

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

Civil
Case No. 15/195 SC/CIVL

BETWEEN: Joseph John
Claimant

AND: Kenneth Mera
First Defendant

AND: Gofrey Votot, Sandy Sur, Stanley Renolds, Kim Paulan, Hamlison Sur, Renald Bolan, Julien Wogis, Gibson Wavales and Julian Wogis as Executive Members of "LEWETAO CULTURAL GROUP"
Second Defendants

Before: *Justice D. Aru*

Counsel: *Mr. D. Yawha for the Claimant*
Mr. B. Livo for the Defendants

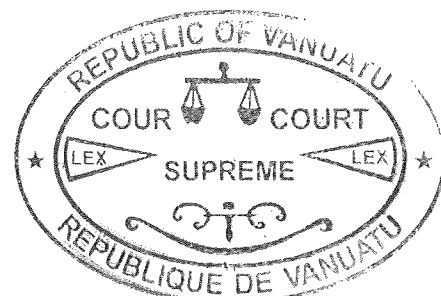
JUDGMENT

Introduction

1. The parties are all from the island of Merelava, TORBA province. They have been residing in Port Vila for sometime. In 2003 they formed the Lewetao Cultural Group ("LCG"). Those who joined as members would take part in performing Merelava traditional dances at various hotel venues in Vila as a means of earning income to help themselves and their community. In 2011 there were some disagreements between Mr Joseph John and the rest of the members. The claimant then left the LCG. As a result he filed this claim.

Pleadings

2. The claimant pleads his claim that he is a descendant of two maternal grandmothers namely, Julia and Nara. He says that that the LCG was set up for those who are related by blood or are descendants of Julia and Nara. That is the main requirement for becoming a member of the LCG. On that basis he is seeking orders that he is still a member of the LCG due to his lineage and claims that his removal was unlawful and seeks damages in the sum of VT626, 580.



3. The defendants on the other hand deny the claimant's assertions. They say that the criteria for membership is open to anyone from Merelava to join and participate in the cultural dances performed by the group.
4. To succeed, the claimant bears the onus to prove his case on the balance of probabilities. Three issues are identified for determination namely: was the LCG established only for descendants of Julia and Nara? Is the claimant still a member of the LCG? and is he still a beneficiary to any asset owned by the LCG?

Agreed Facts

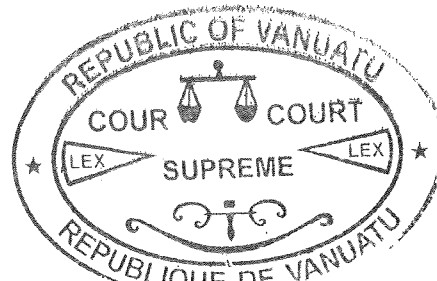
5. The first defendant is the chairman of the LCG and the second defendants who are also from Merelava are the registered users of the name "Lewetao Cultural Group". When the claimant left the group he was paid VT 150, 000. After each performance, VT 1000 from the group's funds would be given to a member as bus fare to collect their payment and to do banking on their behalf. Income from the cultural performances was used by the LCG to purchase land at Etas area, lease title 12/0921/234 which was registered in its name on 5 February 2007. The group also purchased a Toyota bus.

Submissions

6. The claimant submits that the only criteria to be a member of the LCG is one must be a descendant of Julia and Nara. That was the purpose for setting up the group .He submits that as a descendant he remains a life member of the group and could not be removed by the other members. The defendants on the other hand submit that the LCG is for everyone from Merelava who joins the group and participates in the cultural performances. They submit that once a member leaves the group he gets paid his share from the group's income and ceases to be a member. It was submitted that the claimant left the group and was paid VT 150,000. He therefore ceased to be a member and is no longer entitled to any assets of the LCG.

Was the LCG established for the descendants of Julia and Nara

7. The evidence for the claimant was given by the claimant himself, Lio Alfred and Alfred Mol. None of them produced any evidence of a decision that the members agreed that the only criteria for joining the LCG was if one is a descendant of Julia and Nara. Under cross examination all three confirmed that the LCG was set up for everyone from Merelava and there were members who are not descendants of Julia and Nara.
8. This evidence supports the defendant's position that the only requirement for membership was for one to join and participate in the cultural performances. Anyone from Merelava was welcome to join and be a member. This was confirmed by Stanley Reynold and Kenneth Mera who gave evidence for the defendants.
9. The evidence contradicts the claimants assertions. This issue is answered in the negative.



Whether the claimant continues to be a member of the LCG

10. The answer is No. Alfred Mol and his wife, Lio Alfred who gave evidence for the claimant both said in their evidence that after every performance each member is entitled to VT 250 recorded against his name after a roll call. When a member decides to leave the group his entitlement is calculated from the VT 250 and paid to him. Once paid the recipient no longer remains a member. Alfred Mol said he was a former member. When he decided to leave the group, he was paid VT 100,000 and he ceased to be a member. The claimant confirmed that he was paid VT 150,000 and no longer participates in the group's activities as he has ceased to be a member.
11. The claimant cannot continue to be a member of the LCG as his evidence confirms that he has left the group and no longer participates in the cultural performances with the other members. Given the answer to the first issue above, the claimant cannot continue to be member of the LCG.

Is the claimant a beneficiary of any current asset owned by the LCG

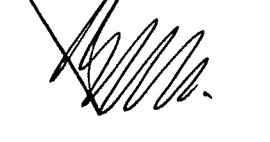
12. The claimant has left the group and was paid his share in the sum of VT 150, 000. He no longer participates in the cultural performances with the other members therefore he could not continue to be a beneficiary of any current asset. He is also not a registered user of the name "Lewetao Cultural Group" which is the registered lessee for the land at Etas title 12/0921/234.
13. The issue is answered in the negative.

Conclusion

14. Having answered all three issues in the negative, the claim is therefore dismissed. The defendants are entitled to costs to be agreed or taxed by the Master.

DATED at Port Vila this 22nd day of November, 2018

BY THE COURT



.....
D. Aru
Judge

