

**IN THE MAGISTRATES' COURT**  
**OF THE REPUBLIC OF VANUATU**  
*(Civil Jurisdiction)*

Civil. Case No. 36 of 2015

**BETWEEN:** LOUISE AKE YAKEULA &  
DOMINIQUE YAKEULA  
SIMON

Claimant

Claimant's lawyer:  
Justin Ngwele of IIDIGENE  
LAWYERS  
Port Vila, Efate, Republic of  
Vanuatu

**AND:** JOHN KALORONGO  
KALMARI, ANDRE  
KALORONG KALMARI,  
KALORONG KALMARI

Defendant

Defendants' Lawyer:  
Saling Stephen of SALING  
STEPHEN LAWYERS  
Port Vila, Efate, Republic of  
Vanuatu

*Coram: Moses Peter*

*Appearances: Justin Ngwele for Claimant*  
*Saling Stephen for Defendants*

**DECISION ON CLAIM FOR CUSTOM OWNERSHIP OF LAND**

1. Claimant filed proceedings against the defendants who appears to be from the same village (Erakor Village).
2. The claimant sought for injunctions to restrain defendants from entering a customary land known as Etannamos located somewhere near Erakor Village and that they are prohibited from building any structure on the said land and must not threaten and/or abuse the claimants or their agent.



3. The claimant Louise Ake Yakeula asserts that her husband namely Andre Ake Yakeula was declared by Erakor Community Council on 18<sup>th</sup> August 1999 as the custom owner of Etannamos land and the declaration was signed by Paramount Chief of Erakor Village namely Chief Waia Tenene.
4. The claimant says the declaration held that her husband Andre Ake Yakeula including herself Louise Yakeula as his wife and their children have full right over the said land.
5. The Claimant Louise Ake Yakeula and her husband had two children one of which is now deceased and the other is married to an Italian and is residing in Italy with her husband.
6. On 16<sup>th</sup> May 2006, Louise Yakeula gave the land (Etannamos land) to Dominique Yakeula Simon. Over the years Dominique Yakeula and her children made attempts to develop the land by having it surveyed in order to obtain a lease however the defendant namely John Kalrongo Kalmari has prevented them and their agents from attending the land claiming himself as the custom owner of the land.
7. The claim was filed with an interlocutory order application which was to be heard on an urgent basis and a draft order was also filed for signage by myself.
8. The applications transpire that the nature of the land in dispute is customary therefore I have reminded myself about determining the issue separately.
9. Counsels were directed by the court to file submissions with regard to the nature of the claim whether this court has jurisdiction to deal with it.

**Issue:**

***Does the Magistrates' Court have jurisdiction to uphold a declaration of a village court on ownership of customary land?***

10. The claimant relies on the declaration by Erakor Council of Chiefs declaring Andre Yakeula as the custom owner of the land known as Etannamos Land.
11. Mr. Saling Stephen submitted that the claim be struck out because the Magistrates' Court lacks jurisdiction to entertain the claim.
12. While the claimant is right about the circumstances that would trigger Rule 9.10 for court to strike out the claim, I concur with him that none of the circumstances are available in this instance however, the court would take it as a preliminary matter to decide whether or not the claim discloses a legal cause of action meriting the claim to be registered in the first place.
13. Rule 14.39 of CPR states *"The court must not make an enforcement order for possession of customary land except after hearing a claim under rule 16.25."*
14. Rule 16.25 (1) states *"A person who wishes to enforce a decision of a land tribunal may file a claim in the Supreme Court"*.
15. The declaration of the council of chiefs of Erakor Village fell below the requirement of rule 14.39 and does not give the right to this court to uphold the declaration.



16. While the claimants may wish to rely on the declaration, the defendants particularly Kalorongo Kalmari deposed that he has occupied the Etannamos land since 20<sup>th</sup> May 1987 and he evicted Paramount Chief Waia Tenene from the land.
17. He said he was never made aware of the Village Council of Chief's declaration of Andre Yakeula as custom owner of Etannamos land.
18. He said he was made aware of the declaration when the court documents were served on him recently by the claimants.
19. He describes the declaration by Paramount Chief Waia Tenene declaring Andre Yakeula as a revenge to him because he evicted Chief Waia Tenene from Etannamos land.
20. While the dispute remains unresolved, this court cannot enforce the declaration of Erakor Council of Chiefs to remove the defendants from the land.
21. In *Valele Family v Touru* [2002] VUCA 3; the court held that *"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 meeting 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 settlement, the only bodies that have lawful jurisdiction and power to make determination that binds everyone are the Courts, in the first instance the local Island Court, and if there is an appeal, the Supreme Court."*
22. While it is obvious that the land is disputed by the claimants and the defendants despite a declaration by village council of chiefs, it would be advisable that they file a claim before the Tribunal Court established by Customary Land Management Act No. 33 of 2013 which supersedes the Customary Land Tribunal Act.
23. I therefore answer the issue in the negative.
24. The claim is thereby dismissed for want of jurisdiction.
25. I order cost for the defendant to be taxed failing agreement.

Dated at Port Vila this 10<sup>th</sup> day of April 2018

BY THE COURT

MOSES PETER  
Senior Magistrate

