

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

Civil
Case No. 18/1190 SC/CIVL

AND: HENRY IOUIOU, TOM RAUHU,
SIMON JIFLY, TANGAP WILLIE,
DAVID FIWI, ANDONY IOUIOU,
NUMANSE WIKEN, PIERRE WILLIE,
KOLWIN JIMMY, STEVEN JIMMY,
MOIA BEN, JOHNNY NAWANAPIK,
JIMMY RANDY, FLORA WILLIE

Claimants

AND: TMOTHY POTA, AMOS CHARLIE,
AMOS WILLIE NAKOU, NIKELSEN
CHARLIE, WILLIE SAUTE, IAUKAS
NAUAM, IAMAK IAMIAM NASSE,
KENNETH BREDY, WILLIAM IAHAM,
TOM NAKLINPIN, ISAAC TOM, KEING
TARIK, JUDGE IAWANTAK, ORI JOE
IALU, RUBEN MUSA IAPAKEL, MIKE
NAKOU RADLEY TOM, BRIAN JIMMY
AND SAMUEL IAWANTAK

Defendants

Before: Justice Saksak

In Attendance: Less John Napuati for the Claimants
Willie Kapalu for the Defendants

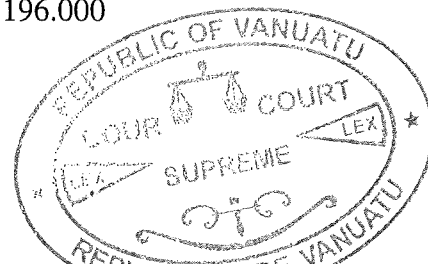
Dates of Hearing : 29th May 2019

Date of Decision: 10th July 2019

JUDGMENT

1. The 14 claimants claimed general damages jointly and severally against the 19 defendants jointly in the total sum of VT 51.412.560 made up as follows:-

(a) Harry Iouiou- 4 houses	VT 26, 090, 300
(b) Tom Rauhu- 2 houses	VT 571,000
(c) Simon Jifly -1 house at	VT 300,900
(d) Kolwin Jimmy -1 house at	VT 196.000

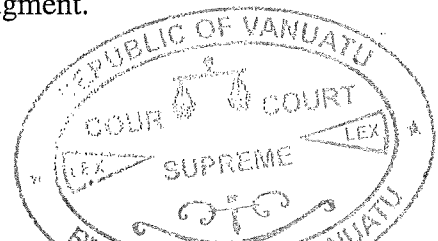


(e) Tangap Willie- Damage to property	VT 682, 750
(f) Steven Jimmy – Grass House	VT 244, 600
(g) Jifly Namanse- Grass House	VT 977,250
(h) Moia Ben	VT 416, 500
(i) David Fiwi	VT 154,960
(j) Johnny Nawanapik	VT 60,100
(k) Jimmy Randy	VT 713,300
(l) Andony Iouiou	VT 1, 230, 000
(m) Numanse Wiken	VT 15.523.300
(n) Pierre Willie	VT 1, 557, 300
(o) Flora Willie	VT 1, 694, 400

In addition they claimed VT 1,000,000 each for pain and suffering.

Background

2. The defendants, 21 in all were prosecuted in 2016 in Criminal Case No. 889 of 2016 Public Prosecutor.v. Rhau Ialu and others for unlawful assembly, and arson.
3. The relevant facts are that on 16th February 2016 the defendants gathered together and used fuel to burn down 15 houses belonging to the Claimants. As a result the claimants lost their homes and personal belongings such as clothes, kitchen utensils, money and other chattels.
4. The Court convicted the defendants and sentenced them to various terms of imprisonment with suspensions of sentences for some, and community work with supervision for some, on 20th October 2016.
5. On the basis of those convictions and sentences, the claimants filed their various claims on 27th April 2018.
6. The defendants were served with the claims but did not file any response and defences. Therefore the claimants filed a request for default judgment.



Default judgment

7. On 2nd April 2019 the Court entered default judgment as to liability against the defendants and deferred quantum of damages to be assessed. Directions were issued requiring the claimants their evidence as to damages and for the defendants to file responses on the same date.

Evidence

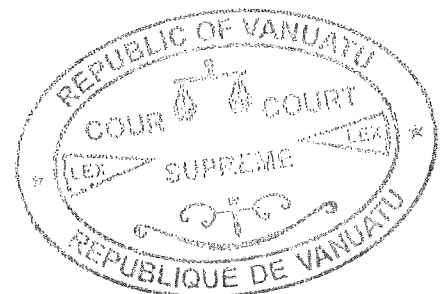
8. On 11th April 2019 Henry IouIou, Numanse Wiken, David Viwi, (on behalf also of Ben Moio and Johnny Nawanapik), and Jimmy Randy filed their sworn statements. On 18th April 2019 Simon Jifly Kolwin Jimmy filed their sworn statements as to damages. Finally on 24th April 2019 Tangap Willie, Steven Jimmy, Andony IouIou, Tom Rauhu, Pierre Wilie and Florah Willie and Jifly Namanse filed their sworn statements as to damages.

