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

Civil
Case No. 26/160 SC/CIVL

BETWEEN: NAFIA FAMILY
Claimants

AND: CUSTOMARY LAND MANAGEMENT OFFICE
Defendant

AND NATIONAL COORDINATOR

AND NAFEA AREA COUNCIL OF CHIEFS

AND CUSTOMARY LAND TRIBUNAL UNIT
Office of the Attorney General for
(Second, Third & Fourth Defendants)

Date of Hearing and decision:	***27 February 2026***
Before:	***Hon. Chief Justice V. Lunabek***
Counsel:	***P. Fiuka for the Claimants*** ***F.Sewen for the Defendants***
Date of written decision:	***13 March 2026***

Reasons for striking out the application for restraining orders and the claim

Introduction

1. A custom land called "Ianawan" located in the southern part of Tanna Island, is the subject of the claim and the urgent application for interlocutory orders in cc 26/160.

2. The claimants/applicants asserted that in 2003, the Nikoletan Tanna island Council of chiefs sat to hear claims and disputes over the Ianawan custom land. The Nikoletan Tanna island Council of chiefs gave a decision declaring that Nifia Family was the custom owner of Ianawan custom land located in South Tanna in its decision dated 24 June 2003.

3. There was no appeal or pending appeal made against the decision of Nikoletan Tanna island Council of chiefs' decision of 24 June 2003

4. In September to November 2025, despite, the decision of Nikoletan Tanna island Council of chiefs' decision of 24 June 2003 on Ianawan, the defendants established an Area Council of chiefs, called Nafea Area Council of chiefs of South Tanna (the Third Defendant) which heard claims and disputes over Yasur custom land, which, according to the claimants/applicants, overlapped the whole part of Ianawan

custom land. The Nafea Area Council of chiefs of South Tanna was established under the Customary Land Management Act No. 33 of 2013, which covered more than one area or more than one boundary.

5. The claimants/applicants asserted that the judgement of Nikoletan Tanna island Council of chiefs of 24 June 2003 on Ianawan custom land in their favour, is valid and enforceable under section 33 of the Customary Land Tribunal Act [271] and section 2 of the Customary Land Management Act No. 33 of 2013. They, therefore, filed a claim claiming against the defendants under Part 16 - Division 8, Rules 16.24 and 16.25 of the Civil Procedure Rules No. 49 of 2002 (CPR), among other remedies, a declaration that the judgement of Nikoletan Tanna island Council of chiefs of 24 June 2003 on Ianawan custom land, is valid and enforceable; and an order that the defendants must be permanently restrained from facilitating claims or disputes against the claimants/applicants regarding ownership of Ianawan custom land in South Tanna.

6. The claimants/applicants also filed an urgent application for interlocutory injunctions seeking an order that there shall be no act of facilitation and determination as to ownership of Ianawan custom land by any party hereto until the final determination of this substantive claim.

7. On 27 February 2026, I heard and refused to grant the urgent interlocutory injunctions sought and struck out the application. I also refused to manage the claim and struck it out as the essential evidence was lacking; and that, even if I allow the defendants to file a defence, there is no case (claim) to defend.

8. Below are the reasons for striking out of the Application and claim.

Background

9. The claimants/applicants, Nafia Family, represented by Daniel Kom of Ianawan village, South Tanna, Vanuatu, filed a Supreme Court claim on 3 February 2026 pursuant to Part 16 - Division 8, Rules 16.24 and 16.25 of the Civil Procedure Rules No. 49 of 2002 (CPR), among other matters, for declaration that the Nikoletan Tanna island Council of chiefs' decision of 24 June 2003 on Ianawan custom land in favour of the claimants/applicants, is valid and enforceable.

10. The claimants/applicants asserted and took the following steps: -

    a) Prior to the Third Defendant's hearing of claims over Yasur custom land on 20 October 2025, the claimants through their spokesman, Daniel Kom, wrote a letter with attachments to the defendants to stop overlapping claims over Ianawan custom land; but there was no response from the defendants.

b) On 16 October 2025, the claimants' Counsel wrote an urgent letter of demand to the defendants to stop the hearing of 20 October 2025; but there was no response either.

c) Between 20 October 2025 and 20 November 2025, the defendants facilitated the hearing of claims over Yasur custom land at Lenakel. At times, the claimants/applicants appeared before the Third Defendant and made submissions to strike out the claims on Yasur custom land; but the Third Defendant refused the claimants' application to strike out the claims or disputes on Yasur custom land.

d) On 27 January 2026, the defendants through the Custom Land officer (Wilson Nasawa), informed the claimants that the Third Defendant will continue with the hearing of claims or disputes over Yasur custom land unless the claimants obtained further restraining orders from the Court.

e) This prompted the claimants/applicants to file their claim in cc 160 of 2026 and the urgent application for interlocutory orders filed both on 3 February 2026.

