

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

Civil Appeal
Case No. 19/2802 SC/CIVA

BETWEEN: Blue Bay Paradise Limited
First Appellant

AND: Bernier Bay Limited
Second Appellant

AND: Plantation Paradise Limited
Third Appellant

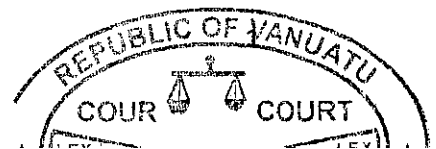
**AND: Nickson Moli, Eddie Moli, Vanua Moli,
Timothy Tari Moli, Wilson Boe,
Zacharia Moli**
Respondents

Date: 5 June 2020
Before: Justice V.M. Trief
Counsel: Appellants – Mr N. Morrison
Respondents – Mr J. Garae

JUDGMENT

A. Introduction

1. The Appellants obtained restraining orders against the Respondents dated 15 December 2017 and 5 June 2018. By Reserved Judgment dated 9 October 2019, the Magistrates' Court quashed the restraining orders. The Appellants appeal that judgment.
2. The Appellants and Respondents have filed written submissions. I now determine the appeal on the papers.

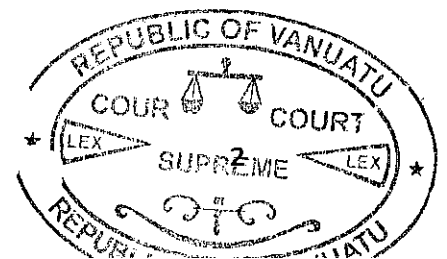


B. Background

3. The Appellants have changed over the years but are the owners of 3 adjoining properties on Aore Island. They rely on local managers to maintain their properties.
4. Since the Appellants acquired their leasehold interests on Aore island, thereafter they have been subjected to unlawful entry, trespass, intimidating, threatening, use of abusive and aggressive behaviour from the Respondents.
5. On 15 December 2017 and again on 5 June 2018, restraining orders were obtained for the Appellants.
6. The Respondents are from Tutuba island and claimed various rights over the leasehold properties of the Claimants located on Aore island in Sanma Province, Vanuatu. The principal Respondent was previously Peter Moli. He passed away in late 2017.
7. Despite Peter Moli's passing away, the Appellants remained concerned for their safety on coming to Vanuatu/Aore. They remained concerned at unwanted trespass on their properties. They remained strongly of the view that other family members (not just Peter Moli deceased) required to be restrained by orders, and filed their Claim seeking damages and continuation of the restraining orders.
8. The Respondents filed a Defence and an Application to Set Aside the Restraining Orders. The Magistrates' Court judgment determined both the Claim and the Respondents' Application.

C. Grounds of Appeal

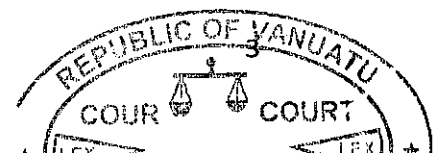
9. The Appellants advance 5 grounds of appeal:
 - 1) The decision is wrong in fact and at law;
 - 2) The Court found that previous defendant Peter Moli deceased was the cause of all problems which ignores the evidence;
 - 3) The Court found that the allegations against the defendants were of a general nature which is wrong in fact and at law.
 - 4) The Court applied wrong tests as to be applied for an Application to set aside a Restraining order.
 - 5) The Appellants continue to have reasonable fears requiring restraint of the Respondents and this was ignored by the Court.



