent orders , then the claimants are authorized by the defendants to apply on their behalf , all costs remaining the full responsibility of the defendants."*

## Evidence

8. The claimants rely on the following sworn statements:
  - Sworn statement of Louisa Kombe filed on 7 March 2013 and tendered as exhibit C1;
  - Two sworn statements of Thierry Marcel Rabin Grandidier filed on 7 March 2013 and 24 September 2012 and tendered as exhibit C2 and exhibit C3 respectively;
  - Sworn statement of Siza Waiane filed on 24 August 2012
  - Sworn statement of Christophe Dinh filed on 7 March 2013; and
  - Sworn statement of Martial Meltenoven filed on 21 August 2012.
9. Ms. Louisa Kombe and Mr. Grandidier were cross examined on their evidence.
10. The evidence for the defendants is the sworn statement of Mr. Glen August which was tendered as exhibit GA1. He was also cross examined.

## Lease title 12/0913/590 (the Property)

11. This lease was transferred to the claimants by Mrs. Simone August for a sum of VT1, 500, 000 and was registered on 12 April 2011. It is accepted by the parties that payment was done by installments until the full amount was paid. As far as issues concerning access to the property are concerned, those have been addressed in the consent orders referred to above.
12. The only remaining issue is whether the claimants are entitled to any damages for the period they were prevented from accessing the property. The defendants deny that the claimants are entitled to any damages as they removed the 'nalalas' plants voluntarily after taking legal advice from their solicitor. The evidence of the second claimant is that as a result of the defendants actions to deny them access to the Property which started on 2 March 2012, they have had to occupy their other house which was rented out to Mr.



Fancois Boutard for VT 150,000 a month. Their loss was rental for the month of March. A copy of the tenancy agreement with Mr. Boutard is annexed as Annexure "E" to exhibit C2. The tenancy was for a period of 12 months with effect from 1 February 2012.

13. Although the claimants also claim special damages of VT10, 000 per day for the period they were denied access to the Property there is no evidence that would support such a claim. However they did hire private security during this period to protect the Property at a cost of VT 37, 500. Annexure A to exhibit C3 is the invoice and copy of the claimants' cheque payment on the invoice.

#### Elaknap land

14. The claim for the refund of VT 1, 000, 000 relates to Elaknap land which is the defendants' custom land. The claimants allege that on 24 September 2009 Mr. August entered into an agreement with Mr. Grandidier for the sale of a piece of land at Elaknap for the sum of VT 1,000,000 (the First Agreement).
15. Mr. Grandidier later discovered that the land was sold to a third party and as a result on 28 October 2011 another agreement (the Second Agreement) was entered into by the parties for the refund of all monies advanced by Mr. Grandidier. The Second Agreement is Annexure "D" to exhibit C3. An English translation of this agreement is Annexure "B1" to exhibit C2 which sets out the terms as follows:-

#### *"TRANSACTION FOLLOWING BREACH OF CONTRACT FOR SALE*

##### *Preamble*

*On 24 September 2009 Mr. Glen August signed a sales agreement concerning a plot of 2000 m2 on the site called ELAKNAP. Land giving directly on the lagoon, for the price of one million vatu (VT million) to Mr. Thierry Rabin Grandidier.*

*Thierry Rabin gave an advance payment of 180,000 (one hundred and eighty thousand) by ANZ check 453.*

*Mr. Glen August wish a survey to be done on the entire land and he does not have the money for it, he asked Mr. Thierry Rabin Grandidier to advance all expenses for this*





survey. Mr. Thierry Rabin Grandidier paid the sum of 110,000 vatu (VT one hundred and ten thousand) for the survey of the land. – cheque ANZ 155.

The amount and detail is below:-

Location: ELAKNAP (land of about 2000m2 to the lagoon  
1,000,000

Date	Payment methods	Debit	Accumulated amount
	ANZ BRED CASH		
Advance 24/sept/09	453	180,000	180,000
Survey 14/oct/09	155	110,000	290,000
Total paid by Mr. Rabin		290,000	
BE. TRG fees consultation			
1.meeting with the surveyor		25,000	
2.survey of land with surveyor		45,000	
3.appointment with SHEFA province (passage of the road		20,000	
4.signing of land by the Topographic Service		40,000	
5.meeting with the customary		15,000	
6.meeting with the chiefs		15,000	
7.drafting of the transaction with Sandy Pakoa		15,000	
8.Translation to bislama		10,000	
9.signing of transaction		5,000	
Total BE. TRG fees		190,000	
Total ELAKNAP			480,000
Total ERAKOR			351,696
Total to pay to Thierry Rabin			831,696

That is

Mr. Glen August wishes to take back the ELAKNAP plot of land he needs money and he got more interesting offer.



*Both parties agree to a refund of the expenses incurred by Mr. Thierry Rabin Grandidier with a penalty paid by Mr. Glen August 168,304 (one hundred sixty eight thousand three hundred and four VT).*

*The amount to be paid by Mr. Glen August is 1,000,000 vatu (one million vatu)*

*This sum is to be reimbursed by 5 installments of 200,000 (two hundred thousand vatu).*

