

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

Civil
Case No. 20/858 SC/CIVL

- BETWEEN:** Family Narueang Barnabas represented by
Stephen Iatika
Claimant
- AND:** Family Sam Iohnamu represented by Johnny
and Nilausau, Napip Johnny, Jean Paul and
Lindi Pateipai, Claude Teaua, Marcel Peter
and Lesabeth Peter, Anso Peter and Iasua
Peter
First Defendants
- AND:** Family Nokamaha represented by Michael
Nokamaha and Lesbeth, Nimanian Sibas and
Mawina, Tikiskisi Jean Ives, Sipus Nimanian
and Karuan Nimanian
Second Defendants
- AND:** Family Joseph Faniku represented by Henry
Joseph and Rotha Johnson, Marcel Joseph
and Anne, Joseph Faniku and Single
Third Defendants
- AND:** Family Iata Pikpik represented by Noel
Nokamaha, Harry Iata and Viti, Sanel Iata and
Meriam
Fourth Defendants
- AND:** Family Poida represented by Willie Mikail and
Luci Mikail
Fifth Defendants
- AND:** Family Niplei represented by Niplei Meiake
and Wio Niplei
Sixth Defendants
- AND:** Natuan Johnson, Solomon Johnson, Noel
Resu, Albert Iokai and Iata Luata Amson
Seventh Defendants

Date of Hearing:

25 September 2020

Before:

Justice V.M. Trief

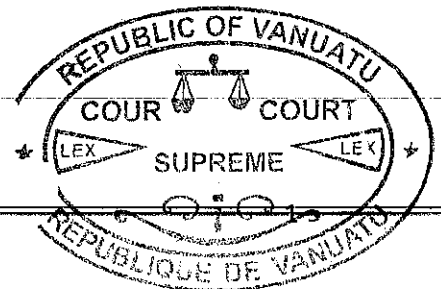
In Attendance:

Claimant - Mr A. Nalpini

Defendants – Mr G. Takau

Date of Decision:

27 November 2020



DECISION AS TO APPLICATIONS FOR SUMMARY JUDGMENT AND STRIKE-OUT

A. Introduction

1. The Claimant filed an Application for Summary Judgment. The Defendants filed an Application to strike out the claim. Counsel sought time on 25 September 2020 to file their submissions and that the Court then determine the Applications on the papers. This decision determines the Applications.

B. Statements of the Case

2. By the Claim, the Claimant Family Narueang Barnabas seeks orders evicting the Defendants from Loutapunga land on Tanna island. The Claimant alleges that it is a declared custom owner of Loutapunga land pursuant to a 1984 Tanna Island Court judgment, the Chief Justice's decision dated 1 September 2003 in a Land Appeal Case and consent orders dated 28 September 2005 in a Magistrates' Court proceeding. The Defendants are alleged to unlawfully occupy the Claimant's land.
3. The Defendants' Defence denies all allegations in the Claim and states that the Defendants relies on the consent orders dated 28 September 2005.
4. In its Reply, the Claimant states that after the 2005 consent orders were signed and the subsequent custom meeting of 2005, other Defendants started to reside unlawfully on Loutapunga land without the Claimant's consent.

C. Discussion

5. The Claimant seeks summary judgment on the ground that the Defendants have no real prospect of defending the Claim and relies on the decisions and consent orders set out at para. 2 above.
6. The Defendants seek strike out of the Claim on the ground that the Tanna Island Court did not declare any of the two claimants (I assume the Claimant) to be the custom owner of Loutapunga land. Further, that it gave them rights over the land but not custom ownership. Finally, that custom ownership is yet to be determined.
7. There are questions of fact as to whether or not the Tanna Island Court declared custom ownership, and not just rights over the land or the custom boundary of Loutapunga land, and whether custom ownership of Loutapunga land has been determined. These factual questions must be determined at trial. In the circumstances, I decline to grant summary judgment. That Application is **dismissed**.
8. The Claim discloses a cause of action in trespass. The grounds set out in the Application to strike out the claim are questions of fact for determination after trial. I **decline and dismiss** that Application.



D. Result

9. The Claimant's Application for Summary Judgment is declined and dismissed.
10. The Defendant's Application to strike out the claim is declined and dismissed.
11. The parties are to bear their own costs of the Applications.

**DATED at Port Vila this 27th day of November 2020
BY THE COURT**

VM Trief
.....
Viran Molisa Trief
Judge

