

(Civil Jurisdiction)

BETWEEN: JEAN MARK RARA

Claimants

**AND: DANIEL MARMAR, CHOISAIN
MARMAR, GERALD MARMAR,
MAXIM MARMAR, TOMMA MARMAR,
ANISETO MARMAR, RARA MARMAR,
NORIS MARMAR, CHARLEY
MARMAR, JOE MARMAR,
MARCELLINO MARMAR, SILVIO
PAURA, CHIEF KARAE NINISIA**

Defendants

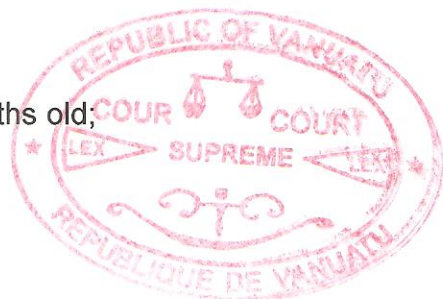
**Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk**

**Mr Kevin Nathan for the Claimant
Mrs Marisan P. Vire for the Defendants**

**Date of Hearing: 28th September 2010
Date of Oral Decision: 29th September 2010**

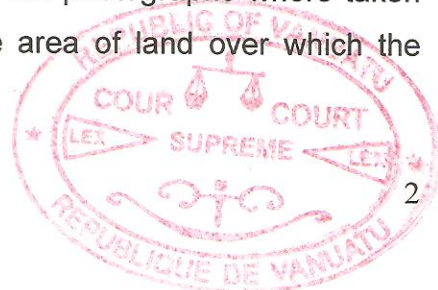
DECISION

1. This is a claim for property damage alleged to have been done by these defendants on the claimant's garden crops sometimes on or about Monday 3rd December 2007.
2. It is alleged the defendants damaged –
1500 heads of kava of between 12 – 24 months old;
1448 heads of island taro of between 7 – 12 months old;
1500 heads of kava of between 7 – 24 months old;
80 vines of yams of 0 – 6 months old;
4 heads of fiji taro of 12 – 24 months old;
40 stems of island cabbage of 7 – 12 months old;
2 stems of banana of 12 – 24 months old;



20 stems of sugar cane of 12 – 24 months old; and
2 stems of breadfruit trees of 12 – 24 months old.

3. The total costs of crops is placed at VT1.998.700.
- Other claims included –
- | | |
|------------------------------------------|-----------------|
| Labour costs in 2006 – | VT20.000; |
| Labour costs in 2007 – | VT20.000; |
| Supenatavuitano Council of Chiefs Fees – | VT15.000; |
| Food & Drinks costs – | VT10.000; |
| Public Solicitor's costs – | VT1.125 |
| Supreme Court Fee – | <u>VT20.000</u> |
| Total | <u>VT86.000</u> |
4. The total claims for damages is calculated to be VT2.084.825 together with interests at 5% per annum.
5. The claim is based on the law of torts. The claimant bears the onus of proof on the balance of probabilities.
6. The defendants partly deny the claims in that –
- (a) They say not all of the named defendants were involved in the damage.
- (b) They admit there was some damage but say the damage was exaggerated and that it was not worth the amount claimed by the claimant.
- (c) There was no evidence to show the claimant had incurred labour costs, council of chief's fees and food and drinks costs.
7. The Claimant called evidence from four witnesses including himself. All four of them gave evidence of damage but they could not describe with any certainty the extent of the damage. No photographs were taken to show the extent and the size of the area of land over which the damage was alleged to have been done.



8. Witness Denis Philippe gave evidence that it was he who went to the scene of the damage and counted the damaged crops in the presence of the claimant and chief Chanel Rarapua. He annexed and exhibited an Assessment Form by the Agriculture Officers but was not able to identify who that Officer was and his signature. The Claimant did not call the Officer concerned to confirm the Assessment Report. Therefore, the Assessment Report will not be admitted into evidence.

9. Five of the 13 named defendants gave evidence in their defence. Their evidence showed that –

(a) 4 of the defendants namely Choisain Marmar, Gerald Marmar, Maxim Marmar and Chief Karae Ninisia had no part in the damage.

(b) The rest took part in the damage done to the Claimants crops.

10. The issues are as submitted by Mrs Vire and they are –

(a) Whether there was damage to the garden crops of the Claimant?

The Court answers this issue in the affirmative.

(b) Whether all the named defendants are liable for the damage caused?

The Court answers this issue in the negative. The following 4 defendants were not part of the damage and these 4 are Choisain Marmar, Gerald Marmar, Maxim Marmar and Chief Karae Ninisia. The claims are dismissed as against these 4 defendants.

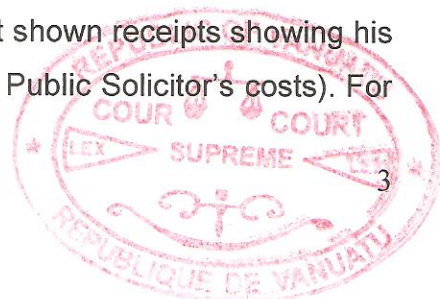
(c) Whether the assessment of damage is reliable?

The Court answers this issue in the negative.

(d) Whether the Claimant is entitled to reliefs sought?

The Court answers this issue partly in the affirmative and partly in the negative.

For the negative part, the Claimant has not shown receipts showing his incidental costs (apart from filing fees and Public Solicitor's costs). For that reason, those claims must fail.



For the affirmative part, the Court is satisfied there was some damage, but the Court agrees the amount of damage claimed is exaggerated.

11. In the final analysis, there will be judgment in favour of the Claimant but his claims are substantially reduced to a nominal sum of VT90.000 only.

Each of the remaining 9 Defendants are hereby ordered to pay VT10.000 each to the Claimant in final settlement of his claims.

12. The Claimant's claims for interests must fail. He has not shown he borrowed moneys to grow his crops which he was refunding to be entitled to interests.

13. The Claimant is entitled to his costs of the proceedings against the Defendants to be agreed or taxed.

14. Each of the 9 Defendant is hereby ordered to pay VT10.000 to the Claimant within 28 days from the date of this order being published.

DATED at Luganville this 29th day of September 2010.

PUBLISHED: 4th October 2010.

BY THE COURT


OLIVER A. SAKSAK

Judge

