

**IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU**
(Civil Appeal Jurisdiction)

Civil Appeal Case No.45 of 2012

BETWEEN: REPUBLIC OF VANUATU
Appellant

AND: FELIX LAUMAE
First Respondent

AND: SINGO MOLVATOL
Second Respondent

Coram: *Hon. Chief Justice Vincent Lunabek
Hon. Justice Bruce Robertson
Hon. Justice John Mansfield
Hon. Justice Daniel Fatiaki
Hon. Justice Dudley Aru*

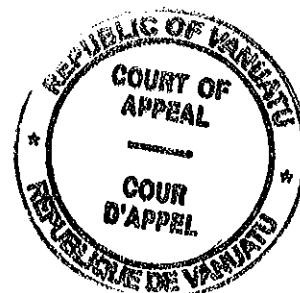
Counsel: *Mr. Justin Ngwele for the Appellant
Mr. Felix Laumae for the First Respondent
Second Respondent – no appearance*

Date of Hearing: *22 October 2012*

Date of Decision: *25 October 2012*

JUDGMENT

1. There is some background to this appeal which needs to be mentioned only briefly. It flows from the compulsory acquisition of the Vanuatu Agricultural College, an issue addressed by the Court of Appeal in the Republic of Vanuatu v. Boetara Family [2011] VUCA 6.
2. Once the compensation payable for the acquisition of that leased land was determined, the issue arose as to who precisely was entitled to the compensation. Much of the compensation has now been paid, but not without further litigation culminating in a further decision of the Court of Appeal in Zebedee Molvatol v. Boetara Trustees Ltd. [2012] VUCA13. That judgment records the background in some detail.
3. Presently, the Republic of Vanuatu holds the balance of the compensation payable of some VT29,533,245. It is holding that amount until it is clear who is entitled to it.



4. The present appeal arises from an order of the Supreme Court made on 4 September 2012 in Civil Case No. 21 of 2012 when the Director of Finance was directed to pay to Felix Laumae VT12,189,871.
5. In the Supreme Court action, Felix Laumae on 2 August 2012 obtained an order to that effect. At that time, the Republic was not a party to the action. It had been brought by Felix Laumae against his client (then Singo Molvatol) for his costs for and in relation to the compensation proceedings. For present purposes, there is no issue about those costs being payable by Singo Molvatol to Felix Laumae. On 21 August 2012, the Supreme Court ordered the payment of those costs from the balance of the compensation payable, within 7 days.
6. The Republic then applied to become, and was joined as, the second respondent to that action. It applied to stay the enforcement order. It said that, contrary to what the first order said or accepted, the VT29,533,245 was not held on trust for Singo Molvatol only, the sum was held on account of both the Boetara family and for Zebedee Molvatol Tarvui. Even if the interests of Singo Molvatol and Zebedee Molvatol are treated as one, there is still a potential liability to pay that sum or part of it to the Boetara family.
7. Moreover, the Republic said, in a separate proceeding in the Supreme Court in Civil Case 18 of 2012, Thompson Wells had obtained an order restraining the Republic from paying out any of that sum because Thompson Wells claimed he was entitled to it, or to some of it. That order was made on 2 April 2012. Both the Boetara family and Zebedee Molvatol Tarvui are parties to that action. On 6 July 2012, an application to discharge that order was not successful.
8. There is a third problem confronting the Republic. It said that on 30 May 2005 the Veriondali Village Land Tribunal declared the Boetara family and Zebedee Molvatol Tarvui as custom owners of Belvarav land. That was land part of which was acquired for the Vanuatu Agricultural College. The compensation of VT196,888,300 was largely paid, and two Deeds of Release with the Boetara family and with Zebedee Molvatol Tarvui were signed. Then, it appears, that Felix Laumae obtained an order that the Deed of Release signed by Zebedee Molvatol Tarvui on 5 May 2011 should be vacated. The material before the Court of Appeal does not show why that order was made. The order was made in Supreme Court Civil Case 42 of 2011. Then, early this year, on 16 April 2012 the Veriondali Land Tribunal apparently changed its earlier decision and declared that customary ownership of Belbarav land (previously including the acquired land) was held equally between Timothy Molbarav, Amal Solomon, Peter Natu, James Tamata, and Singo Molvatol. That determination is now under appeal by Thompson Wells and by Rachel and Mathias Molvatol.
9. Despite the material, the Supreme Court on 4 September 2012 refused to suspend the execution order. The judge said that it "*is common knowledge*" that the balance of the compensation payable "*belongs to Zebedee Molvatol, now Singo Molvatol*" and he noted that the Veriondali Land Tribunal on 31



