

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

Civil Appeal  
Case No. 20/2824 SC/CIVA

**BETWEEN:** **Matova Toatau & Descendants**  
Appellants

**AND:** **Henry Cyrel Kalsurai**  
First Respondent

**AND:** **Ernest Kaloris & Descendants**  
Second Respondents

**AND:** **Vamele Family**  
Third Respondent

*Dates of Hearing:* 22-23 June 2023, 26 June 2023, 14-15 September 2023, 4 October 2023  
and 6 October 2023

*Before:* Justice V.M. Trief

*Assessors:* Mr N. Kaluatman & Mrs E. Nawen

*In Attendance:* Appellants – Mr E. Molbaleh  
First Respondent – Ms L. Raikatalau, holding papers for Mrs Ferrieux  
Patterson  
Second Respondents – Mr S. Kalsakau  
Third Respondent – no appearance (Mr D. Yawha)

*Date of Decision:* 24 February 2025

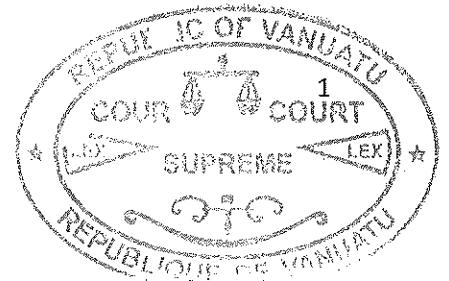
---

## JUDGMENT

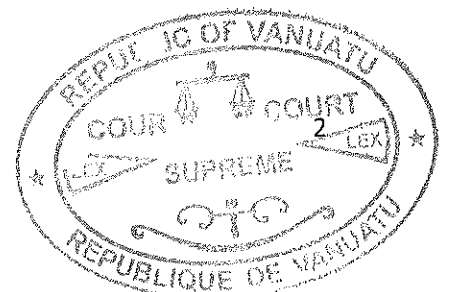
---

### A. Introduction

1. The Appellants Matova Toatau & Descendants ('MTD') filed this appeal against a judgment of the Magistrates' Court dated 19 October 2020 concerning the ownership of the chiefly title, "*Manlaewia*", which is connected with Malasa custom land at Paunangisu village at North Efate: *Manlaewia v Toatau* [2020] VUMC 14.



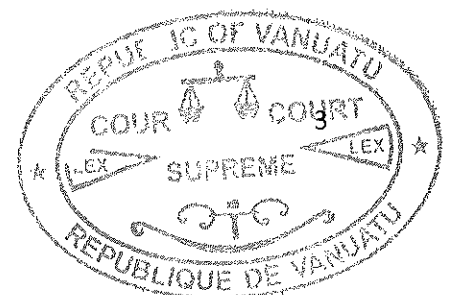
2. The proceedings commenced in the Efate Island Court ('EIC') in Chiefly Title Case No. 412 of 2019 ('Case No. 19/412'). The EIC in its decision dated 31 May 2019 declared MTD as the owner of the "*Manlaewia*" chiefly title: *Kaloris v Kalsurai* [2019] VUIC 3.
  3. The present First Respondent Henry Cyrel Kalsurai appealed to the Magistrates' Court. The Magistrates' Court constituted by a Magistrate and two assessors in accordance with subs. 22(2) of the *Island Courts Act* [CAP. 167] (the 'Act') by judgment dated 9 October 2020 allowed the appeal and declared Mr Kalsurai to be the rightful person to be bestowed the title, "*Manlaewia*": *Manlaewia v Toatau* [2020] VUMC 14.
  4. On 15 October 2020, MTD filed its notice of appeal in this Court against the Magistrates' Court decision. It is seeking orders that the Magistrates' Court judgment of 9 October 2020 to be quashed and for the matter to be remitted to the Magistrates' Court for rehearing.
  5. MTD filed an Appeal Book. This Court also had the benefit of Appeal Books A and B filed by the Second Respondent Ernest Kaloris and Descendants ('EKD') in CAC 20/3037 (which was struck out on 16 December 2022) which were treated as having been filed in the present matter for the purposes of the appeal hearing.
  6. The Court was assisted by Mr Molbaleh and Ms Raikatalau's written submissions. Despite numerous Orders, counsel for EKD Mr Kalsakau never filed written submissions (which led in part to the striking out of EKD's appeal in CAC 20/3037). As EKD's case opposed the Magistrates' Court's declaration of Mr Kalsurai as the owner of the "*Manlaewia*" title, I permitted Mr Kalsakau to make oral submissions after Mr Molbaleh.
  7. The Third Respondent Vamele Family has not taken any part in this appeal. Their counsel Mr Yawha has not attended Court since the first several case management conferences. Nor were any written submissions filed for Vamele Family. There was no appearance for Vamele Family during the appeal hearing.
- B. Preliminary matter – ruling as to 'objections'
8. At the hearing of the appeal, Ms Raikatalau objected to certain documents relied on by EKD, submitting that the Magistrates' Court had given an oral ruling that they were inadmissible. Mr Kalsakau submitted that Ms Raikatalau's recollection was incorrect as there had only been closing submissions in relation to the documents but no objections as to their admissibility hence there was no oral ruling by the Magistrates' Court.



