

(Civil Jurisdiction)

**BETWEEN: JIMMY BERNARD AND
DOMINIQUE BOULEKONE**
Representing –
**DUDUNI THEOPHILE
MALON KEN
DORIRI BARTHELEMY
BOULEBAN JACQUES**

Plaintiff

AND: LULU VATU & OTHERS

Defendants

Date: 7th September, 8.10 a.m.

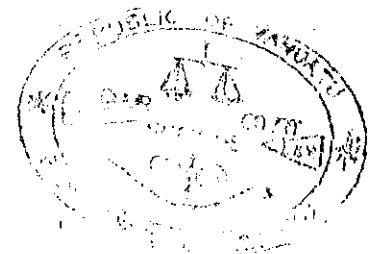
Coram: Before Mr Justice Oliver A. Saksak
Clerk: Ms Cynthia Thomas

Counsel: Mr Saling N. Stephens of Counsel for the Plaintiffs
Mr Bill B. Tamwata of Counsel for the Defendants.

JUDGEMENT

The Plaintiffs issued exparte summons on 6th August 2001 seeking various orders which is the main seek removal of namele leaves placed by the defendants at four different, location on land owned by the defendants but which the plaintiffs have been granted licence by the defendants to reside and work on.

The exparte summons was first heard inter partes on 10th August, 2001 on which date Mr Tamwata informed the Court that he had prepared an affidavit of Mr Lulu Vatu but could not have it sworn by the deponent because he had been rushed to the hospital due to serious respiratory problems. The matter was adjourned to 16th August. Unfortunately the



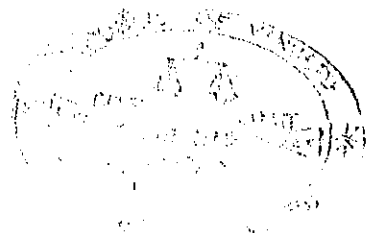
matter had to be further adjourned as Mr Lulu Vatu had passed away during the weekend.

On the hearing of the application today Mr Stephens informs the Court that 15 of the original plaintiffs had indicated their intention and desire to be withdrawn from the proceedings. This is confirmed by Mr Tamata. The following names are therefore withdrawn from the proceedings –

- (1) Michael Fabibang
- (2) Raphael Bulememex
- (3) Yannick Boubounvah
- (4) Tabimwel Moses
- (5) Paulin Bu-letare
- (6) Simon Bulewak
- (7) Erick Noel
- (8) Tabimwel Incocent
- (9) Virega Joseph
- (10) Tamos Petro
- (11) Tabiganbo Jean-Baptiste
- (12) Buleuru Joseph
- (13) Tabilip Francois
- (14) John Buleuru
- (15) Virelala Jean-Marie

It appears that some of the persons named as original plaintiffs are not on this list. But it appears apparent also that the only remaining plaintiffs are the six (6) persons named herein and proceedings in future will continue only in respect of those six persons unless ordered otherwise.

Mr Stephens relies on the affidavit of Mr Jimmy Bernard in support of the application. Mr Tamwata however calls oral evidence from Victor Andre whose testimony reveals among other things that the namele leaves were removed on 3rd Agusut 2001. This was done after the defendant had purchased a life pig from Malo at VT10.000 and had slaughtered the pig over the namele leaves before the rest of the leaves were taken down. The Court hears that the reason for putting up the leaves was to promote talks between the two parties because talks had broken down and there was no other way to make the parties come together except to use the namele leaves. Further the court is told that even when the leaves were in place, the six plaintiffs were still seen on the land picking crops and doing other things.



It is submitted that the plaintiffs have come to Court with dirty hands and that the orders they seek should not be granted.

It now appears clear from the evidence which is not rebutted by the plaintiffs that the namele leaves have been removed. In my view there is now no basis for the application or the orders to be granted. It appears clear from evidence from Mr Victor Andre that it is the plaintiffs who have barred themselves from going onto the land by failing to comply with the fines of one (1) pig each imposed upon them by the Chiefs. For these reasons I hereby dismiss the application of the plaintiffs. And I order that the plaintiff pay the defendant's costs of and incidental to this application.

DATED at Luganville this 7th day of September, 2001.

BY THE COURT

A handwritten signature in cursive script, appearing to read 'OAS', is written over a circular embossed seal. The seal contains text around its perimeter, including 'JUDICIAL OFFICE' and 'LUGANVILLE', and a central emblem.

OLIVER A. SAKSAK

Judge