

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

Civil
Case No. 15/139 SC/CIVL

**BETWEEN: JACK KELIU representing CHIEF PARSIO
TUKUL; BAI TAUN representing CHIEF TOM
GEORGE PARMELE; WILLIE ABEL representing
PARTAMAOTE and WILLIE MESEK representing
CHIEF PARTAMAOTE**

Claimants

**AND: PHILIP BILLY, ROLLAND BILLY, REMO BILLY,
JOEL BILLY, SAKSAK BILLY, JOHN BILLY,
ANDREW JACK, KORAH JACOB, KOMOA
JACOB, SAMUEL JACOB, PATIS JACOB, SAM
JACOB, JOHN JACOB, SIMON JACOB, KALO
JACOB, STEVEN JACOB, KALO JACOB, DANY
JACOB, JONAH JACOB, KILALA YOSHUA,
MICHEL YOSHUA, GEORGE YOSHUA, KALO
YOSHUA, TOM YOSHUA PHILIMON YOSHUA,
SANO MARK, WEL MARK, ROBIN MARK,
KAMA MARK, MAWA SALKON, REMY
SALKON, SAM HARRY, LEN FRED, FRED LEN,
ROBERT FRED, ALILI HARRY, ABONG
HARRY, SALES HARRY, JOEL HARRY, JOHN
HARRY, DAVID HARRY, MAWA TOM, MISEL
TOM, TANGAT MAI, KAMY MAI AND DOUGLAS
MAI of Bonkovio Area, West Epi, Shefa Province**

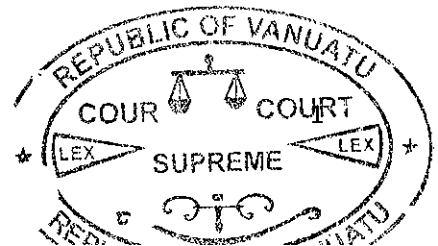
Defendants

Date of Trial: 9 September 2021
Before: Justice V.M. Trief
In Attendance: Claimants – Mr P. Fiuka
Defendants – Mr J.I. Kilu
Date of Decision: 25 October 2021

JUDGMENT

A. Introduction

1. The Claimants seek an order for the eviction of the Defendants from Bonkovio, Puluyu, Kapliu and Yeva customary lands on Epi island. The Claim is disputed. The Defendants filed a Counter-Claim seeking damages for negligence.



B. Pleadings

2. The Claimants alleged in the Claim that:

- a) The Claimants were declared by several Customary Land Tribunals as the custom owners of Bonkovio, Puluyu, Kapliu and Yeva customary lands on North West Epi;
- b) On 20 October 2014, they received Certificates of Recorded Interest in Land for Bonkovio, Puluyu, Kapliu and Yeva customary lands;
- c) Due to the Defendants' actions against the Claimants including destruction of property and threats, the Claimants have asked them numerous times to leave the customary lands; and
- d) Despite numerous verbal demands to quit, the Defendants remain.

3. The Defendants filed a Counter-Claim alleging negligence by the Claimants in unnecessarily commencing this action without any basis because the Claim was filed after the *Customary Land Tribunal Act* had been repealed and an appeal had been lodged under s. 58 of the *Custom Land Management Act*.

4. Both the Claim and Counter-Claim were opposed.

C. The Law

5. Section 58 of the *Custom Land Management Act* provides:

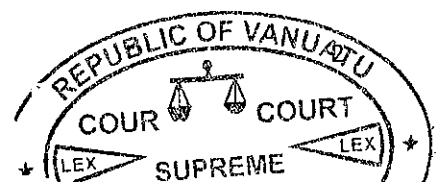
58. (1) Decisions of:

- (a) a single or joint village Customary Land Tribunal; or
- (b) a single or joint sub-area Customary Land Tribunal; or
- (c) a single or joint area Customary Land Tribunal; or
- (d) an island Customary Land Tribunal,

which determined the ownership of custom land and which were made before the commencement of this Act and have not been challenged within 12 months after the commencement of this Act, are deemed to create a recorded interest in land in respect of the person or persons determined by such tribunal to be a custom owner.