9. The Magistrates' Court's file shows that the last date of its hearing of the appeal against the EIC decision was 11 August 2020. The Magistrate's notes record Mrs Ferrieux Patterson, counsel for Mr Kalsurai, making submissions about documents relied on by EKD as being unreliable, as contradicting EKD's case or made against EKD's interest. There is no record in the notes that those submissions about EKD's documents were objections to their admissibility or that the Magistrates' Court made any ruling as to any objections.
10. The Magistrates' Court's file also shows that on 14 August 2020, Mr Kalsurai filed a document titled, 'Reply to the Second Respondent Oral Submission.' This document contains submissions that EKD's documents are not relevant and should not be relied on by the Court. Those submissions appear to be the distillation into writing of Mrs Ferrieux Patterson's oral submissions on 11 August 2020. I consider that there would not have been any need to file written submissions on 14 August 2020 if the Magistrates' Court had already made a ruling as to objections on 11 August 2020.
11. As there was no mention in the Magistrate's notes as to any objections made to EKD's documents, nor of any ruling as to objections, and the filing of the 14 August 2020 documents supports the contention that the Magistrates' Court did not make a ruling as to EKD's documents, I reject Ms Raikatalau's submissions that the Magistrates' Court had ruled that EKD's documents were inadmissible.

C. The Efate Island Court Judgment

12. The parties in EIC Case No. 19/412, concerning the ownership of the "*Manlaewia*" chiefly title, were as follows:
  - a) Ernest Kaloris and Descendants, **Claimants** ('EKD');
  - b) Henry Cyrel Kalsurai and Family, **First Defendants**;
  - c) Vamele Family, represented by Kaltonga Kalorong, **Second Defendant**;  
and
  - d) Matova Toatau and Descendants, represented by Kennedy Kalfau, **Third Defendants**.
13. The EIC, properly constituted of 3 justices, heard the disputing parties and delivered judgment dated 31 May 2019: *Kaloris v Kalsurai* [2019] VUIC 3.
14. The EIC in its judgment summarised each party's statement of the claim and then the evidence of each of its witnesses. It then set out its "Court findings" which are summarised as follows:



- a) It found that Mr Kalsurai's bloodline could not succeed according to the custom of North Efate, that he had received the title from Solomon Kalsurai who was from Tareang custom land, that Solomon Kalsurai did not take the title following Efate custom, and that Mr Kalsurai was a caretaker chief only but could not own the title according to Efate custom and patrilineal bloodline ("*caretaker be hemi no save ownem title follem custom mo patrilineal bloodline*");
- b) It found that the Claimants EKD and the Second Defendant Vamele Family did not have enough evidence to prove their right to the title; and
- c) It set out MTD's 5-generation family tree in which the title twice passed on the death of the title-holder to his widow as "*tukurao*" as well as to a grand-daughter's husband, from a widow holding the title as "*tukurao*" to her daughter, as well as from a "*tukurao*" to her son and then to her nephew.

15. The EIC then set out its "Declarations" as follows:

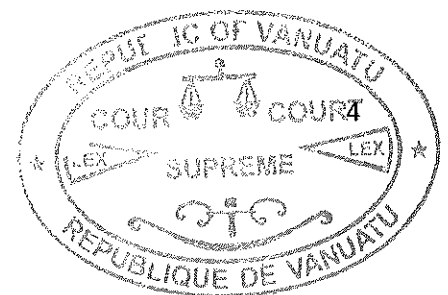
- (i) the "*Manlaewia*" chiefly title is the title of a small custom chief of Malasaliu customary governance, which is inside the larger customary governance of Tanomiala at North Efate; and
- (ii) that MTD as the descendants of Matova Toatau Manlaewia are the custom owners of the "*Manlaewia*" chiefly title according to bloodline, the rules and custom practices of Efate.

16. The EIC referred to the custom of North Efate and the laws of the Vaturisu Council of Chiefs but did not make any findings as to the rules of custom which apply in Malasa land concerning chiefly title. It referred to "*tukurao*" without making any finding as to what this custom rule is (if at all) and how such a rule applies. The EIC did not declare any applicable custom as law.

17. Section 10 of the *Island Courts Act* provides that, "*the Island Court shall administer the customary law prevailing within the territorial jurisdiction of the Court so far as the same is not in conflict with any written law and is not contrary to justice, morality and good order.*"

18. As the Court of Appeal held in *Bob v Mala* [2015] VUCA 3 at [45] and [46], the custom which applies must be proved and established by evidence:

45. *The establishment of custom in the Courts requires evidence to prove what the custom is. As is illustrated by the Magistrates Court decision in this case the questions posed and answered by that Court in its judgment were based on the evidence called to establish for*



example, the relevant chiefly title for the area in issue and any biological link between the chiefly title and the Claimant.

