

BETWEEN: LAURENT LEINGKONE

Claimant

AND: REPUBLIC OF VANUATU

Defendant

Coram: Justice D. V. Fatiaki

Counsels: Mr. J. W. Timakata for the claimant
Mr. F. Gilu for the defendant

Date of Decision: 15 February 2013

JUDGMENT

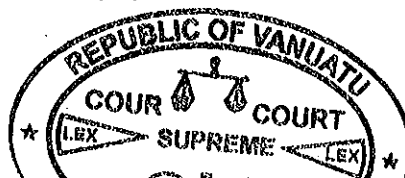
1. This is another case in the long-standing saga involving the proposed airport to be built at **Olal** area in **North Ambrym**. I gratefully adopt for present purposes the brief background provided by State counsel as follows:

- "1. The Government of Vanuatu had decided through the Council of Ministers' decision to build an airport at Olal Area on the Northern part of Ambrym island;
2. In 1994 process of land clearing commenced for the construction of the new airport but the work stopped due to disputes in relation to the land ownership;
3. On or about 2 January 1996 the Ambrym Island Court delivered its judgment in relation to customary land known as Fonmour in favour of Mr. Louis Worwor. The decision of the Ambrym Island Court was appealed by Mr. Laurent Leingkone and the Supreme Court issued its judgment dismissing the appeal on 16 June 2003;
4. On 22 December 2006, the Taneo Village Land Tribunal declared Family Leingkone represented by Mr. Laurent Leingkone to be the custom owners of land that is described as Taneo Land. In its judgment the Tribunal stated:

"Nao teafo, Tribunal hemi mekem desisen se family LEINGKON we Mr. LAURENT hemi representem hemi TRU kastom LAND ONA blong Taneo land boundary we airport hemi stap long hem."

2. In this application for summary judgment the claimant seeks:

- "(1) An order for enforcement of the Tribunal's declaration dated December 22nd, 2006 that the claimants are the declared custom land owners of the custom land known as "Taneo" in accordance with the said declaration made;
- (2) An order that pursuant to the Tribunal's declaration dated December 22nd, 2009 that the first and second defendants make payment to the claimant;



- (3) *An order that the first and second defendant make payment to the claimant, the declared custom owner of the parcel of land to be acquired in accordance with the Valuer General's appeal determination dated March 17th, 2008;*
- (4) *Interest at such rate and on such sums for such period as the court deems fit."*
3. The application is supported by a sworn statement of the claimant which asserts his belief that the defendant has "*no real prospect of defending the applicant's claim*" and confirms the truth of the contents of a substantial sworn statement filed in support of the claim. Notably, the claim does not seek the payment of any liquidated sum of money and mention is made of an unidentified "*second defendant*".
4. In its defence, the Government whilst conceding the claimant's custom ownership of Taneo land and its own intention to acquire land in **North Ambrym** for the purpose of constructing an airport, nevertheless, says:
- (1) *"that the acquisition process has not been completed" and*
- (2) *"... it does not know whether Taneo land is within the area to be acquired".*
5. As to (1) above, the claimant's evidence is to the effect that all necessary steps for the acquisition of the claimant's customary land under the **Land Acquisition Act** [CAP. 215] have been concluded with the Valuer-General's determination that a sum of **VT39,852,139** was payable by way of compensation for the land being acquired for the airport.
6. However the defendant in three (3) sworn statements filed in opposing the application relevantly deposes (as to (1) above):
- *"... the initial process of acquisition was not completed and had not been conducted in accordance with the Land Acquisition Act" (per **Richard Dick**);*
- and
- *"... the acquisition process has not yet been completed due to insufficient funds" (per **Jean Marc Pierre**);*
7. As to (2) above:
- *"... despite previous efforts to have parties determine their customary boundaries to clarify whether the land intended to be acquired is within or outside their respective boundaries, the Government continues to receive contradicting claims by the disputing parties" (per **Gordon John Arnhambat**).*
8. Additionally, the relevant ministerial public **Notice** dated 6 March 2007 for the acquisition of the land as well as the more recent **Statutory Valuation** dated 24



February 2009 both identify the custom owner of the land to be acquired as: "*Louis Worwor representative of the Tourmormal Family*".

9. Finally, **Jean Marc Pierre** deposes:

"On or about 9 October 2000 a custom owner declaration form was sent to Ambrym to determine the custom owners of the land on which the Olal airport is to be located. The following custom owners were identified: name Worwor Louis, Sangul Abraham, Sangul Christophe, Worwor Antoniu; Wokon Cyriaque, Yeole Firmin and Worwor Lino."

