

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

Civil
Case No. 22/2171 SC/CIVL

BETWEEN: Family Bani Asi represented by Asitaviti Molivalaleo and
Tari Moli

Claimants

AND: Morris Lui and Family, Moli Morris and Family, Bani
Morris and Family, Tari Boesulawono and Family,
Haenamoli and Family, Christian Tari and Family,
Tangati Anji and Family, Malahase Langati and Family,
Votambe Vanuaturu and Family, Harold Vanuaturu and
Family, Fred Vanuaturu and Family, Voleo and Clen
Michael and Family, Tangisi Molira and Family, Toaturu
Tangisi and Family, Damsal Tangisi and Family, Moli
Tangisi and Family, Willie Tangisi and Family, Uloulou
Damsai and Family, Leowono Damsai and Family and
Sohlosu Damsai and Family

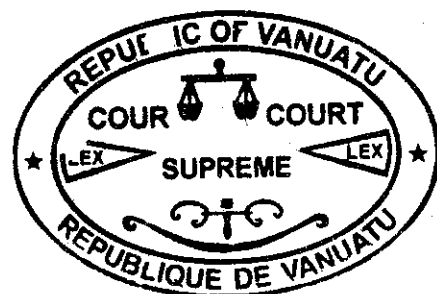
First Defendants

Sylvain Vanuaturu, Molisale Vurobaravu, Fred
Vanuaturu, Migael Glen, Batrick Clen, Max Clen, Kalvano
Harold Vanuaturu Clen Migael, Uloulo Damsal, Votambu
Vanuauru Lina Vanuaturu, Voleo Vanuaturu, Tangisi
Molira Damsai, Tangisi and Toaturu Tangisi

Second Defendants

Anna Livo Erenga, Eranga Livo and Vosumbe Livo Bani
Livo, Molimwemwe Livo Manjeu Livo and Esbel Livo
Berna Livo and Family, Berna Livo and Kathy Livo
Votarivui Lui Wala Vui Lui and Pascaline Vui Lui

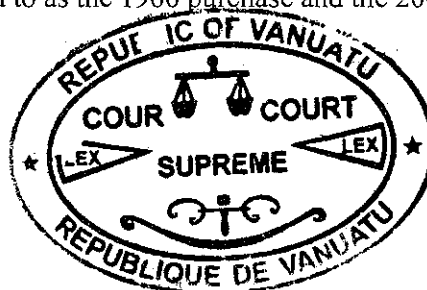
Third Defendants



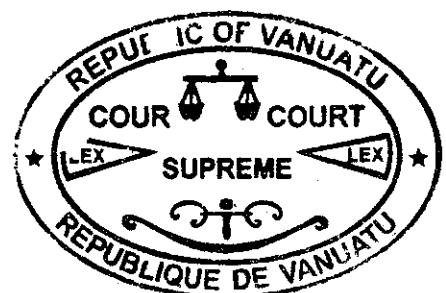
Date of Hearing: *Monday 26th May, 2025 and Tuesday 27th May 2025*
Before: *The Hon. Mr. Justice E P Goldsbrough*
In Attendance: *Leo, C for the Claimant*
Tevi, R for all defendants

Decision on application for summary judgment

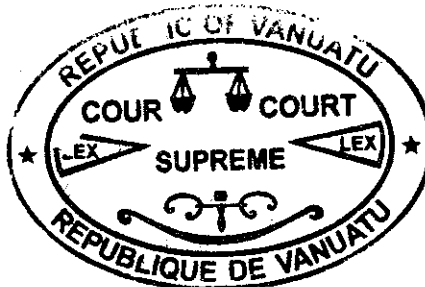
1. The opposed application for summary judgment was heard in full yesterday. Both Counsel made submissions. At the conclusion of that hearing, an application was filed by the defendants. That application was refused for the reasons set out in a separate decision also published today.
2. This claim is for eviction from land known as Nabatului land on the island of Malo. There is a defence filed on behalf of the defendants. It is different in nature for each category of defendants.
3. The first defendants plead that they do not occupy land known as Nabatului, but land called Amaliaro. Yet in the sworn statement of Morris Lui, the first named of the 1st defendants and filed in support of that defence, he attests that the defendants do live and work and have built property within Nabatului land.
4. That apparent conflict demonstrates, as counsel for the claimant submitted, that the defence has no prospect of success. It was the only matter raised in the defence of the 1st defendants.
5. The second and third defendants both raise the question of having bought portions of Nabatului land. There are two distinct purchases raised in the defence. It is not clear which purchase relates to which of the two defendants. For clarity, the alleged transactions will be referred to as the 1966 purchase and the 2005 purchase.



