

BETWEEN: BONAVENTURE FRANK

Appellant

**AND: CHRISANTHE NICOLAS FRANK, FAMILY
ALGUET**

Respondents

Before: *Justice Dudley Aru*
Counsel: *Lent Tevi for the Appellant*
Kylie Karu for the Respondent

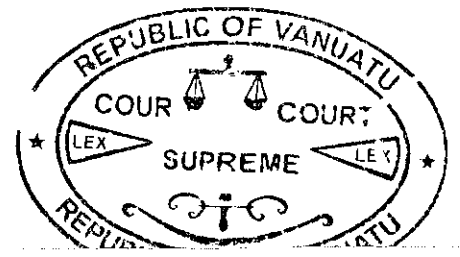
JUDGMENT

Introduction

1. The parties are from Port Olry in Santo and are very closely related .The appellant's sibling is the respondent, Christian Nicholas Frank's father. The respondent runs a small restaurant on their land at Port Olry. In his claim in the Court below he alleges that the defendant was disturbing the business by demanding money from visitors and harassing their guests and sought orders to restrain the defendant and orders for trespass.
2. Following the hearing of the claim, judgement was given in favour of the claimant. A restraining order was issued with an order to pay damages in the sum of VT 200,000 for trespass and an order to pay a further amount of VT 200,000 for general damages. The defendant now appeals the judgment.

Grounds of appeal

3. The appellant, Mr Bonaventure Frank appeals the judgment and says that the Magistrate erred in law and fact as -



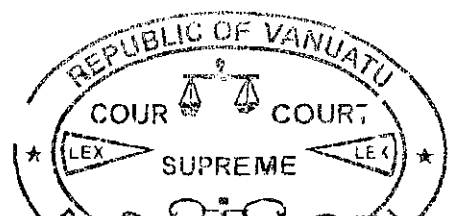
- 1) Both parties agreed in a memorandum that the appellant will have access to the area of the business;
 - 2) The Court did not consider the appellant's evidence that the appellant is also the custom owner of the area where the respondent's restaurant business is located; and
 - 3) There was no basis for an order for damages for trespass.
4. As to ground 1) the Court found that *"the assertion of an agreement is unfounded as there is no substantive evidence of an agreement of the same .But if there is an agreement in place then it poses the question whether it is appropriate to benefit from the claimant's effort, ..."*. There was no agreement for payment of land rent in the sum of VT 60,000. The evidence of Chief Gratien Alguet confirms that. However chief Alguet also deposes in his sworn statement that a Port Olry Tourism Committee ("the POTC") was set up by those involved in tourism at Port Olry and the appellant was appointed chairman of the committee. Members of the POTC signed a Memorandum of Understanding ("the MOU") which agreed to a number of things one of which is item 4 relating to entrance fees. It states –

"Item 4: entrance fees

All days visitors (including cruise passengers) will be charged 250 VT per person to enter the tourism zone and have access to facilities .Chief Bonaventure Frank and chief Gratien Alguet are responsible for fee collection and must organise one main entrance with a collection system"

(Emphasis added)

5. The MOU was signed by both the appellant and the respondent including eight other members of the POTC. There was therefore a basis for the claimant to ask guests to pay money being entrance fees which was agreed to by the respondent. This is also confirmed by the appellant in his sworn statement.
6. As to ground 2), it was submitted that the Court did not consider the evidence of the appellant that he is also the custom owner of the land where the respondent's business is located .The Court found that *"the claimant did not dispute ownership of the land (where his business is located) but argued that the defendant became owner on a representative capacity and not the sole owner of the land."* The appellant and the respondent are members of the Frank family .On 13 October 2005 the East Santo



Island Tribunal made a declaration of custom ownership over the land where the respondent's restaurant is located as follows –

"Graon ia Lathma sigo I divided long three (3) parts - south part I blong Chief Gideon Rocroc , Centre part I blong chief Bonaventure Frankmo chief Gratien Eugen mo northern part emi blong chief Leon Katty , Noel Relie mo Juda .

.....Chief Bonaventure Frank mo chef Gratien Eugen i representem Okome mo Alguet....."

(Emphasis added)

7. The appellant and Chief Gratien Alguet were declared custom owners of the land where the respondent's restaurant is located in a representative capacity . The respondent accepts that. The appellant therefore could not have trespassed as the land belongs to Family Frank. Both parties are members of Family Frank. Secondly the respondent agreed that the appellant would collect entrance fees from visitors wanting to access the area identified as the Port Olry Tourism Development Zone.
8. In relation to ground 3) in view of what I have said above, the appellant could not have trespassed onto land belonging to Family Frank as the parties are the custom owners of the land .There is no basis for damages for trespass or general damages.

Conclusion

9. The conclusion is that the judgment of the Court below must be set aside. It is highly likely that the appellant being an old man misunderstood that he was only required to collect rental fees not land rents as he cannot do so as they all own the land.
It maybe a matter for the parties to consider in a family meeting to resolve their differences and to have a common understanding regarding the declaration of custom ownership in their favour otherwise they need to get the judgment clarified by the relevant authorities .
10. The appellant is entitled to costs to be agreed or taxed.

DATED at Port Vila this 18th day of October, 2018.

BY THE COURT

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DUDLEY ARU
Judge