46. Although the Island Court Justices and the Magistrates Court Assessors have expertise in custom issues they are not appointed because they necessarily have in-depth knowledge of the facts of the particular disputed custom before the Court. The disputed custom must be established by evidence called and subject to challenge in Court.

(my emphasis)

19. As Lunabek CJ made clear in Lekum v Fresher [2020] VUSC 257 at [19]-[20], the court must make findings as to the applicable custom, which can then be declared and applied (enforced) as law by the courts:

19. ... custom is not a law but it is a fact. So, custom, as a fact, has to be first proved, through judicial discovery and fact finding processes in the cases before the courts or tribunals by evidence of custom [fact and expert] (through most commonly conflicting evidence of custom). Second, the custom has to be found, accepted as applicable custom (not inconsistent with any written law, justice, and morality and good order). Third, it has to be declared and applied (enforced) as law by these courts or tribunals. This is where article 47 (1) of the Constitution has its significance in the application of custom when there is no rule of law or substantial justice applicable in such given cases. This results in establishing the customary law applicable in a given case.

20. This brief reflection is important to understand what the Constitution says and means in Article 95 (3) that: **“Customary law shall continue to have effect as part of the laws of Vanuatu.”** It is in that sense that the recognition of customary law as part of the laws of Vanuatu, is proclaimed under the Constitution (Art, 95 (3)). Judges (including particularly local justices) create and refine this customary law through interpretation and application of declared custom as applicable custom in such given cases. The decisions of the courts (and tribunals) thus establish precedent for future interpretation of the customary law by judges in the same or lower courts within the same jurisdiction. Judges (and local justices) then refine this interpretation in future cases by extending it to different facts and circumstances. It will be a matter of good sense and time in the development of customary law. That is the statement of the principle.

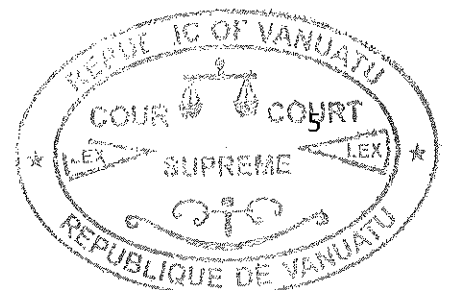
(my emphasis)

20. Chief Justice Lunabek further held as follows in Lekum v Fresher at [24]:

24. What it is in dispute before the Malekula Island Court is a custom chiefly title dispute over Potun Nasara but it is not a custom land dispute. The resolution of the dispute is to apply the customary law prevailing on custom chief title on the area or region of the dispute within the territorial jurisdiction of the court (here, Malekula Island Court). The Malekula Island Court did so by applying the applicable custom on custom chief title dispute (as found by the court) prevailing in the area or region of the dispute on Malekula, namely, Uripiv Island...

(my emphasis)

21. As already stated, the EIC did not make any findings as to the applicable rules of custom which apply at Malasa land or in the wider North Efate area. Accordingly, the EIC erred in failing to make findings as to the applicable custom.



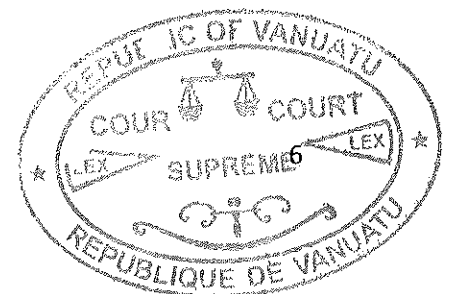
D. The Magistrates' Court Judgment

22. The Magistrates' Court constituted of a Senior Magistrate and 2 assessors heard the appeal against the Efate Island Court decision dated 31 May 2019 and gave its judgment dated 9 October 2020: Manlaewia v Toatau [2020] VUMC 14.
23. The Magistrates' Court held that Mr Kalsurai, of all the parties, had the most probable and consistent history and ancestral lineage, which history and family tree the Supreme Court had accepted to declare Chief Manlaewia as the customary land owner of Malasa custom land. Further, that while land claims and chiefly title claims were two separate customary issues, both are inter-connected in Efate custom, as the Supreme Court emphasised in its judgment in the Malasa LAC.
24. In doing so, the Magistrates' Court agreed with Mr Kalsurai's grounds of appeal that the EIC had erred in ignoring the findings as to Mr Kalsurai's family tree made by the Supreme Court in its judgment in Manlaewia v Maripongi [2018] VUSC 257; Land Appeal Case No. 01 of 2010 (the 'Malasa LAC'), allowing MTD "a second bite at the cherry".
25. The Magistrates' Court also held that while the patrilineal inheritance of the chiefly title "Manlaewia" was broken when Solomon Manlaewia gave the title to Mr Kalsurai, he (Mr Kalsurai) held it in custom as "Napumas" (testamentary gift or present) therefore on Mr Kalsurai's death, the "Manlaewia" title would revert to the original patrilineal lineage through the sons of Thomas Solomon Manlaewia.

