

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

Civil Case No. 107 of 2010

**BETWEEN : JOSIAS MOLI & DALSON
BALENG**

Claimant

AND: FAMLY ZACHIAS TINNING

Defendant

Coram: Justice Macdonald

Claimant: Mr J. Boe

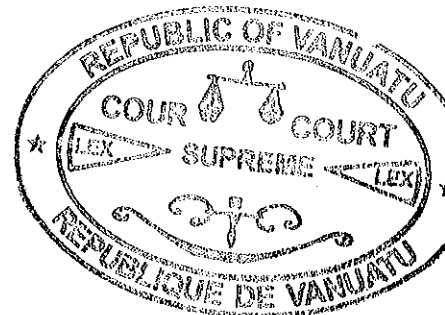
Defendant: No-appearance

Date of Hearing: 14 October 2010

Date of Decision: 14 October 2010

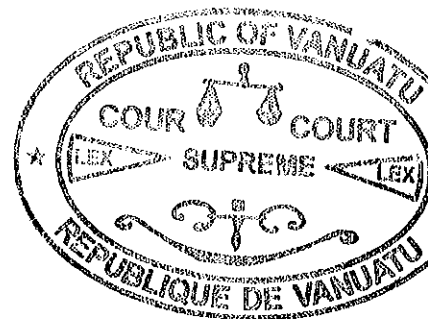
JUDGMENT

1. The claimants are the custom owners of land known as Atorea on the South East of Malo Island. This was by virtue of a declaration made by the Molvora Joint Village Land Tribunal on 29 May 2007.
2. In 2006 the defendant had been granted permission by Josias Moli's father, who is now deceased, to carry out gardening on the land. That right existed until such time as the claimants required the land for further development.
3. Earlier this year the claimants decided that the land was needed for development and accordingly requests were made to the defendant to vacate the land. The first



request was made in February 2010. That, and subsequent requests, have been ignored by the defendant.

4. The claimants therefore filed an urgent application seeking an order for the immediate eviction of the defendant and an injunction preventing any return to the land. The application was filed on 28 July 2010.
5. I was not convinced as to the urgency of the application and on 29 July 2010 I directed that the application proceed on notice.
6. The defendant was served with the proceedings on 19 August 2010 but has failed to take any steps.
7. The matter has therefore proceeded today in the absence of the defendant. I have heard from the claimant, Josias Moli, and his counsel Mr Boe.
8. Having heard from them I am satisfied that the claimants are entitled to an order for eviction. Mr Boe suggests that the defendant should be given three months to vacate the land, which seems perfectly reasonable. The application for an injunction has not been pursued.
9. I have also considered the issue of damages. That is sought to recognize the act of trespass and I am satisfied that such an order is also appropriate.
10. In fixing an appropriate amount Mr Boe has referred me to *Warput v Santo Veneers Limited* [2004] VUCA 18. I have considered that judgment, along with the circumstances of this case. The trespass has carried on since at least February this year and the claimants have therefore been deprived of the use of the land for a significant period. The defendant has continued to carry out gardening on the land, which has included cutting down trees and planting such things as yams, bananas and natagura.



11. I now make the following orders:

- a) An order for damages against the defendant for the trespass in the sum of VT 200,000.
- b) An order that the defendant is to vacate the property within three months of today's date.
- c) An order for costs against the defendant on the standard basis.

Dated at Port Vila, this 14th day of October, 2010

BY THE COURT



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J. Macdonald
Judge

