

**INSIDE LONG AELAN KOT BLONG EFATE  
BLONG RIPABLIK BLONG VANUATU**

Land kes namba 3/95  
Civil Case 13 of 2008

BITWIN:

**FAMILY MARIK KALONTAN**  
of Pango Village, Efate  
Claimant

MO:

ORIGINAL CLAIMANT, Represented by  
**NOEL KALWUATMAN**  
First Defendant

MO:

**BRUCE KALOTITI KALOTRIP**  
Second Defendant

MO:

**FAMILY TARUS KALPOI**  
Third Defendant

MO:

**CHARLEY KALORUS ARUMUI**  
Fourth Defendant

**CHRIS WILLIS**  
Fifth Defendant

MO:

**MARK SPINOSA**  
Sixth Defendant

MO:

**DIRECTOR**  
DEPARTMENT OF LAND  
Seventh Defendant

**RESTRAINING ORDERS**

Hemia hemi wan applikesen for *Restraining Order* we Family Marik Kalontan, oli filem long 7 April 2008 mo sevem long same date long olgeta Defendants. Kot hemi setem date blong hearem applikesen long 9 April 2008 long 9 am.

Olgeta orders we appliken hemi seekim from Kot oli go olsem:

1. Every development we oli stap ko ahead long Eurakot disputed land oli stop kasem taem we Efate Island Court ifinisim case blong faenem true custom owner;
2. Every development we refer long Order 1, hemi includim ol or any development no matta we oli kat ol leases finis;
3. Every new lease, transfer blong lease, Sub-division Lease, Strata Lease etc, oli stop blong processem;
4. Every Investors we oli kat interest long any parcel blong land long Eurakot Disputed Land oli must stop blong kivim monies whatsoever long any man or party regardem any parcel blong land long Disputed land;
5. Department blong land hemi must stop blong processem any document olsem ol new Land lease, transfer blong lease, sub-division lease, Strata Lease or any document whatsoever regardem Eurakot Dispute Land;
6. All Survey Company too oli must be restrained blong mekem any work long side blong survey long Eurakot disputed land;
7. Every order ia bae oli stap olsem kasem taem we Efate Island Court ifaenem true custom land owner blong Eurakot Disputed land;

Taem appliken hemi presentem applikesen blong hem, hemi informem Kot se:

1. Original claimant Family Kalpram Cook Maseiman oli stap mekem development long Eleo;
2. Bruce Kalotiti we hemi witness blong Original Claimant, istap mekem sub-division long area blong Elak Naplel long Eleo;
3. Charley Kalorus istap developem area long Efilmal;
4. Family Kalpoi, Kalontan istap mekem development long Erasa;
5. Wan company blong Chris Willis istap mekem development long Eleo Land;
6. Mark Spinosa istap mekem sub-division long Emalaurik;
7. Original claimant mo counter-claimant 9 oli stap collectem money long some lease blong lands long Eurakot;
8. Chief Reeman Andy istap signem custom owners declaration form blong department blong Land blong new leases, sub-division Leases, Strata Title Lease mo transfer blong lease inside long Eurakot Land.

### **Finding blong Kot:**

Taem Kot hemi stap hearem application mo after we kot wetem olketa parties oli go long land we

oli claim se igat development blong hem, kot hemi findem out se:

1. Some long olketa claimants oli manage blong obtainem registered leases taem we land hemi still stap long dispute mo oli stap now proceed blong mekem new sub-division;
2. Others oli cuttem down of big trees blong logging;
3. Others oli obtainem lease mo salem long olketa investors;
4. Others oli even go long Counsel blong of chief blong Pango blong hemi decide long customary ownership dispute ia mo signem custom owner's declaration;

**Base long olketa findings ia mo followen olgeta Law ia:**

1. Constitution Article 74 we hemi talem: *"The rule of custom shall form the basis of ownership and use of land in the Republic of Vanuatu."*
2. Constitution Article 78 we hemi talem: (1) *"Where, consequent on the provisions of this Chapter, there is a dispute concerning the ownership of alienated land, the Government shall hold such land until the dispute is resolved. (2) The Government shall arrange for the appropriate customary institutions or procedures to resolve disputes concerning the ownership of custom land."*
3. Constitution Article 79(1) we hemi talem se: *"Notwithstanding Article 73, 74, 75 land transactions between an indigenous citizen and either a non-indigenous citizen or a non-citizen shall only be permitted with the consent of the Government, (2) The consent required under sub article (1) shall be given unless the transaction is prejudicial to the interest of (a) the custom owner or owners of the land..."*
4. Land Reform Act section 5(1) we italem se: *"in any case where there is doubt as to who are the custom owners of land occupied by an alienator one of the custom groups who claim the land may apply to an Island Court established in accordance with section 1 of the Island Courts Act Cap. 167 to decide on the ownership of the land."*
5. Island Court Act Section 13. *In civil proceedings an island court in addition to any other powers it may have may make any or a combination of the following orders-*
  - (a) *an order for the payment of money by way of compensation, costs or otherwise;*
  - (b) *an order for the restitution of property;*
  - (c) *an order authorizing the use or occupation of the land by one of the parties to the dispute for such purposes and subject to such conditions as are set out in the order;*
  - (d) *an order prohibiting, where appropriate, the use or occupation of the land by any one of the parties to the dispute;*
  - (e) *an order restraining the other party to the dispute from interfering with the authorised use or occupation.*

6. Lastly Judgment blong Court of Appeal long case blong **Valele v James Touru (Valele Family v Touru** [2002] VUCA 3) long page 10 we hemi talem: *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 to 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 can 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.*

#### **COURT ORDERS:**

**Island Court hemi satisfied se hemi gat duty blong protectem right blong olketa custom owners long disputed area blong olgeta custom owners long disputed area blong ELEO-EURAKOT LAND; so hemi mekem olketa orders ia:**

1. Olgeta parties, families blong olketa, servant blong olgeta or agents blong olketa, includim applicant mo olgeta family blong olgeta oli **RESTRAINED** blong;
2. **CREATEM** new access road;
3. **CLEAREM** new area wetem purpose blong mekem new sub-division;
4. **CREATEM** new leases, sub-division leases or strata title lease;
5. **SURVEYEM** new site;
6. **CUTEM** down woods for logging;
7. **DAMAGEM** any big trees or fruit trees long area blong **EURAKOT**
8. **EVERY MONEY** we anyone hemi pem from any lease, development or logging long disputed area blong Eleo-Eurakot; oli must payem igo long wan trust account we Supreme Court hemi hollem for the Custom owners;
9. Director blong land hemi must make sure se inomo gat new leases icreated long land ia **ELEO-EURAKOT** disputed land
10. Kot hemi continue blong hearem case 3 of 1995 blong determinem custom ownership blong ground ia **ELEO-EURAKOT** mo adjournem case ia igo long **Monday 28 April**

