

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU

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(Civil Jurisdiction)

Civil Case No. 28 of 2000

**BETWEEN: CHIEF MOSES JEFFREY OVA**

First Plaintiff

**AND: CHIEF LUS**

Second Plaintiff

**AND: ALEXANDER SAMSON**

Defendant

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

**Counsel:** Mr Silas C. Hakwa of Counsel for the Plaintiffs  
Mr Saling N. Stephens of Counsel for the Defendants

**Dates of Hearing:** 6<sup>th</sup> August 2001  
25<sup>th</sup> September 2001  
21<sup>st</sup> November 2001

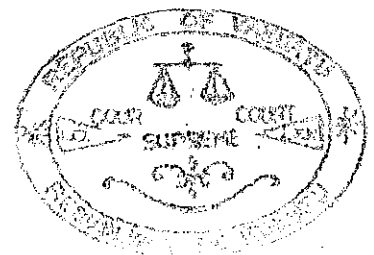
**RESERVED JUDGMENT**

1. Plaintiffs Claims

1.1 The Plaintiffs' claim is by way of a Specially Indorsed Writ of Summons with a statement of claim dated 6<sup>th</sup> October 2000 which was filed on 11<sup>th</sup> October 2000.

1.2 The Plaintiffs claim as follows, that:-

- (a) they are the custom owners of all the land comprised in an area of land commonly referred to as "MATANTAS LAND" which is situated near Matantas Village, Big Bay area, Santo;



- (b) on or about 25<sup>th</sup> October, 1984 the Plaintiffs lodged their claim for customary ownership of the land in the Santo/Malo Island Court. The Defendant was also a claimant in the same case;
- (c) after several years dealing with the claim the Island Court delivered its judgment on or about 21<sup>st</sup> October, 1988; \*
- (d) following the judgment by the Island Court there was an appeal made to this Court in 1988;
- (e) the Supreme Court declared, amongst other things, on or about 12<sup>th</sup> August 1992 that the Plaintiffs herein are the rightful custom-owners of Matantas Land; \*
- (f) between the relevant period (from 12<sup>th</sup> August, 1992) the Defendant has never made any approaches to the Plaintiffs requesting a lease over any part of the land or to obtain permission to continue to reside on any part of the land in accordance with the decision of this Court;
- (g) the Plaintiffs did not give any permission or right to the Defendant to continue to occupy or to farm any part of the land;
- (h) the Plaintiffs did not give any permission or right to the Defendant to carry out any development of any kind or any part of the land;
- (i) the Plaintiffs did not give any consent to the Defendant or any of the immediate family members of the Defendant to work, live on or occupy any part of the land without the Plaintiffs consent or payment of any rents;
- (j) the Defendant, members of his family, his workmen and agents have committed trespass and nuisance on the land;
- (k) the Defendant, members of his family, his workmen and agents have not paid any rents to the Plaintiffs, and
- (l) the Plaintiffs have suffered loss and damages as a result of the Defendant's unlawful and/or improper occupation and use of the land.



1.3 The Plaintiffs seek Orders to evict the Defendant, members of his family, his workmen and agents from the land. Further they seek orders for damages, back rents and costs against the Defendants.

2. Defendant's Defence And Counter-Claims

2.1 On 14<sup>th</sup> December 2000 the Defendant delivered a Statement of Defence denying or not admitting the various claims of the Plaintiffs as set out. And by way of a Counter-Claim the Defendant says that the Plaintiffs claim should be dismissed in its entirety.

2.2 The Defendant caused an amendment to his Defence and Counter-Claim on 22 February 2001 alleging that –

- (a) the Defendant is not a trespasser as the land he currently occupies belongs to him in custom.,
- (b) the Supreme Court judgment of 12<sup>th</sup> August 1992 is not complete and/or does not amount to a final judgment., and
- (c) the Defendant has caused substantial development on the land and that he would have to be compensated for such.

