

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

Civil
Case No. 20/1756 SC/CIVL

BETWEEN: **Family Andre Saravanu of Malekula
Island**
Claimant

AND: **Family Nale, Family Malverus, Family
Ulnaim of Atchin Mainland, Malekula,
Vanuatu**
Defendants

Date of Trial: 26 March 2021
Before: Justice V.M. Trief
In Attendance: Claimant – Mr L.J. Napuati
Defendants Family Nale and Family Malverus – Mrs L. Matariki & Mrs M. Bakeo
Defendants Family Ulnaim – Mr T.J. Botteng
Date of Decision: 29 July 2021

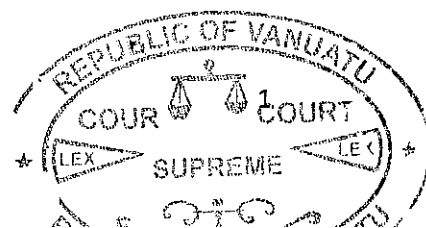
JUDGMENT

A. Introduction

1. The Claimant Family Andre Saravanu ('Family Saravanu') seeks an order restraining the Defendants and their families from constructing new houses, gardens and other improvements on the disputed land of Tanmelev and Letjernavun pending the outcome of the matter before the North East Malekula Customary Land Tribunal.
2. Mr Napuati formally withdrew the claim for damages.

B. Pleadings

3. By its Claim, Family Saravanu alleges that:
 - a) In 2017, the North East Malekula Customary Land Tribunal sat to determine the customary ownership of Betelep land, and that within Betelep land is Tanmelev and Letjernvanu land belonging to the Claimant;



- b) Supreme Court orders dated 8 September 2017 and 24 November 2017 suspended or stayed the Tribunal proceedings until further order of the Court; and
 - c) The North East Malekula Customary Land Tribunal has not resumed its proceedings to determine the customary ownership of Betelep land, however the Defendants continue to build permanent houses on the disputed land and will not stop without a Court order ordering them to.
4. The Defendants Family Nale and Family Malverus denied in their Defence that Tanmelev and Letjernvanu land are located within Betelep land but are located within the boundary of Netchinwar land. Further, they denied that the Claimant has any customary right to stop them from building houses on the disputed land.
 5. In its Defence, the Defendant Family Ulnaim disputed the Claim and alleged that the Claim was an abuse of the Court's process.
 6. The issues arising are:
 - i) Is custom ownership yet to be decided for Tanmelev and Letjernavun land by the North East Malekula Customary Land Tribunal? **[Issue 1]**
 - ii) Whether or not the Court will make an order restraining the Defendants and their families from constructing new houses, gardens and other improvements on the disputed land of Tanmelev and Letjernavun pending the outcome of the matter before the North East Malekula Customary Land Tribunal? **[Issue 2]**

C. Evidence

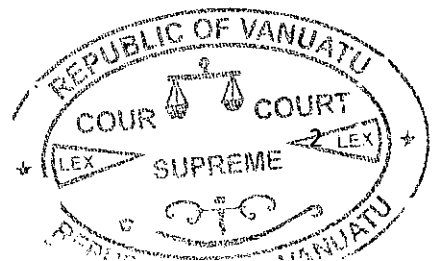
7. Family Saravanu filed 3 sworn statements of Chief Andre Saravanu, [**“Exhibits C1, C2 and C3”**].
8. Mr Saravanu evidenced in his sworn statement filed on 8 July 2020, [**“Exhibit C1”**] that the dispute over Betelep land which also covers Tanmelev and Letjernvanu land is currently pending before the North East Malekula Customary Land Tribunal. He attached copies of:
 - a) Supreme Court Orders dated 8 September 2017 in Judicial Review Case No. 2348 of 2017 which stated:

...

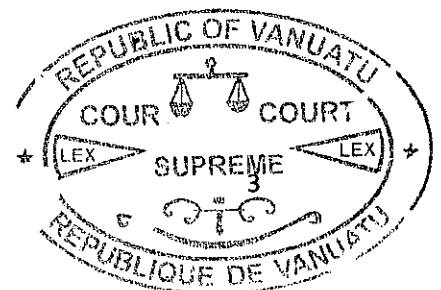
3. *Pending the final determination of this matter or further order of the Court the current proceeding held in the North East Malekula Custom Area Lands Tribunal be suspended and stayed.*

- b) Consent Orders dated 24 November 2017 in Judicial Review Case No. 2348 of 2017 which stated:

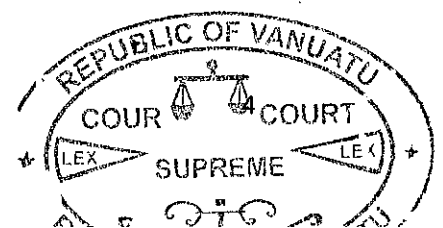
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2. *The First Defendant tribunal [North East Malekula Custom Area Lands Tribunal] is to re-hear all the claimants to the dispute of the customary ownership of Betelep boundary.*
 3. *This proceeding is now discontinued on the basis of these Consent Orders.*
9. Mr Saravanu further evidenced that until final determination by the Lands Tribunal as to the custom ownership of the area, he seeks restraining Orders from the Court to put a stop to the Defendants erecting permanent buildings and making gardens. He has attempted to convene customary meetings with the Defendants but they do not want to attend the meetings nor listen to him.
 10. In his sworn statement filed on 30 September 2020 [**“Exhibit C2”**], Mr Saravanu evidenced that he visited the Custom Land Management Office who provided a letter dated 23 September 2020 (copy attached) confirming that the custom ownership dispute over Betelep land is still pending before the Area Land Tribunal and that Letjernvanu land is located with the Betelep custom land boundary. They were not aware of Tanmelev land located within the Betelep boundary.
 11. Mr Saravanu also attached to his sworn statement [**“Exhibit C2”**] a copy of his sketch map filed in the North East Malekula Customary Land Tribunal showing both Tanmelev and Letjernvanu land are located within Betelep land. He stated that the Tanmelev name is a new name given to the Defendants’ village and it is named after the village on Malekula that they originated from as they are “man come”.
 12. Finally, Mr Saravanu attached to his sworn statement filed on 26 January 2021 [**“Exhibit C3”**] a copy of a Customary Lands Tribunal Office letter dated 1 August 2017 showing that Family Saravanu and the Defendant Family Malverus are party to the Betelep land dispute before the North East Malekula Customary Land Tribunal.
 13. In cross-examination, Mr Saravanu stated that there are other people besides the Defendants living on and building houses on Letjernvanu land however he did not name them as parties to this proceeding. He stated in re-examination that he did not name those other people as parties because they are living outside the area drawn in his sketch map filed in the North East Malekula Customary Land Tribunal.
 14. Mr Saravanu was also challenged in cross-examination that there was not yet a determination that Tanmelev and Letjernvanu land were within the boundary of Betelep land. He answered that it was so in custom but not declared by a Court. He explained in re-examination that he had used the name Tanmelev in his sketch map to the Tribunal as it was the name used by the Defendants from their nasara at Pinalum. It was a new name but the place is called Letjernvanu which he had gotten half of [through custom ceremony], but not all of.
 15. The Defendant Family Ul'naim filed 2 sworn statements of Stephen Ul'naim, [**“Exhibits D1 and D2”**].



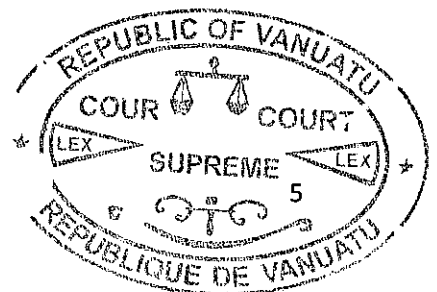
16. Mr Ulnaim asserted that the Claim was an abuse of the Court's process as the Claimant was not a custom owner of Betelep, Tanmelev or Letjernvanu [**Exhibit D1**] and that he supported Family Nale and Family Malverus' evidence and submissions [**Exhibit D2**].
 17. Family Nale and Family Malverus filed the sworn statements of Tino Nale [**Exhibit D3**], Corley Malverus [**Exhibit D4**] and Bani Nale [**Exhibit D5**], and Additional sworn statement of Bani Nale [**Exhibit D6**].
 18. Mr Tino Nale evidenced that Malverus was the older brother of Nale. He has lived on Tanmelev land for 54 years. He also evidenced that Family Nale and Family Malverus have lived continuously on Tanmelev land for over 100 years. Further, that Mr Saravanu obtained an Interim Order from the Supreme Court dated 6 September 2004 in Civil Case No. 31 of 2004 preventing anyone from using Tanmelev land until the Land Tribunal determined its custom ownership. The Court set aside that order on 25 April 2014. Finally, that the Betelep land dispute is before the North East Malekula Custom Area Land Tribunal and that Mr Saravanu is not a declared custom owner of the land.
 19. Mr Malverus and Mr Bani Nale evidenced that Malverus was the older brother of Nale. They have lived on Tanmeliv land for the past 30 years. They repeated Mr Tino Nale's evidence as to the 2004 interim order which was set aside in 2014 and the pending Betelep land dispute before the North East Malekula Custom Area Land Tribunal.
- D. Issue 1: Is custom ownership yet to be decided for Tanmelev and Letjernavun land by the North East Malekula Customary Land Tribunal?
20. It is undisputed that the North East Malekula Customary Land Tribunal has not yet determined the custom ownership of Betelep land.
 21. I accept the Claimant's evidence that Family Saravanu (Claimant) and the Defendant Family Malverus are party to the Betelep land dispute before the North East Malekula Customary Land Tribunal.
 22. I also accept the Claimant's evidence of a letter dated 23 September 2020 from Custom Land Management Office stating that Letjernvanu land is located within the Betelep custom land boundary under dispute before the North East Malekula Customary Land Tribunal. Finally, I accept that Tanmelev land is also located within the Betelep land boundary as Mr Saravanu included both Tanmelev and Letjernvanu land in the sketch map that he filed in the North East Malekula Customary Land Tribunal. Mr Saravanu evidenced that the Tanmelev name is a new name given to the Defendants' village and in order to identify them, named after the village on Malekula that they originated from as they are "man come".
 23. I conclude therefore that the custom ownership of Tanmelev land and Letjernavun is yet to be decided by the North East Malekula Customary Land Tribunal.



