

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

Civil
Case No. 20/338 SC/CIVL

BETWEEN: Jimmy Nemtangas, Serah Nemtangas,
Nasse Jimmy, Tonny Nurap, Eric
Nalan, Tom Nurap, Sewi Nurap, Iakoui
Nurap, Iakoli Napuat, Joe Pita, Jimmy
Rarpaha, Nurap Narap, Rehep Nurap,
Flora Peter, Flora Joe.

Claimants

AND: Kalpapen Nawen, Johnson Natuman,
Noah Philemon, Jack Nawen, Iou
Kalpapaen, Frederick John, Jimmy
Johnson, Kawi Kilima, Noki Kilima,
Nisap Naume, Nekin Naume, Kuanuan
Sam Kahu, Tarwei Obed, Kilima
Maliwan

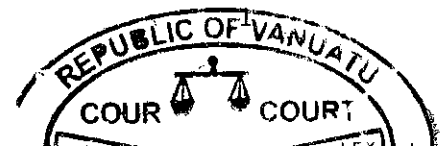
Defendants

Date: 20 September 2021
Before: Justice V.M. Trief
Counsel: Claimants – Mr R. Tevi
Defendants – Mr W. Kapalu

JUDGMENT

A. Introduction

1. The Claimants Jimmy Nemtangas and members of his family seek damages against the Defendants Kalpapen Nawen and others for damage to their properties at Tanna island for which the Defendants were convicted.
2. Neither party required witnesses for cross-examination therefore this matter proceeded by way of written submissions. The Claimants filed submissions as directed. The

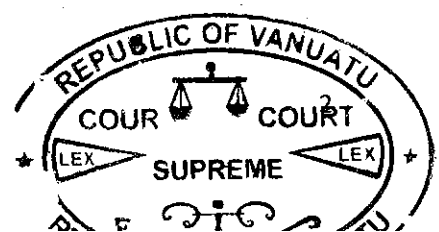


Defendants have not filed any submissions even after being reminded by the Court Registry.

3. Having considered the submissions and the evidence, I now set out my decision.

B. Discussion

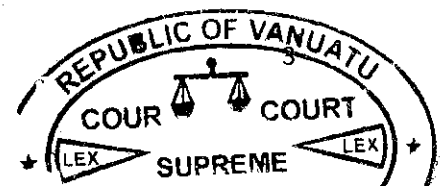
4. At around daybreak on 8 March 2016, the 1st-13th-named Defendants inclusive, together with other unidentified males, went to a neighbouring village at Mensori at Port Resolution area on Tanna Island armed with axes, knives, sticks and stones. They started to shout for everyone at Mensori village to leave as they were not legally entitled to be there. To re-inforce their demands, they commenced to damage homes and other property.
5. At all times the group was encouraged to act in this way by the 14th-named Defendant, their Chief Kilima Maliwan.
6. The Claimants fled from Mensori village and have not lived there again since.
7. The 1st-13th-named Defendants were convicted of 9 charges of malicious damage to property. The 14th-named Defendant was convicted of soliciting the others to commit those offences.
8. On 23 July 2019, the Supreme Court sentenced the 1st-13th-named Defendants to 4 months imprisonment, suspended for 2 years, and 100 hours community work. The 14th-named Defendant was sentenced to 6 months imprisonment, suspended for 2 years, and 150 hours of community work.
9. By the Claim, the Claimants alleged that they now intend to return to Mensori village and seek damages for the loss of their residential dwellings and personal property.
10. The Claim is opposed. The Defendants alleged in their Defence that they acted as they did on 8 March 2016 because of the underlying land dispute and they do not want the Claimants to return to Mensori village unless they have a custom ownership declaration in their favour or this will only cause further land disputes. The Defendants alleged that the Claimants' property was returned to them therefore the damage suffered must be substantiated and damages assessed.
11. It is accepted that the Defendants caused damage to the Claimants' residential dwellings and property therefore the issues between the parties are what loss and damage was suffered by the Claimants, and then assessment of the damages payable to them.
12. The Claimants filed the sworn statements of Jimmy Nemtangas, Nasse Jimmy, Tonny Nurap, Eric Nalan, Tom Nurap, Sewi Nuorap, Iakoui Nurap, Anna Fred, Nurap Narap Rehep Nurap and Flora Joe in which each set out the houses and/or personal property of theirs that the Defendants destroyed.



