

(Civil Jurisdiction)

BETWEEN: CHIEF ENOCH BULEVLA

Claimant

**AND: CHIEF EDWARD TAMBISARI (DR), MARK
MELTEN, CHIEF PAUL BULESUL & JOHN 7
BOLENGA**

Defendants

**Mr Justice Oliver A. Saksak
Mrs Shirley George – Clerk**

**Mrs Mary Grace Nari for the Claimant
Mr Britten Yosef for the Defendants**

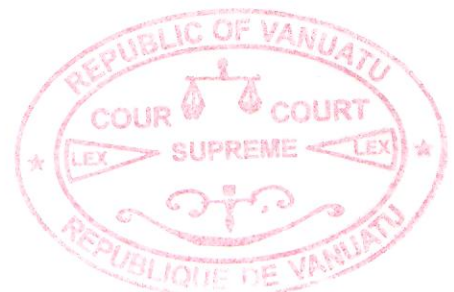
**Date of Hearing: 24th May 2012
Date of Judgment: 7th September 2012**

JUDGMENT

1. This is a reserved judgment.
2. The Court heard evidence from both parties on 24th May 2012 and directed upon Counsel's request that written submissions be filed by the Claimant within 14 days and written responses be filed by the Defendants within a further 14 days thereafter.
3. The Claimants filed written submissions on 21st June 2012 and the defence filed their submissions on 27th June 2012. The Claimant filed responses on 6th July 2012.



4. The Claimant seeks damages for defamation. He claims that certain statements made by the defendants in a public meeting held at Lonorore Airport on 27th May 2006 and during a Lands Tribunal Hearing in 2009 in respect to Sandleing Plantation and in Land Case No. 1 of 1997 relating to Lonblinlom land in 2004 were defamatory, intended to ridicule and damage the Claimant's reputation.
5. He claims the maker of those statements were –
- (a) Mark Melten – who in 2006 said:
“Enoch emi blong Malekula. Mi gat pruf istap.”
- (b) John 7 Bolenga – who in the same meeting in 2006 said:
“Mi, mi blong Lalsa. Yu, yu rolem mat blong yu mo yu go bak long Virenam mo go bak long ples blong papa blong yu long Malekula.”
- (c) Chief Cain Tabi in Land Case No. 1 of 1997 speaking as a witness for Family Tambisari and Mark Melten said:
“Enoch ino pikinini blong Tamtam from we tufala pikinini ia I laet skin be Enoch emi black. Mi harem tu se papa blong Enoch hemi wan man Rano long Malekula we name blong hemi Irene.”
- (d) Edward Tambisari in 2009 during the hearing in respect to Sandleing Plantation stated before the Tribunal that the Claimant was an illegitimate child.
- (e) Chief Paul Bule on 27th April 2009 in a written statement in support of Mark Melten's claim stated that the Claimant was not the child of Tamtam.
6. The Claimant claims damages in the sum of VT5.000.000 plus VT200.000 as personal expenses, and interests at 5% from date of judgment to final settlement, together with costs.



7. The Claimants produced evidence by sworn statements from:-

(a) Johnny Bulebes; (b) Enoch Leon and (c) Chief Enoch Bulevla (the Claimant).
They were cross-examined on their statements which were tendered into evidence as Exhibits C1, C2, C3, C4 and C5.

8. The defendants filed a defence on 16th August 2011. While the defendants acknowledge the statements were made, they assert the statements did not amount to defamation for reasons that –

(a) They were made by Mark Melten and John 7 Bolenga during a meeting in which its intended purpose was to identify the real custom land owner of a land and as such, it would be normal to make such accusations.

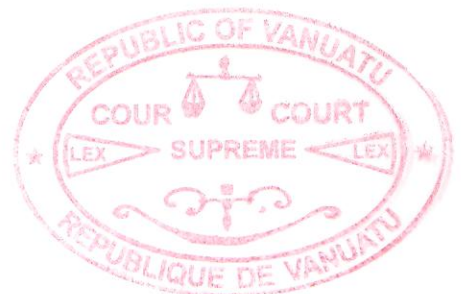
(b) During 2009 in respect to hearing of the Sandleing Plantation case and in relation to the Lonblinlom land case in 2004 they were privileged statements made in Court proceedings.

(c) For those reasons they deny the defendants were liable to pay the damages as claimed and seek orders that the Claimant's claims be struck out.

9. In support of their defences, the defendants provided evidence from (a) George Melten and (b) Chief Paul Bulesul. Both were cross-examined and their sworn statements were tendered as Exhibits D1 and D2 respectively. John 7 Bolenga's sworn statement was admitted into evidence without objection.

10. I have analysed all the evidence produced by both the Claimant and the defendants and can confirm that –

(a) The statements alleged under paragraph 5 (a), (b), (c), (d) and (e) were in fact said and published by the defendants.



(b) They were statements made or said or published about the claimant by the defendants who are by far younger compared to the claimant's age of being 101 years old.

(c) They were defamatory statements because –

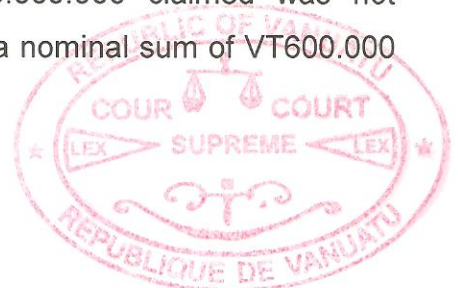
- (i) They were said repeatedly first in 2004 when the Tribunal rejected its truth and ruled also in favour of the claimant as land owner of Lonblinlom and Sandleing Plantation in 2009.
- (ii) The Claimant being an elderly man of 101 years old and a recognized chief. Prior to 2004 such statements were unheard of.
- (iii) The statements said or published were not the truth.
- (iv) They were not said in the honest opinion of the defendants because they never established its truth at any time. They bear the onus of proof.
- (v) They had no consent to make the statements.

These basically answer the three issues raised by Mrs Nari in her submissions in the affirmative.

11. I am satisfied that the claimant has met the test as laid down in Sim v. Stretch [1936] 2 All ER 1237 and in Bule v. Tabiaga [2010] VUSC 132.

12. I therefore reject the submissions of the defendants and give judgment in favour of the claimant.

13. As to amount of damages, the amount of VT5,000,000 claimed was not substantiated by evidence. I am prepared to award a nominal sum of VT600,000



as general damages for defamation and hurtful feelings. As for personal expenses again they are not substantiated and I am prepared to award a nominal sum of VT100.000 taking account of his travel to Santo for the trial with his two sons as witnesses and miscellaneous expenses such as subsistence and transport by transport vehicles, taxis or buses. The VT100.000 will be in addition to the VT600.000 for damages bringing to total award up to VT700.000. The Court is guided by Moli v. Heston [2001] VUCA 3 where the starting point of VT200.000 per year was awarded. The only difference is that whereas Bob Heston was in gainful employment but was not a chief, here it is the reverse. The claimant being a chief of some rank but no gainful employment, I am prepared to award the nominal sum of VT100.000 per year for a chief of his standing, from 2004 to 2009, a period of 6 years.

14. The claimant is entitled to judgment in the total sum of VT700.000 against the defendants jointly and severally.

15. No interests will be awarded but the claimant is entitled to be paid his costs of the action on the standard basis as agreed, or be determined by the Court.

DATED at Luganville this 7th day of September 2012.

BY THE COURT


OLIVER A. SAKSAK

Judge

