

BETWEEN: Osborn Melenamu
Claimant

AND: Peter Sami and Family
Defendant

Before: Justice Oliver A. Saksak

Counsel: Ms Juliette Kaukare for the Claimant
Mr Edwin Macreveth for the Defendant

Date of Hearing: 12th September 2023

JUDGMENT

Introduction

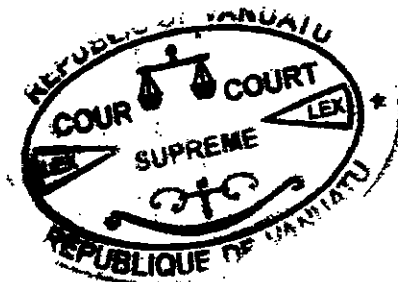
1. I heard Counsel in relation to an application for summary judgment today made pursuant to Rule 9.6 of the Civil Procedure Rules.

Background

2. The Claimant filed their Supreme Court claim on 23rd August 2022 claiming for damages for trespass and for restraining orders.
3. Prior to filing their claim on 23rd August 2022, the claimant filed an urgent ex parte application on 11th August 2022 seeking the same orders they seek in their reliefs to their Supreme Court claim.
4. I heard the application on 28th October 2022 in the absence of Mr Macreveth. I allowed the application and granted only one of the Orders sought as follows:-

" I ORDER THAT UNTIL the claim is substantively determined by the Court or until further order of the Court,

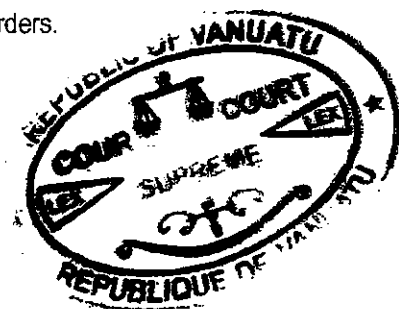
1. *The Defendant, his relatives, families, gets, servants and representatives be hereby restrained from causing any threats either directly or indirectly on the applicant and his families, relatives or members of their claim.*
2. *Any breach of this Order may result in the defendant being committed for contempt of Court.*
3. *Liberty to Parties to apply on 72 hours notice."*



5. The defendant filed a short defence on 5th September 2022 admitting only paragraph 2 and 3 of the claim but otherwise generally denying all other claims in paragraphs 1, 4,5, 6,7,8,9, and 10 and all the reliefs sought.
6. The defendant did not file any evidence in support of their defence. He however filed a response to the claimant's statement on 5th September 2022.
7. The claimant believes the defendant's defence is not a good defence and that he has no real prospect of defending the claim. The claimant relied on the evidence by sworn statement of the claimant filed on 16th August 2022 which annexes a sale agreement dated 16th January 1994 as "OM1".
8. By that agreement the land Nerambis was bought by the claimant from Charley Sami as land owner for cash money of VT 300,000 together with a custom payment involving a white pig with fully rounded tusk worth VT 20,000, 1 yam, and 1 Head of Kava.
9. Nerambis Land is situated between a canoe tree next to Losinwe River and a small creek towards Nuatak village. That is the specified boundary.

Discussion

10. The Court must be satisfied that there is no real prospect of defending the claimant's claim in whole or in part, and that there is no need for a trial.
11. The defendant filed a very short defence but he did not file any evidence by sworn statement to support his defence. The defence is general and does not deal with each fact in the claim as required by Rule 4.5 (2) and (3).
12. Instead of filing a proper defence, the defendant filed a response on 5th September 2022 which is an abuse of process.
13. I am therefore satisfied there is no good defence by the defendant. Further there is no evidence by the defendant therefore there is no need for a trial of this matter.
14. Mr Macreveth responded verbally to the application and submissions by Ms Kaukare. He accepted that the ex parte orders granted on 25th October 2022 be made permanent. He conceded to the balance for the restraining orders sought in the reliefs to the claim of the claimant, to be made permanent.
15. There is no monetary damages claimed, only for restraining orders.



Result

16. Accordingly I enter judgment summarily in favour of the claimant and order as follows:-
- a) Paragraph 1 of the Exparte Order dated 28 October 2022 is now made a permanent order.
 - b) Further the Defendant, his relatives, agents, servants and representatives are hereby restrained from:
 - i. Entering and interfering with the claimant and his family use of the Land Nerambis.
 - ii. Interfering with the negotiation and dealing of the land between the claimant and the Hydro Power Project on Almamak Land until the completion of the Project.
 - iii. Interfering with the Hydro Power Works and the engineer's erecting of Power lines and posts on Almamak Land until completion of all works.
 - c) Any breaches of these orders will result in contempt of Court proceedings against the defendants.
17. There will be no order as to costs. Each party bears their own costs.

DATED at Port Vila this 12th day of September 2023

BY THE COURT


Oliver A. Saksak

Judge

