

**IN THE MATTER:** TAVLAVERE LAND, GAUA

**BETWEEN:** BENJAMIN VAVAK representing his family  
*First Appellant*

**AND:** ABSALOM VANAF AND APULWYN  
TULA representing their respective families  
*Second Appellants*

**AND:** JOHN ASHWING AND LEALUL  
WETELWUR representing their respective  
families  
*Respondents*

*Hearing:* 19 & 20 March 2012

*Before:* Hon. Justice Robert Spear together with Assessors:  
Chief Philip Morris (Vanua Lava) and  
Chief Tom Moses (Gaua)

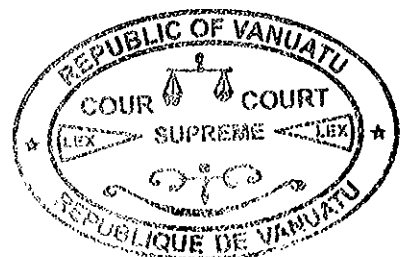
*Counsel:* Edward Nalyal for the First Appellant  
Saling Stephens for the Second Appellants  
Daniel Yawha for the Respondents

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**JUDGMENT / CONSENT ORDERS**

*20 March 2012*

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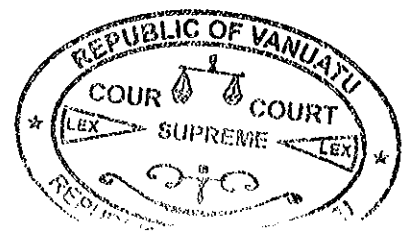
1. This was the hearing of an appeal against the decision of the Banks and Torres Island Court given on 24 November 2005 which effectively determined that the abovenamed Respondents were the custom owners of the land on Gaua known as Tavlarere.
2. As it happened, consensus was quickly reached about certain difficulties with the Island Court decision under appeal. Those difficulties demanded that the appeal be allowed. Furthermore, the consensus was that the dispute as to customary ownership of Tavlavere land be returned to the Island Court for rehearing before a differently constituted Court.
3. The parties have been reshaped slightly and by consent to reflect the representative status of the named parties who are acting on behalf of their respective parties. Additionally, to reflect that there were formally two groups of appellants.
4. The principal difficulties with the Island Court judgment under appeal identified and agreed on are:
  - a. The decision provided inadequate description and detail of the outside boundaries of Tavlarere Land. Additionally, it provided inadequate description and detail of the boundaries for the various nasara and (what might be called) other sub-areas within Tavlarere Land;
  - b. The decision could not be supported by the evidence placed before the Island Court.

### ***JUDGMENT***

5. Accordingly, the judgment of this court is that the appeal is allowed, the decision of the the Banks and Torres Island Court given on 24 November 2005 is hereby set aside, and the case is returned to the Island Court to be heard again by a differently constituted court.

### ***INCIDENTAL ORDERS and DIRECTIONS (all by consent):***

6. The Island Court will be convened and it will hear and determine this case within 6 months (that is by 20 September 2012) given the exigencies of the dispute.
7. There is no barrier to either Chief Philip Morris or Chief Tom Moses (the Assessors in this appeal case) being appointed to the Island Court to rehear this case given that the appeal was disposed of by consent orders.
8. The Island Court will hear the case on the basis of evidence given to it and not by regard to evidence given at the last Island Court hearing unless all parties consent to that course or special circumstances so require (for example, in the event that an important witness from the first hearing has since died or is otherwise no longer reasonably available.
9. The case will be heard and determined only between the abovenamed parties.

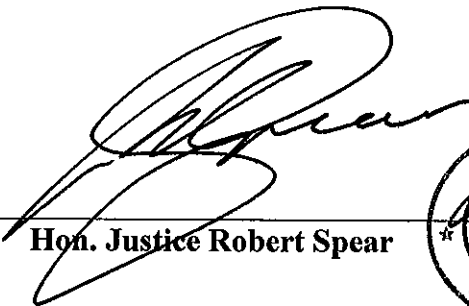


10. No Tavlavere Land is to be sold or leased by anyone without the written consent of all parties to this case or pursuant to an order of this court;
11. No party to this case or any member of their respective families will act violently or threaten violence against any other party to the case or any member of their respective families.
12. Leave is reserved to the parties to apply to this Honourable Court for further directions.
13. No order as to costs

### **CONCLUSION**

14. This decision is signed only by Spear J as it was not possible for a typed copy of the decision to be signed by either Chief Philip or Chief Tom. Be that as it may, both Chief Philip and Chief Tom signed the handwritten original of the decision at the conclusion of the appeal hearing on Gaua.

**BY THE COURT**

  
Hon. Justice Robert Spear