3. Defendant's Notice of Motion To Stay Proceedings

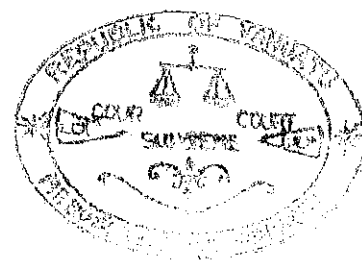
3.1 By a Notice of Motion dated 10<sup>th</sup> may 2001 the Defendant sought Orders to stay the proceedings until such time as the Registry had located the File on the Land Appeal Case.

3.2 The Motion was heard on 23<sup>rd</sup> July 2001 and dismissed for reasons stated in the written judgment dated 25<sup>th</sup> July, 2001.

4. Practical Effect of the Judgment Dated 25<sup>th</sup> July 2001

4.1 The practical effect of the Court's judgment of 25<sup>th</sup> July 2001 is that the Court was upholding the findings and decisions of Goldsborough, J. of 12<sup>th</sup> August, 1992.

4.2 The Court essentially recognises the Plaintiffs as the rightful custom-owners of Matantas Land.

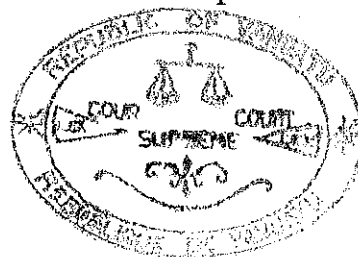


5. Burden of Proof And Evidence

- 5.1 The Plaintiffs had the burden of proof on the balance of probabilities their claims as per paragraph 1.2 (a) to (l).
- 5.2 The First Plaintiff himself testified in Court. He called five other witnesses namely, Sakari Tarisa, Samuel Moses, Japeth Samuel, Andre Joseph and Sela Moses. Mr Hakwa very helpfully summarised those evidence in his written submissions filed on 17<sup>th</sup> December 2001 and served on the Defendant's Counsel. I need not repeat them.

6. The issues

- 6.1 Whether or not the Plaintiffs are the rightful and custom owners of Matantas land? The answer is in the affirmative. The Court upholds the findings and decisions of Goldsborough J. of 12<sup>th</sup> August, 1992. ✱
- 6.2 Whether or not the Plaintiffs gave any permission, right, consent or approval to the Defendant to occupy any part of the land?  
The answer is in the negative. In none of the evidence given by the First Plaintiff and his five witnesses was it shown there was such permission, right, consent or approval.
- 6.3 Whether or not the Plaintiffs gave any permission, right, consent or approval to the Defendant to carry out development of any kind on the land?  
The answer is in the negative.
- 6.4 Whether or not the Defendant made any application to the Plaintiffs to lease any part of the land? I find no evidence to show such application and therefore the answer to this issue must be in the negative.
- 6.5 Whether or not there was any Order restraining the parties from working or developing the land pending resolution in the Island Court and the Supreme Court.  
By the second paragraph at page 4 of the Decision of the island Court dated 21<sup>st</sup> October 1988 it is clear to me that all parties were so



restrained from trespassing, working and/or developing other claimants land. I therefore answer this issue in the affirmative.

6.6 Whether or not the Plaintiffs agreed that the Defendant occupy the land without paying any land rents? I find no evidence to show such agreement and therefore answer this issue in the negative.

6.7 Whether or not the Defendant respected or complied with the judgment of the Court?

The answer is in the negative. And the Defendant has defied Court Orders for the past 16 years since 1985.

6.8 Whether or not the Defendant has occupied the land and/or acted as if he is the owner?

I find sufficient evidence showing that he has persistently continued to occupy the land and that he has even refused and resisted other people going onto the land. I therefore answer this issue in the affirmative.

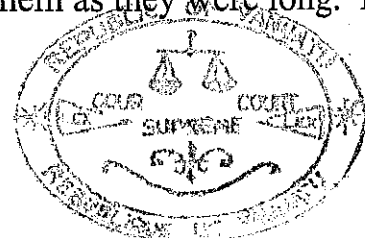
6.9 Whether or not there was any agreement between the Plaintiffs and the Defendant that the Plaintiffs would compensate the Defendant for his alleged development of the land?

