

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

**Civil Case
No. 21/2203 SC/CIVL**

BETWEEN: **Vanuatu Agriculture Research and
Technical Center (VARTC)**
Claimant

AND: **Marie Loy, Cevu Vocor, Joseph Loy,
Philimon Loy, Salome Loy, Pauline Loy
representing Family (Daniel) Loy**
Defendants

AND: **Republic of Vanuatu**
Interested Party

Date of Hearing: 27 January 2023
Before: Justice V.M. Trief
In Attendance: Claimant – Ms V. Muluane
Defendants Salome Loy & Philimon Loy – no appearance (Mr T.J. Botleng)
Other Defendants – no appearance (in person)
Interested Party – Mr F. Bong (excused from appearance)
Date of Decision: 6 April 2023

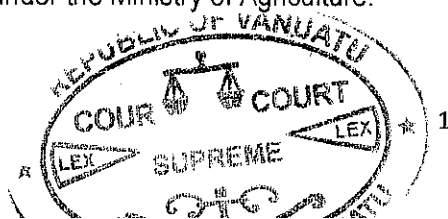
**DECISION AS TO APPLICATION TO SET ASIDE DEFAULT JUDGMENT IN RESPECT OF
TWO DEFENDANTS AND AS TO QUANTUM OF DAMAGES**

A. Introduction

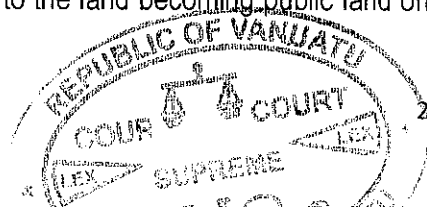
1. The Defendants did not file a defence despite an Order to do so. Default judgment was entered as to liability. This was an application to set aside the default judgment in respect of two Defendants, Salome Loy and Philimon Loy, and sets out the Court's determination as to the quantum of damages the Defendants are to pay to the Claimant Vanuatu Agriculture Research and Technical Center ('VARTC').

B. Background

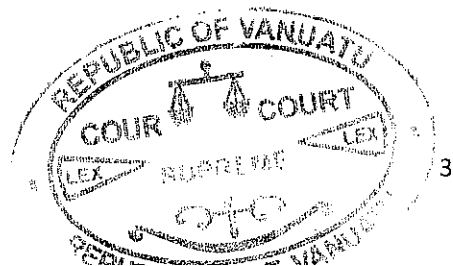
2. The VARTC is a corporate body established by the *Vanuatu Agriculture Research and Technical Centre Act* [CAP. 286] and operating under the Ministry of Agriculture.



3. VARTC operates Vanuatu's agricultural research centre. The research centre began in 1966 as the Institut de Recherche pour les Huiles et Oleagineux ('IRHO') and Institute de Recherche du Café et du Cacao ('IRCC') through the French Government and the Condominium Government. In 2002, the Centre became the VARTC.
4. The VARTC's functions are prescribed in subs. 3(1) of the Act as follows:
 3. (1) *The functions of the Centre are as follows:*
 - (a) *to carry out scientific research and development for any of the following purposes:*
 - (i) *assisting the agricultural, livestock, forestry and fisheries industries;*
 - (ii) *furthering the interests of the Vanuatu agricultural and rural community;*
 - (iii) *contributing to the achievement of Vanuatu national objectives;*
 - (iv) *any other purpose determined by the Minister;*
 - (b) *to encourage or facilitate the application or utilization of the results of such research;*
 - (c) *to carry out services, and make available facilities, in relation to science;*
 - (d) *to act as a means of liaison between Vanuatu and other countries in matters connected with scientific research;*
 - (e) *to train, and to assist in the training of, research workers in the field of science and to cooperate with tertiary education institutions in relation to education in that field;*
 - (f) *to establish and award fellowships and studentships for research, and to make grants in aid of research, for a purpose referred to in paragraph (a);*
 - (g) *to recognize associations of persons engaged in industry for the purpose of carrying out industrial scientific research and to cooperate with, and make grants to, such associations;*
 - (h) *to collect, interpret and disseminate information relating to scientific and technical matters.*
5. VARTC operates on the following two areas of land (the 'VARTC properties'):
 - a) Survey plan 04/2641/019 which is unleased land also known as the 'IRHO land'; and
 - b) Lease title no. 04/2641/002 over land leased from Family Tangis (lessor and custom owner) known as 'IRCC'.
6. VARTC employs over 106 staff members who together with their families total 250 people who reside on the VARTC properties.
7. The Republic of Vanuatu, Interested Party, is the owner of the IRHO land either by way of a compulsory acquisition process commenced in 2017 (with the IRHO land valued at VT435,960,000 (the 'compensation sum')) or due to the land becoming public land on Independence.