13. The only sworn statement filed for the Defendants was by the Defendant Kalpapi Nawan. He stated that the Claimants' personal property from within their houses was heaped together and taken to them at Whitesands area. They did not damage that property, only the Claimants' houses.
14. In his sworn statement in reply, Mr Jimmy stated that that was not true. The Defendants burned or removed all the Claimants' property for themselves.
15. With Mr Nawan's concession that they damaged the Claimants' houses, it follows that the Claimants have proved the loss of their houses as follows:

Claimants	Residential dwellings
Jimmy and Serah Nemtargas	4 sleeping houses and 1 kitchen house
Nasse Jimmy	1 complete residential house (iron sheet roofing) and 1 thatched roof house
Tonny Nurap	1 residential dwelling and 1 kitchen
Eric Nalan	1 residential dwelling and 1 kitchen
Tom Nurap	1 residential dwelling, 1 kitchen and 1 hurricane house
Sewi Nuorap	1 residential dwelling and 1 kitchen
Nurap Narap	1 residential dwelling
Rehep Nurap	1 residential dwelling, including iron roofing and coconut leaf roofing
Flora Joe	2 sleeping house and 1 kitchen

16. I will award VT1,000,000 damages to each of the above Claimants for the loss of their houses.
17. Anna Fred also filed a sworn statement stating that she was one of the Claimants who lost a residential dwelling however she was not named as a Claimant in the Claim.
18. However, the problem with not having witnesses' evidence tested by cross-examination is that I cannot assess whether the Claimants or the Defendants were telling the truth as to what happened to the Claimants' personal property. There is simply no way that I can work out whether all the Claimants' property was burned or stolen, or that the Defendants returned the Claimants' personal property to them at Whitesands. In the circumstances, I will award a nominal amount for each Claimant for the loss of their personal property of VT300,000 each.



C. Result and Decision

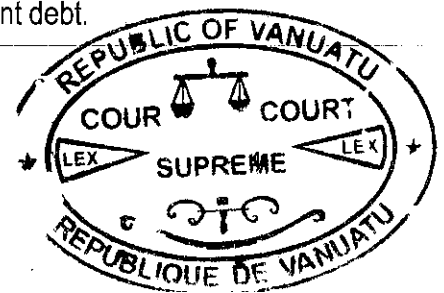
19. For the reasons given, the Claimants have proved the Claim on the balance of probabilities. Accordingly, the Defendants are jointly and severally liable to pay the Claimants the damages assessed as follows (the 'judgment sum'):

Damages payable to Claimants	
Jimmy and Serah Nemtangas	VT1,600,000
Nasse Jimmy	VT1,300,000
Tonny Nurap	VT1,300,000
Eric Nalan	VT1,300,000
Tom Nurap	VT1,300,000
Sewi Nuorap	VT1,300,000
Iakoui Nurap	VT300,000
Nurap Narap	VT1,300,000
Rehep Nurap	VT1,300,000
Flora Joe	VT1,300,000
TOTAL	VT12,300,000

20. The Defendants are to pay the Claimants interest on the judgment sum until fully paid, at the Supreme Court rate of 5% per annum.
21. The Defendants are to pay the Claimants' costs as agreed or taxed by the Master. Once set, the costs are to be paid within 28 days.

D. Enforcement

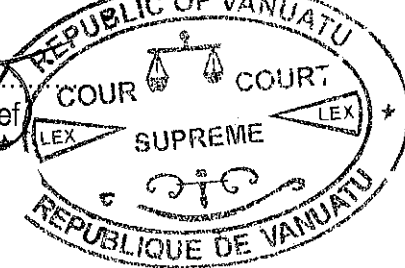
22. Pursuant to rule 14.3(1) of the Civil Procedure Rules, I now schedule a Conference at 1.40pm on 18 October 2021 at the Luganville Court House and by video link to the Port Vila Supreme Court Registry to ensure the judgment has been executed or for the judgment debtors to explain how it is intended to pay the judgment debt.



23. For that purpose, this judgment must be served on the Defendants and proof of service filed.

**DATED at Port Vila this 20th day of September 2021
BY THE COURT**

VM Trief
Justice Viran Molisa Trief

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem of a scale of justice. The words "REPUBLIC OF VANUATU" are written in an arc at the top, and "REPUBLIQUE DE VANUATU" at the bottom. The words "COUR" and "COURT" are on either side of the scale, and "SUPREME" is written below it. Two small triangles containing the word "LEX" are positioned on the left and right sides of the seal.