

**IN THE MAGISTRATES' COURT OF
THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

Case No. 20/2897 CIVIL

BETWEEN:

BERNARD LAUTO
Claimant/Respondent

AND:

**SAMUEL KALTACK, JEAN
PIERRE SEREL, WALTER
MALAWI, MANIEL WAYANE,
MONEANE WAYANE**
Defendants/Applicants

Coram: Fsam (Magistrate)

*Appearances: Mr Rongo_R for Claimant/Respondent
Mr Napuati_L for the Defendants/Applicants.*

Copy: Mr Less Napuati of Warsal & Co., Mr Rongo Roger.

**DECISION ON AMENDED APPLICATION
TO STRIKE OUT CLAIM**

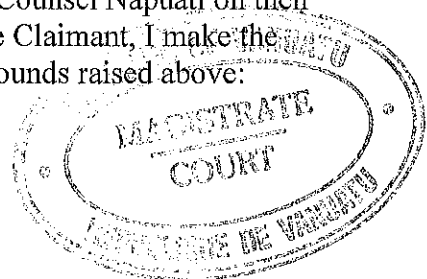
1. The Defendants had initially filed an application to strike out claim on the 25th of February, 2021, and then later sought leave of Court to file an amended application. Leave was granted and their amended application was filed on the 25th of March, 2021 seeking the following orders:

- "1. The Claim be struck off in its entirety, and, or,*
- 2. The Claim be struck off against all other Defendants."*

2. And the grounds on which this application was advanced were that:

- 1. There is already a declaration in favour of the Defendants by the Erakor Council of Chiefs.*
- 2. The Magistrate court does not have jurisdiction to preside over issues to do with customary land.*
- 3. There are no allegations against the Defendants.*
- 4. The Claimant has no locus standi to bring this proceeding pursuant to Court of Appeal Case of Lauto v Efate Island Court [2016] VUCA 46.*

3. UPON HEARING the defendants' Application advanced by Counsel Napuati on their behalf, and upon hearing Mr Rongo's Response on behalf of the Claimant, I make the following findings from which I give my ruling based on the grounds raised above:



4. On ground 1; I consider that Counsel Napuati did refer to a decision of the Erakor Village Court on the 6th of June 2012, that declared that the land boundary of "Elak Mparon" is owned by Ati Nelly and her sister Ati Tala. However, the Defendants are neither party to this proceeding, nor is there any supporting evidence to show that they are related to Ati Nelly as alleged, or that they have any right or interest to the land in question. I accept their evidence, as per decision of the Court of Appeal, in *Lauto v Efate Island Court* [2016] VUCA 46, and for this ground I can only conclude based on the evidences produced, that neither the Claimant, nor the Defendants, have ownership over the land "Elak Mparon", and that Smith Richard Lauto is the owner of land boundary of Erakor including the land "Elak Mparom."

5. On Ground 2: It is important to consider the main cause of action in the claim and supporting documents in order to determine this ground. The claimant through his counsel, Mr Rongo, submitted that the claim is one of trespass and threatening, and not one of customary ownership of land, and is within the jurisdiction of this court. However, I fail to accept the claimant's position as the issue before this court is beyond just the alleged threatening and trespass. The Claimant made reference to himself as having ownership over some customary land in Erakor, including "Elak Mparom" and even sought restraining orders against the Defendants from accessing this land. What is interesting is, even despite the decision of the Court of Appeal, in *Lauto v Efate Island Court*, which clearly outlined in paragraphs 31, 32 and 33, that the right person to inherit custom properties of family Itai Lauto in accordance with Erakor custom is Smith Richard Lauto, the first born son of late Gerald Itai Lauto who was the claimant's brother, the claimant is still coming to court relying on the Efate Island Court decision on 26th April 2011, to justify his position, as being customary land owner, and therefore instituting this claim and seeking restraining orders accordingly. However, based on the evidence, I find the claimant is not the custom owner of the land in question. I also find that the Defendants are disputing their right to the land "Elak Mparom" as according to their evidence, so clearly, there remains a dispute as to ownership of this particular land in question, and this can only be properly determined before the appropriate court. Therefore, I accept this ground that this Court does not have jurisdiction to determine this proceeding due to the dispute over custom land in question.

6. On Grounds 3; the only allegations against the defendants are for threats and trespass as aforementioned, however, there is no supporting evidence to prove which property in particular has been trespassed upon by the defendants, and with regards to the alleged threatening, there is no evidence to satisfy this court as to what extent the threats took place to cause the claimant pain, distress and suffering as alleged. Therefore I accept this ground to the extent that whilst there are allegations against the defendants, there is no sufficient evidence to prove them by the claimant.

7. And as to ground 4: I answer this in consideration of both grounds 2 and 3 as aforementioned, and conclude that the claimant does not have the locus standi to bring this proceeding given the decision in the court of Appeal case of *Lauto v Efate Island Court*.

8. Having given the above findings, it is important to note also, that the claimant through his counsel, Mr Rongo, did made reference to a letter dated 20th April 2021, by the National Coordinator of the Customary Lands Management Office (CLMO). However, I do not see how this document supports his position, if at all, when he states in his claim and evidence that he is the custom owner of some Land in Erakor, and then decides to rely on this document to say that CLMO is awaiting written decisions to certify custom ownership of the land in question. And if there was a hearing of 4th March 2021, by the Erakor Mpatnatkon



Nakamal, as mentioned in the letter, no documentations in respect of this proceeding has been provided in evidence by the claimant to support his case.

10. And having so ruled on the relevant grounds of the Application, I hereby make the following orders:

- 1) That Application to strike out the claim in its entirety against all the Defendants is granted.
- 2) That the restraining orders issued by this Court on the 29th of October, 2020, is hereby dismissed.
- 3) That the Claimant is to pay Defendants cost of this application as agreed or taxed failing agreement.
- 4) That Claimant reserves the right to appeal this Decision if he is not happy with it.

Dated this 20th April, 2021.

BY THE COURT


MAGISTRATE

