

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

Civil Case No. 50 of 2008

IN THE ESTATE OF: JIMMY VARA TIMONA

BETWEEN: ELDER EZEKIAL WOKON
 Claimant

AND: TAHO DICK
 First Defendant

THE REPUBLIC OF VANUATU
 Second Defendant

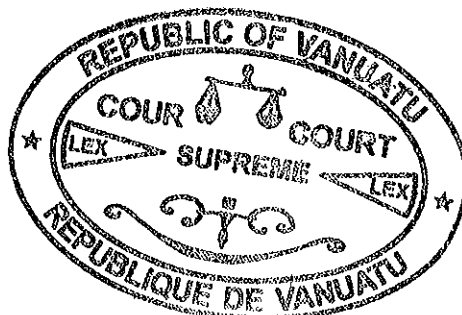
Hearing : 22 February, 2011
Before: : Hon. Justice Robert Spear

Appearances

Claimant : Mr J Kausiama
1st Defendant : Mr D Yawha
2nd Defendant : Mr J Ngwele

RESERVED DECISION

26 April 2010



Introduction

1. The Claimant (Elder Wokon) alleges fraud in respect of the 1998 transfer of a leasehold interest in a block of land contained and described in Title No. 11/OH24084 ("the land"). The allegation is essentially that the First Defendant (Dick Taho) conspired with others to effect the transfer of the land from Jimmy Timiona to him in 1997 particularly by impersonation and forgery. Elder Wokon seeks rectification of the Land's Register and substantial damages.
2. This is not the first time that there has been litigation between the parties in respect of the estate of Jimmy Timiona who died in 2002 and just four years after the initial transfer of the land (the target of these allegations) to Dick Taho. The subsequent dealings on the land are detailed in the earlier decisions and it is unnecessary in this case to address them. However, see **Taho v Wokon et al: Civil Case 133 of 2007; judgments of 30 May 2007 and 13 December 2007 – Tuohy J.**
3. This is a case which turns entirely on the evidence rather than any fine points of law.

The applicable legal principles

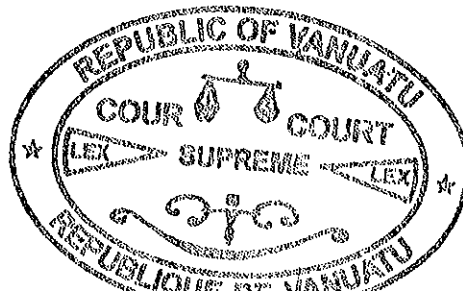
4. This court has jurisdiction pursuant to s. 100 of the Land Leases Act [CAP 163] to rectify the Lands' Register as may be required in the event of fraud or mistake in respect of land dealings:

100. Rectification by the Court

(1) *Subject to subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is so empowered by this Act or where it is satisfied that any registration has been obtained, made or omitted by fraud or mistake.*

(2) *The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the interest for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.*

5. Before proceeding further with an examination of the evidence given at the trial, it is convenient to record now that the burden of proving these allegations and thus the claim is entirely on Elder Wokon and to the standard of beyond reasonable doubt. It is also well appreciated that where a case depends on the proof of an allegation of fraud, or other such serious criminal conduct, the standard should be applied flexibly to reflect the gravity of the



allegations. That is, the more serious the allegation of criminal conduct in civil proceedings, the more concerned that the court should be as to the quality of the evidence of criminality before determining that it is satisfied that the allegation has been proven. This is now well established law in the UK, Australia, New Zealand and Vanuatu. See, in particular,

Z v Dental Complaints Assessment Committee [2008] NZSC 55 (25 July 2008) 98 - 112

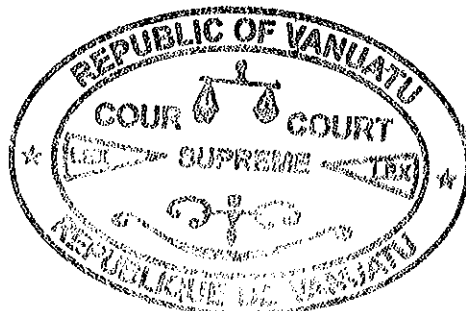
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Solomon v Turquoise [2008] VUSC 64; Civil Case 163 of 2006 & 29 of 2007 (8 August 2008) 10 – 12

6. Given this well-established approach, it has accordingly been a little difficult to understand why the evidence in this case was as limited in respect of the allegations as I consider that it ultimately proved to be and why there was no serious attempt to discredit the contrary evidence adduced by Dick Taho. In the end, however, it is for the court to determine the case on the evidence presented to it.

