

BETWEEN: REMY KUNUAN as Representative of Family Kunuan
Claimant

AND: RAYMOND NASSE
First Defendant

AND: Nisam Iata representing Family Iata
Second Defendant

Before: Justice Oliver A. Saksak

Counsel: Mr Jona Mesao for the Claimant
No appearances for the First and Second Defendants

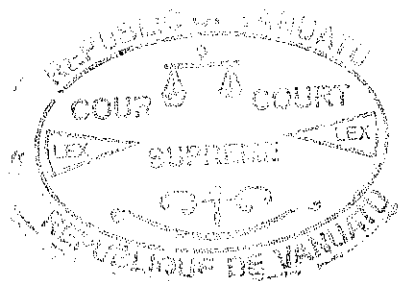
Date of Hearing: 15th February 2024

Date of Decision: 20th June 2024

JUDGMENT

Introduction

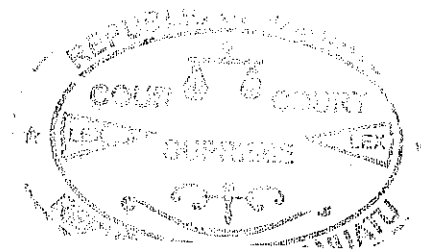
1. By an initial claim filed by the claimant on 14th August 2023 as amended pursuant to leave being sought and granted on 12th January 2024, the claim seeks-
 - a) An Order or Declaration that the claimants are the recognised custom landowners of Enkahi Land pursuant to decisions of the Area Council of Chiefs, Nikolitan Council of Chiefs, Joint Court Judgment, Ombudsman (Land) Decision and the Court of Appeal Case of Kalotiti v Kaltapang (2007) VUCA 25.
 - b) An Order to permanently restrain the First and Second Defendants from damaging Enkahi Land.
 - c) Alternatively, an Order to evict the Second Defendants from Enkahi Land.
 - d) Damages for trespass and nuisance, and
 - e) Costs.



2. The claim was served on the First Defendant who responded on 23rd November 2023 that he agrees that claim is correct without any dispute.
3. The Second Defendant was served by a Police Officer Jimmy Remo of Isangel Police on 19th January 2024 when the defendant authorised service on his niece Naomi who received documents and signed the Service Report at 4:41pm on 19/01/2024. Proof of service was filed on 27th February 2024. Despite service, no response and/ defence have been filed by the Second Defendant. He was served directly by Sgt Teana Pierre on 7th September 2023 with the claim and sworn statement and signed the Service Report at 16:14pm. Proof of service was filed on 22nd September 2023.
4. Mr Jona Mesao is the lawyer on record for the claimant. He filed a notice of ceasing to act on 15th March 2024 but no leave has formally been granted for him to cease acting. It is essential he continues to act for the claimant in such a case of great significance and importance which would leave the claimant in a very disadvantaged and prejudicial position.
5. The Second Defendant Nisam Iata was served but he has not filed any response and/or defence. And he has not filed any evidence.

Discussion

6. The claimant's claim is essentially not challenged by the Defendants. Therefore the claimant filed written submissions on 9th April 2024 seeking judgment and the orders sought in the claim. The claimant relies on all the sworn statements filed in support of the claim. This judgment is made on the papers as filed by the claimant.
7. The claimant seeks an order or a declaration that he be recognised as the custom landowner of Enkahi Land, situated at Port Resolution, South East Tanna.
8. The Supreme Court lacks the jurisdiction to hear and determine customary land disputes and declare custom ownership. However it is my view that the Supreme Court has inherent jurisdiction to make confirmation of declarations or pronouncement of a competent Court or tribunal established under the Island Court, Land Tribunal, and the current Customary Land Management Act.