11. Mr. Daniel Kom filed a sworn statement on 3 February 2026 in support of the claim, which attached a copy of the decision of the Nikoletan Tanna island Council of chiefs of 24 June 2003 on Ianawan custom land of South Tanna. (See DK1).

12. Mr. Daniel Kom also filed two (2) sworn statements of 3 February 2026 and 19 February 2026 in support of the urgent application for interlocutory orders of the claimants/applicants.

13. Mr. Fiuka, Counsel for the claimants/applicants filed a sworn statement of urgency on 3 February 2026. An undertaking as to damages was also filed on 3 February 2026 by Daniel Kom.

14. The claim, the urgent application for interlocutory orders, the sworn statements tiled in support of both and any ancillary documents (statement of urgency and undertaking as to damages) were all served on the defendants on 6 February 2026 (see sworn statement of Fiuka filed in support of proof of service dated 6 February 2026).

15. The defendants filed a response to the claim on 12 February 2026. The response was that the defendants disputed all the claim.

16. On 16 February 2026, I listed a conference hearing to consider and deal with the urgent application for interlocutory orders filed 3 February 2026. I, then, heard Mr. Fiuka on the urgent application. But before I invited the defendants' Counsel to respond, I indicated to the Counsel that I am not going to hear any response from the defendants' Counsel, and I am going to adjourn the hearing of the urgent

application for interlocutory injunctions. The reason being that, as I heard the urgent application for interlocutory orders based on Rule 7.2 of the Civil Procedure Rules (since the urgent application was filed in the proceeding), I perused the claim, the urgent application for interlocutory orders, the sworn statements filed in support of the urgent application and the claim. I noted that a copy of the decision of the Nikoletan Tanna island Council of chiefs of 24 June 2003 was attached to the sworn statement of Daniel Kom and nothing more.

17. I indicated to Counsel and in particular Mr. Fiuka that the decision of Nikoletan Tanna island Council of chiefs of 24 June 2003, appeared, on its face, to be a decision of Tanna Island Council of chiefs on Ianawan custom land. The question is whether that decision of 24 June 2003 was a decision of a land tribunal established under the Customary Land Tribunal Act No. 7 of 2001 (coming into force on 10 December 2001) for the claim to be filed and enforced pursuant to Part 16 - Division 8 Rules 16.24 and 16.25 of the Civil Procedure Rules. Part 16 - Proceedings in Division 8 deals with Enforcement of decisions under the Customary Land Tribunal Act No. 7 of 2001. Rules 16.24 and 16.25 provide: -

Definitions for this Division

16.24 In this Division:

"Act" means the Customary Land Tribunal Act Act No.7 of 2001;

"decision" means a decision of a land tribunal;

"land tribunal" means a land tribunal established under the Act;

"record of the decision" means a record of a decision as set out in Schedule 3 of the Act.

Claim for enforcement

16.25 (1) A person who wishes to enforce a decision of a land tribunal may file a claim in the Supreme Court.

(2) The claim must:

(a) set out the decision, the date it was made and who made it; and
(b) name as defendant the person against whom the decision is to be enforced; and
(c) state in what way the defendant is not complying with the decision; and
(d) set out the orders asked for; and
(e) have with it a sworn statement in support of the claim.

(3) The sworn statement must:

(a) give full details of the claim; and
(b) have with it a copy of the record of the decision; and
(c) state that:

(i) The time for an appeal from the decision has ended and no appeal has been lodged, or
(ii) An appeal was made but was unsuccessful.

(4) The claim and sworn statement must be served on the defendant.

(5) A defence filed in the proceeding must not dispute anything in the record of the decision.

(5) If the court is satisfied that the defendant is in breach of the decision, the court may make an enforcement order.

[Noted: For enforcement orders and enforcement warrants for possession of land, see Division 7 of Part 14.]

18. If that decision of 24 June 2003 was and remained a decision of Tanna Island Council of chiefs, then, it cannot be enforced under Part 16, Division 8, Rules 16.24 and 16.25 of Civil Procedure Rules 2002. The decision of the Court of Appeal in Valele Family v Toura [2002] VUCA 3; Civil Appeal No. 1 of 2002 (26 April 2002) is relevant on the point where the Court of Appeal stated (at pp. 9-10):

"*Where a dispute over custom ownership of land arises, it is to be expected that those involved will do their best to reach an agreement to settle the dispute, with such assistance as is possible from customary procedures and meetings of chiefs. However, it is clear from the Constitution and from the Island Courts Act that unless everyone who at any time claims an interest in the land is prepared to accept a settlement, the only bodies that have lawful jurisdiction and power to make a determination that binds everyone are the Courts, in the first instance the local Island Court, and if there is an appeal, the Supreme Court.*