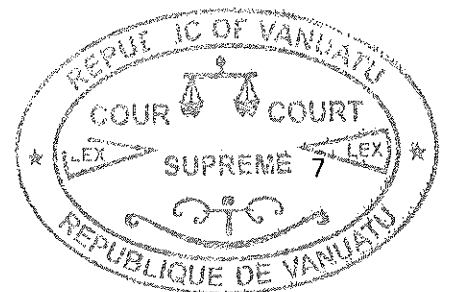
E. Appeal to the Supreme Court

26. Sections 22 and 23 of the Act (since 25 February 2002 when the *Island Courts Amendment Act* No. 15 of 2001 commenced into force) provide as follows for an appeal of an Island Court decision, and for the power of the court on appeal:

22. (1) *Any person aggrieved by an order or decision of an island court may within 30 days from the date of such order or decision appeal from it to the Magistrates' Court.*
- (2) *The court hearing an appeal against a decision of an island court shall appoint two or more assessors knowledgeable in custom to sit with the court.*
- (3) *The court hearing the appeal shall consider the records (if any) relevant to the decision and receive such evidence (if any) and make such inquiries (if any) as it thinks fit.*
- (4) *An appeal made to the Supreme Court under subsection (1)(a) shall be final and no appeal shall lie therefrom to the Court of Appeal.*



- (5) *Notwithstanding the 30 day period specified in subsection (1) the Supreme Court or the Magistrates' Court, as the case may be, may on application by an appellant grant an extension of such period provided the application therefore is made within 60 days from the date of the order or decision appealed against.*
23. *The court in the exercise of appellate jurisdiction in any cause or matter under section 22 of this Act may –*
- (a) *make any such order or pass any such sentence as the island court could have made or passed in such cause or matter;*
- (b) *order that any such cause or matter be reheard before the same court or before any other island court.*
27. Section 30 of the *Judicial Services and Courts Act [CAP. 270]* ('JSC Act') provides as follows for an appeal of a Magistrates' Court judgment to the Supreme Court:
30. (1) *Subject to the provisions of any other Act, the Supreme Court has jurisdiction to hear and determine appeals from judgements of the Magistrates' Court on all or any of the following:*
- (a) *a question of law;*
- (b) *a question of fact;*
- (c) *a question of mixed law and fact.*
- (2) *The Supreme Court in hearing an appeal:*
- (a) *is to proceed on the face of the record of the Magistrates' Court; and*
- (b) *may exercise such powers as may be prescribed by or under this Act or any other law; and*
- (c) *has the powers and jurisdiction of the Magistrates' Court; and*
- (d) *may review the procedures and the findings (whether of fact or law) of the Magistrates' Court; and*
- (e) *may substitute its own judgement for the judgement of the Magistrates' Court; and*
- (f) *may receive evidence.*
- (3) *(Repealed)*
- (4) *The Supreme Court is the final court of appeal for the determination of questions of fact. However, an appeal lies to the Court of Appeal from the Supreme Court on a question of law if the Court of Appeal grants leave.*
28. The Court of Appeal held in *Bob v Mala [2015] VUCA 3* at [39] that decisions of the Island Court may be appealed to the Magistrates' Court and from that court to the Supreme Court:



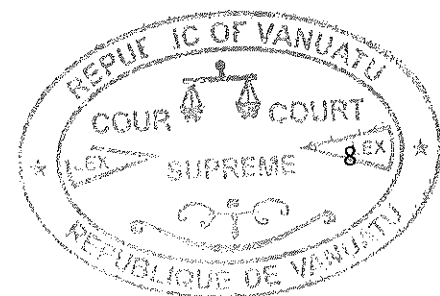
39. We are therefore satisfied that s. 22 of the Island Courts Act does not limit s. 30 of the Courts and Judicial Services Act and that there is an appeal right from Island Court decisions to the Magistrates Court and from that court to the Supreme Court.
29. The Supreme Court hears an appeal by way of “rehearing”, on the face of the record of the Magistrates’ Court and may substitute its own judgment for the judgment of the Magistrates’ Court: paras 30(2)(a) and (e) of the JSC Act; Manlaewia v Maripopongi [2015] VUSC 119 at [25].
30. The Court of Appeal held in Numake v Iopil [2019] VUCA 60 at [20]-[21] as follows:
20. It has previously been held that section 22(2) applies to the appeal to the appeals to the Magistrates Court and to the Supreme Court: See Kaites v Kaising [2010] VUCA 19; Bule v Tamtam [2011] VUCA 16; Hapsai fv Attorney General [2010] VUCA 30; Matarave fv Talivo [2010] VUCA 3].
21. That is because the appeal to the Supreme Court may also be an appeal on the merits of the case, involving an assessment of evidence: see Tula v Weul [2010] VUCA 42 at [3]. It is not simply an appeal from the Magistrates’ Court on a question of law. Section 22 then requires that, when an appeal is heard by a Court which may look at the merits of the case, the Court should do so with the benefit of assessors.