The background

7. The background to this case reflects the relationship that each of Elder Wokon and Dick Taho had to the late Jimmy Timiona. As it appeared, Jimmy Timiona used different combinations of names but nothing turns on that. Certainly, there was nothing sinister in respect of the names he chose to use at different times. There is some uncertainty as to the correct spelling of his surname. This proceeding is intitled to relate to the estate of **JIMMY VARA TIMONA** but the printed or typed part of the land transfer records are consistently in the name **VARA TIMONIA** beside the signatures **JIMMY TIMIONA** (1997) and **VARA TIMIONA** (1998). For convenience, I will simply refer to him as **JIMMY TIMONIA** as that appears to be the consistent way in which he spelled his name.
8. Elder Wokon was found by this Court (**Taho v Wokon et al - 30 May 2007 (supra)**) to be the adopted son of Jimmy Timiona by South West Ambrym custom. There is no evidence that Jimmy Timiona ever married or had any natural children of his own. Following Jimmy Timiona's death on 20 September 2002, Elder Wokon's "adopted-son" relationship was sufficient to convince this court that Elder Wokon should be granted letters of administration in the deceased estate of Jimmy Timiona over the competing claim of Dick Taho.



9. Jimmy Timiona was originally from Tahiti but had obviously moved some years ago to Vanuatu and taken up residence in Port Vila. He was a long-term employee of Dinh Construction and was based at Port Vila. Jimmy Timiona came to know Dick Taho's family on Ambrym when he was working on that island for Dinh Construction probably in the 1970s.
10. Dick Taho came from Ambrym to boarding school at Port Vila in his school year 7. Jimmy Timiona appears to have shown an interest in the young Dick Taho during the remaining school years but more particularly after Dick Taho left school. The uncontested evidence is that Jimmy Timiona found work for Dick Taho after he left school first with a garage and then with Jimmy Timiona at Dinh Construction. Furthermore, Dick Taho lived with Jimmy Timiona during those working years until Dick Taho returned to Ambrym in 1989 to care for his Mother. Dick Taho states that, later in 1989, Jimmy Timiona sent one Elli Bong from Sesibi Village to visit Dick Taho on Ambrym with the request that Dick Taho return to live with him and help him develop a block of land that Jimmy Timiona had purchased. Again, the uncontested evidence is that this happened in 1990.
11. The assertions in the Claim suggest that Jimmy Timiona had earlier taken (what appears to be) a similar paternal interest in Elder Wokon when he was a young man both helping him find work and then taking him in to his home. There is no actual evidence of this but, for the purposes of this case, I proceed on the assumption that this is so; particularly, given the eventual grant of letters of administration in Jimmy Timiona's estate to Elder Wokon by this court.
12. There is a dispute between Elder Wokon and Dick Taho as to who was favoured more by the paternal affections of Jimmy Timiona in the period leading up to his death in 2002. However, there was no evidence directly from Elder Wokon in this respect; just the assertions in the Claim that there was untoward conduct on the part of Dick Taho that must have had the effect of creating some distance between Jimmy Timiona and Elder Wokon. The latter was still residing on Ambrym, according to the Claim, following his call to head the Presbyterian Mission at Port Vato on Ambrym. Again, there is no evidence to that effect - just an assertion in the Claim to that effect.
13. It is unnecessary to try and resolve the competing assertions (Claim v defence evidence) in respect of this issue as to who was the person most favoured by Jimmy Timiona at the time that the land was transferred to Dick Taho in November 1998. It suffices simply to



observe that Jimmy Timiona probably had a strong paternal relationship with Elder Wokon at least up to the time of Elder Wokon's move to Ambrym. Furthermore, that this appears to have been eventually overtaken by a similar, strong paternal relationship with the much younger Dick Taho. There is insufficient evidence for me to find that Elder Wokon had been completely displaced by Dick Taho in respect of Jimmy Timiona's paternal affections nor is it necessary that I enter further in to that issue.