(2) The creation of a recorded interest in land under subsection (1) will enable the custom owners so recorded to be identified for the purpose of consenting to an application for a negotiator's certificate or a lease, or is to provide the basis for rectification of an existing lease instrument.

(3) A person may challenge a decision of a Customary Land Tribunal under this section by filing an application with the appropriate Island Court (Land) that the decision of the Customary Land Tribunal be reviewed on the ground that:

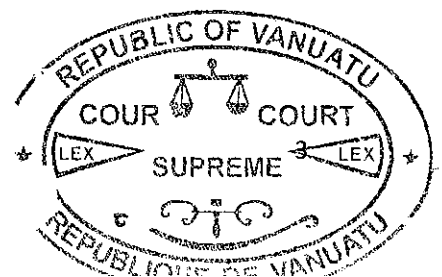


- (a) *it has been made at a meeting that was not properly constituted; or*
 - (b) *it has been made in breach of the authorised process; or*
 - (c) *it has been procured by fraud; or*
 - (d) *it was wrong in custom or law.*
- (4) *The Island Court (Land) after hearing all relevant evidence may dismiss the application for review, or may order that the decision of the Customary Land Tribunal be set aside and direct that the ownership of custom land be determined in accordance with this Act.*

(my emphasis)

D. Evidence

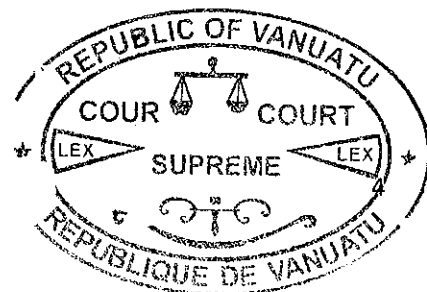
6. By his sworn statement filed on 7 July 2015, [**“Exhibit C1”**], Mr Api Kekei evidenced that the Claimants are the declared custom owners of Bonkovio, Puluyu, Kapliu and Yeva customary lands pursuant to the following – he attached copies of each Tribunal decision:
- a) Nivenue Village Land Tribunal decision dated 28 August 2013 [**annexure “AK1”**];
 - b) Vermaol/Vermali Joint Area Land Tribunal decision dated 19 September 2013 [**annexure “AK2”**]; and
 - c) Epi Island Land Tribunal decision dated 13 November 2013 [**annexure “AK3”**].
7. Mr Kekei evidenced in his sworn statement filed on 8 April 2016, [**“Exhibit C2”**; **annexure “AK1”**], that on 24 March 2016, the parties agreed that the matter be referred back to the Epi Island Land Tribunal to clarify its 13 November 2013 decision. By decision dated 30 March 2016, the Epi Island Land Tribunal clarified that its 13 November 2013 decision was about the custom ownership of Bonkovio, Puluyu, Kapliu and Yeva customary lands and that the Claimants were the custom owners of those lands.
8. Mr Kekei also adduced into evidence copies of the Claimants' Certificates of Recorded Interest in Land in relation to Bonkovio, Puluyu, Kapliu and Yeva customary lands in [**“Exhibit C1”**, **annexures “AK4”**, **“AK5”**, **“AK6”** and **“AK7”**].
9. Finally, Mr Kekei evidenced in [**“Exhibit C1”**] that due to the Defendants' actions against the Claimants including destruction of property and threats to kill the Claimants and their people, the Claimants have asked them numerous times to cease to do such things. However, they continue to do so. He evidenced in his sworn statement filed on 27 July 2021, [**“Exhibit C3”**], that the Defendants are residing within Bonkovio which is outside registered leasehold title 10/1133/011 and accordingly, the Claimants want to evict the Defendants from their customary land.