I find no evidence showing such an agreement and must answer this cause in the negative.

## 7. The Defendant's Case

7.1 The Defendant claims that he is still the custom owner of "Longkar" land situated within the Matantas land because the Island Court had decided in his favour in respect of that particular land. The decision of the Island Court was overruled by the decision of the Supreme Court on 12<sup>th</sup> August 1992. I accept Mr Hakwa's submission that the issue of ownership of the land is now resjudicata.

7.2 The Defendant further claims that the decision of the Court dated 12<sup>th</sup> August 1992 is incomplete because it is not accompanied by reasons for the findings made therein. Although that may be a valid statement, there was nothing to show that the Defendant pressed for those reasons to be given on the same day. The decision indicates in paragraph two (2) that Goldsborough J. had the reasons with him on 12<sup>th</sup> August 1992 and did not wish to read them as they were long. Mr

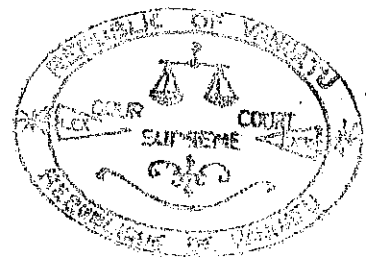


Samson Samsen's evidence was that he made several attempts on 13<sup>th</sup> August, 1992 and thereafter to see the judge and/or to appeal. There is no evidence that he requested for a handwritten copy of the reasons from the Court or the Registrar on the same day. The Defendant waited until 24<sup>th</sup> June, 1998 some six years later when Goldsborough J. was gone from the jurisdiction that he through Counsel requested reasons for the decision of the Court dated 12<sup>th</sup> August, 1992.

- 7.3 The defendant also claims that he is not a trespasser. Clearly this claim cannot be sustained in the light of the clear decision of the Court in August 1992.
- 7.4 The defendant further claims that the plaintiffs action is statute-barred by section 3(4) of the Limitation Act No.4 of 1991. Again this claim cannot be sustained because the current proceedings is an action for continued trespass and nuisance. It is not an action upon a judgment.
- 7.5 And finally the defendant claims for compensation for loss and damages and/or compensation for improvements done on the land.

## 8. Defendant's Evidence

- 8.1 On the counter-claim, the burden of proof shifted to the defendant to prove on admissible evidence on the balance of probabilities.
- 8.2 The defendant gave evidence himself. He called nine (9) other witnesses. One of his witnesses was Chief Lus, the second Plaintiff whose evidence is totally disregarded. It was lightly improper for him to give evidence against his own case when he was and still is the second plaintiff in the case.
- 8.3 The only relevant evidence in respect of compensation is that from Mr Alexander Samsen himself and that of Philip Banban, the Agricultural Extension Officer. Mr Samsen's evidence is that he planted 3,300 heads of coconut in 1964 – 1965. He continued planting even in 1985 and 1988 when the matter was being dealt with in the Island Court and in the Supreme Court on appeal.



- 8.4 Mr Banban's evidence is that he counted 3,000 heads of coconut and valued them at Vt950 each head making a total of VT2,850.000.
- 8.5 In addition, Mr Banban counted up fruit trees and other garden crops and assessed them at a total value of VT408.800.

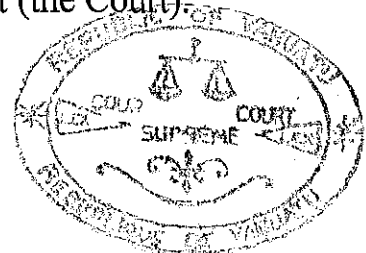
9. The Issue

Whether or not the defendant is entitled to compensation?