- E. Issue 2: Whether or not the Court will make an order restraining the Defendants and their families from constructing new houses, gardens and other improvements on the disputed land of Tanmelev and Letjernavun pending the outcome of the matter before the North East Malekula Customary Land Tribunal?
24. Restraining orders may be sought to maintain the status quo or otherwise preserve the subject matter of the proceeding pending the determination of the proceeding.
25. The Claimant seeks an order restraining the Defendants and their families from building or gardening on Tanmelev and Letjernavun land pending the outcome of the Betelep Inad dispute before the North East Malekula Customary Land Tribunal.
26. Until that Tribunal makes its decision, no one including the Claimant has been declared custom owner of Tanmelev or Letjernavun land.
27. I will assume that the Claimant has a serious question to be tried before the Tribunal as it, like Family Malverus, is party to the pending Betelep land dispute.
28. The Claimant seeks a restraining against the Defendants and their families only. The Claimant has not sought to have the restraining order also apply to it or any other party to the Betelep land dispute.
29. If the restraining order is not made, the Claimant could be disadvantaged but equally, the Defendants too would be disadvantaged, particularly if ultimately they (Family Malvurus) are declared the custom owner of Tanmelev or Letjernavun land.
30. The Claimant's seeking of the order against the Defendants assumes that either the Defendants will not succeed in their claim for custom ownership of Tanmelev and Letjernavun land, or conversely, that the Claimant will succeed in such claim. However, I cannot make such assumption. It is entirely a matter for the North East Malekula Customary Land Tribunal and that tribunal only (on the evidence before me) to determine the custom ownership and rights to Betelep land, Tanmelev land and Letjernavun land (again, on the evidence before me).
31. Mr Saravanu conceded in cross-examination that there are other people besides the Defendants living on and building houses on Letjernvanu land however he did not name them as parties to this proceeding. He stated in re-examination that he did not name those other people as parties because they are living outside the area drawn in his sketch map to the Tribunal. However, it is for the Tribunal and the Tribunal only to determine the boundaries of Betelep land and any other customary land within Betelep land, and the custom ownership and/or other rights in relation to that land.
32. In the circumstances, I decline to exercise my discretion to grant the restraining order sought by the Claimant.

F. Result and Decision

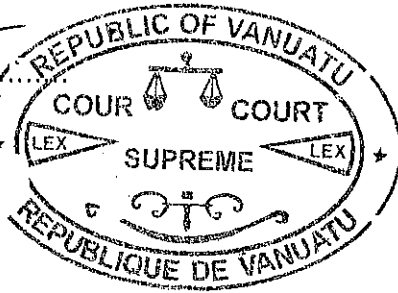
33. The Claim is dismissed.



34. The Claimant is to pay the Defendants' costs as agreed or taxed by the Master. Once set, the costs are to be paid within 28 days.

**DATED at Port Vila this 29th day of July 2021
BY THE COURT**

VM Trier
Justice Viran Molisa Trier



The seal of the Supreme Court of Vanuatu is circular. The outer ring contains the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom. Inside the ring, the words "COUR" and "COURT" are positioned on either side of a central scale of justice. Below the scales, the word "SUPREME" is written in a larger font. Two small triangles containing the word "LEX" are located on either side of "SUPREME". At the bottom of the inner circle, there is a decorative flourish.