

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

Civil Case No.84 of 2013

**BETWEEN:** MELE TRUSTEES LIMITED  
Claimant

**AND:** SILU MALASIKOTO, DICK LANGA, MICHEL OVA  
TARIPAKOA, KIKI CHILLIA, MITH CHILLIA and  
NAKMAU SAMBO  
First Defendants

**AND:** HONORE POILAPA, HENRY RAKUM, MALAKAI  
LOLOA, SEULE POILAPA, SUBOSU MIKE, ELDA  
LANGA, RORO MANSALE, EDMOND  
KALCHIWATA, RIMATA LORY SORONGI, RAFE  
CHILIA, KENNETH LOLOA, KIKI BROSS, ALKANA  
MANSALE, SEULE MALASIKOTO and JOHN OVA  
Second Defendants

**AND:** POILAPA SIMEON, WAREWO RAFE CHILIA, JAMES  
POILAPA HONORE, LORRY NARUMATA  
SONGORIKI, RORO SAMBO, MAHIT CHILIA  
SUBOSU MIKE, ATLANGY SOPE, MASOPONG,  
MUNUMUNULOU TARIMIALA and MICHEL OVA  
Third Defendants

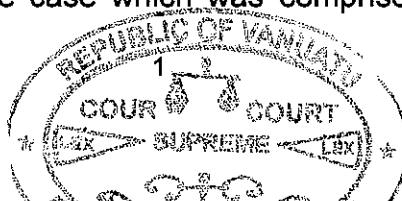
**Coram:** Justice D. V. Fatiaki

**Counsel:** Mrs. MNF Patterson for the claimant  
Mr. F. Laumae for the defendants

**Date of Decision:** 14 March 2014

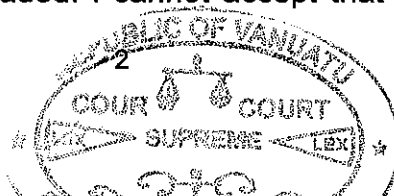
**RULING**

1. At the close of the claimant's evidence defence counsel indicated that had this been a criminal trial he would have made a submission that the defendants had no case to answer. I pointed out to counsel that such a submission was available but that it would be necessary for counsel to first elect or indicate that the defendants would be calling no evidence.
2. After the luncheon adjournment, defence counsel indicated that he would not be making a no case submission but, instead, would be asking the Court of its own motion, to stop the case as occurred in **Vanuatu Fishman Cooperative Marketing Consumer Society Ltd. V. Jed Land Holdings (2008) VUSC 73.**
3. Claimants' counsel then addressed the court dealing extensively with the claimants' evidence in the case which was comprised of three (3) witnesses



and six (6) sworn statements with numerous annexures. I shall return to the submissions but to better understand them, it is necessarily to briefly outline the nature of the pleadings and the issues raised.

4. In brief, the claim is one of trespass to property causing damages. There are 30 defendants collected into 3 groupings of 6, 14 and 10 named individuals. More specifically, the claimant Mele Trustees Ltd. ("MTL") avers that the first named group of defendants illegally and wrongfully "... appointed themselves as interim Board Members of the claimant without any authority of the shareholders ..." on 8 April 2013.
5. Thereafter, the second group of defendants "... on behalf of themselves and acting as agents of the First Defendants came to the office of the claimant and broke in the office situated in Oceania Building in Port Vila and trespassed in the office". At the same time they "removed the lock, damaged the door, trespassed in the office and the claimant suffered damages". These are later itemized in the claim and includes a "broken door and locks"; "replacement of 2 computers"; "damages for repairing the printer"; "electricity used by the defendants"; "costs of reconnecting the telephone"; "costs of common seal"; "costs of security".
6. In the original claim no averments were made against the third group of defendants but that was subsequently amended with the leave of the Court on the trial date, to an allegation that they "... are part of the Nakamal of Simeon Poilapa and declare themselves as custom owners who as a group led the meeting on 8 April 2013 to appoint illegally the new Board of the claimant and to take over the office of the claimant as beneficiaries of the claimant". In counsel's words, they were "aiders and abettors" in the process leading up to the actual trespass committed at the claimant's office premises.
7. Other than a vague suggestion of "agency" between the second group and the first group of defendants, no similar claim is made against the third group of defendants. Likewise, no positive averment is made against the third group of defendants that they persuaded, incited, counseled or procured the second group of defendants to trespass onto the claimant's business premises. Indeed, on the claimant's pleadings only the second group of defendants actually trespassed onto the claimant's business premises.
8. I return to the claimant's evidence. The claimant called 3 witnesses namely, **Rose Bangga, Kalori Koriaru Anatu and Phillip Malastapu** and produced six (6) sworn statements. Each was cross-examined.
9. The claimant's evidence cannot advance or alter its case against the third group of defendants, as pleaded. I cannot accept that the actions of the third