May 2005 had decided that the Belbarav land was owned by the Boetara family "*which includes Zebedee Molvatol (then), now Singo Molvatol*". He did not think that the restraining order in Civil Case 18 of 2012 could "*be sustained*" as Felix Laumae had not been a party to it.

10. In our view this appeal must be allowed and the orders of the Supreme Court in Civil Case 21 of 2012 made on 2 and 21 August and 4 September 2012 must be discharged.
11. That is not to say that Felix Laumae cannot recover his costs properly payable by Singo Molvatol. There does not seem to be any dispute about that, although in the course of the submissions Mr. Laumae did not enable the Court of Appeal to be clear about the precise terms of the oral agreement as to who should pay his costs, and in what proportions, and precisely what costs he should be able to recover. Once it is accepted that it was agreed that he should conduct the compensation case and related matters on a contingency basis, with his fee being 20% of the recovered compensation. Such an agreement should always be reduced to writing and signed to avoid any ambiguity.
12. However, the material before the judge at first instance did not indicate with clarity the person or persons entitled to the balance of the funds, or all of them. It is not clear on the material that, ultimately Thompson Wells or Rachel and Mathias Molsakel have no status as custom owners as their appeal to establish their status has not been finalized. That is why another Supreme Court judge made the restraining order on 2 April 2012 and affirmed it on 2 July 2012. It is not clear that, in the light of the apparent decision of the Veriondali Village Land Tribunal of 16 April 2012, its previous declaration of custom ownership of 30 May 2005 stands.
13. The judge at first instance may well be correct that it cannot change its earlier decision, but that is not a question to be decided on an application between a lawyer and his client for an order as to how his costs may be paid. It is also not clear from the material, especially as the Deed of Release with Zebedee Molvatol had been vacated, that he (or Singo Molvatol) is entitled to the whole of the balance of the remaining funds. We note that Felix Laumae in his submissions said that the entitlement was equal between the Boetara family and the Molvatol family (through Zebedee Molvatol and now Singo Molvatol), but that is not obvious and indeed the judge described the custom owners as the Boetara family which included Zebedee Molvatol and Singo Molvatol.
14. In our view, the orders could only have been made if it was clear that only Singo Molvatol is entitled to the balance of the funds. If that becomes clear, the Republic will pay the funds to him or as directed by him (or by the Supreme Court). Whilst there is uncertainty about that, as there is, the order should be set aside.
15. The Republic, in its grounds of appeal, raised the correctness of the judge at first instance accepting that Felix Laumae is entitled to recover his legal fees on a contingency basis. We do not think that it is necessary to deal with that.

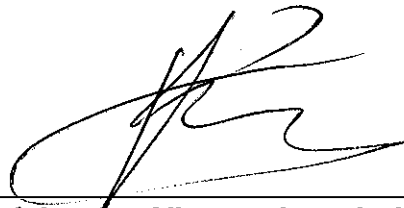


We have made some brief comments above about the apparent looseness of the arrangement.

16. The orders made are that the appeal be allowed and the orders of the Supreme Court in Civil Case 21 of 2011 on 2 and 21 August and 4 September 2012 are set aside. Felix Laumae is to pay the costs of the appeal, as the unsuccessful party. We add that there is no suggestion that Felix Laumae, in seeking the orders now set aside, did not fully disclose to the judge at first instance, the material about the outstanding issues concerning the status of the custom owners of Boetara land.

DATED at Port Vila, this 25th day of October, 2012.

BY THE COURT



Chief Justice Vincent Lunabek

