

IN THE SUPREME COURT  
OF THE REPUBLIC OF VANUATU  
(Civil Jurisdiction)

Civil Case No. 136 /2005



BETWEEN: KALOTIP ROBERT, MARK KALMET, ALLEN KALON,  
PIERRE ONEL  
Claimants

AND: GERALD LAUTO  
First Defendant

AND: BERNARD LAUTO  
Second Defendant

AND: DIRECTOR OF LAND RECORDS  
Third Defendant

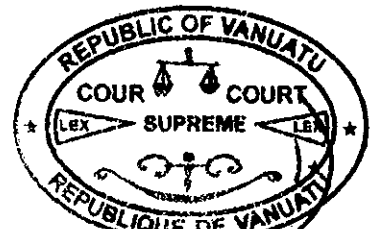
Conference : 15 September 2011  
Before: Justice RLB Spear  
Counsel: No appearance by or on behalf of the Claimants  
Mr R Sugden for the First and Second Defendants  
Mr F Gilu for the Third Defendant and the Third Party

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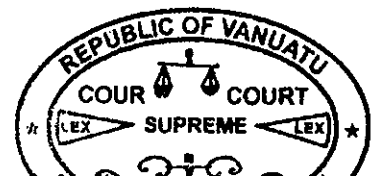
JUDGMENT OF THE COURT

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1. This hearing was of the application by the Second Defendant Bernard Lauto for summary judgment as to liability only against the Claimants on his counterclaim. That counter claim is the only remaining part to this proceeding yet to be resolved except for issues of costs. In particular, there is no cross-claim or third party claim being pursued on behalf of either the First or Second Defendants.
2. The claim initially brought against the defendants was based on a belief on the part of the claimants that they were the custom owners of certain land at Erakor. That claim was dismissed by Dawson J on 31 March 2010. However the counter claim by the second defendant remained to be determined.

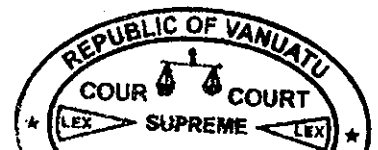


3. The claimants were initially represented by Mr Stephen Joel but subsequently changed their legal representation and, up until the time their claim was dismissed, they were represented by Mr Collin Leo. However, Mr Leo has not acted for the claimants since late 2010 and they have taken no steps to instruct alternative counsel.
4. At the conference called on 16 June 2011, the claimant Mr Pierre Onel appeared in person and indicated that he was there as a representative of the four claimants. As detailed in paragraph 9 of the notes of that conference, I encouraged Mr Onel and the other claimants to be legal represented. I mention to Mr Onel that I consider it is important that the claimants are legally represented and that the discussions between the parties should take place as quickly as possible to resolve these outstanding compensation issues.
5. At that conference which Mr Onel attended on 16 June 2011, a further conference at 8 am on 16 August 2011 was set and that is indeed detailed again in the conference notes which were posted to Mr Onel.
6. At the conference on 16 August 2011, there was no appearance by or on behalf of any of the claimants. That notwithstanding, a copy of the notes of that conference was sent by post to Mr Onel at the PO Box he had nominated at the earlier conference. Those conference notes from 16 August 2011 confirmed that the counter claim would be heard as a backup fixture on Thursday 15 September 2011 (today). Furthermore, that it would proceed once the criminal trial set for that day had been completed. The parties were to be ready from 9 am this morning in respect of the counter claim.
7. The case was called by the Registrar at the Courthouse this morning. Mr Sugden and Mr Gilu were in attendance but there was no appearance by or on behalf of any of the Claimants. The hearing was then moved from Dumbea Hall to the Supreme Court Office at approximately 10:30 am and the Registrar again checked that none of the Claimants or representing them was present at Dumbea Hall at that time. Furthermore, counsel Mr Sudden and



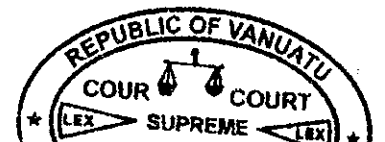
Mr Gilu confirmed that they did not see any of the Claimants this morning at the courthouse.

8. In those circumstances, it is appropriate to proceed to hear the application for summary judgment as to liability on the counter claim and that indeed is what is sought by Mr Sugden.
9. Mr Gilu remains interested in this case only in respect of costs that the Republic of Vanuatu has been put to for its assistance to the Court. Mr Gilu confirms that the Republic will abide the decision and does not intend to take an active role in the case.
10. The counter claim is established by the evidence from Mr Bernard Lauto filed in support. There is a sworn statement from the claimant Mr Pio Onel in opposition to this application for summary of judgment which is more in the nature of a submission that there was no evidence as to any loss sustained by the second defendant. That overlooks, however, the limited nature of the application of summary of judgment which is as to liability only with the issue of damages to be determined in due course.
11. At the background to this counter claim is land at Erakor. There has been no determination by either the Courts or a land tribunal as to custom ownership but it is clear that the first defendant Gerald Lauto was at all material times treated as the custom owner. Gerald Lauto, the first Defendant, has since died and there remains outstanding an issue as to succession of custom ownership.
12. The second defendant (Bernard Lauto) obtained from the Director of Land Records a negotiators certificate as it was intended that he would take a lease of the land in question from his brother Gerald Lauto. Indeed, that lease was eventually issued and bears registration number 12/0912/510. Bernard Lauto is the brother of Gerald Lauto. On 11 April 2005, however, the claimants lodged a caution against the registered leasehold title 12/0912/510. It is alleged that the caution was lodged by the claimants for the purposes of



holding up sub-divisional work that the second defendant Bernard Lauto was then undertaking on the land. The caution was eventually lifted by the Director on 22 June 2005 pursuant to section 97 (3) of the Land Leases Act but not before Bernard Lauto asserts that he had suffered loss as a consequence; all as particularised in paragraph 6 of the counter claim and in the sworn statement filed in support.

13. On 10 July 2005, the claimants lodged another caution against the land which caution was lifted by the Director on 14 December 2005. Again, Bernard Lauto claims that he suffered loss as a result of the lodgement of that caution as particularised in the counter claim and as detailed in his sworn statement filed in support.
14. It is clear that the claimants either collectively or individually had no lawful interest in the leasehold estate such that they were entitled to lodge a caution. In respect of claims for custom ownership, whether or not they have validity, it is well settled that custom owners or those claiming custom ownership do not have an interest in the leasehold estate properly created and registered – see *Ratua Development v Ndai & Ors* CAC 32/07 (CA) 13 November 2007.
15. In all those events, it is clear that any loss sustained by Bernard Lauto as a consequence of the wrongful filing of the first and the second cautions are recoverable from the claimants. Accordingly, the application for summary judgment is allowed and judgment is entered against the claimants jointly and severally as to liability on the counter claim brought by the second defendant Bernard Lauto with the quantum of those damages to be determined at a hearing in due course.
16. The second defendant has until 4 November 2011 to file any further sworn statements in support of the damages sought on the counter claim. The matter should return for a conference before me after the sworn statements have been filed (if any) and in the hope that the claimants will either be represented at that conference or attended personally. It is certainly in their distinct best interests to do so and, as has been mentioned earlier, to enter



into sensible discussions with counsel for Bernard Lauto to see whether there is a possibility of settling the issue of damages now that liability has been established.

17. The next conference will be at 8 am on 17 November 2011 at the Supreme Court Office before me.
18. Costs are awarded to the second defendant on the counter claim to be determined in due course.
19. The Republic of Vanuatu's application for costs is similarly adjourned through to 17 November 2011.

BY THE COURT