group of defendants in attending, and voting at a meeting that purportedly appointed the first group of defendants as an interim board of the claimant company, can be said by any stretch of the imagination to make the third group of defendants complicit and liable for any tortious activity that occurred thereafter by the second group of defendants who are alleged to be the "agents" of the first group of defendant and not of the third group of defendants.

10. As is written by the learned authors of **Winfield & Jolowics on Tort** (17<sup>th</sup>edn) at p. 924:

*"Mere facilitation of the commission of a tort by another does not make the defendant a joint tortfeasor and there is no tort of 'knowing assistance' nor any direct counterpart of the criminal law concept of aiding and abetting: the defendant must either procure the wrongful act or act in furtherance of a common design or be party to a conspiracy".*

11. In the present case no "common design" or "conspiracy" has been pleaded nor is there any suggestion whatsoever that the third group of defendants procured the second group of defendants to trespass onto the claimant's business premises.

12. Furthermore, in **Amstrad Consumer Electronics Plc. v. British Phonographic Industry Ltd.** (1986) FSR 159 Slade LJ. said in the Court of Appeal at p. 212:

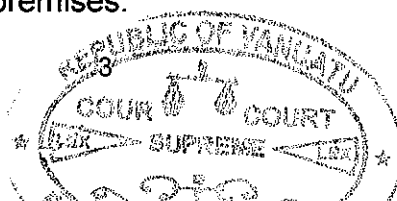
*"The concept of accessories is a familiar one in the criminal law. However no authority has been cited to us which show that a person can be civilly liable as 'accessory' to the tortious act of another ... unless he is actually a joint tortfeasor or has procured or incited such act"*

and in the subsequent appeal to the **House of Lords [1988] AC 1013** at p. 1058:

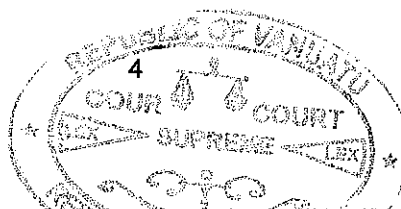
*"Generally speaking, inducement, incitement or persuasion to infringe must be by a defendant to an individual infringer and must identifiably procure a particular infringement in order to make the defendant liable as a joint tortfeasor".*

(my underlining)

13. The claimant's evidence does not mention or identify any of the third group of defendants as persons who were gathered outside the carpark of the building in which the claimant's office is located or were blockading or breaking the locks on the door of the claimant's premises.