8. The Defendants Marie Loy, Joseph Loy, Philimon Loy, Salome Loy and Pauline Loy as 'Family Loy' are custom ownership claimants in the Santo/Malo Island Court Land Case No. 5 of 1992 and Land Case No. 18/206 over Belbarav custom land which is still pending determination and Cevu Vocor is an agent of the previously-named Defendants.
9. On 17 December 2020, the Government paid the first instalment of the compensation sum in the amount of VT45,690,000 to Marie Loy (the daughter of Saul Loy).
10. On 3 February 2021, the Government stopped the payment of any further instalments of the compensation sum to Marie Loy pursuant to a Supreme Court Order dated 20 October 2010 that any future dealings in relation to the acquisition of IRHO should be conducted with Philimon Loy, the sole surviving administrator of Daniel Loy's estate.
11. On 22 June 2021 and continuing till 14 July 2021, the Defendants and agents and family members entered onto VARTC properties, illegally evicted VARTC staff and threatened staff members by placing crossed namele leaves which prohibited and prevented VARTC and its staff to continue VARTC operations.
12. Namele leaves, from the palm known as Chief's Palm, pose a very real deterrent in Vanuatu culture. If two leaves are crossed over and placed at the door of any place of business, the staff will bluntly refuse to enter that property. The business has no choice but to cease to operate, until such time as the issue is solved.
13. The Defendants' actions caused trauma, stress and anxiety that not only impacted VARTC but staff members and their families including children.
14. VARTC, its Board members and Government officials attempted to get the Defendants to remove the namele leaves so that VARTC could resume operations but Family Loy representatives particularly Marie Loy refused to remove the namele leaves. Consequently VARTC was shut down from 22 June-14 July 2021.
15. On 12 July 2021, this Court granted urgent restraining orders against the Defendants.
16. On 20 July 2021, Mr Yawha filed Notice of Beginning to Act for the Defendants Salome Loy and Philimon Loy.
17. The Claim was filed on 18 August 2021 seeking *inter alia* special, punitive and general damages for the loss suffered in the period 22 June-14 July 2021.
18. On 18 August 2021, the Claim was served at Mr Yawha's office.
19. In the period 6 October 2021 to 2 November 2021, the Claim was personally served on the other Defendants.
20. On 11 February 2023, default judgment was entered for an amount to be determined ('Default Judgment').



C. Application to Set Aside Default Judgment

21. Rule 9.5 of the Civil Procedure Rules ('CPR') provides as follows:

9.5 (1) *A defendant against whom a default judgment has been signed under this Part may apply to the court to have the judgment set aside.*

(2) *The application:*

(a) *may be made at any time; and*

(b) *must set out the reasons why the defendant did not defend the claim; and*

(c) *must give details of the defendant's defence to the claim; and*

(d) *must have with it a sworn statement in support of the application; and*

(e) *must be in Form 14.*

(3) *The court may set aside the default judgment if it is satisfied that the defendant:*

(a) *has shown reasonable cause for not defending the claim; and*

(b) *has an arguable defence, either about his or her liability for the claim or about the amount of the claim.*

22. Salome Loy and Philimon Loy sought the following orders in their Application filed on 5 December 2022 (the 'Application'):

a) *That the Request for Default Judgment and the Application for Quantum of Damages be discontinued against Salome Loy and Philemon Loy (Administrator of the estate of the late Daniel Loy); and*

b) *That the costs of this application be costs in the cause.*

23. Default judgment had already been entered so I have treated the application as an application to set aside the default judgment in respect of Salome Loy and Philimon Loy.

