

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

**Civil**  
**Case No. 16/3848 SC/CIVL**

**BETWEEN: Tom Noam**

**Claimant**

**AND: Martin Iapatu , Tau Niamanase, Nalpini Iatimu, Kauci Harry, Iapit Kamliapin, Muna Iatapu, Kapalu Kauciel, Jimmy Nital, Rauh Kapalu, William Kapalu, Jimmy Kaviel, Charley Naknaou, Iasu Stephen, Namtengas Ias, Iau Roy, Nauka Noanalial, Philip Nakus, Nias Namtengas, Nat Malias, Johnson Namtengas, Marcel Namtengas, Peter Ias, Ken Nauka, Sam Iauiei, Ioran Namanik, Iatis Iamanik, Sam Kulu Nias, William Yasu, Jeak Iasu, Mako Iasu, Stephen Nama, Willie Napwat, Matua Joseph, Noam Nikauah Apen, Nasak Jimmy, Willie Pati, Joseph Yasur, Natonga Yasur, Kuau Nalpe, John Kalkie, Klupis Nasak, Lava Naknau, Manu Naknau, Frank Matua, Tom Mark, Charley Kuei, Pago Iakul, Solomon Nauei, Rau Sikai, Tom Iaute, Kasou Rosikai, Charley Caledonia, Mili Laukuasuas, Kuai Ianpisin, Namei Iakun, Natang Nauei, Pakoa Charley, Simeon Man, Kalwin Iatis.**

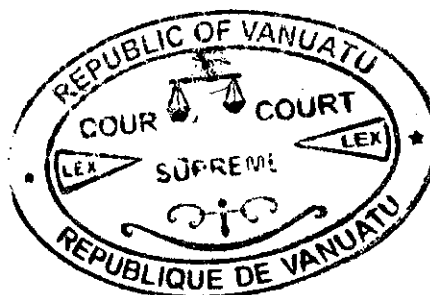
**Defendants**

*Date of HEARING: 6th day of September, 2017 at 10:00 AM*  
*Date of Judgment: 13<sup>th</sup> September, 2017 at 8:30am*  
*Before: Justice Oliver Saksak*  
*In Attendance: Less John Napuati for the Claimant*  
*Eric Molbaleh for the Defendants*

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**SUMMARY JUDGMENT**

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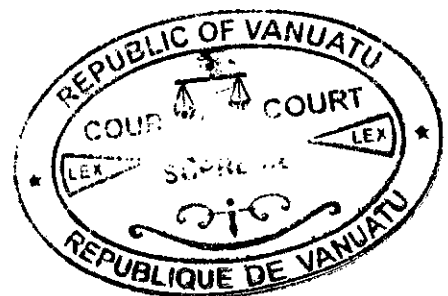
## **Background**

1. The Claimant filed a claim on 23<sup>rd</sup> November 2016 together with a sworn statement on 24<sup>th</sup> November 2016. The claim was served on Peter Iaus and Namtengas Iaus by Mr Napuati on 24<sup>th</sup> November 2016.
2. On 20<sup>th</sup> January 2017 a defence was filed by Indigene Lawyers on behalf of the defendants who are named as a group. On 1<sup>st</sup> February 2017 Mr Molbaleh filed a notice of beginning to act for the defendants.
3. A conference was held on 31<sup>st</sup> January 2017. The defendants and their Counsel did not attend. The Court adjourned the matter for 28 days for mutual discussions to reach a settlement. On 1<sup>st</sup> March 2017 a further one month was given by the Court to the parties to perform a custom ceremony. This did not occur.
4. The Claimant therefore applied pursuant to Rule 9.6 of the Civil Procedure Rules No. 49 of 2002 ( the Rules) seeking summary judgment. The application was filed on 18<sup>th</sup> August 2017. The application served on the defendants on 19<sup>th</sup> August 2017.

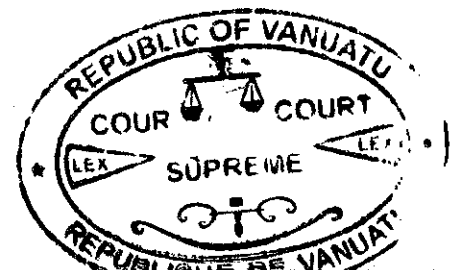
## **Discussions**

5. Rule 9.6 is applicable where a defendant files a defence but the claimant believes the defendant has no real prospect of defending the claim. Subrule (3) is mandatory and states-

