

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

Civil Case No. 164 of 2010

**IN THE MATTER OF: THE COMPANIES ACT [CAP. 191] AS AMENDED**

**AND IN THE MATTER OF: IFIRA TRUSTEES LIMITED**

First Claimant

**AND: TERIKI PAUNIMANU MANTOI KALSAKAU III,  
MASSING LAURU, KALPOVI MANGAWAI, BUTUA  
BAKOKOTO, CHARLEY AIONG, TWARA  
KALONIKARA, MANDREA KALORIB being  
Executive Directors of the First Claimant**

Second Claimant

**AND: BARAK SOPE, KALPOKOR KALSAKAU,  
NATOIKA TAIWIA, TAPALU LAURU, PETER  
TULANGI, IETONGA AYONG, KIRKIR BAKOKOTO,  
VIRASEN BAKOKOTO, EDDIE KALPUKAI,  
KALTAKI LABAN, JEFFREY TOKATAAKE, TOM  
KALSAL, TARILASI SAUREI, JOSEPH SAUREI  
and WILLIE LOKIN**

First Defendants

**AND: THE VANUATU FINANCIAL SERVICES  
COMMISSION**

Second Defendant

**Coram: Justice D. V. Fatiaki**

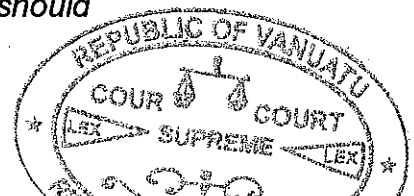
**Counsel: Mr. M. J. Hurley for the claimants  
Mr. B. T. Bani for the First Defendants  
Mr. F. S. Loughman for the Second Defendant**

**Date of Judgment: 18 September 2013**

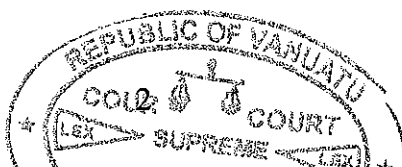
**FINAL JUDGMENT**

1. On 6 September 2013 this Court delivered an interim judgment the penultimate paragraph of which reads:

*"Accordingly, I do not propose at this stage to make any final orders and risk aggravating existing hostilities, instead, by way of an indulgence, I give the parties and their respective advisors the opportunity to carefully consider the contents of this somewhat lengthy interim judgment, and thereafter meet together and decide by themselves and for themselves in the traditional and customary manner, the final orders that the Court should make in disposing of this case."*



2. Subsequent to that interim judgment a meeting was held between the remaining two (2) shareholders of ITL namely, **Teriki Paunimanu Mantoï Kalsakau III** and **Kalpokor Kalsakau** at the ITL premises at 10.30 a.m. on Thursday 12 September 2013.
3. The clear and sole purpose of the shareholders meeting was to pass special resolutions consistent with the Court's interim judgment with a view to regularizing and ratifying the various unanimous decisions adopted at the beneficiaries meeting of 4 December 1999 as they impacted on the Memorandum and Articles of Association of ITL.
4. Unfortunately, no proper consensus could be reached between the remaining two (2) shareholders and accordingly this Court as earlier indicated, must now proceed to final judgment.
5. In exercising its jurisdiction and powers in rendering this final judgment this Court is essentially engaged in determining what ought to be done in the best interests of the beneficiaries and not necessarily in determining the rights of adversarial litigants. This is not always easy, particularly where, as in this case, the proceedings have been conducted as hostile litigation but that must not be permitted to obscure the real question at issue which is what orders and directions ought to be given in the interests of all the beneficiaries both, present and future, of the Ifira Trust.
6. In this latter regard the Court extends its gratitude for the invaluable assistance provided by all counsels in arriving at an acceptable set of proposed final orders for the consideration of the Court.
7. If I may say so the transcribed Minutes of the shareholders meeting of 12 September makes unedifying reading of the exchanges that occurred between the two (2) remaining shareholders of ITL.
8. In the circumstances, given the intransigence and unwillingness of **Kalpokor Kalsakau** to agree to the change from the "matarau" system to the unanimously adopted "warakali" system, the Court is constrained to **ORDER** the removal of **Kalpokor Kalsakau** from his trusteeship of the one (1) issued ITL share that he holds on behalf of the beneficiaries of the Ifira Trust and **DIRECTS** that the share be transferred and vested in the current representative of the "warakali Kalsakau" namely, **Ian Kalsakau**.
9. It will also be necessary to exercise the Court's power under **section 136** of the **Companies Act** to call a meeting of the remaining shareholder of ITL to pass the necessary resolutions to implement and ratify the unanimous decisions of the beneficiaries meeting of 4 December 1999 and I so **ORDER**.
10. Having so ordered and directed the Court takes this opportunity to highlight what appears to be an important concern of the first defendants that the "warakali" system may be discriminatory of woman Ifira in its



exclusion of their beneficial interests if they should choose to marry a man from outside Ifira.

