

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

Civil
Case No. 20/20 SC/CIVIL

BETWEEN: Ezekiel Bule
Claimant

AND: August Tabi and Steward Bule
Defendants

Date of Hearing : 12 May 2020
By: Justice G.A. Andrée Wiltens
Counsel: Mr H. Tabi for the Claimant
No appearance by of for the Defendants
Date of Decision: 14 May 2020

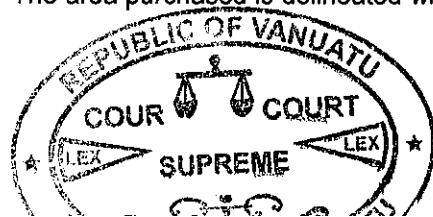
JUDGMENT

A. Introduction

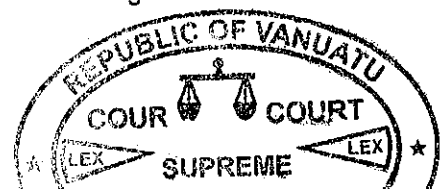
1. This is a Claim for eviction from land on Pentecost Island. It involves those with secondary use rights in respect of some area of land attempting to occupy land for which they have no usage rights.

B. Background

2. Mr Ezekiel Bule's sworn statement related the history of this matter.
3. In 1947, his father, Mr Joe Tabi in conjunction with two others purchased an area of land adjacent to Levigintema from Mr Samson Bule and family. A diagrammatical sketch of the area was appended to Mr Ezekiel Bule's sworn statement, showing the various areas referred to which are depicted by different colourings as well as printed labels. That original sketch is appended to this decision for the purposes of accuracy. The area purchased is delineated with yellow markings.



4. In 1948, Mr Joe Tabi and others cleared the area of land known as Leoumtemrap. In return for their assistance, Mr Abel Buletik and Mr Erick Bule were invited to settle on part of the land purchased. Those areas are depicted respectively as "Family Abel" and "Family Joram".
5. The Aldam area was next to be cleared, with the assistance of Mr Elikem Bule. In return for that assistance Mr Elikem Bule and Mr James Bule were invited to settle at Aldam area.
6. Next Mr Joe Tabi and his wife cleared the Lebare area and Vanmaselang. That area was made into gardens with coconut palms planted. It was settled by Family Morris.
7. Other areas were set aside for communal use, such as the nakamal, soccer field and Church, which are all marked on the sketch.
8. Finally, the remaining area to the top and top-right of the land depicted in the sketch was designated the area for Family Joe Tabi, the Claimant's family – it is labelled Family James and delineated by the green markings. That land was further divided and settled as follows and as further marked on the sketch:
 - In 1962, there was a request that a dispensary be built, so a further area was set aside for that;
 - In 1972 a Teleradio aerial was built;
 - In 1978 the Woman's Club area was created;
 - In 1982 a communal water tank;
 - Mr James Bule built a private dispensary; and
 - Finally, a co-operative store was built.
9. The community are said to have lived happily in their allotted areas, until in the 1990's when a son of Mr Joram Bule, Mr August Tabi returned to live on Pentecost from Santo.
10. Mr August Tabi did not settle in the Family Joram area with other members of his family – instead he built a house in the Old Church House area.
11. He then built his outdoor kitchen next door in the Old Nakamal area.
12. Both those areas are marked on the sketch and had been kept for communal use even though the Church and Nakamal had been moved by then to other parts of the area originally purchased by Mr Joe Tabi and his two associates.
13. Next, Mr August Tabi claimed for himself the entire Leoumtemrap area.
14. Finally Mr August Tabi, and his son Steward Bule, moved into the area at the top and top-right of the sketch labelled Family James and delineated with green markings. He built a house in

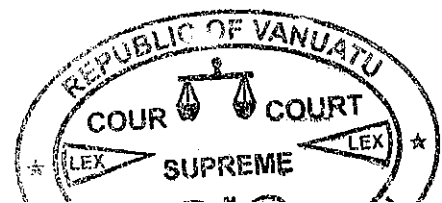


the area allocated for the Woman's Club, and fenced off the former Teleradio area as well as the area the old dispensary used to occupy.

15. As a result, the Claimants say that Family Joe Tabi is now left with no area of their own to occupy on land which they own as a result of inheritance.
16. There have recently been many Village meetings to discuss the dispute that has recently arisen within the community. Those meetings are said to have confirmed who is allocated to what area as described by Mr Ezekiel Tabi in his sworn statement. Further Mr August Tabi and his son Mr Steward Bule have had it clearly explained to them where they are permitted to occupy within the community. However, things have not improved, which led to the current Claim being filed and appropriate Court restraining Orders sought.
17. On 8 January 2020 Justice Felix granted interim restraining orders Court orders against the two-named defendants. Those orders restrained the defendants from carrying out any development or any other form of activities on the land at the far end of Leoumtemrap, including Teleradio, Water tank, Co-operative, Dispensary and Woman's Club areas. The orders also restrained the defendants from moving into Levigintema and carrying out development or other form of activity there.
18. The restraining orders have been served on the defendants, but it is alleged they are ignoring their legal effect. An application for finding the defendants in contempt has accordingly been made. Such application must be personally served according to the Civil Procedure Rules, and accordingly the contempt application has yet to be advanced. In the meantime, there was an application filed for judgment by default as no steps have been taken in these proceedings by the defendants. That is not an available remedy for this kind of case. Further, it has been submitted that judgment be granted pursuant to Rule 4.5(5) – again I do not consider that appropriate.
19. However, as no steps have been taken by the defendants, the hearing this week has been taken as pursuant to Rule 12.9(1)(c).

