

**BETWEEN: CHURCH OF MELENESIA**  
Claimant

**AND: THE REPUBLIC OF VANUATU**  
First Defendant

**AND: BOATARA QUARRY AND WORKS LIMITED**  
Second Defendants

**AND: CHIEF SUMBE AND CHARLIE MOLISALE**  
Third Defendants

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

**Counsel:** *Lent Tevi for the Claimant  
Kent Tari for the First Defendant  
Felix Laumae for the Second Defendant*

**Hearing Dates:** *23<sup>rd</sup>, 24<sup>th</sup>, 25<sup>th</sup> May 2016*  
**Judgment Date:** *11<sup>th</sup> August 2016*

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## **JUDGMENT**

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### Introduction

This is a claim for damages as a result of trespasses by the First and Second Defendant onto the Claimant's lease title no.04/3313/001, situated on the West of Malo Island in the Sanma Province.

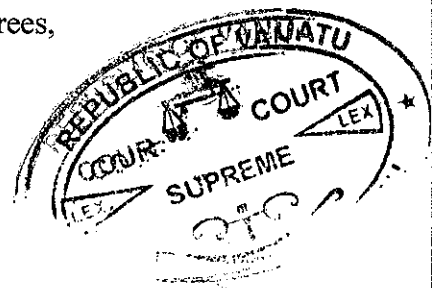
### Claims

The Claimant claims that from 3-7 February 2014 the First and Second Defendants created a new access road through the Claimant's lease ( Title 001) without consultation and permission from or by the Claimant.

The Claimant claims further that it was the Third Defendants who had given authorisation to the First and Second Defendants to enter Title 001 without the Claimant's consent and authorisation.

Specifically the Claimant claims-

VT 609,350 for damages to 300 coconuts, 7 bread fruit trees and 60 citrus trees,



3. The Claimant claims further that it was the Third Defendants who had given authorisation to the First and Second Defendants to enter Title 001 without the Claimant's consent and authorisation.
4. Specifically the Claimant claims-
  - a) VT 609,350 for damages to 300 coconuts, 7 bread fruit trees and 60 citrus trees,
  - b) VT 66,500 costs to Geomatic solution Vanuatu,
  - c) VT 25.000 travelling costs,
  - d) VT 50.000 repair costs,
  - e) VT 3.5 Million- costs of materials,
  - f) VT 500.000- damages for trespass, and
  - g) VT 500.000- punitive damages, and
  - h) Costs of the proceeding-

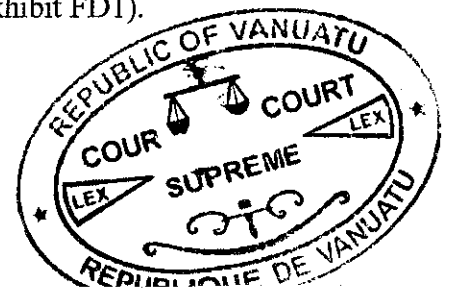
**TOTAL= VT 5.250.850**

### Defences

5. The First Defendant denied any trespass and say that if there was, it was the Second Defendant's bulldozer whose driver had been authorised by the custom owners representatives, as Third Defendants herein.
6. The Second Defendant on the other hand denied liability and alleged the work was authorised by the Public Works Department.
7. The Third Defendants had no defences to the claims.

### Evidence

8. The Claimant relied on the evidence of Bishop James Marvin Ligo ( Exhibit C1), George Hinge, ( Exhibit (2)) Anthony Seketa ( Exhibit C3), John Siba ( Exhibit C4 and C5), and Austine Rolly (Exhibit C6) in support of their claims.
9. The First Defendant relied on the evidence of Sam Namuri ( Exhibit FD1).



10. The Second Defendant relied on the evidence of John Tari Molbarav ( Exhibit SD2)

11. The Third Defendants produced no evidence.

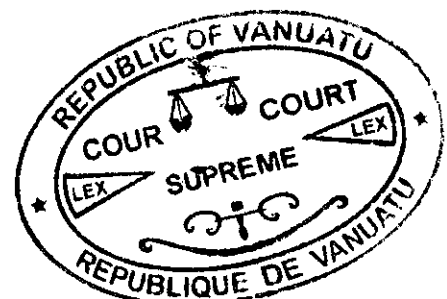
**The Issues**

12. The Claimant raised three issues as follows:-

- a) Whether the First and Second Defendants trespassed and caused damage on the Claimant's property?
- b) Whether the First and Second Defendants are liable for trespass and damages?
- c) How much is the damages payable by the First or Second Defendants?

