

BETWEEN: Family Kalmet and Family Kaltatak
Claimants

AND: Eratap Chief, Community and Area Council (ECCAC)
Defendants

Date of Hearing: 8th October 2024

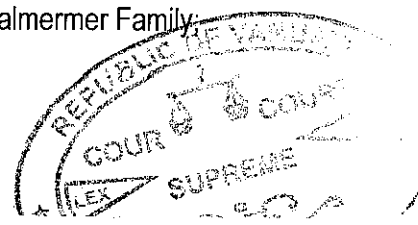
Before: Justice Oliver A. Saksak

Counsel: Mr James Tari for the Claimants/Respondents
Mr Silas C. Hakwa for the Defendants/Applicants

Date of Decision: 14 October 2024

JUDGMENT

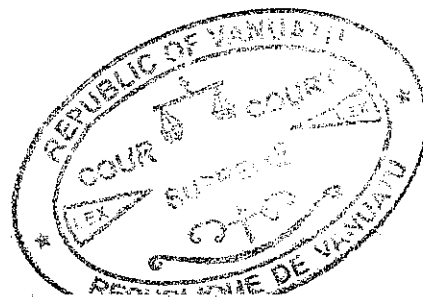
1. By application filed on 18 July 2024 the defendant sought orders that, (a) the Claimants' claim be struck out in its entirety and (b) costs of the proceeding as agreed or taxed.
2. The defendant relied on the evidence by sworn statement of Thomas Tau filed on the same date, who represents the Defendant in his capacity as Chairman.
3. The grounds of the application are that –
 - (a) The Claimants do not have any proper standing to institute the claim;
 - (b) Neither of the named Families was a claimant for custom-ownership of Teouma/Rentapau Land dispute the subject Land Case No. 8/1993 in the Efate Island Court whose judgment is currently pending as Land Appeal Case No. 71/2006 re-registered as Land Appeal Case No. 17/1269;
 - (c) As a result, none of the named Family Claimants have the right to represent anybody or make a claim in relation to the land;
 - (d) The claim that they are the declared custom land owners is false and wrong;
 - (e) The claimants are acting in breaches of the interlocutory orders issued in LAC17/1269 first on 24 November 2006, second, on 25 March 2008 and third, on 18 December 2008 which are subject of an application for contempt of Court by Kalmermer Family;



- (f) For the last 17 years and 7 months since the defendant ceased its work, activities and operations in 2017, the named Claimants did not take any steps against it, therefore they have waived their right to do so;
4. Mr Tari opposed the application and filed a formal response on 23 September 2024 and a sworn statement in support of the response on 8 October 2024, just prior to the hearing. Counsel relied on these documents in opposition to the application and the grounds relied on by the claimants.
 5. Mr Hakwa relied on the application and grounds stated therein, the sworn statement of Thomas Tau filed in support and the written submissions filed earlier on 8th October 2024 in response on the defendant's response.
 6. Mr Hakwa submitted that the claims of the Claimants should be dismissed with costs relying on the case laws of Kalulu Kalsrap Family v The Republic and Others CAC 22/3303 [2022 VUCA and CC21/1949 [2021] VUSC Thomas Tau v Republic and Others. In the Kalulu appeal as applied in Tau's case the Court of Appeal said in paragraph 7 of its Judgment that the appropriate place to seek enforcement (or redress) of a Court order is in the proceeding in which the order was made and not in separate proceedings before a different judge, as the claimants have done in this proceeding.

Discussion

7. From the Claimants' pleadings in paragraphs 1, 3 and 4 of their claim the relevant case is Land Appeal Case No. 71 of 2006 formerly Land Case No. 8 of 1993. There are currently three interlocutory orders which appear to be the foundation of the Claimants' complaints. The orders were issued in Land Appeal Case No. 17/1269 which is the same appeal as Case No. 71/2006.
8. Following the Court of Appeal decision in Kalulu's case this proceeding should have been issued under Land Appeal Case No. 17/1269, not separately.
9. As to the issue of standing, it is arguable but it is not the defendants' strongest ground for a dismissal of the claimants' claims.
10. Paragraph 3 of the claim specifies the purpose of the claim which is for the defendant to produce reports of all monies collected by him in his capacity as acting on behalf of the Eratap Community.
11. In the supporting evidence of Willie Andrew by sworn statement filed on 8 October 2024 the deponent says in paragraph 6 that this claim is about the beneficial owners of the defendants. And in paragraph 8 he alleges the defendant is acting as a trust on behalf of the beneficial owners and repeats the allegations in paragraph 9.



12. The real problem however is that the Eratap Chiefs Community and Area Council ceased its work, activities and operations in 2017. And from 2017 to June 2024 when the Claimants filed their claims, it is some seven years later. Therefore it appears to be that the Claimants' claim is time-barred by virtue of Section 8(2) of the Limitation Act [CAP. 212].

13. Section 8 provides:

"Limitation of actions in respect of trust property.

(1) No period of limitation prescribed by the provisions of this Act shall apply to an action by a beneficiary under a trust, being an action –

a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(b) to recover from the trustee, trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.

(2) Subject as aforesaid and to the provisions of any other Act, an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of six years from the date on which the right of action accrued:

Provided that the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property, until the interest fell into possession.

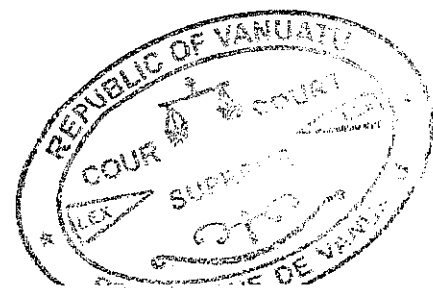
(3) No beneficiary as against whom there would be a good defence under the provisions of this Act shall derive any greater or other benefit from a judgment or order obtained by any other beneficiary than he could have obtained if he had brought the action and this Act had been pleaded in defence.

14. Sub-section (2) is clear that an action by a beneficiary to recover trust property or in respect of any breach of shall not be brought after the expiration of 6 years from the date of the right of action.

15. The Claimants claim they are beneficiaries claiming under a trust. However they have no evidence establishing that the Eratap Council of Chiefs was set up and registered as a trust and a trustee. That is a further difficulty of the Claimants. And they also have to establish by evidence that they are beneficiaries under the trust which they have not done.

16. What the Claimants are trying to do is set out on a fishing expedition to get reports to help them decide on what further steps to take to advance any claims they have, if at all.

17. All that leads me to the final conclusion that the claims of the Claimants are misconceived and is an abuse of process.



18. I therefore accept Mr Hakwa's submissions. Accordingly, I order that –

- (a) The application be allowed;
- (b) The claim dated 14 June 2024 and filed on 18 June 2024 is struck out in its entirety;
- (c) The Claimants will pay the defendant's costs of and incidental to the proceeding as agreed or taxed.

Dated at Port Vila, this 14th day of October, 2024.

BY THE COURT


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Hon. Justice Oliver A. Saksak
Judge