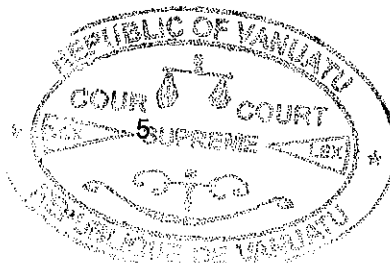
14. In any event, mere presence at the scene of a tortious activity or event does not per se make a person a joint tortfeasor nor does it suffice to make such person liable for the actions of the tortfeasor without more.
15. Accordingly, and in light of the foregoing, I have no hesitation in dismissing the claim against the third group of defendants on the basis that no case has been made out by the claimant either on the evidence adduced or on the relevant applicable law to warrant an answer.
16. I turn next to consider the case against the remaining groups of defendants who are alleged to have actually trespassed into the offices of MTL which is situated on the first floor of the Oceania Building. The evidence against this group of defendants is based on the sworn statements of Rose Bangga and Kalori Anatu. Although Phillip Malastapu was also present at the scene he remained in the carpark on the ground floor and did not see any of the defendants inside the MTL office premises or anyone breaking the front door lock.
17. **Rose Bangga's** evidence was brief, she had gone to the MTL office on that day. She saw a group of 20 men in the carpark area standing and talking and another "20 men ... standing at the front door and inside the group I recognized Honore Poilapa and Kiki Chillia". She saw two men "... drilling the main door of the claimant's office and they changing the lock". Nowhere in her sworn statement does she state what Honore Poilapa and Kiki Chillia were saying or doing nor does she identify the two men who were drilling the office door and changing the lock. In cross-examination she agreed that the walkway outside the MTL office and the carpark were "*public areas*".
18. **Kalori Anatu** was a little more helpful in identifying ten (10) of the defendants present at the scene. In particular he identifies: Ova Michel, Honore James Poilapa, Dick Langa and Seule Poilapa, Henri Rakum and Edmond Rakum, Roro Sambo Kalorongoa, Abudji, Warewo Lalorave Chillia and Lorie Songoriki as persons he recognized at the scene.
19. No where, in his sworn statement does he describe what any of the identified persons were doing or saying or whether or not they entered the offices of MTL. Indeed, in cross-examination he said although he recognized all the assembled men "(he) did not see them open and enter the claimant's office". He was able to confirm however, his police statement (**Annex "A"**) that it was Dick Langa who had drilled and changed the locks on the MTL office door. He also produced a photo that was taken at the time of the incident (**Annex "B"**) which showed a large group of men gathered in the carpark area on the ground floor



outside the Oceania Building. He left the scene when he was aggressively questioned by the assembled men.

20. The essence of the tort of "*trespass*" is the unjustifiable interference with land in the possession of another and the slightest intentional entry into the land in this case, the claimant's office premises, would have sufficed. However, no where in the pleadings is there any suggestion that the first and/or the second group of defendants were either prohibited from entering the MTL's office premises or had been requested to leave after entering it.
21. Having carefully considered the claimant's evidence in that regard against the first and second groups of defendants and mindful that the alley or passage way immediately outside the MTL office and the carpark on the ground floor outside the Oceania Building are "*public areas*" to which members of the public have unrestricted access, and given Kalori Anatu's admission in cross-examination that the assembled men were landowners and beneficiaries of MTL as well as custom owners including Malasikoto, and also, Philip Malastapu's acceptance that the men had come after their money held by MTL, I am not at all satisfied that the claimant has established a prima facie case of trespass against the first and second groups of defendants or that their presence at the claimant's office premises was unjustified or tortious.
22. Much less am I satisfied from the claimant's evidence that the second group of defendants were "*agents*" of the first group of defendants such that their tortious actions (upon which there is no satisfactory evidence) could be attributed to the first group of defendants such as to render them joint tortfeasors or co-trespassers into the MTL office premises.
23. Finally, in my view using generalisations such as "*they*" and "*the defendants*" in a claim which separates 30 named defendants into 3 broad groupings with distinct roles performed at different locations is not only misleading but highly embarrassing when considering the question of damages.
24. As the Court of Appeal said in **Vuroese Family v. Ave** [2010] VUCA 22 at para. 4:

*"A representative claim cannot include a claim for damages caused by individual members of the group. Claims for damages caused by the conduct of individual members of the group must be brought against those members individually, and they must be specifically named and served. If the claims proceed, judgment would then be given against the named individuals and the judgment would be capable of enforcement."*



25. In the circumstances given the inadequacies in the claimant's pleadings and the meager evidence presented by the claimant in support of its claim, I do not consider that the case should be allowed to proceed beyond the closure of the claimant's evidence.
26. The entire claim is accordingly dismissed with costs to be taxed if not agreed.

**DATED at Port Vila, this 14<sup>th</sup> day of March, 2014.**

**BY ORDER OF THE COURT**

  
**D. V. FATIAKI**  
**Judge.**



The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a book. The text around the perimeter includes 'REPUBLIC OF VANUATU' at the top, 'SUPREME COURT' in the middle, and 'VANUATU' at the bottom. There is also a date '1980' visible.