This conclusion immediately points up a difficulty with attempted settlements of ownership disputes arranged through bodies such as councils of chiefs that are not part of the constitutional court system. Article 73 of the Constitution provides that all land in Vanuatu belongs to the indigenous custom owners and their descendants. Unless an ownership dispute is determined through the Court system, in the manner provided for in the Constitution, a descendant of a party to an ownership dispute that has been "settled" outside the Court system may reopen the dispute by claiming a custom entitlement under Article 73. This kind of difficulty is not unknown in the law. Where the interests of children and future generations relating to land arise, the general law provides that their interests only be affected by a settlement if the terms of the settlement are approved by a Court as being in the interests of the present and future children. It follows that

neither the Utalamba Committee and its associated "Area Land Court" or Committee (which was in no sense a court established under the Constitution) nor the council of chiefs that sat at Deproma had any jurisdiction or authority to make determination of custom ownership which found claimants who disagreed with their ruling".

19. On 20 February 2026, I adjourned the hearing of the urgent application for interlocutory injunction and I directed Mr. Fiuka to file and serve material evidence/proof that when Nikoletan Tanna island Council of chiefs made its decision over Ianawan custom land on 24 June 2003, the Nikoletan Tanna island Council of chiefs was a land tribunal established under the Customary Land Tribunal Act No. 7 of 2001. I then adjourned the hearing to 27 February 2026 at 2:45pm.

20. On 27 February 2026, when the Court resumed its hearing on the urgent application for interlocutory injunctions, Mr. Fiuka informed the Court that he could not file any further material evidence that when the Nikoletan Tanna island Council of chiefs made its decision on the customary ownership of Ianawan custom land, Nikoletan island Council of chiefs sat as a Land Tribunal established under the Customary Land Tribunal Act No. 7 of 2001.

21. Mr. Fiuka further informed the Court that one or two chiefs that sat with Nikoletan island Council of chiefs and made the decision of 24 June 2003 relating to Ianawan custom land were appointed on the list of chiefs and elders who have sufficient knowledge of the custom of the custom area to adjudicate disputes relating to the boundaries or ownership of customary land in the custom area. Mr. Fiuka also said two other chiefs who sat and made the decision of 24 June 2003, were not appointed on the list of chiefs to adjudicate disputes relating to the boundaries or ownership of customary land (See Sections 35 (1), (a) (ii), (b) (ii) and 36 (1) (b) of the Customary Land Tribunal Act No.7 of 2001).

22. Section 37 of the Customary Land Tribunal Act No. 7 of 2001 dealt with the qualifications of members of land tribunal; and subsection (1) says that a chief or elder is not qualified to be a member of a land tribunal unless he or she is included in a list approved under section 35 or 36 of the Customary Land Tribunal Act No. 7 of 2001.

23. I bear in mind the ratio decidendi of the Court of Appeal judgement in the Teaching Service Commission v Director General in the Ministry of Education and Training [2024] VUCA 7.

24. In the circumstances of this present case, the claimants/applicants failed to provide the material evidence that the decision of Nikoletan Tanna island council of chiefs of 24 June 2003 was a decision of land tribunal established under the Customary Land Tribunal Act No. 7 of 2001. The claimants/applicants, by failing

to provide that evidence, did not show that they have legal or equitable rights in the case before the court; and they did not show the injunction is related to any right in the meantime. They did not show that there is a serious question to be tried. Put it in another way, the claimants/applicants have not made out a prima facie case in the sense that, if the evidence filed at the time of interlocutory application remained at trial the claimant will be entitled to the relief they sought, quite the contrary is the case.

25. On these bases, the urgent application for interlocutory injunctions must be denied. I consider the overriding objectives of the Rules and the duty of the courts to actively manage the cases (Rules 1.2 (1) (2) and 1.4 (1) (2)). I asked Mr. Fiuka as to how, he wished to deal with the claim as the crucial evidence before the Court is lacking. Filing a notice of discontinuance was considered but Mr. Fiuka invited the Court to also strike out the claim instead of directing the Defendants to file defences as an easier course for him with his clients (Rules 9.9 and 9.10 (1) (a) (b)). The ultimate position is that there is no case (cause of action) to defend.

Striking out orders

26. On 27 February 2026, based on the above considerations and discussions with Counsel and in particular Mr. Fiuka on behalf of the claimants/applicants, the Court issued orders striking out the urgent application for interlocutory injunctions and the Supreme Court Claim in Cc 160 of 2026 filed respectively on 3 February 2026.

27. There is no order as to costs.

Dated at Port Vila, this 13th March 2026.

BY THE COURT

Hon. Chief Justice Vincent Lunabek