

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

**Civil
Case No. 16/2074 MC/CIVL**

BETWEEN: EDDIE SILAS

Claimant

Claimant's Lawyer:

Mr. Lorenzo Moli of the PSO LAWYERS
Port Vila, Efate
Republic of Vanuatu

AND: JOSEPH MARAN

First Defendant

First Defendants' Lawyer:

Mr. Willie Kapalu of YAWHA &
ASSOCIATES
Port Vila, Efate
Republic of Vanuatu

AND:

WILLIE JIMMY TAPANGARARUA

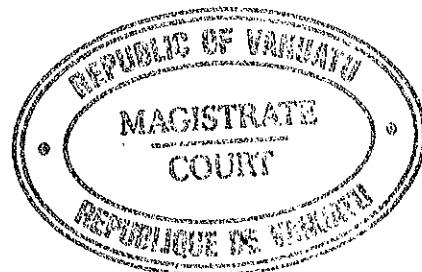
Second Defendant

Of Port Vila, Efate
Republic of Vanuatu

Before: ***Senior Magistrate Moses Peter***

In Attendance: ***Counsels, Parties***

Copy: ***Parties***



JUDGMENT

Introduction

1. The claimant filed proceedings against the first defendant and claim for damages in respect of trespass and damage to property.

Background

2. The claimant is from Tongoa Island but occupied 30 hectares of custom land at Teouma Bush area since 1987 by an oral agreement with the chief of Eratap Village namely Pakoa Andrew Kalpoilep.
3. It was an agreement by claimant and Chief Andrew Pakoa Kalpoilep that he would use the land for farming purposes and would pay yearly rental fee of VT 15,000.
4. It appears similar arrangements are also undertaken by second defendant and other occupants of the adjacent custom land. The second defendant in this case is the claimant's neighbor.
5. As the case progressed to trial, it became obvious that the first defendant who hails from Tanna Island, was only a caretaker of the land for the second defendant.
6. When the second defendant applied to join as a party the court granted his application after having satisfied that his presence as a party would be necessary to enable the court to make a just decision.

Agreed facts

7. Claimant and Second Defendant both acquired custom land at Teouma Bush area by authorization of Chief Andrew Kalpoilep of Eratap Village, Efate.
8. The defendants both share a common adjacent boundary.
9. First Defendant resides on Second Defendant's land and does gardening by right of entry granted by the second defendant and his deceased brother namely Alick Jimmy.
10. The parties and the chief identified natural vegetation setting apart their respective boundaries.



Issue

Whether the First defendant trespassed into the claimant's land and uprooted 16 out of the 150 stems of natangura plants planted by claimant when he was clearing the bush for gardening?

Discussions

11. It became clear in evidence that at some point of the second defendant's political career, he wanted to secure a land at Teouma for his community and after discussions with Chief Andrew Pakoa Kalpoilep, he paid him VT 700,000 for the said land.
12. The claimant accepted that he was at that time assuming role of chairperson of the community political grouping with the second defendant.
13. It appears the land became specifically allocated to the claimant and several other members of the community with the second defendant's land occupied by his brother namely Alick Jimmy who is now deceased.
14. To assist in determining whether the court can deal with any claim for trespass in customary land, we look at some discussions of the court in similar nature of cases.
15. In the case of *Fittlers Investment Ltd v David Abel and Others Civil Case No.234 of 2006 dated 14th March 2008*, the learned Judge Tuohy referred to an extract from a New Zealand case called *De Luxe Confectionary Ltd v Warrington [1958] NZLR 272*, which saw the court referring to another case called *Rewiri v. Eivers [1917] NZLR 479* where he made the following remark:

"The judge said that that person in possession of the land under an unregistered lease was in possession with a complete title in equity...he had by virtue of this complete equitable right, the right to sue for any wrongful injury sustained by him as fully as if he was holding the property under the registered instrument..."
16. The land occupied by the claimant is a customary land and not a registered leasehold land. However, by virtue of the right of entry granted to him by the chief of Eratap Village namely Andrew Pakoa Kalpoilep he has resided on the said land for more than 30 years. Hence, in the circumstances he has an equitable right over the land and can sue for any wrong done to him.