11. To allay such fears and hopefully assist the parties, the Court's unassisted view is that every girl child born to or adopted by man Ifira automatically becomes and is included within the beneficiaries of the Ifira Trust and such girl child does not cease to be a beneficiary of the Ifira Trust by virtue of her marriage to an outsider. I accept that her children from an outsider may not necessarily qualify as beneficiaries of the Ifira Trust, especially, if she moves away from Ifira but, nevertheless, her children may receive benefits through their mother. In other words "once a beneficiary of the Ifira Trust by birth or adoption, always a beneficiary". In so saying the Court is not unmindful of the significant overarching role of the Council of Ifira in declaring the beneficiaries of the Ifira Trust.

12. The final orders of the Court are:

(1) In exercise of the court's power under **Section 120** of the **Companies Act** the Court **ORDERS** rectification of the Register of Members of the Ifira Trustees Limited ("ITL") by deletion of the name of **KALPOKOR KALSAKAU** as a member of ITL and **DIRECTS** that notice of such rectification be given to the registrar and to the second defendant **VFSC** forthwith.

(2) That pursuant to **Section 136** of the **Companies Act**, **IT IS HEREBY ORDERED** that a meeting by the member of ITL, namely, **TERIKI PAUNIMANU MANTOI KALSAKAU III** to consider and adopt the following special resolutions shall be deemed to constitute a valid meeting:

a) That part of **clause 5 (a)** of the objects of the Memorandum of Association which now reads:

*"(being the members from time to time of the Blakniu, Blakuita, Blakmalu and Blaknawi clans)"*

be deleted and replaced by:

*"(being the chief and members from time to time of the thirty (30) warakalis of Ifira Tenuku more particularly enumerated in the **Ninth Clause** and herein collectively referred to as "the people of Ifira".)"*

b) That the revised Memorandum and Articles of Association of the Company in the form attached hereto and marked "**A**" is approved as and from 4 December 1999 but with the deletion of the reference to the proposed allotment of 278,000 ordinary shares divided into VT 100 each and the substitution of the allotment of 31 ordinary shares divided into single shares of AUD 1.00 each, to the Paramount Chief of Ifira and to the representative of each of the 30 Warakalis, enumerated in



paragraph 2(c) below and in the manner prescribed at paragraph 2 (g).

- c) That the revised Memorandum of Association of the Company is approved as and from 4 December 1999 but with the **NINTH** clause amended as follows:

*"The Directors of the Company will come from each Warakali of Ifira Tenuku described as follows:*

- |               |                 |
|---------------|-----------------|
| 1. Sope       | 16. Kalterikia  |
| 2. Kalsakau   | 17. Kaltowa     |
| 3. Ayong      | 18. Kalworai    |
| 4. Albert     | 19. Kiri        |
| 5. Bakokoto   | 20. Korikalo    |
| 6. Chichirua  | 21. Matas       |
| 7. Feandre    | 22. Meneai      |
| 8. Itonga     | 23. Motoutorua  |
| 9. Kalfabun   | 24. Napakaurana |
| 10. Kalfau    | 25. Sablan      |
| 11. Kalorib   | 26. Saurei      |
| 12. Kalpukai  | 27. Taiwia      |
| 13. Kalsal    | 28. Kalonikara  |
| 14. Kaltabang | 29. Lauru       |
| 15. Kaltaki   | 30. Mangawai"   |

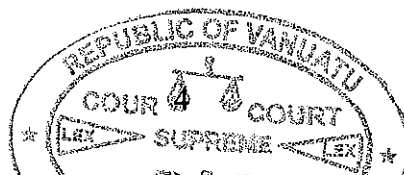
- d) That the Directors of the Company as and from 4 December 1999 are approved and confirmed as being:

- i) Teriki Paunimanu Mantoï Kalsakau III as Chairman; and
- ii) A representative of each of the 30 Warakali appointed by the respective Warakali in accordance with the revised Memorandum and Articles of Association and as set out in the attached Schedule.

- e) Following paragraph 52 of the Interim Judgment the previous one (1) ordinary share issued to **Barak Tame Sope** be reallocated to the current representative of "Warakali Sope", namely, **Fatani Sope**.

- f) That the one (1) ordinary share issued to **Kalpokor Kalsakau** be reallocated to the current representative of "Warakali Kalsakau", namely, **Ian Kalsakau**.

- g) In addition to the re-allocation of Barak Sope's and Kalpokor Kalsakau's shares as provided for above, a further 28 ordinary shares be allotted at a par value of AUD 1.00 to each named Warakali in paragraph 2 (c) above, so that there is one (1) ordinary share issued to each Warakali representative




subject to payment in cash and in accordance with the share certificate number shown in the attached **Schedule**.

- (3) That each party pay their own costs of these proceedings.

DATED at Port Vila, this 18<sup>th</sup> day of September, 2013.

BY THE COURT

  
**D. V. FATIAKI**  
Judge.