13. The First Defendant raised the following issues:-

- a) Whether they are liable in trespass and causing damage to the Claimant's leased property on Title 001?
- b) Whether they entered the Claimant's property?
- c) Whether they entered the Claimant's property by some intentional act?
- d) Whether they entered the Claimant's property without lawful authority?
- e) Whether the Claimant has lawful possession of Title 001?
- f) Whether the Claimant's enjoyment of Title 001 was interfered with?
- g) Whether the Second Defendant acted as agent of the First Defendant, and if so, could the Second Defendant be held liable?
- h) Quantum of damages, Whether proved?



### Submissions

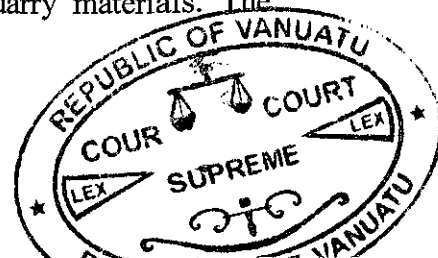
14. On 25<sup>th</sup> May 2016 Counsel requested time to file written submissions. The Court issued directions requiring the Claimant to file written submissions within 14 days by 8<sup>th</sup> June 2016, and for the defendants to file written submissions within 14 days thereafter by 22<sup>nd</sup> June 2016.
15. The Claimants filed their written submissions on 10<sup>th</sup> June 2016 and the First Defendant filed their submissions on 4<sup>th</sup> July 2016. The Second and Third Defendants have not filed any written submissions. The Court will dispense their submissions.

### Discussions

16. First, it is not contested that the Claimant is the registered proprietor of Lease Title 001 and that as such the Claimant has lawful possession.
17. Second is the issue of trespass. Mr Tari argued and submitted that in order for the Claimant to succeed on their claim for trespass they had to establish by evidence that-
- a) The defendants entered their property either directly or indirectly,
  - b) They did so by some intentional act,
  - c) They had no authority,
  - d) The Claimant had lawful possession of the land, and
  - e) The Claimant's enjoyment of the land was interfered with.

Counsel submitted that this is the common law requirement as set out in the PNG case of Bob.v.Stelli Bay Lumber Company Ltd [2008] PNGC 120 and adopted by the Supreme Court of Vanuatu in the case of Kuckry.v.Republic [2015] VUSC, CC 111 of 2008 and an earlier case of Mamelin .v. Republic CC 31 of 2013.

18. The Court agrees with Mr Tari's submissions and confirms the position as trite law. From the evidence before the Court of the Director of Public Works Department ( PWD) Mr Namuri that in or about June 2013 PWD mobilised on Malo to carry out road maintenance in accord with the 2013 Business Plan. In doing so PWD contracted Boetara Trustees Ltd, Second Defendant for the supply of quarry materials. The



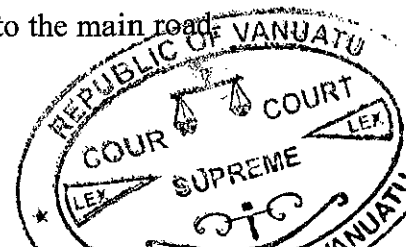
Second Defendant used its own bulldozer and driver. The contract works were supervised by the PWD Luganville Manager, Simeon Stanley. When the bulldozer entered the Claimant's property Mr Stanley was on Santo meeting with Bishop James Ligo. It was only upon his return to Malo that he found that work had been done on and through the Claimant's property. PWD had no bulldozer on Malo at the relevant time.

19. Mr Stanley's evidence corroborated and confirmed Mr Namuri's evidence that ( a) PWD had engaged Boetara Trustees Ltd pursuant to a contract for provision of quarry materials needed for the road works, (b) the bulldozer and its driver were the Second Defendant's and (c) He supervised the work. Mr Stanley went further to reveal that the then Prime Minister Moana Carcasses Kalosil and the late Havo Moli (MP) had given him information that the bulldozer had to clear an access or feeder road through the Claimant's property for farmers to have easy access to the coast to transport their products to Luganville. He then instructed the driver of the bulldozer not to do anything until he received authorisation from the Claimant. He confirmed that only upon his return that he found the work had been done and upon enquiries from the driver, the witness was told, the driver had obtained authorisation from custom-landowners by names of Chief Sumbe and Charlie Molisale.

