

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

**Civil
Case No. 20/3103 SC/CIVL**

BETWEEN: Soterio Tevanu
Claimant

**AND: Cerilo Varavara
Japeth Okau
Silas Tamata**
Defendants

Coram: *Justice Aru*
Counsel: *Mrs. M. Vire for the Claimant
Mr. J. Vohor for the Defendants*

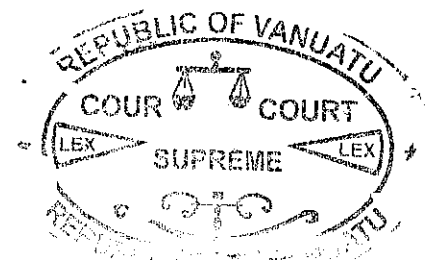
JUDGMENT

Introduction

1. The claimant claims compensation from the defendants for loss of property being his food crops, fruit trees and valuable trees following his eviction by the chiefs of Radio Station in Luganville, Santo where he resided.

Background

2. Mr Cerillo Varavara is the custom landowner of the area known as Radio station in Luganville, Santo. He allowed the claimant to live within his custom land boundary and gave him a plot of land. The claimant cultivated his plot and planted food crops as well as fruit trees and valuable trees such as sandal wood. Japeth Okau and Silas Tamata are community chiefs of the residents living within the Radio Station area.
3. Sometime in May 2020, a meeting was held between the chiefs and the claimant to deal with an issue of alleged use of witchcraft. The claimant and several individuals were suspected of practising witchcraft following the death of a female member of the community. At the end of the meeting the claimant was given 10 days to leave the community. He complied with their demands and left area leaving behind most of his valued possessions including his food crops fruit trees and cash crops.



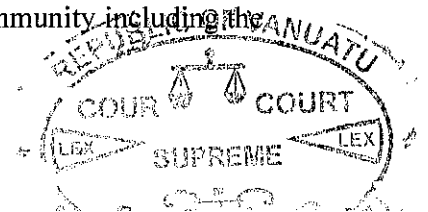
4. The claimant claims VT995,000 as damages for the loss of his forestry and agricultural produce, VT 95,000 in transport costs and VT 500,000 for stress and humiliation.
5. This is a civil claim. The claimant has the burden of proving his claim that he is entitled to compensation on the balance of probabilities.

Evidence

6. He filed several sworn statements tendered as **Exhibits C1** to **Exhibit C6** and was cross examined. He called two other witnesses Titus Bani and Tari Vira who were both also cross examined. Their sworn statements were tendered as **Exhibits C7** and **C8** respectively.
7. For the defence, they called three witnesses. Malmaltavui Langi whose sworn statement was tendered as **Exhibit D1**, Silas Tamata whose sworn statements were tendered as **Exhibit D2** and **D3** and Cerillo Varavara whose sworn statement was tendered as **Exhibit D4**. They were all cross examined.

Discussion

8. The central issue in this case is whether the claimant is entitled to claim compensation against the defendants for his loss.
9. At the outset there was no proof or evidence, that the claimant practised witchcraft or that he caused the death of a woman within the Radio Station community by using witchcraft.
10. The parties do not dispute the fact that there was a meeting which was held on 3 May 2020 by the chiefs to deal with the claimant and four others for allegedly practising witchcraft. The claimant denies the allegations of using witchcraft and in his evidence said he was made to sit in the sun from 1 pm to 6pm before the chiefs decided that he must leave the community. During that time their mobile phones were removed, they were not given water to drink, the whole community of Radio Station surrounded them and swore and threatened them with death. He was terrified and feared for his life.
11. After 6 hours of sitting in the sun the chiefs gave him 10 days to leave Radio Station. He had no choice and out of fear for his life followed their orders. He was able to move to a place at Belleru leaving behind his possessions.
12. Silas Tamata under cross examination agreed as the chief of the community he called and chaired the meeting. He does not deny that the claimant was made to sit in the sun with his friends who were threatened, had their mobiles removed and sworn at and not given any water to drink. This witness said the decision to remove the claimant was in line with community bye laws agreed to by members of the community including the



claimant that when the community is faced with such a situation, the suspect must be asked to leave the community for a period of three (3) months before returning to his property. He went further to state that the claimant's properties have remained untouched. He said the claim should have returned as there was a custom reconciliation. This is denied by the claimant and no other defence witnesses confirmed there was a custom reconciliation.

