

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

**Civil**  
**Case No. 20/2943 SC/CIVL**

**BETWEEN:** **Family Sawia represented by Noel  
Stephen Sawia and Song Stephen  
Sawia**  
Claimants

**AND:** **Pikin Nalau, Mafe Nalau, Kausir Kapera**  
Defendants

*Date of Hearing:* 20 October 2022  
*Before:* Justice V.M. Trief  
*Counsel:* Claimants – Mr R. Tevi  
Defendants – Mr W. Kapalu  
*Date of Decision:* 17 March 2023

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**DECISION AS TO QUANTUM OF DAMAGES**

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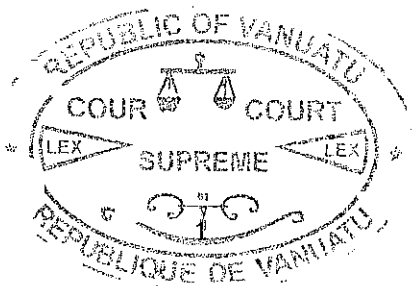
A. Introduction

1. On 18 July 2022, Default Judgment was entered in this matter. The matter then proceeded to hearing as to quantum of damages.
2. This is the decision.

B. Background

3. On 24 September 2020, the Claimants Family Sawia represented by Noel Stephen Sawia and Song Stephen Sawia ('Family Sawia') filed a Claim against the Defendants Pikin Nalau, Mafe Nalau and Kausir Kapera for damages for loss of crops valued at VT815,000 and trespass. They also sought an order that the Defendants not mine sand and build cement blocks at Kwanpir custom land and for costs.
4. The Claim was not defended. This resulted in Default Judgment being entered on 18 July 2022.
5. The Default Judgment not been appealed nor application made to set it aside.
6. Accordingly, the undisputed facts are as follows:

- a. The Claimants reside on customary land at Isangel on Tanna;



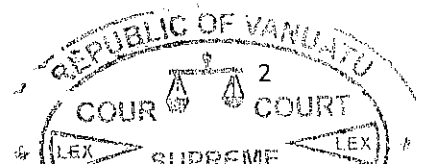
- b. By Order of the Supreme Court dated 5 November 2010, the Defendants and all parties are not to do anything to alter the physical stated of the relevant land at Isangel on Tanna;
  - c. That despite the Supreme Court Order dated 5 November 2010, the Defendants have been digging sand and making and selling cement blocks;
  - d. Mr Jacobe is a businessman operating at his business place at Tebakor area in Port Vila;
  - e. The Defendants trespassed into land occupied by Family Sawia and destroyed their crops and began to build houses there unlawfully; and
  - f. Family Sawia lodged complaints with the Police dated 16 and 17 July 2020 – these have not resulted in any arrest.
7. Family Sawia seeks damages for their destroyed crops of VT815,000 and for trespass of VT100,000, plus a permanent restraining order for the Defendants not to mine sand and build cement blocks and costs.

C. The Evidence

8. Noel Sawia deposed in his sworn statement filed on 24 September 2020 that the dispute over the ownership of the custom land of Isangel is still pending before the Tanna Island Court. The matter had been appealed to the Supreme Court in Land Appeal Case No. 73 of 2006. By Decision dated 5 November 2010, Justice Dawson held that the matter must be reheard *de novo* in the Island Court and that no parties or other persons are to take any actions that will alter the physical state or the legal status of the relevant land prior to the claims being heard by the Island Court [attachment "NS"].
9. Mr Sawia deposed that the Defendants have mined sand and built cement blocks at Kwanpir until now, contrary to the Supreme Court's Order dated 5 November 2010. He has lodged Police complaints with no arrest or prosecutions resulting. Further, the Defendants Pikin Nalau and Mafe Nalau damaged their gardens (used for potato farming), uprooted the grass used to fertilize the soil, cut down kassis trees and built houses to live in and farmed poultry and pigs there. He attached a copy of the Agriculture Department crops compensation valuation of VT16,600 for lost yam crops [attachment "NS3"].
10. Photographs of the houses and toilets built by the Defendants and where Family Sawia's fences were cut were attached to Mr Sawia's further sworn statement filed on 11 June 2021. In his sworn statement filed on 23 August 2022, Mr Sawia deposed that most of Family Sawia's crops destroyed or damaged by the Defendants over a 10 year period would amount to a greater value but they will limit the value to VT815,000 damages sought and VT100,000 for trespass.

D. Discussion

11. The custom ownership of the land in question is still under dispute pending before the Tanna Island Court. Therefore Family Sawia can only claim as occupiers, not owners. I am satisfied that they are and were occupiers of the land that they have complained the Defendants have moved onto.



12. I am satisfied on Mr Sawia's evidence that the Defendants have moved onto land that Family Sawia used for gardening and built houses and toilets and are rearing animals there.
13. Mr Tevi accepted that the only evidence as to quantum of damage was the Agriculture Department crop valuation of VT16,600. I accept that as evidence of the value of the crops destroyed by the Defendants.
14. In addition, I will make an order for damages for trespass onto the land occupied by Family Sawia of VT100,000.
15. The order sought to restrain the Defendants from mining sand and building cement blocks is sought due to alleged breach of an Order in Land Appeal Case No. 73 of 2006. As this is an allegation of contempt of that Court Order, that must be raised in that proceeding in which that order was made. I decline therefore to make the order sought.

E. Result and Decision

16. The Claimant is awarded damages as follows, to be paid by the Defendants jointly and severally, for:
  - a. The loss of crops valued at VT16,600 (the 'judgment sum'); and
  - b. Damages for trespass VT100,000.
17. Interest is to be paid on the judgment sum until fully paid, at the Supreme Court rate of 5% per annum.
18. The Claimant is entitled to the costs of this action fixed summarily at VT80,000 to be paid within 28 days.
19. The restraining orders dated 11 March 2021 (amended on 23 August 2021) are discharged.

F. Enforcement

20. This matter is listed for Conference **at 1.30pm on 12 April 2023**, including by video link to the Luganville Court House, for the Defendants to inform the Court: (i) that they have paid the judgment sum or (ii) to explain how they intend to do so. If there is no satisfactory conclusion, the file will be transferred to the Master for enforcement action.
21. For that purpose, this judgment must be personally served on the Defendants and proof of service filed.

DATED at Port Vila this 17<sup>th</sup> day of March 2023  
BY THE COURT

  
Justice Viran Molisa Trief