24. The following grounds for the Application were set out in Ms Loy and Mr Loy's affirmed statements:

a) In Ms Loy's evidence, that she did not join the other Defendants Marie Loy, Cevu Vocor, Joseph Loy and Pauline Loy to disrupt VARTC's operations; and

b) In Mr Loy's evidence, that he is the administrator of the estate of the late Daniel Loy and he did not authorise the other Defendants Marie Loy, Cevu Vocor, Joseph Loy and Paulin Loy to unlawfully interfere with VARTC's operations. They acted of their own volition and did not act as representatives of Family Daniel Loy to disrupt VARTC's operations.

25. VARTC's submissions in response (titled "Claimant's Reply to the Defendant's Application to Set Aside the Default Judgment dated 05.12.22") were filed on 22 December 2022.

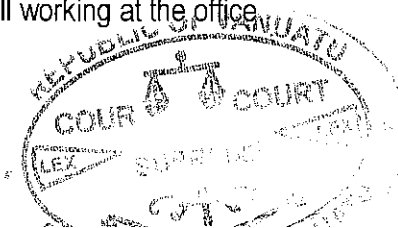
26. Ms Muluane submitted that the Court may set aside the default judgment if it is satisfied of both matters set out in rule 9.5 of the CPR. However, the 2 Defendants have only



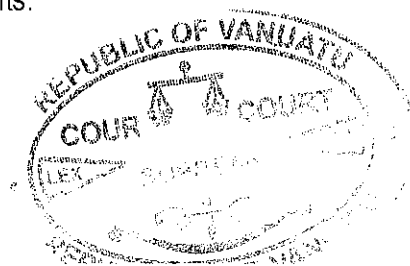
- addressed a possible defence to the Claim, without attaching a draft defence, and have not shown any cause for not defending the Claim.
27. She also submitted that the 2 Defendants were represented at all times before the Default Judgment by counsel Mr Yawha and that default judgment was even served on Mr Yawha on their behalf. She submitted that the 2 Defendants never applied to have themselves removed as a party pursuant to rule 3.2 of the CPR therefore the Application should be dismissed and damages be assessed.
 28. Mr Botleng did not appear at the hearing so I set out Ms Muluane's submissions in a minute and gave his clients the opportunity to file and serve submissions in reply. None were filed.
 29. Ms Muluane is correct in her submission that the Court may set aside the default judgment if it is satisfied of both matters in rule 9.5(3) of the CPR. That is, that reasonable cause has been shown for not defending the claim and the defendants have an arguable defence. Ms Loy and Mr Loy did not give any reason for not defending the Claim. They did not apply to set aside the default judgment until the hearing of the quantum of damages when Mr Botleng appeared and informed the Court that he now represented them and would file an application to set aside the default judgment in respect to them.
 30. Ms Loy and Mr Loy have only addressed a possible defence to the Claim, that is, that they did not authorise the other Defendants to interfere with VARTC's operations. It is good practice to attach a draft defence with the application to set aside default judgment. They did not.
 31. However, I consider that in the particular facts of this case, Ms Loy and Mr Loy are on the opposing side to Marie Loy and the other named Defendants who placed namele leaves to stop VARTC operating until the Government resumed paying the compensation sum to them. Mr Loy is the sole surviving administrator of Daniel Loy's estate and thus is asserted to be the only person that future dealings in relation to the compulsory acquisition of IRHO land are to be conducted with, not Marie Loy. Further, none of the evidence for VARTC establishes that Ms Loy or Mr Loy were seen on VARTC properties or were part of the Defendants' actions which resulted in VARTC's closure. There is also no evidence that Ms Loy and Mr Loy were part of the Defendants' refusal to remove the namele leaves.
 32. Accordingly, in the particular circumstances of the present case, I consider that the Default Judgment should be set aside in respect of Ms Loy and Mr Loy. Their Application will be granted.

D. Evidence of Quantum of Damages

33. The evidence of **Vincent Lebot**, a member of the VARTC Board [Sworn statement filed on 7 July 2021) was that at 5pm on 22 June 2021, all VARTC workers had left work for the day except for the Chief Executive Officer ('CEO') Michel Lechapt, Deputy CEO Steglare Tabiaga and Silyeye Tiata who were still working at the office.