6. First in time is raised the issue of having brought land in 1966 from a custom owner. A tribunal since then in 2004 looked at customary ownership and did these defendants to be custom owners. Since a Certificate of Recorded interest was issued in 2021 the defendants have not raised the question of their ownership again until filing the defence.
7. It was incumbent on the defendants to raise their position as custom owners at the Tribunal hearing in 2004. They were parties to those hearings. Given the lack of records of such hearings two possibilities present themselves; either the matter was raised and found to be wrong, or the matter was never raised before the Tribunal in which case it cannot be raised now.
8. Counsel were also asked to consider the effect of the coming into force of the Constitution especially at clause 73. This transaction in 1966 was pre-Independence. On Independence in 1980, all land was vested in the custom owners. They made no submissions on that question when asked, but given that the defendants had the opportunity to have raised in the Tribunal hearing the question of their alleged ownership and are now estopped from raising it again, it is not necessary for this Court to make finding on that point.
9. The Certificate of Recorded interest was issued on 5th November 2021, based on the West Malo Island Land Tribunal decision of 16th April 2004.
10. That Certificate of Recorded interest was not challenged by any of the defendants until now. In these proceedings and by way of defence to the claim for eviction by persons representing those named in the Certificate of Recorded interest, the defendants assert that the Certificate Recorded interest was wrongly issued to the people named in it as representing the custom owners.
11. There is no counterclaim filed to challenge the Certificate of Recorded interest.
12. Some of the defendants rely upon a further alleged purchase, this time in 2006, after Independence and after the decision of the West Malo Island Land Tribunal. That purchase was said to have been between a surviving widow Votari Fred at a time when brothers of her deceased husband remained alive.



13. The widow's right to be on this land was through her husband and his family. After he died, she had, no doubt, retained the right to live on the land (as perhaps her children would also have) but not the right to sell off her late husband's land in the absence of consent from the remaining surviving custom owners. She was not identified as a custom owner within the decision of the West Malo land tribunal in any event, so this is not a factual question that needs to be canvassed at trial.
14. Thus, the defence of the 2nd and 3rd defendants based on purchase have no prospects of success. Their defence, that they own the land and so cannot be evicted, has no prospect of success. Nor the defence of the 1st defendants that they do not occupy the land when in support of that defence is a sworn statement confirming that they do live on the land.
15. Applications for summary judgment should not be granted unless the case is clear and unless there are no prospects of success and no issues of fact that need to be determined at trial.
16. However poorly these defendants have been treated by 'consultants' and by their own counsel, there is still no explanation for sworn statements to be so far from representing their story that they should be allowed to be replaced. This claim began in 2022, was set down for trial more than once, was to have been heard in full finally on 26th May 2025 after many pre-trial conference and directions requiring the filing of evidence, after payment of trial fees and a successful application to have the matter heard in Luganville for the convenience of the witnesses. A significant factor in the decision of this Court not to adopt a different approach is that the defendants did not seek to change their evidence until after they had seen that the application for summary judgment was most likely to be successful. Also significant is the fact that the defences filed amount to an attack on decision the West Malo Land Tribunal made in 2004 (itself an appeal from the village land tribunal) about ownership and of 2021 when the Certificate of Recorded Interest was issued, otherwise not challenged until now.
17. The application for summary judgment is granted. An order of eviction will issue as sought, save that the order will not include any person other than those named in the claim and served with process excluding "and family". The Court of Appeal has repeatedly and consistently held that only named adult persons may be made the subject of such orders.



18. Costs of the application are awarded to the claimant on the standard basis, to be agreed or assessed.

19. This decision and the reasons for it were given at the end of the hearing on Tuesday 27th May 2025 and for the benefit of the parties and at their request, in Bislama. It is published today in writing. After the decision was announced, counsel sought a further order by consent concerning the peaceful transition following this judgment. That consent order was subsequently filed by counsel and perfected by this Court. Finally, the parties were informed of the right to appeal and advised that should they wish to do so, the appeal should be filed within 30 days.

DATED this 28th day of May, 2025

BY THE COURT

E P Goldsbrough

The Hon. Mr. Justice E P Goldsbrough