14. I accept, however, that Dick Taho (and his wife from their marriage in 1998) lived with Jimmy Timiona for the twelve or so years of Jimmy Timiona's life and they cared for him following his diagnosis of diabetes in 1998. Again, while the Claim asserts that Dick Taho abused Jimmy Timiona over this period, there is no evidence that this occurred.

The evidence

15. The evidence was presented by the following sworn statements:

a) Claimant

- i. Winnie Tete
- ii. Tales Kaloris
- iii. Levi Tarosa (1)
- iv. Levi Tarosa (2)

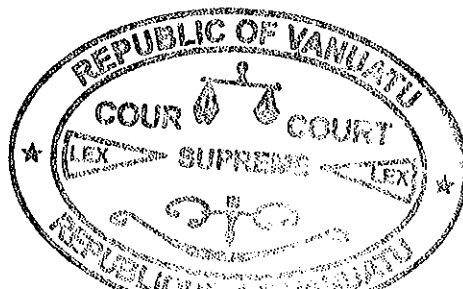
b) First Defendant

- i. Dick Taho
- ii. Abel Taho
- iii. Billiam Jeiock
- iv. Erick Molwaiang
- v. Christine Taho

c) Second Defendant

- i. Jean Marc Pierre (Director of the Department of Lands)

16. Surprisingly, there was no evidence at all from Elder Wokon although, perhaps, that may be explicable by reason that Elder Wokon could conceivably not offer any evidence about the circumstances surrounding the transfer of the land to Dick Taho in 1998 only as to general background. The evidence is not entirely clear as to the dates when Elder Wokon moved out of Jimmy Timiona's home and took up the position in Ambrym. However,



even accepting that there might have been some slight overlap between Elder Wokon and Dick Taho while Dick Taho was at school, it appears that Elder Wokon must have gone to Ambrym at least by the early 1980s if not the 1970s. Dick Taho's evidence is that he finished his schooling in Port Vila during which time he spent weekends with Jimmy Timiona. Furthermore, he then worked in Port Vila for at least six years up to 1989 and stayed with Jimmy Timiona during that period. Dick Taho stated that he returned to Ambrym to live with and care for his Mother in 1989.

17. More surprisingly, the only witness called for cross-examination was Levi Tarosa.

Evidential objection

18. There was only one challenge to the admissibility of evidence and that related to the opinion advanced by Levi Tarosa as to handwriting comparison. That objection was upheld as Levi Tarosa could not be considered, by any stretch of the imagination, an expert in that particular discipline. His evidence was to be that Jimmy Timiona's signature on the transfer to Dick Taho on 6 November 1998 was clearly not the signature of the same person who signed the original lease (as lessee) on 28 January 1997. Levi Tarosa was, as it happened, the witness to both signatures. A handwriting expert might well have been influenced in respect of the comparison of the signatures by the fact that Jimmy Timonia had become ill with diabetes by the time of the transfer in 1998 to Dick Taho evidenced by the fact that he had quite recently had a leg amputated. However, that is to speculate. The evidential position is that there is no expert evidence in respect of handwriting..
19. I record that there was no objection to the evidence of Billiam Jeiock who, I was informed, had died by the time of the hearing. Notwithstanding the absence of any submissions on the point, I have taken account of the fact that Billiam Jeiock was not available for cross-examination and depreciated the value of his evidence accordingly. I would have been reluctant to have determined this case on the evidence of Billiam Jeiock if that was to be pivotal to the outcome.