10. By the Defence, the Defendants alleged that on 16 February 2015, the Defendant Saksak Billy lodged an application for review before the Island Court (Land) under s. 58 of the *Custom Land Management Act* therefore the Epi Island Land Tribunal is not a final declaration as alleged.
11. Remo Billy evidenced in his sworn statement, [**“Exhibit D1”**], that Chief Saksak Billy's letter dated 16 February 2015 to the Custom Land Management Office was intended by the Defendants to be their application for review to the Island Court (Land).
12. Any reading of that letter cannot construe it to be an application for review of the Epi Island Customary Land Tribunal decision. Such application must be lodged in the Island Court (Land). However, this letter was written to the Custom Land Management Office. In Mr Billy's own evidence, he acknowledged that the 16 February 2015 letter was written without any legal assistance and that the Defendants had since asked their lawyer to draw up a proper 'appeal' document to be filed in the Island Court (Land). There is no evidence that any such application has been filed in the Island Court (Land).
13. Further, the *Custom Land Management Act* commenced on 20 February 2014. Subsection 58(1) of that Act provides that a decision of an island Customary Land Tribunal made before the commencement of that Act and which had not been challenged within 12 months after the commencement of that Act is deemed to create a recorded interest in land in respect of the persons determined by such tribunal to be a custom owner. It has already been established that no application for review has been made, and therefore the Epi Island Land Tribunal decision has not been challenged within 12 months after the commencement of that Act or otherwise. Therefore the Claimants were entitled to, and have received, Certificates of Recorded Interest in Land in relation to Bonkovio, Puluuyu, Kapliu and Yeva customary lands. The Defence fails.
14. The Claimants have proved their claim for trespass on the balance of probabilities. The matters raised in the Defence have not been established. The Claimants are entitled to judgment on the Claim and to the orders sought.
15. By the Counter Claim, the Defendants alleged negligence by the Claimants in unnecessarily commencing this action without any basis because:
 - a) The Claim was filed after the *Customary Land Tribunal Act* had been repealed; and
 - b) An appeal had been lodged under s. 58 of the *Custom Land Management Act*.
16. It has already been established that no application for review was lodged under s. 58 of the *Custom Land Management Act* or otherwise. As to the Claim being filed after the *Customary Land Tribunal Act* had been repealed, the Defendants have not shown that the Claimants had any duty of care to file their Claim before that Act was repealed. The Counter Claim is devoid of legal merit. It must be declined and dismissed.

E. Result and Decision

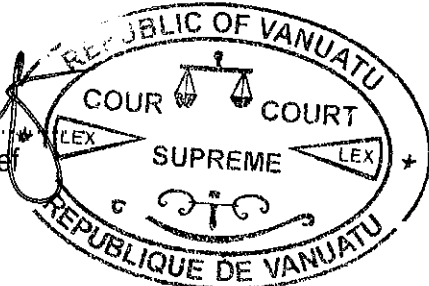
17. Judgment **is entered** for the Claimants on the Claim.



18. The Defendants are to vacate Bonkovio, Puluyu, Kapliu and Yeva customary lands on North West Epi within 3 months from the date of service of this decision.
 19. The Defendants are restrained from cutting trees, making gardens and building houses and harvesting sea resources within the areas of Bonkovio, Puluyu, Kapliu and Yeva customary lands.
 20. The Counter Claim is **declined and dismissed**.
 21. Costs follow the event. The Defendants are to pay the Claimants' costs as agreed or taxed by the Master. Once set, the costs are to be paid within 21 days.
- F. Enforcement
22. Pursuant to rule 14.37(1) of the *Civil Procedure Rules*, I now schedule an Enforcement Conference **at 8am on 24 January 2022** to ensure the judgment has been executed or for the Defendants to explain how it is intended to comply with this judgment. For that purpose, this judgment must be personally served on the Defendants.

**DATED at Port Vila this 25th day of October 2021
BY THE COURT**

VM Trief
Justice Viran Molisa Trief

The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The words "REPUBLIC OF VANUATU" are written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. The words "COUR" and "COURT" are positioned on either side of the scale, and "SUPREME" is centered below it. Two small triangles containing the word "LEX" are also present on either side of the scale.