

(Civil Jurisdiction)

BETWEEN: LESLEY NUTON

Plaintiff

AND: JOHN LOPE

Defendant

Date of Hearing: 13th July, 2001.

Coram: Before Mr Justice Oliver A. Saksak

Clerk: Ms Mandeng John

Counsel: Mr Saling Stephens for the Plaintiff.

: Mr Hillary Toa for the Defendant.

RESERVED JUDGEMENT

CLAIMS

The Plaintiff's claims are in two parts. The first is in respect of improvements by the Plaintiff on land known as "Verue" on Maewo Island. The sum claimed is VT3,723,240. The second claim is for equitable relief for monies and labour had and rendered by the Plaintiff which the Defendant now enjoys at the Plaintiff's expense. He seeks declaration that he holds an equitable right over the said property. He further seeks declaration that Defendant has been unjustly enriched by the said property to the detriment of the Plaintiff's legal and equitable right to the said property.

FACTS

The facts as appeared from both oral and affidavit evidence first concerning the Plaintiff are as follows:-

Island of Origin – Merelava, Banks group.

Father's name – Silas Sil.

Date of father's first arrival on Maewo – 1960.

Date of arrival of Plaintiff on Maewo – 1961.

Land purchased by Silas Sil - Naumumu in 1960. In 1961 the Plaintiff bought another small parcel adjoining that bought by his father making a total area of 2½ hectares.

Land-owner – Simon Tarisulu.

Marital Status – It appears that the Plaintiff has never married.

Age – He does not know his exact age but thinks he is 70 years old.

Defendants – It appears that he has none.

Relationship with the Defendant – Brother-in-law. His sister is married to the defendant.

Date when Plaintiff first lived with Defendant – 1967.

Date when Plaintiff asked to vacate – November, 1995, a total of 28 years.

As regards the Defendant:-

Island of origin – Father, John August from Ambae. Mother is from Maewo.

First settled – At Betarara on Maewo.

Later moved – To “Verue” in 1943 – 1944.

Land purchased – By father John August for £20 (Pounds)

Land-Owner – Simon Tarisulu.

Further parcel purchased – 1962 by the Defendant.



Marital Status – Married.

Relationship with Plaintiff – Brother –in-law. His wife is the Plaintiff's sister.

Date when Defendant invited the Plaintiff and gave him licence to live with him. – 1967.

Date when Plaintiff was asked to vacate – November, 1995, a total of 28 years.

Arrangement made by Defendant with the Plaintiff - To live with the Defendant and his family as his brother-in-law, to make gardens to feed himself, to cut copra to earn money for himself but not to plant coconuts.

EVIDENCE

Further evidence has shown that the Plaintiff had planted fruits trees and coconuts on the land in question. In or about 1984 the Defendant's sons had made a further payment to the land-owner of "Verue" as follows:-

Tony – VT10,000
 Maclean – VT10,000
 1 pig – donated by the Plaintiff
 2 mats, and
 1 head of kava.

The pig donated by the Plaintiff as uncle of the Defendant's sons have been repaid or replaced. Evidence show that the Plaintiff was summoned before a chiefs meeting. He was specifically asked not to continue planting coconuts on Verue but he failed to comply with the direction of the chiefs. The only explanation he provided was that he was planting coconuts for his two nephews. Evidence shows the reason why the Defendant took his brother-in-law to live with them is that he was having disputes concerning land with the land-owner Simon Tarisulu. As his brother-in-law, the Defendant felt obliged to accommodate him according to local values and tradition.

Evidence shows that the Plaintiff has bought lands at Naumumu which is still available to him. When he was asked to leave Verue, he returned to live at Naumumu.

ISSUES

1. Is the Plaintiff part or joint-owner with the Defendant to "Verue"? The answer is in the negative. He only contributed a pig because the defendant's son did not have a pig of the appropriate size. That pig has since been replaced. In no way can that be interpreted as a 'payment' for land. A payment for land according to custom practiced in that part of Maewo comprises of money, pig, mats and kava, all in one parcel.
2. What right did the Plaintiff have to the Defendant's land? In my view his right was a mere licence its work and plant edible root-crops and cut copra from the defendant's existing coconuts to earn money. He was not given a licence to plant coconuts or fruit trees which would remain permanently on the land. When therefore the Plaintiff planted coconuts and fruit trees on the land, he was doing so outside the license he was granted. His claims for improvements therefore must fail.
3. Has the Plaintiff any valid equitable relief against the Defendant? The Plaintiff has worked the Defendant's land, cut copra and benefited from the Defendant's land without any returns to the Defendant for 28 years since 1967 to November, 1995. For this reason it is in my view fair to hold that the Plaintiff now has no equitable relief for which he can usefully claim against the Defendant. This claim must also fail.
4. Has the Defendant been unjustly enriched by the property which the Plaintiff had planted on the Defendant's land? For the reasons given in (3) above the answer is in the negative. In his evidence supported by the evidence of the Chiefs the Plaintiff said he was planting coconuts for the benefit and future of his nephews. In my view he cannot lay any claim to that.



5. Does the Plaintiff hold an equitable right over the said property?
The answer is in the negative.

CONCLUSION

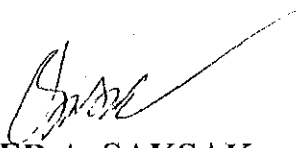
The Plaintiff's statement of claim fails and is dismissed in its entirety.

ORDERS

The Plaintiff is ordered to pay the Defendants costs of and incidental to this Action within 28 days from the date of this judgment. The Costs shall be taxed if Parties fail to reach agreement within a further 28 days thereafter.

DATED at Luganville this 2nd day of October, 2001.

BY THE COURT



OLIVER A. SAKSAK

Judge

