

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**

(Civil Jurisdiction)

Civil

Case No. 15/166 SC/CIVL

BETWEEN: Edward Gordon

Claimant

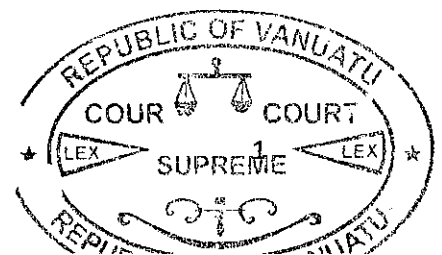
AND: Jack Klates

Defendant

Date: 15 June 2020
Before: Justice V.M. Trief
Counsel: Claimant – no appearance
Defendant – Ms M. Mala, holding papers for Mr S. Kalsakau


JUDGMENT

1. The last steps in this proceeding were the filing on 27 June 2018 of the Defendant's Application to Strike Out the Amended Claim and the sworn statement in support, and the Claimant's sworn statement in response on 19 July 2018. This judgment determines the strike out Application.
2. By his Amended Claim, the Claimant alleges trespass, unlawful interference and unjust enrichment by the Defendant on Apan customary land on Malekula.
3. The Defendant's Application to strike out is made on the ground that the Malekula Island Court judgment dated 3 May 1985 in Land Case No. 2 of 1985 (the 'Island Court judgment'), on which the Claimant bases his Claim, is under appeal in the PRV Land Appeal Case No. 13 of 1996 ('PRV LAC') and has not yet been determined. Accordingly, the Claimant is not yet a declared custom owner of Apan Land and the claim should be struck out with costs.
4. The Defendant's Application is supported by two sworn statements of Lawson Jack Samuel. He evidences the first page of a Court notice for the PRV LAC, and also that the Claimant passed away in July 2019.



5. I have looked at the Court file for the PRV LAC. I confirm that the PRV LAC has not yet been determined.
6. In the circumstances, the Claimant cannot rely on any custom ownership pursuant to the Island Court judgment. Further, he does not have standing to bring the Claim in the present proceeding.
7. The Claimant has also taken no steps in this matter for an inordinate period. Accordingly, the proceeding may be struck out without notice pursuant to rule 9.10(2)(d) of the *Civil Procedure Rules*.
8. In all the circumstances, the Claim and the Claimant's Application for Restraining Orders are dismissed, and the proceeding is struck out.
9. The Defendant is entitled to the costs of defending this matter, which I hereby set at VT50,000. That is to be paid within 21 days.

**DATED at Port Vila this 15th day of June 2020
BY THE COURT**

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Viran Molisa Triéf
Judge