10. The form also identifies the customary name of the land as "*Fonmour*" which coincidentally, is the name of the Tourmormal Family's home village ("*VILIJ*"). The form which is completed by the relevant Council of Chiefs (in the absence of an established Land Committee), also declares that there is no dispute concerning the custom ownership of the land ("*mifala ibiliv se inokat dispiut*").

11. Notable by their absence are sworn statements from the then Director-General of Lands (Russel Nari); **Moses Kalsale** a surveyor with the Department of Land Management and **David Moses** a principal valuer. These latter two officers were the Government representatives who attended the physical inspection of the land surrounding the site for the proposed airport at Olal area, North Ambrym on **28 December 2008** for the purpose of identifying, walking and demarcating the customary boundaries of Fonmour land and Taneo land.

12. The summary judgment application and substantive claim is further complicated by the existence of two (2) applications by **Vital Lowonbu Tankimal** of Olal Customary Land representing Family Lowonbu Tankimal and by **Louis Worwor** of Fonmour custom land to be joined as "*interested parties*" with a view to opposing the present claim and application.

13. A common feature of the interested parties opposition to the present claim is that they both assert that Taneo customary land is:

"... not a separate customary land boundary ... (but rather) ... this piece of land known as Taneo is within a land area of LONWORIM near the sea coast, and it is truly belong to the customary land boundary of Fontengro".

14. In similar vein **Louis Worwor** deposes:

"One of the main reasons is that Fonmour custom land include Olal airport and for this reason, any question concerning whether Olal or any other part of the land (Taneo) is inside Fonmour custom land is a matter within the jurisdiction of the Island Court ..."

15. State counsel also highlights the decisions in Land Appeal Case No. 01 of 1996 **Family Laurent Leingkone v. Louis Worwor** where the present claimant unsuccessfully appealed against the decision of the Island Court declaring "*Louis Worwor on behalf of the Toumourmal Family are the owners of the land called Fonmour in North Ambrym*"



16. The second decision is by the Court of Appeal in Civil Appeal Nos. 23 and 26 of 2006 **Worwor v. Leingkone** [2006] VUCA 19 where the Court addressed competing claims concerning the payment of compensation for North Ambrym Airport at Olal and the Court said inter alia:

"We are satisfied that the compensation referred to in the letter of 7 June 1995 which is in conformity with the schedule that was submitted to the Council of Ministers was for fruit trees and crops ... the only logical conclusion is that the Council of Ministers based its decision on the assessment of crop loss suffered by the farmers who were using the land. It was quite unrelated to the value of the land itself."

17. Notably the "*schedule*" referred to in the judgment of the Court of Appeal is set out in the judgment of *Treston J.* that was appealed from and it identifies **Fonmour** and **Arimal** (aka Hanimal) customary lands as being the lands that were cleared for the airport at Olal and for which compensation was payable to named individuals for the loss of crops and fruit trees including coconut trees and kava plants.
18. In an earlier ruling in Civil Case No. 165 of 2002 **Wokon v. Government of the Republic of Vanuatu** [2005] VUSC 18 in rejecting an appeal by Louis Worwor against a Third Party order granted against him at the behest of the Government, **Treston J.** relevantly observed:

"... It is inappropriate to remove Mr. Worwor as Third Party to the action until the Court has made factual findings on evidence as to precisely where the cleared area for the airport is and on whose land the cleared area stands. Matters have been made more compelling by the present application by the Leingkone Family because they contend, as I have said that none of the cleared area was on the Fonmour land of which the Third Party is the declared custom owner. Until specific findings of fact are made it is this Court's view that it would be inappropriate to remove the Third Party from the action ..."

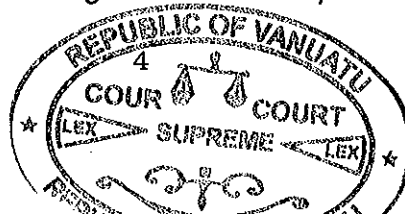
19. Later the Court of Appeal relevantly observed:

"The State must accept its responsibility in this matter. The State authorised its agents to start clearing the land without complying with the procedures prescribed by Parliament in the Land Acquisition Act No. 5 of 1992. It then was muddled about the nature of the compensation to be paid.

If Government wishes to proceed with the construction of the airport, it must properly survey the land and pay proper compensation to the land owners of the land itself in line with the provisions of the Land Acquisition Act. Any entitlement which Mr. Louis Worwor has under that process will be subject to a set-off for the VT3 million he has already received."