(my emphasis)

31. Questions of custom can involve both questions of fact and may involve questions of law: Bob v Mala [2015] VUCA 3 at [50].
32. Given that this Court might in the hearing of the appeal look at the merits of the case, I sat with two assessors being Mr Kaluatman and Mrs Nawen to hear the appeal.

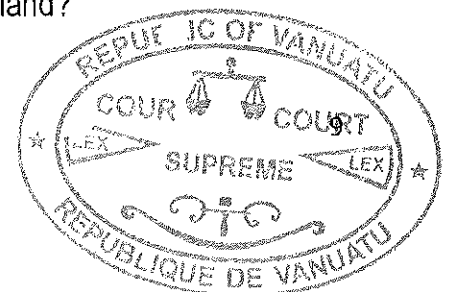
#### F. Grounds of Appeal in Supreme Court

33. The Notice of Appeal filed on 15 October 2020 contained the following grounds of appeal:
- (I) The Learned Judge and justices erred in law in fact and law.
- (II) The Learned Judge and justices erred in law in failing to take into account the Appellant’s arguments before the Island Court.
- (III) The Learned Judge and justices misinterpreted the arguments of the Island Court judgment subject of the appeal and Supreme Court.
- (IV) The Learned Judge and justices erred in law in accepting fabricated facts by Henry Cyrel as being the truth.
- (V) Other points will be raised in support of the Notice of Appeal.





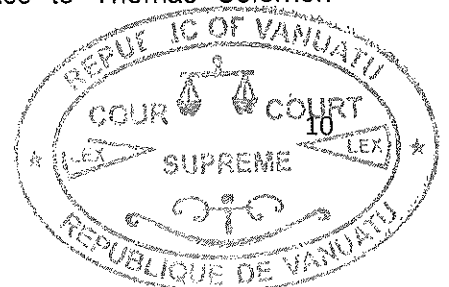
34. Each of the grounds of appeal filed on 15 October 2020 referred to "Judge and justices" however, no Judge sat in the Magistrates' Court decision which is being appealed against. There is no merit in these grounds of appeal.
35. Ground (V) of the grounds of appeal filed on 15 October 2020 referred to other points that would be raised in support of that notice of appeal.
36. On 19 January 2021, MTD filed a further Notice and Grounds of Appeal setting out 15 grounds of appeal (over 21 pages) which are summarised as follows:
- a) Grounds 5 and 13 are correct in that the Magistrates' Court in its order at para. 69(3) of its judgment incorrectly cited the Supreme Court judgment in Land Appeal Case No. 1 of 2020 as to the custom ownership of Malasa custom land as *Manlaewia v Maripopongi* [2015] VUSC 119 when the correct citation is *Manlaewia v Maripopongi* [2018] VUSC 257. Other instances of the incorrect case citation were at paras 57, 63 and 65 of the Magistrates' Court judgment dated 9 October 2020;
  - b) Grounds 6 and 15 were to the effect that the Magistrates' Court erred in that it did not consider the findings of the EIC. However, the Magistrates' Court was not bound by the findings of the EIC. Accordingly, there is no merit in grounds 6 and 15;
  - c) Grounds 1-4, 7, 8 and 12 referred to matters being proved beyond reasonable doubt. However, the relevant standard of proof in civil matters is on the balance of probabilities. There is no merit in this aspect of those grounds;
  - d) Grounds 1-5, 7-10 and 13 alleged that the Magistrates' Court erred in 'ignoring' or misapplying the judgment of the Supreme Court in the Malasa LAC as to Mr Kalsurai's bloodline and the custom ownership of Malasa custom land; and
  - e) Grounds 11, 12 and 14 were to the effect that the Magistrates' Court erred in holding that on Mr Kalsurai's death, the "*Manlaewia*" chiefly title will pass to the sons of Thomas Kalsurai as Thomas' sons were never a party to Chiefly Title Case 19/412 in the EIC, in the Magistrates' Court appeal case or in the Malasa LAC in the Supreme Court.
37. I will deal with the grounds of appeal summarised in paras (d) and (e) above under the following headings or questions:
- (A) Did the Magistrates' Court err in 'ignoring' or misapplying the judgment of the Supreme Court in the Malasa LAC as to Mr Kalsurai's bloodline and the custom ownership of Malasa custom land?



- (B) Did the Magistrates' Court err in holding that on Mr Kalsurai's death, the "Manlaewia" chiefly title must revert to the original patrilineal lineage through the sons of Thomas Solomon Manlaewia?

