

BETWEEN: GIDEON YONA AND FAMILY MAKALVIP
Claimants

AND: JACK LUI MPOPONGLIU AND FAMILY BONG
Defendants

Before: Justice Oliver A. Saksak

Counsel: Mr Andrew Bal for the Claimants
Mr Eric Molbaleh for the Defendants

Date of Hearing: 2nd February 2024

Date of Judgment: 13th June 2024

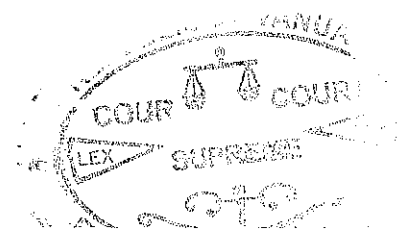
JUDGMENT

Introduction

1. This judgment is formulated on the papers as agreed by both counsel on 2nd February 2024 when Mr Bal proposed to file written submissions by 30th April 2024 and Mr Molbaleh to file and serve his submissions by 30th May 2024.
2. Molbaleh filed defence submissions first in time on 3rd May 2024 and Mr Bal filed his final submissions only on 7th June 2024.

Background

3. By their Supreme Court claim filed on 4th August 2023 the Claimants claim that they are the declared custom owners of Kitto or Ngitto land situated on West Epi.
4. The decision was made by the Mabfilau Village Court on 10th October 1984.
5. The decision was appealed to the Tarpumamele Council of Chiefs which upheld the decision of the Mabfilau Village Court on 12th June 2000.



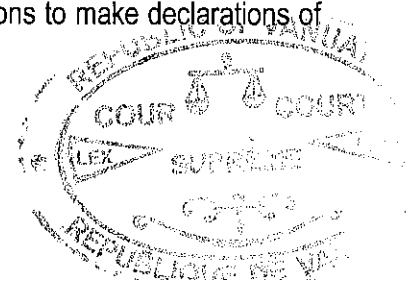
6. Based on the decisions the claimants seek orders to:
 - a) Evict the defendants from Mabfilau village and Kitto land,
 - b) Special and punitive damages in the sum of VT 2,000,000,
 - c) General damages in the sum of VT 500,000, and
 - d) Costs

Defence case

7. The defendants filed a defence on 5th September 2023 denying that the claimants were declared as custom owners of Kitto land and say they are not entitled to the orders they seek, and say further that the claim should be dismissed. They also filed an amended defence on 9th November 2023 which included a counter-claim claiming orders of eviction and damages against the claimants.
8. They relied on the evidence by sworn statements of Jack Lui Mpopongliu filed on 8th September 2023, 9th November 2023 and 21st March 2024.
9. The claimants on the other hand relied on the evidence by sworn statements of Gideon Yona filed on 4th August 2023, 13th and 28th March 2024 and 27th February 2024.

Discussion

10. Mr Bal submitted that since there was no appeal against the decision of the village Court of 1984, that decision has become a final decision by virtue of Article 78 (3) of the Constitution, and further that Mr Aicta Vuti by letter of 17th September 2007 had upheld the decisions of the Mabfilau Village Court and Tarpumamele Council of Chiefs.
11. Those submissions are inconsistent with the claimant's pleadings in paragraph 5 of the Supreme Court claim and the evidence presented by the defendants.
12. Further from the evidence of Jack Lui dated 21st March 2024 and in particular the documents annexed as "JLM4", " JLM5", the Mabfilau village Court decision and the Council of Chiefs decision of 2007 showing irregularities in the procedures required. Furthermore the Village Court and Council of Chiefs are not appropriate customary institutions to make declarations of

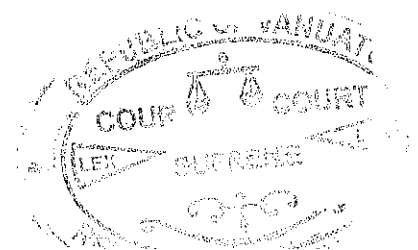


custom land ownership. The Court of Appeal so held in the case of Valele Family v Toura [2002] VUCA 3.

13. These irregularities have been taken to the appropriate Office of the Customary Lands Management through Mr Aicta Vuti who acknowledged them as an appeal by his letter of 8th June 2015, see "JLM9". Mr Vuti confirmed the appeal and said it would be referred to the Custom Land Management for resolution.
14. Further Jack Lui also annexed a New Fresh Claim Form as "JLM 10" dated 21st June 2023 with a boundary map which is currently pending before the Customary Land Management Act for resolution.
15. Despite the claimants claiming they have been declared custom land owners of Kitto Land since 1984, they have no evidence showing that they have been issued a "Green Certificate" in respect of Kitto Land.
16. For them to succeed in their claims for eviction orders and damages, the claimants must show to this Court that they are the declared custom owners with further proof of a Certificate of Registered Interest. And they have failed to so prove.
17. Similarly the defendants also must discharge that onus of proof as regards their counter-claim for eviction and damages against the claimants. They too have no declaration of custom ownership to Kitto had as yet and they cannot be claiming for eviction and damages against the claimants. Their claims are premature, without foundations, frivolous and vexatious

Results

18. The claimants fail in their claims and they are dismissed.
19. The defendants fail in their counter-claims which are also dismissed.
20. The parties are to return and start their claims a fresh in the nakamal under the Custom Land Management Act to resolve ownership of Kitto Land.



21. There will be no order as to costs. Each party will bear their own costs.

DATED at Port Vila this 13th day of June 2024

BY THE COURT



Hon. OLIVER A SAKSAK

Judge

