

(Civil Jurisdiction)

BETWEEN: CHIEF TENENE

First Applicant

AND: ERAKOR VILLAGE CHIEF
COUNCIL COMMITTEE

Second Applicant

AND: GLEN AUGUST

Third Applicant

AND: DENIE SAKARI

First Respondent

AND: ABEL KALTAPAS

Second Respondent

AND: PIERRE ONELL

Third Respondent

AND: MARK KALMET

Fourth Respondent

AND: JEAN KALMET

Fifth respondent

AND: KAMI TOM
Sixth Respondent

AND: KALMET ABEL
Seventh Respondent

AND : TIMTEO KALMET
Eighth Respondent

AND: CHARLIE KALMET
Ninth Respondent

JUDGMENT

On the 23rd October 2001 Chief Tenene, Erakor Village Chief Council and Glen August first, second and third Plaintiffs respectively sought interlocutory orders against each of the Defendants. The orders sought are: -

1. The First and Second Respondent deliver up possession the keys to the Community Hall to the Applicants herein;
2. The First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eight and Ninth Respondent including their relatives or agent be restrained and debarred from approaching or coming within 100 meters of Erakor Community Hall or Erakor Village Chiefs Council members
3. Costs

This hearing of this application was set for 24 October 2001. On this date the matter was adjourned to 29 October 2001. On the 26 October Plaintiff filed an Amended Statement of Claim. All parties appeared before the Court on the 29 October 2001. Since the relief sought in the interim application and Writ of Summons were of substantially the same nature the proceedings therefore was commenced on the basis of the Writ of Summons. In their Statement of Claim Plaintiffs sought:

1. Delivery of the keys
2. Injunction against the Defendants
3. Damages for detention of the keys
4. Costs
5. Other orders as the Court deems fit

There is no doubt in my mind that the issue in contention is whether or not Plaintiff could recover possession of the keys to the Community House. Although the court was not given the evidence it ought to receive in respect to the issue of right to possess the key, it nevertheless is content with the evidence before it to assist in arriving at a decision. Briefly the case for Plaintiff is this. Waia Tenene who is a Chief and Glen August had been entrusted to oversee the running of a Community House at Erakor. There is no evidence to suggest that they were acting without rights so it is assumed that they were mandated by the community or the Erakor Village Chief Council Committee to work in the Community House, thus rights to the keys. The Erakor Community House has the Chief Secretariat, Shefa Provincial Office and other public amenities. When the keys were removed the public had not freely accessed the premises to use its facilities. At the time this matter came to court, the key remains in Defendants possession.

Six Defendants gave evidence. It transpired that defence evidence was based on the issue of title. Defence contended that the First Plaintiff has

been declared by Kastom Kot to be the Paramount Chief. Other declarations were also given in support of this assertion. It was assumed that since First Plaintiff is not the Paramount Chief, he could no longer command the respect of the community and this disentitled him to have access to the Erakor Community House and since a new Paramount Chief has been installed the keys to the Community House must be surrendered to him.

From the outset the court is mindful of the competing claims before it claim for the possession of the keys by Plaintiff on the one hand and the chiefly title which according to defence was conferred on Kalmetabil Nmak Kalmet by a declaration of Kastom Kot on 17 March 2000. However, it must be emphasised that this court must not be misled as to what the real issue is. It is the issue of "keys" - who has the right to possess the keys. Defence has not provided evidence to support their action of removing the keys from the Plaintiffs. No court has sanctioned such an action. The Plaintiffs were in lawful possession of the keys. No decisions have been made on the rights and eligibilities of Plaintiff to possess the keys to the Community House. Until such a decision is made there is no reason why the Plaintiffs should be deprived of the rights to the keys. No formal sanction or decision was made to transfer possession of the keys in question. The manner in which the keys were demanded (on the road by a group of people/defendants) was not consistent with business practice. In the absence of any proper transfer of leadership to oversee the running of Erakor Community House it is prudent for this court to maintain the status quo of the parties. For these reasons the keys are to remain with the Plaintiffs until a decision proper is made, to determine who takes charge of the Erakor community House.

Orders accordingly.

ORDERS

Upon hearing Plaintiffs and their witnesses, Defendants and their witnesses and upon hearing Mr Boar Counsel for the applicants, and Mr Timteo Kalmet as amicus curiae for and on behalf of the Defendants, the Court makes the following orders:

1. That the First, Second, and Third Respondents deliver up the possession of the keys to the Applicants herein within seven days from 15/10/01 of this order.
2. This Order be communicated to the Police.
3. The Respondents be summoned for contempt if they breach the terms of this order.
4. Cost to the Plaintiffs.
5. Any party aggrieved by this order has three months to appeal.

Dated at PORT VILA this 14th day of November, 2001.

IKaw
.....
KEWEI KAWI-IU
Senior Magistrate