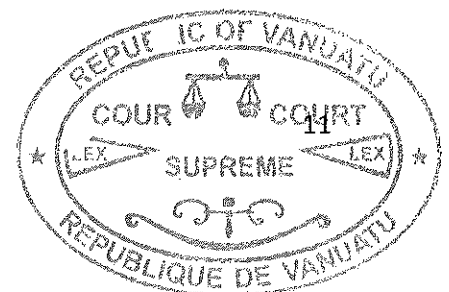
G. Submissions

38. On 4 May 2022, MTD filed its appellant's submissions. MTD submitted that Solomon Manlaewia held the chiefly title of "Tuapuletari" of Savaki customary governance therefore he never legally held the title, "Manlaewia" to legally pass it onto Mr Kalsurai. It was also submitted that the Magistrates' Court erred as it held that Mr Kalsurai held the title as a caretaker but did not decide the true holder or owner of the title. It was submitted that therefore the Magistrates' Court erred in declaring that Mr Kalsurai was the rightful person to be bestowed the title, "Manlaewia."
39. Mr Molbaleh submitted that the Magistrates' Court erred by choosing Mr Kalsurai's bloodline whereas the EIC had been correct in choosing MTD's family tree. He submitted that this Court should accept MTD's family tree as Mr Kalsurai's bloodline includes his father who was from Norfolk Island however the chiefly title must pass through bloodline, citing the Malasa LAC judgment.
40. Mr Molbaleh submitted that the sons of Thomas Solomon Manlaewia were never a party to the EIC or MC proceedings therefore the Magistrates' Court should never have ordered that on Mr Kalsurai's death, the "Manlaewia" title would pass to them. He submitted that the matter should be remitted back to the EIC and the sons of Thomas Solomon Manlaewia be invited to put their claim for the "Manlaewia" title.
41. Mr Kalsakau submitted that his client EKD supported the appeal but on different grounds. He submitted that the Magistrates' Court erred in ignoring the EIC's finding that Mr Kalsurai was from Tareang custom land. Secondly, that the Magistrates' Court erred because it felt constrained by the Supreme Court judgment in the Malasa LAC but custom land ownership and chiefly title rules are distinct and different hence this Court should not bring in a land ownership decision to the present chiefly title dispute. Alternatively, the Magistrates' Court erred in holding that Mr Kalsurai received the "Manlaewia" title by testamentary gift therefore he holds it as an "olioli" or caretaker and the Court erred, in the absence of any finding of a custom rule, to order that the title would pass *after* Mr Kalsurai died.
42. Mr Kalsurai filed a response to MTD's notice and grounds of appeal on 3 December 2020 and then extensive submissions on 2 September 2022.
43. Ms Raikatalau submitted that the Magistrates' Court was correct in allowing the appeal before it but erred in holding that Mr Kalsurai held the title as "olioli" (caretaker) therefore on his death, the title would pass to Thomas Solomon



Manlaewia's sons as the 'internal succession' issue (who would hold the title after Mr Kalsurai) was never before the EIC or the MC. She submitted that the Magistrates' Court accepted bloodline succession (whether matrilineal or patrilineal) as a rule of custom and applied this because Mr Kalsurai's case relied on adoption inside the bloodline as he had been adopted by his grandfather Solomon at the same time as he received the "Manlaewia" title from him (Solomon). She submitted that MTD's appeal relies on mischaracterizations of the Supreme Court's judgment in the Malasa LAC therefore it must fail. Further, that all the parties are bound by the Supreme Court's findings in the Malasa LAC.

44. In reply, Mr Molbaleh submitted that Mr Kalsurai had conceded to MTD's appeal ground that the Magistrates' Court erred in holding that on Mr Kalsurai's death, the "Manlaewia" title would pass to Thomas Solomon Manlaewia's sons. He submitted that there was an unfairness in the process as Thomas Solomon Manlaewia's sons had never been party to the proceedings therefore this Court should remit the matter to the Magistrates' Court for hearing *de novo*, citing *Kofi v Mafe* [2020] VUCA 34. He submitted that even though Mr Kalsurai was successful in the Malasa LAC, Mr Kalsurai must still prove his ownership of the "Manlaewia" title in the chiefly title dispute. He submitted that this Court should limit its consideration to the evidence in the EIC in the chiefly title dispute. He submitted that there was no evidence of Mr Kalsurai's adoption by his grandfather therefore this Court should not accept that Mr Kalsurai received the title by way of his adoption.
- H. Did the Magistrates' Court err in 'ignoring' or misapplying the judgment of the Supreme Court in the Malasa LAC as to Mr Kalsurai's bloodline and the custom ownership of Malasa custom land?
45. MTD alleged in a number of the appeal grounds that the Magistrates' Court had erred in 'ignoring' or misapplying the judgment of the Supreme Court in the Malasa LAC as to Mr Kalsurai's bloodline and the custom ownership of Malasa custom land.
46. Ground 4 was to the effect that Mr Kalsurai's bloodline fails on all customary land tenure principles on Efate, which principles the EIC had declared in the land case of *Maseiman v Natongrau* [2009] VUICB 2, Land Kes 03 of 1995, and which the Supreme Court cited in its Malasa LAC judgment. By this and other appeal grounds, MTD made submissions about Mr Kalsurai's bloodline in direct contradiction to the findings of the Supreme Court in its judgment in the Malasa LAC: *Manlaewia v Maripopongi* [2018] VUSC 257.
47. However, the same parties (albeit under different names) contested both the Malasa LAC custom land ownership dispute and the "Manlaewia" chiefly title dispute in EIC Case No. 19/412 and the Magistrates' Court CAC No. 19/2856. The following table sets out the parties to each set of proceedings:

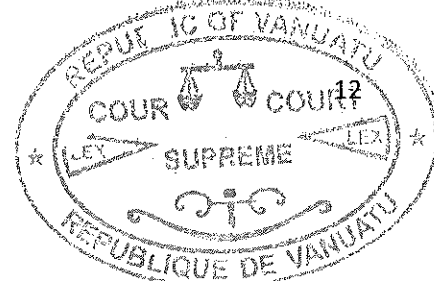


<b>Parties in the Malasa LAC No. 2010/01:</b>	<b>Parties in the EIC Case No. 19/412 chiefly title dispute:</b>	<b>Parties in the present appeal as to chiefly title dispute:</b>
Chief Henry Manlaewia, <b>First Appellant</b>	Ernest Kaloris and Descendants, <b>Claimants</b>	Matova Toatau and Descendants, represented by Kennedy Kalfau, <b>Appellants</b>
(Family Maalu) Chief Manavilalu and Chief Lakeleowia and Descendants, <b>Second Appellant</b>	Henry Cyrel Kalsurai and Family, <b>First Defendants</b>	Henry Cyrel Kalsurai, <b>First Respondent</b>
Chief Simeon Peter Maripongi and Descendants, <b>Third Appellant</b>	Vamele Family, represented by Kaltonga Kalorong, <b>Second Defendant</b>	Ernest Kaloris and Descendants, <b>Second Respondents</b>
(Family Vamele) Chief Maripongi Family and Family Tanmiala, <b>Respondent</b>	Matova Toatau and Descendants, represented by Kennedy Kalfau, <b>Third Defendants</b>	Vamele Family, <b>Third Respondent</b>

48. The same parties (albeit under different names) contested the Malasa land case and the “*Manlaewia*” chiefly title dispute as follows:

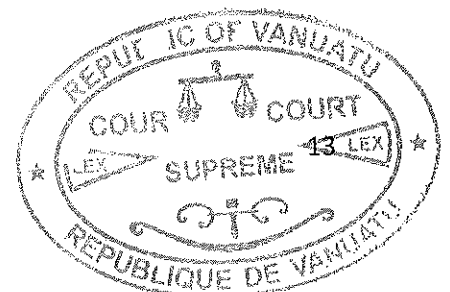
- a) The present Appellants MTD, represented by Kennedy Kalfau, were party to the Malasa LAC as the Third Appellant, “Chief Simeon Peter Maripongi and Descendants.” Mr Kennedy Kalfau was a witness for Chief Simeon Peter Maripongi and Descendants’ case in the Malasa land case; his family tree was relied by MTD in the chiefly title dispute;
- b) The present First Respondent Mr Kalsurai was the First Appellant in the Malasa land case;
- c) The present Second Respondent EKD was party to the Malasa LAC as the Second Appellant, “(Family Maalu) Chief Manavilalu and Chief Lakeleowia and Descendants”; and
- d) The present Third Respondent Vamele Family was party to the Malasa LAC as the Respondent, “(Family Vamele) Chief Maripongi Family and Family Tanmiala.”

49. Given that the parties to the present chiefly title dispute proceedings were also party to the Malasa LAC (albeit under different names), they are bound by the Supreme Court’s findings and judgments in the Malasa LAC: *Manlaewia v Maripongi* [2018]



VUSC 257. This is also in accordance with the public interest in the finality of litigation: Tangraro v Republic of Vanuatu [2019] VUCA 73; Adams v Public Prosecutor [2008] VUCA 20.

50. The Supreme Court, in its judgment in the Malasa LAC, accepted Mr Kalsurai's family tree and bloodline as to the custom ownership of Malasa custom land and declared Chief Manlaewia, being the chiefly title held by Mr Kalsurai, as the custom owner of Malasa custom land. Those were findings by the Supreme Court, which findings cannot be challenged by any further appeal.
51. As the Supreme Court has made findings about Mr Kalsurai's family tree and bloodline, the EIC did not have jurisdiction or power to contradict the findings and the decision by the Supreme Court as to Mr Kalsurai's family tree and bloodline.
52. Given that the same parties which had contested the Malasa LAC are party to the "Manlaewia" chiefly title dispute, I must infer that by the latter, the unsuccessful parties in the land case are attempting to remove Mr Kalsurai as the custom owner of Malasa custom land. In the land case, Mr Kalsurai was the only party to claim for Malasa custom land under the "Manlaewia" chiefly title. The other parties claimed the ownership of Malasa land using other chiefly titles namely, "Manavilalu", "Lakeleowia", "Maripopongi", "Maripongi" and "Tanmiala". Having lost in the land case, they then in the chiefly title dispute proceedings are contesting the ownership of the "Manlaewia" chiefly title.
53. However, it is not proper to do indirectly what cannot be done directly. The EIC could not, in the face of the Supreme Court judgment in the Malasa LAC, decide that Mr Kalsurai was not the owner of the "Manlaewia" chiefly title. The comments of the Court of Appeal in Numake v Iopil [2019] VUCA 60 at [24]-[29] where a "true bloodline" application in the Tanna Island Court was filed in an attempt to remove the declared custom land owner, are apposite to the present circumstances:
  24. This is now accepted by Sam Naiu Iopil, by the "true bloodline" application in the Tafea Island Court, he was attempting to remove Tom Numake as the custom owner of the "Niougan" land.
  25. The effect of the Tafea Island Court decision is that he achieved that objective. It is not proper to do indirectly what cannot be done directly.
  26. So the Tafea Island Court could not, in the face of the 1973 Native Court decision, decide that Tom Numake was not the custom owner.
  27. In the circumstances, the Supreme Court and in turn the Magistrates Court should have decided that the Tafea Island Court decisions should not properly have been made. It did not have jurisdiction or power to contradict the 1973 decision of the Native Court.