*" An application for judgment must:*



- a. *Be in Form 15, and*
- b. *Have with it a sworn statement that:*
- I. *The facts in the claimant's claim are true, and*
  - II. *The claimant believes there is no defence to the claim, and the reasons for this believe."*
6. I have read the sworn statement of the claimant filed on 22<sup>nd</sup> August 2017 in support of the application. Regrettably it falls short of meeting the criteria in subrule (3)(b) (i) and (ii). However the belief of the claimant is included in the application filed on 18<sup>th</sup> August with the particulars. In my view this is sufficient.
7. Subrule 7 requires "*the Court to be satisfied that:*
- a. *The defendant has no real prospect of defending the claimant's claim or part of the claim, and*
  - b. *There is no need for a travel of the claim or that part of the claim,*
  - c. *The Court may give judgment for the claimant for the claim or part of the claim, and*
  - d. *Make any other orders the Court thinks appropriate."*
8. Looking at the defence, the defendants say among others that-
- a) They are lawfully residing on Lapan Napeuk Land.
  - b) The claimant never held meetings with them to inform them they should leave.
  - c) The Claimant never verbally advised them to leave the land, and
  - d) They are not trespassers on the land.
9. The defendants have never filed any evidence in support of their defences.



10. The evidence of the claimant is however clear and unchallenged. He has a judgment in his favour given by the Tanna Island Court in its Judgment dated 27<sup>th</sup> November, 2014. The declarations are stated at pages 12-13 of the judgment. It states in part as follows:

“DECLARATION

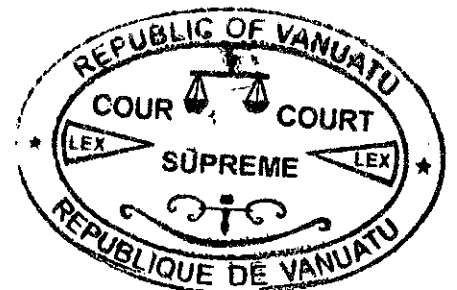
*In light of the totality of the evidence gathered in this proceeding and in application of the law and custom, the Court declares as follows,*

*1. That Tom Noam on behalf of Family Ioumiwan be the customary owners of the land of Lapangnapeuk”.*

*4. ....Those who are affected by the decision are reminded that this declaration does not affect other property rights to harvesting coconuts, gardens, graze cattle and other existing development within the declared land. The losing parties must bear in mind that these rights may be waived or varied by the land owners. The exercise of these rights is limited to existing properties prior to this declaration.*

*As such, it is further directed that all persons currently in use of the declared land areas undertake to cause appropriate arrangements with the declared owners to accommodate their continuous use of the land. (emphasis added).*

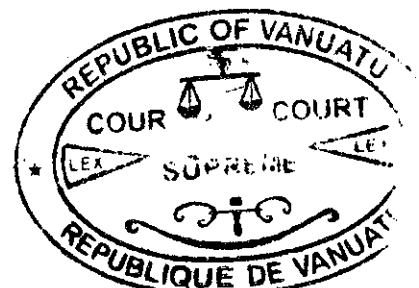
11. That judgment and declaration have never been appealed by the defendants. They could not do so under section 22 of the Island Court Act Cap.167 and it is not open to them to do so under the 12 month window available under the current Customary Land Management Act. The defendants are stuck with the judgment.



12. As such I am satisfied the defendants have no valid defence and no real prospect in succeeding on the defence that they have filed.
13. The defendants have complained against the claimant in their defence that the Claimant never held any meeting with them or given any advise to them to leave the land. Reading paragraph 4 of the Island Court's declaration as quoted in part in paragraph 10 of this judgment that is contrary to the Island Court's direction. That direction is to the defendants to arrange to meet with the claimant and make "appropriate arrangements" about their continuous occupation. That is not for the claimant to do, rather it is for the defendants. And they have never done that although this Court gave them opportunities to do it since the first conference on 31<sup>st</sup> January 2017.
14. Clearly the actions of the defendants are annoying and they are causing substantial delays to the Claimant from enjoying the fruit of his judgment.

### **Submissions**

15. I am grateful to Mr Napuati for his written submissions filed on 6<sup>th</sup> September. I accept those submissions. I adopt and apply the case of Vutimamoli vs Buleingmol [2015] VUSC in support of my holding that the defence of the defendants claiming they are lawfully occupying the claimant's land has no basis and is not a defence.
16. I also note Mr Molbaleh has not filed any submissions opposing the entry of summary judgment. Counsel sought an extension of time by email yesterday



(12/09/2017) but I declined the request. I considered it unreasonable. Counsel had ample time since 6<sup>th</sup> September 2017.

### **The Result**

17. The claimant's application for summary judgment is successful and is allowed.

### **The Orders are –**

1. Judgement is hereby entered in favour of the claimant.
2. The defendants are required to deliver vacant possession of the land clear from all personal properties within 30 days from the date of this order ( by 12<sup>th</sup> October, 2017).
3. An Eviction Order will issue after 12<sup>th</sup> October 2017 against the defendants or anyone who does not vacate the claimant's land willingly, peacefully and voluntarily within 30 days from today's date.
4. The defendants will pay the claimant's costs of this action on the standard basis as agreed or taxed.

**DATED at Port Vila this 13<sup>th</sup> day of September, 2017**

**BY THE COURT**

  
**OLIVER.A.SAKSAK**

**Judge**