20. Mr John Tari Molbarav gave evidence in support of Boetara Trustees Ltd, Second Defendant. He confirmed the bulldozer and driver were the Second defendant's but that they were hired by PWD under a contract for Physical Services and Equipment Hire (Exhibit SD2). He confirmed the instructions to do the feeder road came from the then Prime Minister and the late Havo Moli (MP). He denied that the Second Defendant is liable for the damages done on and to the Claimant's property.

The driver of the bulldozer was not called to give evidence.

21. The Claimant called evidence from 5 witnesses namely Bishop James Ligo, George Hinge, Anthony Seketa, John Siba and Austine Rolly. All witnesses placed responsibility for the damage on PWD and the First Defendant, and not the Second Defendant. None of these 4 witnesses saw the bulldozer and the driver on site except Austine Rolly who said the bulldozer was PWD's and that it was PWD who asked him to move the gate, paving way for them to push the road through to the main road.



He did not say how he recognised the bulldozer and he did not say who the persons were who asked him to move the gate and how many they were.

22. From the relevant evidence summarised, it is clear to me that-

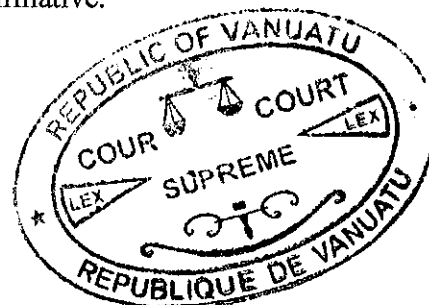
- a) The bulldozer that did the clearing of the feeder road through the Claimant's property was the Second Defendant's bulldozer, including its driver.
- b) The instruction to do the clearing did not come from PWD who were the construction supervisor and site Manager under the contract.
- c) The authorisation to do the clearing did not come from PWD.
- d) The entry by the bulldozer and its driver onto the Claimant's property was not done by PWD or the First Defendant.
- e) The feeder road was constructed outside the scope of the Lump Sum Contract for Supply of Quarry Materials (Annexure "SN2) to Exhibit FD1) and also outside the scope of the Contract for Physical Services- Equipment Hire ( Exhibit SD2).

As such the works were done unlawfully and neither the First and/or the Second Defendant could be bound and be held responsible for any damage done to the Claimant's property.

23. For the reasons and findings given, the issues raised by the Claimant in paragraph 12 (a) and (b) are answered in the negative. It follows as a consequence that the claimants are not entitled to any damages from the First and Second Defendants, and the issue in (c) is answered in the negative.

24. Further for the same reasons given, the issues raised by the First Defendant in paragraph 13(a), (b), (c) and (d) are answered in the negative.

The issues in paragraph 13 (e) and (f) are answered in the affirmative.



The issue raised in paragraph 13 (g) as rightly submitted by Mr Tari was not pleaded by the Claimants and therefore the Court will not determine the issue.

25. It is clear however from the evidence that the authority to create a feeder road through the Claimant's property was given by the Third Defendants representing the custom-owners of the land in Lease Title 001. The necessary inference drawn by the Court from the evidence and facts of the case is that the custom owners used their Member of Parliament, the late Havo Molisale who communicated directly with the then Prime Minister. And upon that authority the then Prime Minister gave instructions to Mr Stanley for works to begin. It is inferred further that the custom landowners and the Member of Parliament took opportunity of that time as appropriate to see their wishes come into reality. And it did. It is probable also that the instruction of the then Prime Minister bypassed Mr Stanley and given directly to the driver of the Second Defendant's bulldozer and works began while Mr Stanley was still in Luganville and/or Port Vila awaiting for permission from the Claimant's governing authority. It is probable that the driver of the bulldozer acted on the instructions and went to work. He did so in good faith.

