

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

Civil  
Case No. 23/146 SC/CIVL  
( Manual Registration: Case No. 203/ 2023)

**BETWEEN:** Joshua Kalsakau  
Claimant

**AND:** Steven Kalsakau  
Defendant

**Before:** Hon. Justice EP Goldsbrough

**In Attendance:** Leo, C for claimant  
Kapalu, W for defendant

**Date of Hearing:** 12 December 2023

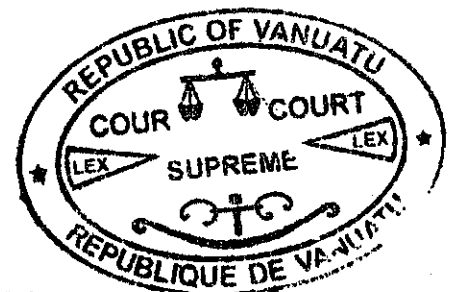
**Date of Judgment:** 13 June 2025

---

**JUDGMENT**

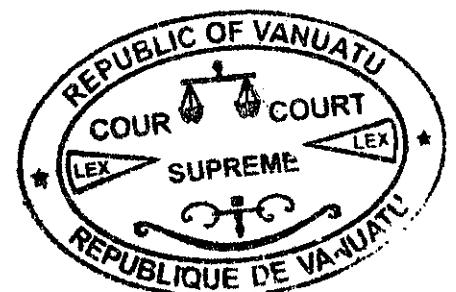
---

1. In a claim filed on 17 February 2023, Joshua Kalsakau Mauu'fatu (claimant) seeks relief against Stephen Kalsakau (defendant). The claim seeks a declaration that the defendant's purported election in October 2021 as the Warkali Kalsakau representative to the Board of Directors of Ifira Trustees (the company) was null and void. It seeks consequential damages and costs.
2. The claimant asserts that he was elected at a meeting of the family on 26 November 2021, whereas the defendant relies on the decision made in October 2021, electing him the representative of the family to serve as the company director.
3. There appears to be a conflict between these two decisions. The defendant has held the position of family representative on the company's Board since his appointment was confirmed on 2 November 2021. By the time of this trial, he had been exercising that right for more than two years. The appointment itself lasts only five years, according to the evidence from both parties to this dispute.



## EVIDENCE

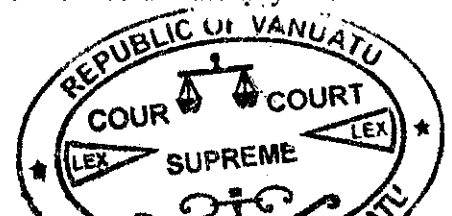
4. The evidence relied upon includes several sworn statements and viva voce evidence from the claimant and from Edward Kalsakau. The defendant gave evidence on his own behalf and called Kaltak Kalsakau, Yoan Kalsakau and Michel Kalworai. Evidence in chief was presented through sworn statements, and all deponents were required to be available for cross-examination.
5. The claimant relied on his evidence in chief, which included his sworn statement filed on 20th October 2023, together with further and responsive sworn statements, totalling six statements. Edward Kalsakau relied upon his sworn statement filed on 1 December 2023. The defendant relied on his sworn statement, which was filed on November 15, 2023.
6. Joshua Kalsakau gave evidence that he was a member of the Kalsakau family who had previously served as a director of the Ifira Trustees. That position came to an end in 2021. He had attended a family meeting on October 9, 2021 and agreed that he also attended a similar meeting on October 18; however, he did not attend the adjourned meeting on October 22. He agreed that the chairman of the family had initiated those meetings and that he had been informed of the meetings by Edward Kalsakau, the secretary of the meetings. He was, of course, present when, on 18 October the meeting was adjourned to 22 October 2021 so he did not need to be given further notice.
7. His reason for not attending the meeting on the 22nd of October 2021 was that he had been told of COVID-19 restrictions. That notice of COVID-19 restrictions was given informally by another family member who shared information not then available to the general public.
8. In his evidence, he referred to the Ifira Trustees' constitution and articles of association, although neither of these documents was introduced into evidence. He confirmed that at the meeting of November 26, 2021, Kalpor Kalsakau did not act as Chairman, as stated in his sworn statement, but was replaced by Ephraim Kalsakau, who acted as Chairman. He also referred to a constitution drafted for the Kalsakau family, which he agreed had never been implemented. Similarly, that draft constitution was not produced in evidence.



9. He pointed out that Stephen Kalsakau was elected only by the elder brothers and the father, as opposed to a majority of the family. Stephen Kalsakau, he said, was elected by only 8 votes out of 17 people, as opposed to his election by many more at a larger and better-attended meeting, boycotted by those who had attended the earlier meeting.
10. Both the claimant and the defendant, as confirmed in evidence, had previously served as directors of Ifira Trustees. If there was indeed any restriction on serving a second term, neither was aware of it, although counsel raised the question in cross-examination, suggesting that serving a second term was not permissible. Nothing turns on this given that both are potential second termers, albeit that one of them did not complete his first term.