17. In the case of **Bob v Stettin Bay Lumber Company Ltd [2008] PNGC (22 August 2008)** the court held that:

“To succeed in an action for trespass to land, a plaintiff must prove five things:

- a) The defendant entered the land, either directly (in person) or indirectly (e.g by propelling an object or a third party on to the land); and*
 - b) The defendant did so by some intentional act;*
 - c) The defendant had no lawful authority;*
 - d) The plaintiff was in lawful possession of the land; and*
 - e) The plaintiff’s enjoyment of the land was interfered with”.*
18. The first defendant confirmed that the second defendant and his now deceased brother Alick Jimmy took him into their land in 1993 and showed him their boundary mark and told him to reside on the said land and make garden.
19. The claimant confirmed in evidence that he was not aware of such arrangements and protested when he saw the first defendant clearing the second defendant’s land for gardening.
20. A letter by Chief Andrew Pakoa Kalpoilep dated 29th May 2015 indicated that he as the chief does not give right of entry to the first defendant to occupy nor sell any land at Teouma, however it could be such that the chief was not aware of the arrangement of the first and second defendant.
21. When the court went and visited the site where the claimant alleged his natangura plants were destroyed, it was covered with bush since the alleged incident has happened in late 2014.
22. If the natangura plants had been uprooted by the first defendant to clear land for gardening, there could be evidence of such garden in the claimant’s land.
23. The claimant and the second defendant did assisted the court in showing their recent common boundary mark but it remain unclear that the first defendant trespassed into the claimant’s land and destroyed the natangura plants.
24. The claimant asserts in his sworn statement that the first defendant cleared a bush within his boundary and uprooted around 16 out of the 150 stems of natangura he had planted on his land.
25. A calculation VT 800,000 is based on a compensation and pricing report presented by the Department of Agriculture:



26. It appears the claim was poorly drafted given the inconsistency in the number of natangura plants destroyed against those asserted by the claimant in his sworn statement.
27. This court will have no jurisdiction to deal with this case had the 150 stems of natangura are being destroyed requiring a compensation for their loss at the rate of VT 50,000 each. This was accepted by the claimant in cross-examination as mistake on the part of his counsel drafting the claim.
28. The first defendant strongly denies trespassing into the claimant's land and denied damaging the claimant's natangura plants.
29. It remains to be seen that the contention remains as to the boundary mark as what was understood by everyone in the beginning to be their boundary mark had been destroyed.
30. It is unfortunate that there are no physical evidence on the land showing that the first defendant had actually trespassed into the claimant's land.
31. **In Bonham –Carter v Hyde Park Hotel Ltd, (1984) 64 T.L.R 177 at page 178**, Lord Goddard C.J had this to say:
- "On the question of damages I am left in an extremely unsatisfactory position. Plaintiffs must understand that if they bring actions for damages it is for them to prove their damages, it is not enough to write down the particulars and so to speak, throw them at the head of the Court saying; this is what I have lost I ask you to give me these damages. They have to prove it."*
32. On the foregoing, I am satisfied that whilst the claimant can sue for trespass on the customary land he occupies, it is obvious that not all of the elements have been satisfied for claim for trespass to succeed. This follows also that he had failed to prove his damages. A mere particular with statements from the office of the Agriculture Department does not suffice.
33. I therefore find for the first and second defendant.
34. Claim is thereby dismissed.
35. I make no award as to cost after forming the view that both parties may have become clearer as regards to their boundary mark after filing of this proceedings to trial.



36. It is expected that all parties maintain a friendly neighborhood from now on and into the future.

DATED at Port Vila this 16th day of October 2019

BY THE COURT



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MOSES PETER
Senior Magistrate