- 9.1 Mr Hakwa submitted that the defendant is not entitled to anything at all because:-
- (a) He had persistently denied the Plaintiffs of the fruit of their judgment for the last 16 years to 1985 and to the last 10 years to 1992;
  - (b) the defendant had persistently defied court orders by not applying for leases to allow him to continue to occupy the land lawfully; and
  - (c) that by virtue of the definition of land, all improvements on land become part of the land which the Court has now ruled in favour of the plaintiffs.

10. Findings

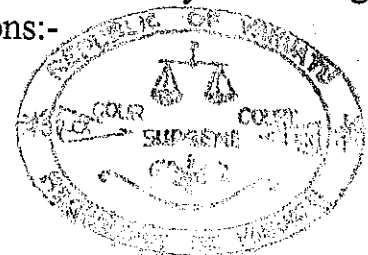
- 10.1 I find that there is sufficient evidence showing that the defendant planted at least 3,000 coconut trees and the fruit trees for which he is claiming. There is nothing in the Plaintiff's evidence that they planted those coconuts and/or the fruit trees.
- 10.2 These coconuts and fruit trees were planted by the defendant on land which he genuinely but mistakenly believed was his customary land.
- 10.3 6 mango trees and 18 nandao trees were 3-4 years old and were incapable of bearing fruits as at 31<sup>st</sup> September 2001. These according to the Assessment Report could have been planted in 1997 – 1998 after the decision of the Supreme Court (the Court).



- 10.4 6 orange trees were 4-5 years old at 31<sup>st</sup> September 2001 and were incapable of bearing fruits. These could have been planted in 1996 – 1997 after the decision of the Court.
- 10.5 1 natapoa tree, 1 breadfruit tree, 3 nakavika trees, 7 navel trees, 16 nangai trees, 23 nakatambol trees and 12 namambe trees were 5 years old and over as at 31<sup>st</sup> September 2001 and were incapable of bearing fruits. These could have been planted in 1995 – 1996 after the decision of the Court.
- 10.6 1000 pineapple heads were 37 months old as at 31<sup>st</sup> September 2001 and were capable of bearing fruits. These could have been planted in 1997 – 1998 after the decision of the Court.
- 10.7 3000 coconut trees planted in 1964-1965 and in 1985-1988 were capable of bearing fruits as at 31<sup>st</sup> September, 2001.
- 10.8 All coconut trees were planted prior to the Island Court decision in 1988 and prior to the decision of the Supreme Court on appeal in 1992 by the defendant under a genuine but mistaken belief that the land was his customary land.

11. Remarks and Conclusions In Respect of the Defendant's Counter-Claim

- 11.1 Land is a very sensitive issue in our jurisdiction. Where people have occupied land for many years and have worked and developed the land under a genuine belief that the land belongs to them as custom owners, it is always very difficult to evict them.
- 11.2 Where it has been proven in a Court of law dealing in land matters that the land being occupied and developed belongs to someone else who has not been in occupation for many years and has not been working or developing the land, and that person as declared custom land owner wishes to evict the person who is in actual occupation, it is fair and appropriate in the circumstances to always be open to any demand for compensation.
- 11.3 The payment of compensation is in my view a fair way in dealing with cases such as this for the following reasons:-





- (a) where persons to be evicted have depended on the land for their livelihood for many years under a genuine but mistaken belief, only this aspect can facilitate their vacation of the land with minimal difficulty and complaints.
- (b) Payment of compensation validates the occupiers labour and efforts in developing land which the actual land owner could and would not otherwise have developed or worked.
- (c) Payment of compensation will assist the persons to be evicted to easily relocate themselves at a new site.
- (d) Payment of compensation becomes a guarantee that the dispute will be laid to rest and the true owner as new occupier of land can quietly and peaceful enjoy the land without worrying about future disputes.