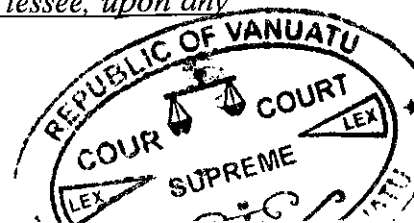
26. Having done so, damage resulted. The Claimant's enjoyment of their lease was disturbed or interfered with. So who is to be rightfully blamed?

In my considered view the blame and responsibility has to fall squarely on the custom-owners of the land as represented by the Third Defendants.

27. The Third Defendants have never responded or filed any defence to the claims. They were joined as a party on the application of the Claimants on the basis that it was they who gave authorisation to the driver of the Second Defendant's bulldozer to enter the property and do the clearing.

28. Service on the Third Defendants remain in doubt. But be that as it may, one of the conditions of Lease 001 is the "Power to enter" which states-

*e) The lessors shall have the right for themselves and for all persons authorised by them with all necessary machinery equipment, vehicles and horses to enter at all reasonable times and after given (sic) reasonable notice so (sic) the lessee, upon any*



part of the demised land for the purposes of exercising any of the rights herein-before excepted and reserved and for the purpose of inspecting and (sic) condition of the demised land PROVICED (sic) ALWAYS that the lessors shall only enter the demised land on the prescribed access or rights of away as determined by the lessee AND the lessors shall make reasonable compensation to the lessee for any damage in consequence of the exercise of the aforesaid rights."

(My underlining for emphasis)

29. From the evidence, it is clear the custom owners as lessors, Rovo Sumbe being one of the named lessors, did not give any prior or reasonable notice to enter the demised land. Despite all good intentions they might have, the lessors as custom-owners were obliged to give notice to the Claimants. There is no evidence that they did. Therefore their authorised entry to the driver of the bulldozer did some damage to the claimant's crops and property. Under the lease, it is the lessors who shall make reasonable compensation to the lessee for any damage done and suffered in consequence of the actions of the authorised person, machinery equipment or vehicle.

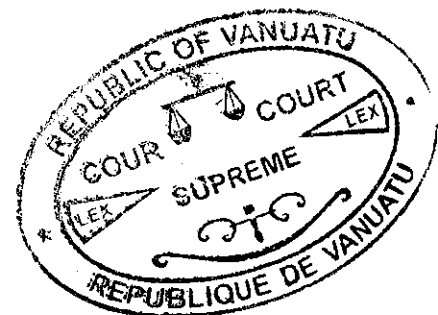
30. The lease also has a provision about determination of disputes. Clause 7 states-

*"If any dispute or difference shall arise between the lessor and the lessee concerning any matter within this lease, it shall be referred to the Lands Referee appointed under the Lands Referee Act Cap.148."*

31. The Claimants chose instead to file proceeding in this Court and have paid the appropriate fees. There is no reason to refer the matter back to the Lands Referee to save duplication of costs.

32. The claimant is entitled only to reasonable compensation. In my considered opinion the reasonable compensation is in the sum of VT 609.350 made up as follows:-

(a) For 300 local coconuts	-	VT 285.000
(b) For 7 Breadfruit trees	-	VT 42.000
(c) For 60 Citrus trees	-	VT 282.000
		<b>VT 609.350</b>





34. The claims for materials, hiring, transport and labour costs are rejected. Claims for trespass and punitive damages are also rejected.

**The result**


35. The claimant's claims against the First and Second Defendants fail in their entirety and are hereby dismissed with no order as to costs. Each party is to meet their own costs.

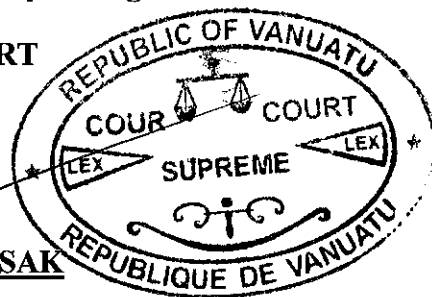
36. As regards the Third Defendants, the Claimant is successful in their claim and judgment is given in their favour for reasonable compensation in the sum of VT 609.350.

37. Finally the Claimants are entitled to their costs of the proceeding against the Third Defendants on the standard basis as agreed or taxed.

**DATED at Port Vila this 11th day of August 2016**

**BY THE COURT**

  
**OLIVER.A.SAKSAK**



**Judge**