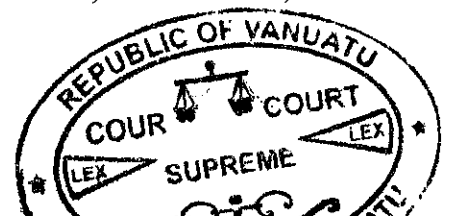
## DISCUSSION

11. In his evidence, the claimant asserts that he was duly elected to represent Family Kalsakau on 26 November 2021, following a well-attended family meeting. He gained 93 votes at that meeting compared with 31 votes for another family member.
12. The claimant further asserts that the defendant was not a candidate for election at the meeting of 26 November 2021. He notes that the Chairman of Warkali Kalsakau was present and witnessed the voting on 26 November 2021, as stated in his evidence in chief; however, he later acknowledged in cross-examination that an Acting Chairman was present at the time. He described how the meeting itself appointed the Acting Chairman without reference to the Chairman, who had not attended the meeting. No explanation was given other than that the family made its decision among those present.
13. As far as the claimant is concerned, the earlier election of the defendant was invalid for several reasons. Of those reasons, he asserts that the meeting at which he was elected was called correctly and attended by the then Chairman of Warkali Kalsakau, noted in the minutes exhibited as the 'interim chairman'. The minutes were taken and signed by the then Secretary Edward Kalsakau, who also gave evidence for the claimant and supported the claim.
14. Further evidence suggested that Edward Kalsakau had been removed from office by Chairman Kalpokor Kalsakau. The claimant asserted that the removal was invalid, as, in his view, the Chairman could not remove the Secretary from office unilaterally. He



could not point to any particular rule that made this so, merely that the family must act together to remove its secretary.

15. Another part of the claimant's evidence showed that he had served as the family representative on the Board of ITL on an earlier occasion. In his evidence, he denied that the family had adopted a constitution to govern its various interests. Some evidence was received regarding whether a person could serve in this position more than once, but the true nature of the position did not become apparent from the evidence.
16. If election to this important position depended on the number of votes cast in favour of the candidate, the claimant should be successful. If the election depended upon the proper calling of a meeting, the position is not so clear. The correct chairman chaired the October meeting. An alternate chaired the November meeting.
17. If appointment to the Board depended upon a recommendation being submitted by the Chairman of the family, how would this happen if he was not part of the meeting at which the candidate was elected? Would he be bound by any decision made at such a meeting? If he were, but preferred not to follow the conclusion of the meeting, would that itself be justiciable?
18. If the family had adopted a constitution, that constitution would have been in evidence and questions about the election of a person for nomination to the Directorship could be readily answered. However, since no such constitution has been adopted and the draft constitution has not been implemented, this court is unable to determine with certainty what rules the family seeks to impose on the process. Indeed, there is no evidence that the family intended to invoke a selection process which created legal relationships on which a civil action could subsequently be based.
19. This is a family process, and families are entitled to make their own rules. Those rules are not prescribed in law. In his claim, the claimant asserts that the defendant misrepresented the family's election of him, leading Ifira Trustees to accept him as a representative of the family in that organisation. For that reason, he seeks a declaration that the purported election of the defendant be declared null and void.
20. It is, of course, for the claimant to show on the balance of probabilities that his claim is made out. In the absence of evidence of the applicable rules, it is difficult, if not



impossible, for the claimant to demonstrate that. He asks the court to accept and apply the principles of democracy to the dealings of his family, even though there is no evidence that the family wishes to apply those democratic principles.

21. Put differently, how the circumstances give rise to a cause of action is not made out.
22. Additionally, the claimant has a credibility issue. More than once, from cross-examination, he was obliged to correct his evidence. The credibility issue is not relevant, given the finding expressed in the paragraph directly above; however, if necessary, adverse findings are available that suggest his evidence could not be relied upon to support his claim.
23. After the trial of this matter concluded, counsel requested and was granted time to file written submissions. Regrettably, those submissions were not filed promptly. When they were filed, the time allocated for writing the judgment had long gone, to be replaced with other work. For that reason, the production of this judgment was delayed. I considered writing the decision without the benefit of submissions from counsel for the claimant, which were the ones not filed on time. Still, given my preliminary conclusion that the claimant would fail, I decided to wait and see if the submissions raised anything that I may have overlooked.

## Decision

24. The claim is dismissed. No mention was made in the closing submissions of counsel regarding costs; therefore, the Court will make an order that costs follow the event. They are awarded to the defendant, to be agreed upon or assessed.

Dated at Port Vila this 13<sup>th</sup> day of June 2025

BY THE COURT

*EP Goldsborough*

Hon. Justice E P Goldsborough