*First refund installment on 1 October 2011*

*Second refund installment November 1, 2011*

*Third refund installment December 1, 2011*

*Fourth refund installment January 1, 2012*

*Fifth refund installment 1 February 2012*

*In case of late payments owing will be increased by 10%.*

*Erakor September 28, 2011*

*Monsieur Glen August*

*Monsieur Thierry Rabin Grandidier*

*Witness: Madame Louisa Kombe"*

16. The amount to be refunded by Mr. August under this agreement was VT831, 696 with an added penalty of VT 168, 304 making a total of VT 1, 000,000. It is alleged that on 22 October 2011 another agreement was entered into by the parties (the Third Agreement). That Mr. August offered Mr. Grandidier another plot of land for the sum of VT 1, 500,000 as indicated on the map annexed as Annexure "E" to exhibit C3. It is alleged that the parties accepted that the sum of VT1, 000, 000 would be set off against the debt owing on the Second Agreement and Mr. Grandidier would only pay the balance of VT500, 000.
17. The defendants deny that the claimants are entitled to another plot of land as they have not received any monies for it and say that the claimants are trying to reap them of their land.
18. The sequence of events leading to the three agreements is that following allegations that Mr. August did not comply with the First Agreement, the Second Agreement was entered



into to remedy the alleged breach, and following non-compliance with conditions of the two previous agreements the Third Agreement was entered into.

## Discussions

19. The purported First Agreement is a statement of monies advanced by Mr. Grandidier to Mr. Glen August. It is annexed as Annexure "C" to exhibit C3. The following payments are shown to have been made by Mr. Grandidier:-

1. Advance 24 September 2009 -180, 000
2. Geometre 14 October 2009- 110, 000

20. Although the claimants allege that the parties signed an agreement on 24 September 2009, there is no evidence of such an agreement before the Court apart from the statement of monies advanced. Secondly the terms and conditions of the First Agreement are not pleaded in the claimant's further amended claim filed on 23 April 2013.

21. What is pleaded at paragraph 12 of the claim is the Second Agreement signed on 28 September 2011 for the refund of VT 1, 000, 000. The agreement as set out in full at paragraph 15 above shows that the only monies paid to Mr. August was an advance of VT 180, 000 the rest were fees paid by the second claimant to others including surveyors, chiefs etc to enable him to obtain a lease title over Elaknap land.

22. ELAKNAP land is custom land. Article 73, 74 and 79 of the Constitution of the Republic of Vanuatu states:-

**"73. Land belongs to custom owners**

*All land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants.*

**74. Basis of ownership and use**

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

**75. Perpetual ownership**





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

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**79. Land transactions**

*(1) Notwithstanding Articles 73, 74 and 75 land transactions between an indigenous citizen and either a non-indigenous citizen or a non-citizen shall only be permitted with the consent of the Government.*

....."

23. And under the Land Reform Act [CAP 123] as amended Part 4 of the Act provides:-

**"PART 4 – NEGOTIATIONS AND AGREEMENTS RELATING TO CUSTOM LAND**

**6. Certificate of registered negotiator**

*(1) No alienator or other person may enter into negotiations with any custom owners concerning land unless he applies to the Minister and receives a certificate from the Minister that he is a registered negotiator.*

*(2) A certificate issued in accordance with subsection (1) shall –*

- (a) state the names of the applicant and of the custom owners;*
- (b) give brief details of the land in respect of which negotiations are registered; and*
- (c) state the object of the negotiations.*

*(3) If negotiations are completed without compliance with subsection (1) the Minister may refuse to approve the agreement between the custom owners and the unregistered negotiator and if he is an alienator may declare the land unsettled land.*

**7. Void agreements**

*All agreements between persons who are not indigenous citizens and custom owners relating to land shall be void and unenforceable in law unless they have been –*

- (a) approved by the Minister; and*
- (b) registered in the Land Records Office."*

24. Article 79 1) of the Constitution prohibits land dealings between indigenous citizens and non-indigenous citizens or non-citizens unless consent is first granted by the Government. Section 6 of the Land Reform Act specifically states that no person may



enter into negotiations with any custom owners concerning land unless he applies to the Minister and receives a certificate from the Minister that he is a registered negotiator.

25. The onus is on the second claimant to show that he has applied to the Minister of Lands and received a certificate of registered negotiator to negotiate a lease of Elaknap land with Mr. August. Unless he has done that any agreement entered into in respect of a custom land without the approval of the Minister is void as provided by section 7.

26. There is no evidence before the Court that the second claimant applied and obtained a registered negotiator certificate from the Minister of Lands before entering discussions with Mr. August over Elaknap land. When Mr. Grandidier was asked in cross examination whether he had a negotiator certificate issued by the Minister his response was he did not know about this formality.

27. In the absence of a negotiator certificate issued by the Minister of lands to the second claimant the First, Second and Third Agreements are void and unenforceable.

#### Undue influence

28. The defendants in their defence at paragraph 12 plead undue influence as follows:-

*"12. As to paragraph twelve and its particulars, the defendant wishes to state that, the second claimant had exceed (exerted) undue influence on the defendant to sign the agreement (the Second Agreement) without firstly explaining the nature of this agreement..."*

29. No particulars are given. The claimants submit that the burden was on the defendants to establish that undue influence existed at the time of the signing of the agreement. Furthermore, they say that there never was any mention of any undue influence through the whole process of the three contracts.

30. Even if the allegations of undue influence are not made out, the three agreements are unenforceable for the reasons given above.

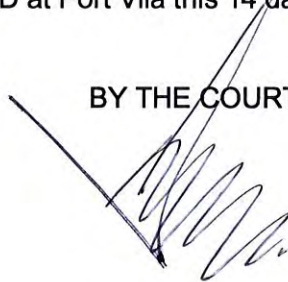
31. Judgment is entered for the claimants as follows:-



- a) Damages in the sum of VT 150,000;
- b) Special damages in the sum of VT 37, 500;
- c) Costs to be agreed or taxed by the Master.

DATED at Port Vila this 14 day of June 2016

BY THE COURT



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D. Aru  
Judge.