34. Mr Tiata was sitting outside the main office building when a truck full of people stopped in front of the main office. Marie Loy's husband Tom was driving. An unidentified man called from inside the truck to Mr Tiata demanding that the employees leave the office as they were ready to place namele leaves on the VARTC office premises due to the compensation issue. Mr Tiata was told that the men in the truck had legal advice to place the namele leaves.
35. Mr Tiata then called the CEO and Deputy CEO who were still inside at that time, to come out of their offices. As soon as the CEO and Deputy CEO came outside, Cevu Vocor placed namele leaves at the main office entrance.
36. The people in the truck informed the CEO, Deputy CEO and Mr Tiata that they had also placed namele leaves at the IRHO main entrance gate and at the junction road that leads to the Coconut Processing Unit area and to the IRCC.
37. Mr Lebot believes that the stopping of any further compensation sum payments to Marie Loy led to the events of namele leaves being placed on VARTC properties, under the instructions of Marie Loy.
38. The placing of namele leaves at the IRHO main entrance gate and the junction resulted in the VARTC employees working at the IRHO land immediately stopping going to work there. Moreover, they feared going back to work on the IRHO land as they did not feel safe. VARTC operations were forced to cease indefinitely.
39. During the global Covid pandemic, Vanuatu national policy had become geared towards an agricultural based economy.
40. Major research projects were underway at VARTC, totalling VT60 million, with contracts and agreements already signed with donors Pacific Fund, French Embassy, French Development Agency, New Zealand MFAT, Australian ACIAR and European Fund. All these projects are necessary for the development of agriculture and livestock, and were at risk with the closure of VARTC activities.
41. VARTC was seriously impacted by Tropical Cyclone Harold. Reconstruction of buildings damaged in that cyclone were underway and many contractors had signed time-limited agreement which would have to be discussed again. Some had recovered their equipment and tools, and were likely to ask VARTC for compensation.
42. The security of the facilities and plant genetic resources collections, as well as that of the cattle herds, could not be properly protected. Paddock gates were opened so that bulls were found among the cows selected for artificial insemination so that the programme would have to be restarted from the beginning.
43. June is the month when the budget for the following year is presented. The 2022 budget was almost ready but it would be seriously delayed because the administrative staff could not access VARTC offices and documents.

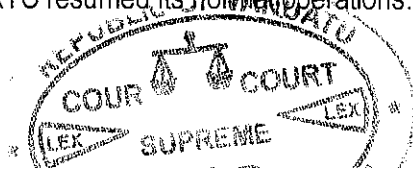


44. The VARTC workers were worried and could not move around freely and access their gardens. Fear, insecurity and danger had been caused to VARTC staff members, agents and workers.
45. The forced closure of VARTC's operations forced the VARTC Board Chairman Antoine Ravo, Director of Livestock Lonny Bong and Director of Bio-Security Vanuatu Meriam Tolak to travel from Vila to Santo. On 24 June 2021, 25 June 2021 and 29 June 2021, they together with a Malvatumauri National Council of Chiefs representative, the Chairman of Tavuemasana Council of Chiefs and other chief representatives held meetings with Family Loy representatives in an attempt to have the namele leaves be removed to allow VARTC to resume its operations.
46. However, Marie Loy and the other Family Loy members indicated that the namele leaves would only be removed once they received the rest of the compensation sum (i.e. VT390,270,000). None of them, however, were declared custom owners as the custom ownership dispute is still pending determination.
47. VARTC's losses as a result of its operations ceasing due to the namele leaves from 22 June 2021 to 7 July 2021 included the following:

a)	Costs of salary of employees forced to stop working	VT2,762,452;
b)	Costs of security	
c)	Costs of 3 meetings on 24, 25 and 29 June 2021	VT199,900
d)	Urgent Board meeting on 1 July 2021 in Port Vila	
e)	Cost of injured cattle due to non-surveillance	VT303,307
f)	Cost of damage done by unsupervised cattle	VT2,356,029
g)	Cost of repairs of fence to Family Molbarav	
h)	Cost of loss of major contracts and donors	

TOTAL **VT5,621,688**

48. **Antoine Ravo**, Chairman of the VARTC Board confirmed in his evidence [Sworn statement filed on 20 April 2022] that the Defendants' placing of namele leaves on VARTC properties instilled a sense of fear, danger, loss and a full suspension of VARTC operations from 22 June 2021 to 14 July 2021. Staff members were adversely affected, being concerned that VARTC might have to be closed indefinitely and were concerned for their safety and their families' safety as many staff live on VARTC premises.
49. He confirmed that he and Directors Bong and Toalak travelled to Santo and met with Family Loy representatives and chief representatives on 24 June 2021, 25 June 2021 and 29 June 2021. Marie Loy and the Family Loy representatives refused to remove the namele leaves until they received further compensation sum payments.
50. On 14 July 2021, the namele leaves were finally removed pursuant to this Court's restraining orders dated 12 July 2021 and VARTC resumed its normal operations.