The evidence of fraud

20. The case for Elder Wokon is that the transfer of the lease to Dick Taho was never effected by Jimmy Timiona. In particular, it is alleged that Dick Taho's brother, Abel Taho,

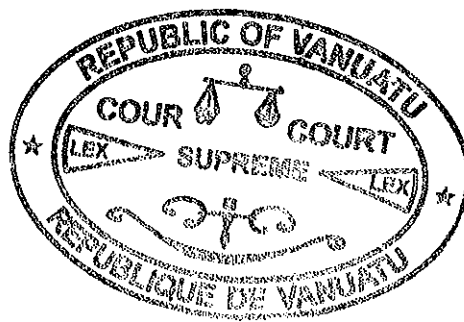


signed the transfer as Jimmy Timiona and/or impersonated Jimmy Timing within the transfer formalities.

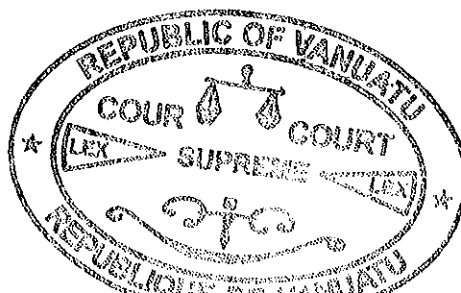
21. Winnie Tete was the front desk officer of the Department of Lands at some stage. In her sworn statement, she stated that she could recall Dick Taho and his brother Abel Taho coming to the Department of Lands to meet with Billiam Jeiock in relation to the transfer of the lease

"Mi bin stap long taem we Dick Taho mo Abel Taho I bin enterem office blong lands blong go luk Billiam Jeiock blong signem transfer blong Lease Title No. 110h24/84"

22. She referred to Jimmy Timiona as "*olfala blong Tahiti*" (old man from Tahiti) which suggested that she may have known him. She was clear that she never saw a man that day in a wheelchair or on crutches. She stated that the two Taho brothers went in to see Belliam Jeiock but that this did not include, "*olfala blong Tahiti*". Her evidence did not specify the date of that meeting or even the year that it is said to have happened. That leaves open the possibility that she was mistaken about the purpose of that meeting.
23. In his sworn statement, Tales Kaloris stated that he was at a meeting with Abel Taho at a Police Station on 26 August 2004. In the course of that meeting, Abel Taho reportedly confessed that his brother Dick Taho forced him to sign the transfer of the lease to Dick Taho. He further confirmed that, at that time, Jimmy Timiona had lost his leg through amputation.
24. There was no cross-examination of Tales Kaloris and so it is difficult to understand how that meeting came about or even who Tales Kaloris is. Was he a policeman? Was he investigating a complaint? What occurred as a result of that apparent confession to criminal conduct? While the confession is strictly hearsay, it is relevant and Abel Taho gave evidence albeit only by sworn statement and without being cross-examined. I have taken account of the evidence of Tales Kaloris in those circumstances; albeit on the limited basis available.
25. Abel Taho joined with his brother and categorically denied that he signed the transfer. He was not cross-examined as mentioned and his evidence in chief makes no mention of any meeting with the Police or even being at the Police Station. I am at a loss to understand why he was not cross-examined if it is seriously maintained that he made this confession.