C. The Claim

20. The Claim set out much of what has been described earlier.
21. The relief sought was as follows:
 - (i) An Order that the Claimant and family is the rightful occupier and/or custom owner of the land areas of Leoumtemrap, Lebare, Wanmaseleng [sic] and Aldam;
 - (ii) An order that the Claimant is the lawful occupier of the land area at the far end of Leoumtemrap area, close to the main road which he occupied and possessed as part of the land being paid by his father and family;
 - (iii) An order that the Defendant August Tabi vacate the areas that have been allocated for the community church and nakamal and be settled back in the area which his father, Joram Bule used to occupy;



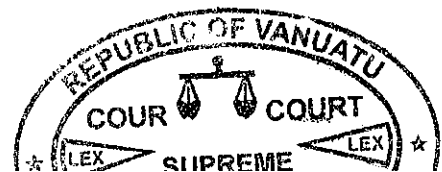
- (iv) An order that the defendants must immediately stopped their actions and withdraw from trespassing into the area at the far end of Leoumtemrap area, close to the main road which the Claimant occupied and possessed as part of the land being paid by them;
- (v) An order that the Defendant August Bule must immediately stopped his actions and withdraw from trespassing into Levigintema custom land belonging to the Claimant;
- (vi) Damages to be assessed; and
- (vii) Costs.

D. Evidence

22. The main witness is obviously the Claimant, Mr Ezekiel Bule. His sworn statement is accepted as true and correct – there is nothing before me to contradict any of it, and it is supported by other evidence. In particular, the evidence set out in paragraphs 2 to 15 of this judgment inclusive are accepted as being accurate and truthful.
23. The sworn statements of Mr Darren Bakai and Mr Morrie Tabi confirm important parts of Mr Ezekiel Bule's evidence such that I consider them to be corroborative.

E. Discussion

24. On the basis of that evidence I find the application to be largely made out to the civil standard of proof, namely more likely than not to be correct. Accordingly I have no hesitation in mostly accepting the Claim and giving judgment accordingly.
25. That said, the relief sought does not appear to me to fit the requirements of the situation. The aim of this litigation is to confirm the previous status quo as it was prior to Mr August Bule and his family disturbing what had had been a contented community. The community can be re-instated to that state by restricting Mr August Bule and his family to being permitted to occupy only that area that was allocated to Family Joram as depicted on the sketch.
26. Accordingly what is sought by proposed order (i) is appropriate in my view. As declared owner of the entire land area shown in the sketch, there seems to me to be no need for proposed order (ii) to be made – proposed order (i) makes it obsolete. Proposed order (iii) appears appropriate, if worded slightly differently. Proposed order (iv) is also superseded in my view by the previous orders contemplated.
27. Proposed order (v) relates to Levigintema area. The evidence does not demonstrate that to be owned by the Claimant; nor does it show that the Defendants have trespassed or done anything on this land. This part of the Claim has accordingly not been made out and such an order cannot be issued.
28. Proposed order (vi) sought damages as assessed. Before me Mr Huri abandoned that. Proposed order (vii) sought costs. Although the defendants have taken no steps, the Claimants have expended funds on having to bring this matter to Court after earlier efforts to



resolve the matter within the community failed. Accordingly, costs for the Claimants are appropriate.

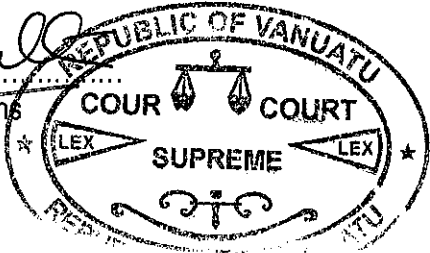
F. Result

29. The following orders are therefore issued:

- (i) An Order that Family Joe Tabi is the rightful occupier and custom owner of the land areas of Leoumtemrap, Lebare, Vanmaseleng and Aldam which are depicted on the attached sketch as delineated in yellow; and
- (ii) An order that Mr August Tabi and all members of his family, within 21 days of service of this decision, vacate all the areas shown on the attached sketch than the area which his father, Joram Bule used to occupy – which area is depicted by the label “Family Joram”.
- (iii) Costs. The Claimants are entitled to an award of VT 75,000 costs. They are to be paid within 21 days.

**Dated at Port Vila this 14th day of May 2020
BY THE COURT**

G.A. Andree Wiltens
Justice G.A. Andree Wiltens



WUSUNMEL
SKETCH MAP

"EB1"