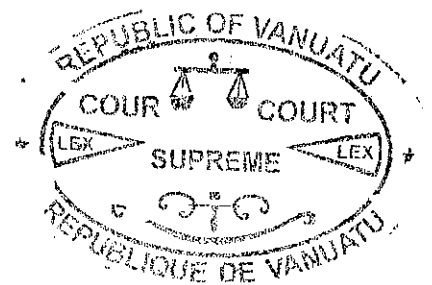
13. There was also no evidence produced of the of the bye laws referred to by Mr Tamata or other defence witnesses.

Stress humiliation

14. The claimant and all his witnesses confirmed the treatment they received during the meeting. As a result, the claimant claims that he suffered stress and humiliation. There was no medical report produced by the claimant to show that he suffered stress although he said he was humiliated as there was no proof and his family witnessed how he was treated by being made to sit in the sun, sworn at and his life threatened as confirmed by Titus Bani and Tari Vira.

Loss of property

15. In his sworn evidence **Exhibit C2**, the claimant provides an assessment of the value of his trees done by the Forestry Department. For his sandalwood and mahogany trees, the value was assessed at VT323,000. His food crops and fruit trees were assessed in line with the Department of Agriculture compensation policy and were valued at VT672,360. The claimant states that when he left following the chiefs orders he never returned. Although Silas Tamata said the claimant's properties are still there and no one has touched them, he does not dispute the assessment, nor the number of trees and food crops planted by the claimant.
16. The claimant claims compensation as the land was later sold by the custom owner to another purchaser, Mr Malmaltavui Langi. This was denied by Mr Varavara, however, Mr Langi under cross examination confirmed he paid a deposit of VT 100,000 for the land to Mr Varavara. He has not developed the land as he has another residence where he was currently staying. Mr Langi further confirmed that after paying the deposit, he informed the claimant that he has paid for the land.
17. In his sworn evidence, the claimant denies he arranged with Mr Langi to purchase the land before leaving. That he could not have done so as he was ordered by the chiefs to vacate within 10 days. Mr Varavara did not inform him of the intended sale before selling the land to Mr Langi. The claimant submitted that he could no longer return to the land as the custom owner has sold it to a new purchaser therefore, he filed his claim for compensation.



Transportation costs

18. Within the 10 days period the claimant found some land at Beleru and had to move there. As it was some distance away from Radio Station, he claims he incurred costs in the sum of VT 95,000 to transport his belongings and build a new home. He has provided evidence of these costs by way of receipts annexed to **Exhibit C3**. This evidence has not been disputed or challenged by the defendants.

Result

19. I find that the chiefs, Silas Tamata and Japeth Okau without any lawful authority and without any proof that the claimant practised witchcraft illegally evicted the claimant from his property. This illegal act was completed by Mr Varavara as the custom owner selling the land containing the claimant's food crops, fruit trees and valuable trees to another purchaser who paid a deposit of VT 100,000 for the land. I further find the claim proved on the balance of probabilities. The defendants are jointly and severally liable to pay the claimant the following: -

- a) VT 995,000 for loss of crops and fruit trees;
- b) VT 95,000 for transport costs;
- c) VT 10,000 for damages for mistreatment suffered; and
- d) Costs in the sum of VT 50,000.

20. An enforcement conference is listed for **8.30 pm on 1 September 2023 by video link**.

DATED at Port Vila this 3rd day of August, 2023

BY THE COURT

