

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

Civil
Case No. 12/34 SC/CIVL

BETWEEN: SILU MALASIKOTO
Claimant

**AND: SILAS VATOKO, NAKMANU SAMBO, MORRIS
KELLY**
Defendants

Coram: Justice Aru

Counsel: Mr. F. Loughman and Mr. P. Fiuka for the Claimant
Mr. E. Nalyal for the Defendants

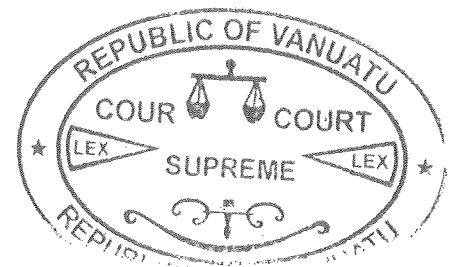
RESERVED JUDGMENT

Introduction

1. The claimant and the defendants are members of the Malasikoto family of Mele village on Efate. The defendants have been managing the affairs of the Malasikoto family in relation to Pangona land for some time. Silu Malasikoto alleges that he is now the chief and duly authorised representative of family Malasikoto. He claims that the defendants have received land rents, premium and consent fees over Pangona land but have not paid or disclosed these funds to family Malasikoto.
2. The claim is for the defendants to account for the monies received. On 20 March 2018 the claimant filed an interlocutory application pursuant rule 18.11 and rule 16.9 seeking judgment and an order to account. The defendants on the other hand filed a cross application seeking orders that the whole proceedings be struck out. Having heard the applications I reserved my decision which I now provide below.

Background

3. In understanding this family dispute one has to start with the declaration of custom ownership of Pangona land by the Efate Island Court (EIC) in **Malasikoto v Nakmau** [2004] VUICB 7 (Land Case No 1 of 1997). Initially the original claimants were Family Malasikoto. Family Lakeletaua Nakmau and family Elmu Labua Kaltamate Thomas were the first and second counter claimants respectively. Before the proceedings begun both counter claimants applied to be part of the Malasikoto family which the EIC accepted. In its judgment on 22 July 2004 the EIC declared family



8. During oral submissions the application to account pursuant to rule 16.9 was abandoned. It would have been difficult also for the claimant to obtain such orders against other persons, commercial banks and trust companies in general as these entities and individuals are not named and are not parties in this case.

Defendant's cross application

9. The defendants applied for orders that the whole proceeding be struck out as it is without basis and the claimant was not authorised by family Malasikoto to bring the claim.

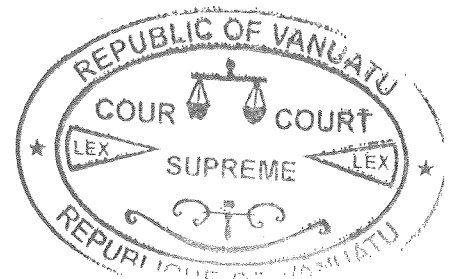
Discussions

10. In dealing with the claimant's application, the orders which he alleges were breached by the defendants are orders which required both parties to file a joint memorandum indicating to the Court what the issues are and if there are pending applications. Nothing was filed. No evidence was filed by the claimant to indicate that they made an effort to have the memorandum filed. The orders were not specific directions to the defendants to do something to progress the matter therefore the application is without substance.
11. On that basis the claimant's application pursuant to r 18. 11 is also dismissed.
12. That leaves the defendant's cross application to strike out the claim in its entirety. The claimant has not shown any authority that he is authorised by family Malasikoto to bring the application or the whole proceedings for that matter. He annexes a copy of a certificate of recorded interest registering himself, Toriki Malasikoto and Freddy Malasikoto as the representatives of family Malasikoto.
13. That certificate was challenged in **Vatoko v Tamata** [2019] VUSC 84. The same parties were involved in that case. Saksak J in quashing that certificate ordered that:-

*"All the members and descendants of the **Malasikoto** family including those from the Taea Family, Vatoko Family, Sambo Family and Family Elmu Thomas Kaltamate in conjunction with the Office of the National Co ordinator, be required to arrange a meeting for all the members of these families in accordance with section 6H of the Land Reform Act, not later than 29th July 2019."*

14. On appeal in **Malasikoto v Vatoko** [2019] VUCA 65, Mr Silu Malasikoto's appeal was dismissed. The Court of Appeal in dismissing the appeal said :-

"It follows from what is said in this judgment that until new representatives are appointed at a meeting properly held under s.6H the identity of the representatives of the custom owners of the Pangona Land are not known, and no new green certificate should issue."



Result

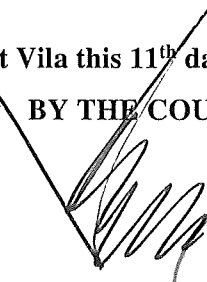
15. In line with the Court of appeal decision, the claim in this proceeding cannot be sustained. There is no known representative of custom owners of Pangona land until a meeting as directed by Saksak J is held.

Conclusion

16. The cross application is granted and the amended claim is hereby struck out. I make no orders as to costs.

DATED at Port Vila this 11th day of December, 2019

BY THE COURT



**D. Aru
Judge**