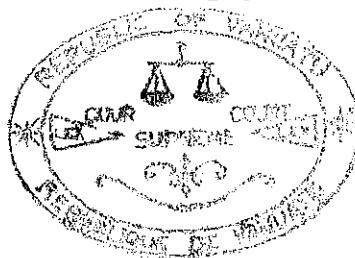
11.4 For the foregoing reasons the defendant will receive judgment on his counter-claim as follows:-

- (a) For 3,000 coconut trees planted prior to 1985 which may include any others planted prior to 12 August 1992 by the defendant on a genuine but mistaken belief that the land was his customary land.
- (b) The amount is assessed at 950 vatu per head making a total of VT2,850.000.

11.5 The defendant's claim for 1,000 pineapples at VT50 per head totalling VT50.000 is dismissed for reasons given in paragraph 10.6.

11.6 The defendant's claim for fruit trees totalling VT408.400 are dismissed for reasons given in paragraphs 10.3, 10.4 and 10.5.

11.7 In the absence of any other claims by the defendant, the only amount of compensation he is entitled to under this judgment is a total of Vt2,850.000. And I order the Plaintiffs to pay the defendant accordingly.



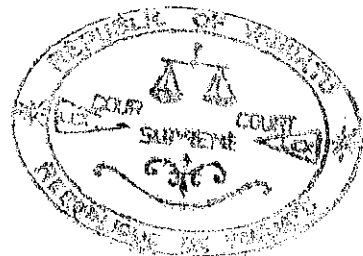
## 12. Conclusions In Respect of the Plaintiffs Claims

- 12.1 The Plaintiffs are entitled to the orders they seek in their Specially Endorsed Writ of Summons, in particular the orders claimed in paragraphs A, B and C.
- 12.2 The Plaintiffs are not entitled to any back rents because they have never or caused to be entered into any leases with the defendant after the decision of the Court in 1992.
- 12.3 The Plaintiffs are not entitled to any damages. It is clear to me from the evidence that all developments on the land were done by the defendant and for that reason it is the defendant who is entitled to compensation. The Plaintiffs will have a lasting benefit from those developments ie the coconuts and fruit trees planted by the defendant. That benefit would not only be for 26 years as the defendant have had, but it will be a lasting benefit. The value to be harvested by the Plaintiffs from the labour and sweat of the defendant would in my view exceed the amount they have to pay to the defendant as compensation.
- 12.4 The Plaintiffs will not be entitled to a costs order. The defendant has succeeded in his counter-claim against the Plaintiffs. Under those circumstances it is fair for each party to meet their own costs.

## 13. The Orders

The Court now issues the following Orders:-

- 13.1 The Defendant, all members of his immediate family, his workmen or servants and/or agents who are living or working on any part of the land in question shall vacate the land peacefully, without destruction of any kind to any immovable structures including coconuts and fruit trees that are part of the land for which the defendant will be compensated for.
- The defendant is given thirty (30) calender days from the date of this judgment to vacate the land.



- 13.2 The Defendant, all members of his immediate family, his workmen or servants and/or agents who are living or working on any part of the land in question who does not vacate after thirty (30) calendar days shall be evicted accordingly by the Commissioner of Police and any Police Officer of the Republic of Vanuatu who by this Order shall be authorised to enter upon the land to enforce this Order.
- 13.3 In the event that the Defendant and/or any member of his immediate family, workman, servant or agent who is living or working on the land disobeys any of these Orders, such disobedience shall constitute a contempt of court, for which the offenders shall be charged.
- 13.4 The Plaintiffs shall pay the Defendant compensation in the sum of VT2,850,000 in five (5) equal instalments of VT570,000. The first instalment of VT570,000 shall be paid on or before 8<sup>th</sup> August, 2002. The second instalment shall be paid on 27<sup>th</sup> September 2002 and thereafter on the last working day of each ensuing month until 31<sup>st</sup> December 2002.
- 13.5 The Defendant shall issue receipts in respect of each payment and provide copies thereof to the Registrar of the Court.

**DATED at Luganville this 10<sup>th</sup> day of July, 2002.**

**BY THE COURT**



**OLIVER A. SAKSAK**

**Judge**

