

The Respondent claimed:

1. Injunction orders
2. Damages to be assessed
3. Costs

The Defence to the claim was that the First Appellant was declared custom owner of the land (Peulrus land) in a village meeting of North Santo Area Council of Chiefs. It is said the Respondent is on Peul Veun Supe land and not Peulrus land. It is said the First Appellant as the custom owner of the said land cannot trespass on his own land. It is said the Respondent, his father and members of his family were placed there on the land by the First Appellants' big brother. The defence said the Respondent was not entitled to the relief he was seeking.

On 3rd July 2015, the Magistrate issued the following orders:

"... Dismissal Order

1. *Whereas the issue of the trespass and damage opted by the claimant stems from a land dispute between the parties.*
2. *It is not within the jurisdiction of this court to entertain such case since land dispute is the subject matter.*
3. *Having considered the aforementioned issues, this Court upon satisfaction believes that will not continue to entertain this case since the Court lacks jurisdiction to ascertain the matter.*

Accordingly, the Court hereby dismissed this case to allow the parties to pursue the matter in the Land Tribunal for determination of the ownership of the disputed land.

Meanwhile, the Defendants must cease to develop the disputed land pending the outcome of the Land Tribunal."

The Appellants filed his notice of appeal against the following last part of the dismissal order of the Magistrate's Court dated 3 July 2015: "Meanwhile, the Defendants must cease to develop the disputed land pending the outcome of the Land Tribunal."

The Appellants ask for:

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- The appeal to be allowed;
 - The part of the order of the Magistrates' Court appealed against to be set aside; and
 - Costs

The Appeal is advanced mainly on two (2) grounds:

First, on 3rd July 2015 the Court dismissed the case of the claimant on the ground that the Court did not have jurisdiction to entertain the matter. However, after dismissing the case the Court made some additional restraining orders against the Defendants (the two Appellants).

Second, the Court erred in law in adjudication on a claimant's (Respondent), application after the case was dismissed.

Mr George Boar concedes on behalf of the Respondent by agreeing with the grounds of and submissions for the appeal that when the Magistrate dismissed the claim then he could not have jurisdiction to issue restraining orders as he did in this case.

This concession disposes of the appeal. The appeal will be allowed and the appellants will be entitled to costs.

Before the Court makes the final orders on the outcome of the appeal, the following statements could be noted:

First, the claim before the Magistrate's Court was not a claim over customary land ownership rights nor a claim asserting section 17(g) rights under the Land Lease Act which are both beyond the jurisdiction of the Magistrate's Court.

Second, the claim before the Magistrate's Court was a claim for trespass and damages. The Defence to the claim admitted the Respondent and the members of his family occupy and live on the land with their authorisation. The sworn statement of Solomon Tavue (First Appellant) confirmed this point.

Third, the nature of damages sought in the claim in the Magistrate's Court was of a compensatory type. In the present case, the Magistrate, instead of dismissing the claim should have assessed the jurisdiction of the Magistrate's Court and dealt with the claim if it was within the Magistrate's Court monetary jurisdiction limit or refer the matter to the Supreme Court if it was beyond the Magistrate's Court jurisdiction. (See Magistrate's Court (Civil Jurisdiction) Act [Cap 130] (ss.1 and 4)); and Tawi -v- Republic of Vanuatu [2012] VUCA (paragraph 29 at p.5) and National Housing Corporation -v- Okau [2013] VUCA 21; Civil Appeal Case 16 of 2013 (26 July 2013).

On the material evidence, the Respondent and his family are occupiers of the subject land the First Appellant sold to the Second Appellant. They maybe entitled to occupy the subject land as a result of custom rights or as a consequence of agreements or authorisation of the custom owners. As occupiers of the land it is not necessary for them to own the land. Although, they may not own the land, they do, as a matter of custom and fact, own the trees and crops which are grown in and on the land. If their trees and crops are destroyed, they are entitled to compensatory damages the assessment of which can be within or beyond the jurisdiction of the Magistrate's Court. (See Kippion -v- Attorney General [1994] VUSC 1; Civil Case 120 of 1994 (1 January 1994).


For the purpose of the appeal, the Court makes the following orders:

ORDERS

1. The appeal is allowed
2. That part of the order of the Magistrate's Court dated 3rd July 2015 which is subject to this appeal is set aside.
3. The Appellants are entitled to their costs assessed and agreed in the amount of 20,000 Vatu.
4. The Respondent shall pay the following costs to the Appellants by 23rd May 2016:
 - 20,000 Vatu costs; and
 - 5,000 Vatu (wasted) costs ordered by the Court against the Respondent on 19 April 2016; and
 - 5,000 Vatu (wasted) costs ordered by the Court against the Respondent on 21 April 2016 which is totalling an amount of 30,000 Vatu.

DATED at Port-Vila this 10th day of May 2016

BY THE COURT


Vincent LUNABEK
Chief Justice