51. VARTC was forced to hire security services for the IRHO property from 28 June 2021 to 14 July 2021 to protect the cultures, the animals and staff living there from any further actions by the Defendants. Retaining GIBS Security Services to guard IRHO for 11 days and nights from 28 June 2021 to 8 July 2021 cost VARTC VT158,400. Retaining Auta Security Services to guard IRHO for 6 days and nights from 9 July 2021 to 14 July 2021 cost VARTC VT120,960. The total cost was VT279,260. Receipts were attached.
52. VARTC incurred the VT50,190 cost of flights for the VARTC Board Chairman and other 2 Directors from Vila, VT50,000 for their accommodation, VT27,800 restaurant expenses and VT50,000 per diem allowances totalling VT213,470. Receipts were attached.
53. When the Defendants did not agree to remove the namele leaves, Mr Lebot, the CEO and Deputy CEO travelled with Mr Ravo and the other 2 Directors to Vila to continue working with Government officials to find a solution. Their flights cost VT56,607, accommodation VT48,930, rental car VT19,200 and per diem allowances VT57,000, totalling VT181,737. Receipts were attached.
54. Fuel costs to transport the chief representatives, Board members and staff totalled VT127,207. Receipts were attached.
55. The fee for the custom ceremony that the chiefs attended was VT2,000 and the cost of mats was VT3,000. Receipts were attached.
56. A temporary workstation had to be set up as there was no indication how long IRHO would remain closed. Costs included stationery VT48,378 and phone refill VT13,580. Receipts were attached.
57. On 27 June 2021, the cattle which were no longer under 24-hour surveillance broke through the fence that separates IRHO land and Family Molbarav's garden and destroyed their crops. The repairs to the fence and compensation to Family Molbarav cost VT200,000. One of the cattle that trespassed into Family Molbarav's garden was killed. That cow was valued at VT70,000. The receipts were attached.
58. The only way to stop the Defendants' illegal and damaging actions was by obtaining restraining orders. VARTC's legal costs are set out in the evidence of Melissa Charley.
59. The Defendants' actions led to VARTC executive staff and employees suffering trauma, stress and anxiety.
60. **Marguerite Cevuard**, VARTC Accountant, deposed [Sworn statement filed on 27 April 2022] that 91 VARTC employees could not work during the closure period 22 June-14 July 2021 but were paid VT3,269,947 (VT3,060,595 for 55 permanent employees and VT209,352 for 36 temporary employees). Receipts were attached.
61. It was impossible to enter VARTC offices due to the namele leaves placed there therefore they had to set up a temporary workstation at IRCC. Three laptops had to be

purchased as well as internet connection installed, totalling VT500,921. Receipts were attached.

62. She works in the VARTC main office which is one of the areas where the Defendants placed namele leaves to force the Government to pay them compensation.
63. She deposed that in Vanuatu custom, the namele leaf is an important symbol of traditional culture and it serves as a powerful taboo sign. The placing of the namele leaves at VARTC made her feel entrapped in the place where she works and scared for her family's safety as well as for all other families that reside at VARTC properties. She could not go back into her office to get office supplies and her computer. She also feared going into town to do grocery shopping for her family or to get wages for the employees in case she was confronted by one of the Defendants.
64. In the past, custom owners had threatened staff members and become violent and the Defendants appeared to be as aggressive, and nothing could convince them to remove the namele leaves. They instilled fear and shut down VARTC's operations in order to get paid compensation.
65. **Melissa Charley**, Accountant at Ferrieux Patterson Lawyers deposed [Sworn statements filed on 20 April 2022 and 22 June 2022] that VARTC's legal fees up to 22 June 2022 in relation to this matter totalled VT2,675,461. Bills of costs were attached.