Defences Counsel's Involvement

9. Mr Willie Kapalu assisted the defendants in the criminal case but did not assist them earlier in the civil proceeding. Counsel only started appearing on 3 December 2018 and requested that a copy of the claim be served on him. Even with service, counsel did not file any response and /or defences and sworn statements.
10. On 25th April 2019 the Court issued some ex parte Orders restraining the defendants from threats and other unlawful actions. Then on 29th May 2019 with Mr Kapalu present the Court required the filing of written submissions by Mr Napuati on 24th April 2019.

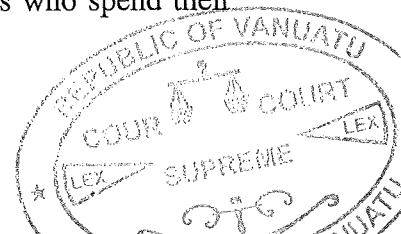
Issues

11. Mr Kapalu raised 2 issues namely (a) whether all the claimant's houses were burned by the defendants? (b) whether the amounts claimed reflect the properties alleged to have been destroyed by fire?



Submissions

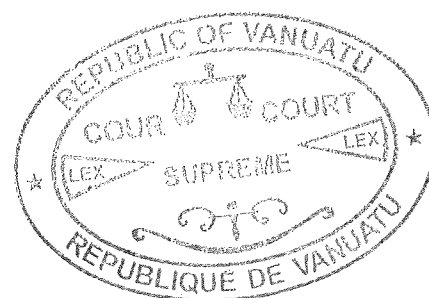
12. Mr Napuati submitted that as there were no opposing sworn statements filed by the defendants the Court should enter judgment for the claimants in the total sum of VT 51, 412,560. Mr Napuati relied on the case of Tchivi.v. Tali & others [2012] VUSC 12. This was a case where the defendants were charged and convicted and sentenced for unlawful assembly, arson and malicious damage to property. The defendants got drunk, assembled together and set fire to the claimant's local store destroying the building and all its equipment and goods. The claimant claimed for VT 4,521,800. The Court assessed the damages and reduced the amount down to VT 2,065,270 comprising of-
- a) Loss of building – VT 1, 385, 000
 - b) Loss of equipment- VT 249, 400
 - c) Loss of Goods – VT 30, 870
 - d) General Damages- VT 400,000
13. The claimants listed by Mr Napuati in his submissions are Henry Iouiou, Tom Rauhu, Simon Jifly and Kolwin Jimmy, Tangap Wilie, Steven Jimmy, Jifly Namanse, Jimmy Randy, Andony IouIou, Namanse Wiken, Willie and Flora Willie and David Viwi and Ben. That is a total of 14 claimants.
14. In the Supreme Court claim 15 claimants are named. Mr Napuati's list does not include Johnny Nawanapik, who is named in the claim. The claim names 2 claimants with the names Ben. There's a Moio Ben and a Moia Ben. Mr Napuati's list does not identify which of the 2 Ben, it just gives the name Ben.
15. Mr Kapalu for the defendants submitted in relation to the first issue that there were only 10 houses burned by the defendants. He submitted that Moio Ben, David Viwi, Jimmy Randy and Andony Iouiou made statements but that their evidence are misleading as their houses were not burnt. He accuses these 4 Claimants of committing perjury and submitted they should be punished.
16. In relation to the amounts claimed by the claimants Mr Kapalu submitted the Court should consider the fact that the defendants are subsistence farmers who spend their



time in the village and live in locally made houses, with no employment and income. He submitted the hand written figures were made up. That some of the claimants are very young and did not have or own any of the properties they claim were destroyed. He argued Jifly Namanse is a young person who is still dependant on his parents and it is unrealistic that he would own such a long list of properties he claims for. Counsel argued it was unrealistic for Henry Iouiou to keep the sum of VT 9 million at home. This included Tom Rauhu and Kolwin Jimmy as well.

17. Finally Mr Kapalu submitted that as subsistence farmers with no regular income the appropriate compensation should be reconciliation where compensation could be made with local food crops. Alternatively, if payment were to be made in monetary terms, the total amount of compensation should be VT 340,000 made as follow:-

(a) Henry Iouiou	VT 100,000
(b) Jifly Numanse	VT 70,000
(c) Wiken Numanse	VT 30,000
(d) Johnny Nawanapek	VT 20,000
(e) Florah Willie	VT 20,000
(f) Willie Tangap	VT 20,000
(g) Pierre Willie	VT 20,000
(h) Tom Rauhu	VT 20,000
(i) Stephen Jimmy	VT 20,000
(j) Kolwin Jimmy	VT 20,000
Total	VT340,000