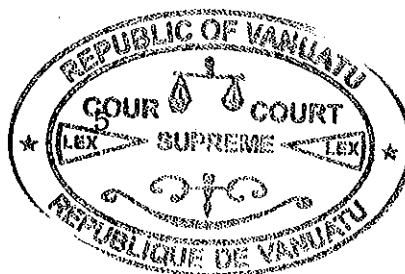
20. The Court of Appeal concluded its judgment by dismissing the claim of Louis Worwor on the basis that:

"... there has been no compensation paid for the land to be taken for the Olal Airport and any issues relating to that have representative of the Toumourmal



Family will have to allow a set-off of the VT3,000,000 which he has already received in respect of any compensation for land to which he becomes entitled."


21. The present case might be considered the sequel to the above cases. From the foregoing quoted extracts, sworn statements and grounds for opposing the application it is clear that the parties continue to differ about the location of the proposed airport at Olal, North Ambrym. The claimant for his part, having obtained a custom ownership declaration in his favour over **Taneo land** asserts that the airport (as surveyed) falls entirely within Taneo land.
22. The Government, on the other hand doubts this assertion on the basis of dicta in the above decisions and other materials which suggest that the proposed airport falls entirely within **Fonmour land** which belongs to the Toumourmal Family (represented by Louis Worwor).
23. Yet a third interested party **Family Lowenbu Tankimal** (represented by Vital Lowenbu) claims that the proposed airport straddles four (4) customary lands, namely, **Olal, Fontengro, Haliomlam** and **Harimal**. No mention is made of Fonmour or Taneo customary lands.
24. Plainly all three (3) claims cannot be correct. Accordingly, with a view to finally settling that issue the claimant was directed to file additional sworn statements and a survey plan clearly delineating the customary land boundaries of Fonmour/Taneo lands and the proposed airport site.
25. After several attempts and clarifications, the claimant produced a surveyor's photomap which purports to indicate that the proposed airport site at Olal is just outside the area which is designated as being the outer boundary of **Fonmour land**. The same photo map clearly shows the proposed airport site to be entirely within the outer boundary limits of Taneo land.
26. The relevant surveyor who produced the photomap deposed that the photomap he produced "*is an accurate record using information provided*". The particular information provided to him comprised:
 - (i) The claimant's sworn statement in support of his claim with the seventeen (17) annexures including the **Taneo Village Land Tribunal** decision in his favour and the hand drawn sketch plan of Taneo land placed before the tribunal showing numerous boundary features as well as, the Valuer General's statutory valuation report in response to the claimant's appeal against the original government valuation of the land to be acquired for the proposed airport at Olal;
 - (ii) The survey plotted markings of an area survey conducted by a government surveyor during a physical inspection of the airport site carried out at Olal area North Ambrym on 23 December 2008 in the company of representatives of both the claimant's family and the Worwor Toumourmal family and representatives of the area chiefs and other independent witnesses.



27. Despite the above, State counsel submits that the **Taneo Village Land Tribunal** decision makes **no** reference to any customary land marks and "... *is silent as to the determination of the boundary of the customary land itself. The tribunal only went to the extent to state that the land subjected (sic) for determination is between Olal, Fonmour, Harimal and Wou*".
28. Plainly the surveyor's photomap of the boundaries of **Fonmour land** and **Taneo land** is only as accurate and as reliable as the hearsay information supplied to him by the claimant and the government surveyor Kalsale. The fact that the determination of this application will likely result in the payment of a very substantial sum of money is further reason for a trial if this claim is to be conclusively and finally settled once and for all.
29. After careful consideration of the competing submissions and conflicting claims I am **not** satisfied from the claimant's evidence that this is an appropriate case for the grant of a summary judgment. In particular, in the absence of a definitive determination by the **Taneo Village Lands Tribunal** of the customary land boundary of Taneo land (a question upon which this Court has no jurisdiction), this action must await such a determination.
30. Accordingly the application is dismissed with costs and the **Taneo Village Lands Tribunal** which determined the customary ownership of Taneo land in the claimant's favour, is ordered to be reconstituted for the sole purpose of determining and declaring the customary land boundary of Taneo land in accordance with the provisions of the **Customary Lands Tribunal Act**.

DATED at Port Vila, this 15th day of February 2013.

BY ORDER OF THE COURT


D. V. FATIAKI
Judge.