E. Discussion

66. On the evidence, VARTC has proved that it suffered loss and damage caused by the Defendants Marie Loy, Cevu Vocor, Joseph Loy and Pauline Loy trespassing onto VARTC properties and placing namele leaves that threatened VARTC staff and illegally evicted them forcing VARTC to cease all operations from 22 June-14 July 2021.
67. VARTC had to pay employees during the closure period even though operations had been stopped, had to pay for security services, officials' travel to Santo and Vila to negotiate a solution, set up a temporary workstation, pay for fence repair and compensation for Family Molbarav's crops destroyed by cattle and other miscellaneous costs.
68. Accordingly, VARTC is entitled to the following **special damages**:

	Description	Amount (VT)	Evidence by:
1	Costs of salary of employees forced to stop working during closure period	3,269,947	Ms Cervuard
2	Costs of security	279,260	Mr Ravo
3	Costs of Board members' travel to Santo for attendance at 3 meetings with chiefs and Family Loy	213,470	Mr Ravo
4	Costs of CEO and Deputy CEO travel to Vila	181,737	Mr Ravo
5	Costs of temporary workstation	562,879	Mr Ravo & Ms Cervuard

6	Costs of fence repair, crop compensation to Family Molbarav & killed cow	270,000	Mr Ravo
7	Miscellaneous costs: fuel for transportation & custom reconciliation	132,207	Mr Ravo
	TOTAL	VT4,909,500	

69. VARTC has also proved that trauma, stress and anxiety were caused to its employees. Accordingly, VARTC is entitled to VT500,000 **general damages**.
70. Punitive damages were also sought. There is no question that the Defendants Marie Loy, Cevu Vocor, Joseph Loy and Pauline Loy's actions were aimed at forcing the Government to pay them compensation which they are not entitled to. Their actions resulted in the forced closure of VARTC which conducts its operations for the nation's benefit and in the national interest. Accordingly, **punitive damages** of VT1,000,000 are also awarded to mark public disapproval of the Defendants' contumelious conduct.
71. Costs must follow the event. The Defendants are to pay VARTC's costs of the proceeding which are summarily fixed at VT1,500,000.

F. Result and Decision

72. For the reasons given, the Defendants Salome Loy and Philemon Loy's Application filed on 5 December 2022 for an order setting aside the Default Judgment in respect to them is **granted**.
73. The Default Judgment dated 11 February 2023 is **set aside** in respect of the Defendants Salome Loy and Philemon Loy.
74. The Defendants Marie Loy, Cevu Vocor, Joseph Loy and Pauline Loy are to pay, jointly and severally, VT4,909,500 **special damages** to the Claimant (the 'judgment sum').
75. Interest is to be paid on the judgment sum until fully paid, at the Supreme Court rate of 5% per annum.
76. The Defendants Marie Loy, Cevu Vocor, Joseph Loy and Pauline Loy are to pay, jointly and severally, VT500,000 **general damages** to the Claimant.
77. The Defendants Marie Loy, Cevu Vocor, Joseph Loy and Pauline Loy are to pay, jointly and severally, VT1,000,000 **punitive damages** to the Claimant.
78. The Defendants Marie Loy, Cevu Vocor, Joseph Loy and Pauline Loy are **permanently restrained** from trespassing onto any property of the Claimant, including the IRHO and IRCC, and from placing any more namele leaves on any property of the Claimant or otherwise carrying out or creating any form of threats or intimidation towards any employee or property of the Claimant.
79. The Defendants Marie Loy, Cevu Vocor, Joseph Loy and Pauline Loy are to pay, jointly and severally, the Claimant's costs of the proceeding fixed at VT1,500,000 within 28 days.

80. There is no order as to the Interested Party's costs.
81. The restraining orders dated 12 July 2021 are **discharged**.
- G. Enforcement
82. This matter is listed for Conference **at 8.45am on 3 May 2023**, including by phone/video link to the Luganville Court House, for the Defendants Marie Loy, Cevu Vocor, Joseph Loy and Pauline Loy to inform the Court: (i) that they have paid the judgment debt or (ii) to explain how they intend to do so. If there is no satisfactory conclusion, the file will be transferred to the Master for enforcement.
83. For that purpose, this judgment must be personally served on those Defendants and proof of service filed.

DATED at Port Vila this 6th day of April 2023
BY THE COURT


Justice Viran Molisa Trief