26. Levi Tarosa was a senior lands' officer in the Department of Lands at the time of the transfers in 1997 and 1998. He appears to have witnessed the signing of both transfers by Jimmy Timiona. That notwithstanding, in his sworn statement he said that he did not know either Jimmy Timiona or Dick Taho at the time that the Timiona / Taho transfer was signed in 1998. He stated that Belliam Jeiock was the departmental officer who certified the true identity of both transferor (Jimmy Timiona) and transferee (Dick Taho) and it appears that this was also the case in respect of the 1997 transfer. Levi Tarosa could not recall whether either signatory was in a wheelchair or on crutches at the time of the 1998 transfer. He said in cross-examination that Abel Taho had subsequently told him that Jimmy Timiona had had an amputation before the transfer. He was not cross-examined further.
27. Levi Tarrasa's evidence never reaches the point of confirming that someone other than Jimmy Timiona signed the 1998 transfer. In particular, it cannot be excluded as a possibility that when he was brought in to witness the signatures in 1998, Jimmy Timiona was sitting down. Accordingly the fact that he had lost his leg and had crutches with him may have been overlooked or forgotten.
28. By paragraph 22 of the Claim, it appears to be alleged that Belliam Jeiock was Jimmy Timiona's brother in law leaving the inference that this somehow encouraged Belliam Jeiock to complicit in this fraud. That does not make sense. It is probable that this allegation meant to say that Belliam Jeiock was Dick Taho's brother in law. Indeed, that is how that paragraph was responded to by Dick Taho in his Defence – "*Belliam Jeiock is not (my) brother in law*" There is no other evidence on this issue either way.
29. In his sworn statement, Belliam Jeiock stated that he remembered the signing of the transfer and particularly that Jimmy Timonia came in to his office on crutches. He confirmed that the transfer was a voluntary act by Jimmy Timonia. It would be either a brazen act of deception or sheer stupidity indeed for Belliam Jeiock to have called in the same person (Levi Tarosa) to witness the signature of someone posing as Jimmy Timiona in 1998 when only twenty two months previously Levi Tarosa had witnessed Jimmy Timiona's signature on the 1997 transfer.
30. Dick Taho also stated that he performed a custom ceremony with Jimmy Timiona after the transfer with, "*a pig, foods and mats as a token for recognizing and giving the title to (him)*". Further that Abel Taho, Paul Wilfred and other relatives were present during the customary gift presentation. That was all capable of being investigated but there is no



evidence that contradicts that this custom ceremony took place. That leave uncontested evidence that is supportive of the defence.

31. In further support to the defence, Dick Taho also produced a handwritten document bearing date 10 June 1998 that he described as a "written will" and which appears to confirm the intention of Jimmy Timiona to gift the land to him. That document also appears to contain an acknowledgment by Jimmy Timiona that, in 1998, he considered Dick Taho to be his son ("*TAHO Dick hem osem one Boy Blon mi*"). Dick Taho's wife, Christiane Taho, explained the background to that document being written out by Jimmy Timiona. Mrs Taho states that this was essentially the commencement of the move to transfer the land to her husband. Furthermore, that Jimmy Timiona had already, by that time, lost his leg and was on crutches.
32. I note that the 1998 transfer was supported by a "CONSENT" by the then Minister of Lands pursuant to the Land Leases Act and which bears the date, 26 October 1998,
Consent to transfer from (Jimmy Timiona) to the benefit of (Dick Taho) without consideration. (FAMILY CONSIDERATION based on Estimated Market Value – VT163,000)
33. There was no further evidence on this "Consent". However, it cannot have been emerged from a vacuum. There would surely have to be some documentation that supported the decision of the Minister to give this consent.
34. There also appears no challenge to the evidence of Dick Taho and his wife that they cared for the ill Jimmy Timiona both before the 1998 transfer and thereafter up to the time of his death in 2002. That appears consistent with other defence evidence and the general thrust of the defence that Jimmy Timiona had, by at least 1998 (and probably earlier), taken to treating Dick Taho as his son.



Conclusion

35. The evidence in this case is not convincing that a fraud of this nature took place; indeed, far from it. There are a number of questions that remain unanswered - in particular, as identified in paragraphs 21 - 25 above. However, it remains for the Claimant Elder Wokon to prove the fraud on the evidence to the standard of the balance of probabilities and he has fallen far short of the mark in that respect. Indeed, the evidence adduced by the defence appears to outline an entirely realistic and probable scenario as to how the 1998 transfer came about.
36. I find against the Claimant. It is unnecessary to deal with the detail of the damages claimed.
37. The Claim is dismissed and judgment is entered for the Defendants together with costs on the standard basis to be agreed or argued. The Second Defendant is entitled to costs against the Claimant given the assistance that it provided with the affidavit of the Director of Lands and the watching brief that it was required to take because of the allegations of complicity in the fraud made against its former officer, Belliam Jeiock.

BY THE COURT