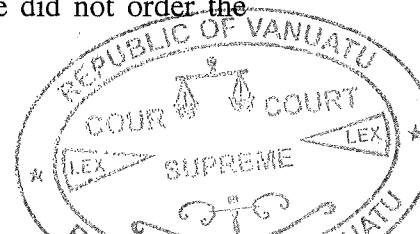
Discussion

18. I begin first by making some findings as follows-

- a) The defendants have no evidence to support their submission that only 10 houses of the Claimants were burnt down. In the sentence dated 20th October 2016 the facts stated at paragraphs 6 and 20 show there were 15 houses burnt. Mr Kapalu was Counsel for the defendants then but did not dispute or refute that fact. And he had no evidence to the contrary. So his argument is not tenable.
- b) The claimant named as Moio Ben and Moia Ben are one and the same person. So there are infact only 14 Claimants.
- c) Moio Ben, Johnny Navanapek, Florah Willie and Kolwin Jimmy have not filed separate sworn statements and their lists, as annexed by David Viwi, Pierre Willie and Simon Jifly are hearsay and are hereby rejected. Their respective claims are hereby dismissed for this reason.
- d) Jimmy Randy's statement is defective because it was David Viwi who deposed to it. His claims are dismissed for this reason.
- e) Jifly Numanse deposed to a statement but he is not named as a claimant. He therefore has no claim and his evidence has no relevance.
- f) There are therefore only 9 remaining Claimants who are Henry Iouiou, Tom Rahu, Simon Jifly, Tangap Willie, Steven Jimmy, David Viwi, Andony Iouiou, Numanse Wiken and Pierre Willie.

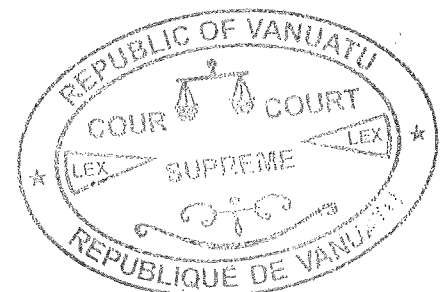
19. The Claimants claim for compensation, not restitution. What each of the claimants have done is make their own lists of houses and personal properties, including money in cash for some. But these are not verified by a chief of the village.

20. The Claimants are certainly entitled to compensation under sections 39 and 40 of the Penal Code Act CAP 135. The only reason the sentencing judge did not order the



payment of compensation in 2016 was because the defendants are all subsistence farmers with very limited means to pay compensation to the Claimants (see paragraph 12). The sentencing judge also noted the defendants willingness to perform customary reconciliation ceremony to the victim.

21. Section 40 (5) of the Penal Code Act also provides that when determining the amount of compensation to be made the Court must take into account the offender's sources of income, or any offer made by the defendants.
22. The defendants have already been punished for their criminal acts. Therefore the claim for compensation cannot be treated as a further punishment imposed on the defendants.
23. It is along these lines that Mr Kapalu made submissions which include an offer in the total sum of VT 340.000 and a custom reconciliation ceremony involving exchange of local food crops.
24. It is important to bear in mind the underlying root of the dispute between these claimants and the defendants. The sentencing judge recorded this at paragraph 4 of the sentence, to be dispute as to ownership of land occupied by the claimants.
25. Land in Vanuatu is always a very sensitive issue. And land disputes can take a very long time to resolve. They create animosities even between families and relatives. And huge financial compensation or reparation can never be in my view, the means to attract and encourage these disputing parties to have peace and harmony between them. Rather, it gets them further away from reaching possible resolutions to their disputes. I accept Mr Kapalu's submission that customary reconciliation is the way forward for these disputing parties in their circumstances.
26. For these reasons, I enter judgment for the claimants but for a substantially reduced sum of compensation in the total sum of VT 340,000, the sum proposed by the defendants based on their financial means.



27. I order that-

a) The defendants pay the claimants sum of VT 340,000 in the following manner-

(a) Henry Iouiou	VT 100,000
(b) Simon Numanse	VT 70,000
(c) Wiken Numanse	VT 30,000
(d) Johnny Navanapek	VT 20,000
(e) Florah Willie	VT 20,000
(f) Willie Tangap	VT 20,000
(g) Pierre Willie	VT 20,000
(h) Ton Rauhu	VT 20,000
(i) Stephen Jimmy	VT 20,000
(j) Kolwin Jimmy	VT 20,000
Total	VT340,000

- b) The defendants and their chiefs are to arrange and perform a customary reconciliation with the chiefs and the 9 claimants, together with the other 5 Claimants excluded from the list during which the money awarded as compensation in (a) is to be paid over to each of the claimants.
- c) The customary ceremony shall be arranged and performed within 3 months from the date of this judgment (by 10th November 2019).
- d) The defendants shall pay the Claimant's costs of this action which I fix at VT 100,000.

DATED at Port Vila this 10th day of July 2019

BY THE COURT

OLIVER.A.SAKSAK

Judge