9. In this case the claimant is relying on decisions of Area Council of Chiefs, the Nikolitan Council of Chiefs, the Joint Court Judgment, the decision of the Land's Ombudsman and the Court of Appeal case of Kalotiti.
10. First the Area Council of Chiefs and the Nikolitan Council of Chiefs. I find no evidence by the claimant disclosing any decisions that make any specific declarations of custom land ownership of Enkahi Land in favour of the claimant.
11. Next is the Joint Court judgment dated 1st June 1934. That Judgment made specific declaration in favour of the Rev John Gibeon, Missionary of the Presbyterian Church of Victoria. All that the judgment did was record a deed of sale dated 23rd November 1911 which confirmed a sale made in 1859 by the natives Kuanuan, Zorou and Kuanpikan. It was not a declaration.
12. Next, the decision of the Lands Ombudsman in July 2020 which was based on the Joint Court Judgment of 1934 which is a confirmation of sale by Kuanuan and others, but not specifically a declaration of custom land ownership of Enkahi Land.
13. That being so, the Court of Appeal case of Kalotiti does not assist the claimant.
14. However the claimant deposed to a sworn statement dated 23rd August 2023 and annexed a Memorandum of Agreement as "RK10" which is dated 8th April 2001.
15. This document records the agreements and understandings reached between Family David Nasse of Lonuu Nakamal of North Tanna and Family Kunuan of lakupen Nakamal of South East Tanna. This was a meeting of joint nakamals.
16. Paragraph F on page 2 of the Agreement states:
"Lonovu Nakamal I aware se Enkali land hemi stap long lakupen Nakamal wea Remy Kunuan wea family Kunuan nao oli Kastom landowner blong hem."
17. Thereafter the two nakamals made the findings in paragraphs 1, 2A, B & C and 3 which specifically states:



“ Based long kastom history mo custom mo traditions, Lonouu Nakamal, confirm se Raymond Nasse mo Lonovu nakamal ino kat any custom rights blong save talem long land tribunal, island Court mo Supreme Court se Raymond Nasee mo Lonovu Nakamal ikat right long Enkahi land long lakupen nakamal. Lonuu nakamal I confirm se family Kunuan hemi custom landowner blong Enkahi land long Port Resolution, South East Tanna. Hemia follem ol point ia”
(Emphasis added)

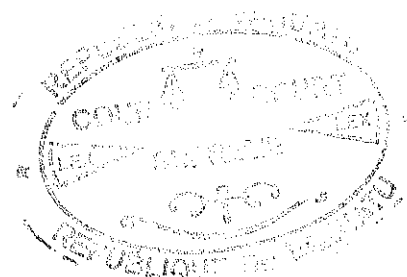
18. The nakamals relied on Exhibits A which included the 1859 deed of sale, the deed of sale of 23 November 1911 and the Joint Court Judgment of 1934 as well as Exhibits B, C, D, E, F, G and H.
19. The Agreement of 28 April 2021 records the confirmation and declaration by two joint nakamals which clearly in favour of the claimant as custom land owner of Enkahi land.
20. This is an existing decision under the Custom Land Management Act. The decision has not be appealed and/or reviewed under section 45 of the Act. As such it is a final decision of custom land ownership in favour of the claimant’s family.
21. There is therefore no impediment in my view why the claimant should not seek to be issued with a certificate of Registered Interest. Once that has been achieved clearly the claimant may be entitled to restraining orders (Relief B) and an eviction order (Relief C) and damages for trespass and nuisance (Relief D).

Result

22. The claimant is partly successful in his claims and judgment is entered in his favour. He is entitled to the order sought in A of the Reliefs that-

The claimants have been recognised and confirmed by the Lonvuu NAKAMAL of North East Tanna as custom landowners of Enkahi Land by the Memorandum dated 28th April 2021.

23. The Orders sought in B, C and D are declined.



24. The claimant is entitled to his costs fixed at VT 100,000.

DATED at Port Vila this 20th day of June 2024

BY THE COURT


Hon. OLIVER A SAKSAK
Judge