D. Discussion

Grounds 1, 2, and 3

10. Mr Morrison submits that the Magistrate's decision is wrong in fact and at law as he found that previous defendant Peter Moli deceased was the cause of all problems which ignores the evidence, and that the allegations of threats and breaches were of a general nature and unsubstantiated. Mr Morrison points to the Telfers' evidence in their statement dated 27 November 2018 that is attachment "B" of the Appellants' Further Submissions, and the Memorandum of Counsel also attached to those Further Submissions. These evidence the incident at the Luganville Court House on 2 November 2018 where immediately following the hearing, the Respondents and supporters gathered around the court precinct in an angry mass. They made serious physical threats against the Telfers and Mr Morrison, such that they were required by the Sheriff and the Police to remain upstairs in the Magistrates area. The Respondents would not disburse so police escort was required to a police vehicle which then delivered the Telfers and Mr Morrison to their respective hotels/addresses.
11. Kami John, a farm manager of the Appellants gives evidence in his sworn statement of a 13 September 2018 trespass incident by Zacharia Moli and several others who entered by boat onto the Blue Bay Paradise property and hunted cattle and fished with nets. Mr John states too that the week before this a boat was landing in the night on the beach and people coming on to the property. He did not go to see who it was because it was very late and he was afraid. He believes it was likely the Moli's.
12. Mr Garae submits that since the restraining orders issued, the Appellants have produced no further evidence to suggest actions that would cause fear or threat to the Appellants. He states that no unlawful acts were committed by the Respondents towards the Appellants or Mr Morrison on 2 November 2018 and that their grouping together at the Court does not mean grouping together to commit an unlawful act.
13. The submissions for the Respondents ignore the Telfers' evidence that they and Mr Morrison were subject to serious physical threats made in the presence of the Sheriff so that the Sheriff and Mr Morrison advised that they all wait until it was deemed safe. Others inside the building who were also instructed to remain inside until it was safe to exit were the court staff, Correctional Services Officers and their detainees, and the Magistrate. It was not deemed safe so the Police were called for assistance. Four Police officers attended. At the second attempt by the Police, the Telfers and Mr Morrison were bundled into the waiting Police car and driven away. How else can the need for police escort be explained than that the Telfers and Mr Morrison feared for their personal safety and required police assistance to remove themselves from the Court premises?
14. Mr Garae also submits that the Appellants have never produced 'independent' sworn statements from the caretakers of the properties as to the Respondents' actions. This submission ignores the evidence from Mr John. Mr John is a caretaker of the Appellants' properties and he has put on evidence. I note that this is the same Mr John who was nearly drowned by Peter Moli on 1 December 2017, in relation to which Peter Moli was



charged for attempted murder. Mr John's evidence of trespass on 13 September 2018 is unchallenged.

15. In the circumstances, I am satisfied that the Magistrate erred in his decision in ignoring the evidence and making a finding that Peter Moli deceased was the cause of all problems. Further, the allegations of threats and breaches on 13 September 2018 and 2 November 2018 are specific and I am satisfied that they have been proved.

Grounds 1, 4 and 5

16. Mr Morrison submits that the Magistrate did not consider the test that he should apply to restraining orders. It is in part at least a subjective test. That is, "Do these particular applicants have fear requiring protection?" Mr Morrison suggests that in making his decision some 1 year after the hearing, it seems that the Magistrate was determined to get this matter off the books and his memory and records were poor. The Telfers' evidence and Mr Morrison's instructions are that the Appellants remain fearful of travelling to their lands on Aore. He submits that the Appellants continue to have reasonable fears requiring restraint of the Respondents and that this was ignored by the Court.
17. Mr Garae submits that the apprehension of fear and or threat on the life of the Appellants was the test. He repeats the submission that there was no evidence to suggest acts by the Respondents that would cause fear and/or apprehension of fear. The only evidence of unruly actions were by Peter Moli deceased.
18. I agree that the Appellants' apprehension of fear and or threat is part of the test to be applied for restraining orders. The Telfers' evidence is that they feared for their lives in the 2 November 2018 incident. They give evidence of their ongoing fear at page 2 of their statement:

We also do not return to our property often as we need to get private security to accompany us when we do.

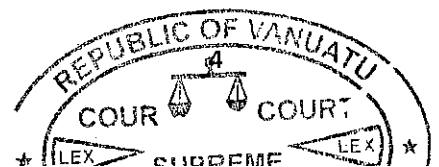
This fear is what forced us to seek restraining orders back in 2015 and the situation has not improved. It just keeps escalating.

... The existing orders must be kept in place indefinitely for some protection to all of us and our property.

19. I am satisfied that the Appellants continue to have apprehension of fear and or threat from the Respondents, and that this was not taken into account by the Magistrate.
20. The Appellants having succeeded on all their grounds of appeal, the judgment of the Magistrates' Court must be set aside. In addition, the restraining orders dated 5 June 2018 must continue to remain in force.

E. Result and Decision

21. The appeal is allowed. The judgment in the Magistrates' Court is set aside.



22. The restraining orders made on 5 June 2018 in the Magistrates' Court remain in full force, until set aside or varied by Court Order.
23. The Respondents must pay the Appellants' costs of the appeal fixed at VT60,000 within 21 days.

**DATED at Port Vila this 5th day of June 2020
BY THE COURT**

UM Trief
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Viran Molisa Trief
Judge

