

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

Civil Case No. 96 of 2010

BETWEEN: ELMO JOSEPH, MANU JOSEPH,
LESSY YUUELEPAT
Claimants

AND: ROGER JAPHERT, ADAM ALBERT,
JOHN MARK MAOS, JOHN TU
SAMSON, PETER ALBERT, MOSES
PAUL, KALO JAPHET
Defendants

Claimants: Mr. J. Tari
Defendants: Mr. D. Yawha

RULING

1. This proceeding was commenced in the Magistrates Court as Civil Case No. 90 of 2009. It is a claim for compensatory damages for the destruction allegedly caused by the defendants of a fence and over 100 mahogany plant lings of the Claimants. The defendants denied the claim. The original estimated value of the damage caused was VT950,000 which was increased in an amended claim, to an amount of VT19,460,000. This increased amount appears to have been based on an assessment report prepared by the Department of Forest at the request of the Claimants.
2. When the case was called in the Magistrate Court after the claim was amended the Court observed that "*the amended claim is quite high and is beyond the jurisdiction of Magistrate Court*", and further, "*that it should be referred to the Supreme Court for that reason*". A formal order dated 21 June 2010 was then issued by the Magistrate Court. It reads:

"Having heard both parties it is ordered that this matter be referred to the Supreme Court on the grounds that the amended Magistrate Courts claim has exceeded the jurisdiction of this Court."
3. This is not the first occasion where this Court has had a matter referred to it by the Magistrate Court but it might assist all parties if a written ruling was delivered in this instance.
4. I accept that section 17 of the Judicial Services and Courts Act [cap 270] empowers a Magistrate to reserve a question of law which may arise in civil



proceedings for the consideration of the Supreme Court and, such reservation, is to be done by way of a case stated for the opinion of the Supreme Court. Upon the Supreme Court rendering its opinion, the case may be finally determined by the Magistrate in accordance with the Supreme Court's opinion. In such a referral the proceeding remains in and is determined by the Magistrate Court and only the legal question is referred to the Supreme Court. That is not what happened in this instance where the entire proceeding and Magistrate Court file was sent to the Supreme Court.

5. I turn next to consider the provisions of the Magistrate Court (Civil Jurisdiction) Act [Cap130] to see whether they may assist this Court in understanding the jurisdictional basis for the Magistrate's referral order. In this regard Section 1 relevantly provides that the Magistrate Court has jurisdiction to try all civil proceedings:

"(a) In which the amount claimed or the value of the subject matter does not exceed VT1,000,000 except claims relating to permanent physical damage to a person."

6. In accordance with the above, the Magistrate clearly had jurisdiction to try the claim that was originally filed by the claimants which sought damages of VT950,000. Equally clearly, the amended claim for VT19,460,000 is well beyond the civil jurisdiction of the Magistrate. What then should done?
7. In this latter regard Section 3 of the Magistrate Court (Civil Jurisdiction) Act provides in subsections:

"(2) A person may relinquish part of a claim in order to bring a suit in the Magistrates' Court but shall not have a right to sue afterwards in respect of the portion relinquished.

(3) The Magistrates' Court may hear a counterclaim in a suit where the original claim is within its jurisdiction although the counterclaim exceeds its jurisdiction.

(4) A magistrate may refer a case where the counterclaim exceeds the original claim to the Supreme Court for hearing.

(5) Where a case is referred under subsection (4) the Supreme Court shall either hear the case or direct the Magistrates' Court to hear it."

8. In summary, the Magistrate Court may retain jurisdiction in this case by the claimants relinquishing part of their claim so as to bring it within, the VT1,000,000 maximum limit of the Magistrate's civil jurisdiction, but, the claimants risk not being able to pursue the balance, or, the Magistrate may refer the case to the Supreme Court *"where the counter claim exceeds the*



original claim". What the Magistrate cannot do is refer the amended claim to the Supreme Court as occurred in this instance.

9. The power of a Magistrate to refer a case under Section 3(4) is strictly confined to one where the "*counter claim exceeds the claim*" NOT, where the claim exceeds the Magistrate's jurisdiction. A counter claim is described in the Civil Procedure Rules as arising where: "*a defendant in a proceeding wants to make a claim against the claimant.*" Again, that is not what occurred in this case.
10. Where a claim (whether as originally filed or later amended) exceeds the Magistrate Civil Jurisdiction then such claim should not be filed or accepted by the Magistrate Court in the first place, and, if wrongly accepted, the Magistrate before whom it is brought should decline to hear it on the basis that it is beyond his/her jurisdiction. The papers should be so-marked and returned to the Claimant who should be advised to commence proceedings in the Supreme Court.
11. I have also noted a further irregularity in the filing of the present proceedings. Rule 2.4 of the Civil Procedure Rules which applies to Magistrate Court proceedings, clearly sets out where civil claims may be filed in the Magistrate Court as follows:-

"in the district where :

- a) *The claimant or defendant lives; or*
- b) *The actions that led to the proceeding happened; or*
- c) *The property the subject of the claim is located;"*

All of the above places, in this case, are located in Santo and this is a further reason for rejecting the claimants claim being filed in the Magistrates Court in Port Vila. The convenience of counsel is not a proper or sufficient reason for filing a claim in Port Vila which, according to the Rules, belongs in another Court district or registry.

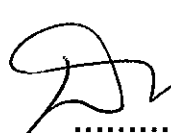
12. For the sake of completeness I mention Section 4 of the Magistrate Court (Civil Jurisdiction) Act [cap 130] which empowers a Magistrate to refer a case to the Supreme Court but that can only occur after the Magistrate Court has tried an issue as to the value of the claim and determined that it is in fact, beyond the Magistrate Court's jurisdiction. In this instance the amended value of the claim is based on a report which values the mahogany plants not on their actual present values at the date of their destruction, but rather, on their estimated values at the date of their future harvesting "*in 25 years time*" which cannot be the correct value for trial purposes.
13. For the forgoing reasons, the Magistrate's order of 21 June 2010 is set aside and I direct that Supreme Court file No.16 of 2010 be closed and the



Magistrate Court file in Civil Case No.90 of 2009 be returned to the Magistrate Court with a copy of this Ruling for its further consideration and continuation.

DATED at Port Vila, this 18th day of August, 2010.

BY THE COURT


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D. FATIAKI
Judge.