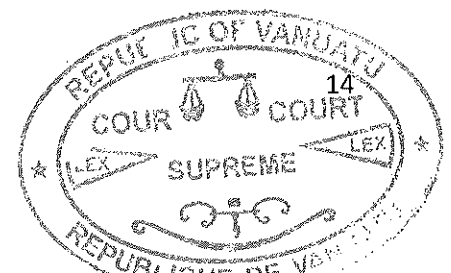
28. *The proper order therefore is, in addition to setting aside the decisions of the Supreme Court and the Magistrates Court, to set aside the decision of the Tafea Island Court of 25 September 2016 and instead make an order that the application to that Court be dismissed.*

Further Comments

29. *It is important to make the point that an application based on “true bloodline” cannot be used to indirectly invalidate or contradict a lawful decision about custom ownership.*

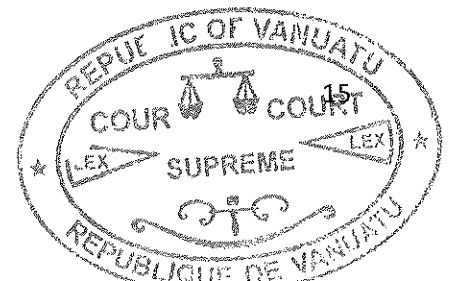
*(my emphasis)*

54. As the Court of Appeal stated in Numake v Iopil [2019] VUCA 60 at [29], an application based on “true bloodline” cannot be used to contradict a lawful decision about custom land ownership.
55. Accordingly, the EIC could not, in the face of the Supreme Court judgment in the Malasa LAC, make contradictory findings about Mr Kalsurai’s family tree, bloodline and his right to the “Manlaewia” chiefly title. It did not have jurisdiction or power to contradict the Supreme Court judgment in the Malasa LAC.
56. The Supreme Court’s findings were made in a land appeal case concerning the custom ownership of land whereas the present dispute concerns the ownership of a chiefly title. It was submitted for MTD that even though Mr Kalsurai was successful in the Malasa LAC, Mr Kalsurai must still prove his ownership of the “Manlaewia” title in the chiefly title dispute. That can be answered shortly as follows: Mr Kalsurai as well as the other parties adduced evidence in the EIC, then Mr Kalsurai was successful on appeal in the Magistrates’ Court to prove his ownership of the title.
57. It was also submitted for MTD that this Court should limit its consideration to the evidence in the EIC in the chiefly title dispute. Mr Molbaleh submitted that there was no evidence of Mr Kalsurai’s adoption by his grandfather therefore this Court should not accept that Mr Kalsurai received the title by way of his adoption. This submission overlooks that this Court on appeal is to consider whether the Magistrates’ Court erred in its decision. The submission also overlooks that it was Mr Kalsurai’s evidence in the EIC that he was adopted in 1976 by his grandfather Chief Solomon Manlaewia III.
58. It was submitted for EKD that the Magistrates’ Court erred in ignoring the EIC’s finding that Mr Kalsurai was from Tareang custom land. However, the Magistrates’ Court was not bound by the findings of the EIC.
59. Mr Kalsakau also submitted that the Magistrates’ Court erred because it felt constrained by the Supreme Court judgment in the Malasa LAC but custom land ownership and chiefly title rules are distinct and different hence this Court should not bring in a land ownership decision to the present chiefly title dispute. However, in the



particular circumstances of this case where Mr Kalsurai as Chief Manlaewia proved his claim to the ownership of Malasa custom land based on his family tree and bloodline, and more so where the other parties had contested the same land under different chiefly titles, the EIC in the later chiefly title dispute proceedings involving Mr Kalsurai and the same parties is bound by the Supreme Court's findings in the earlier custom land ownership proceedings.

60. Accordingly, the EIC erred in making findings about Mr Kalsurai's bloodline which were contrary to and different from those already made by the Supreme Court in its judgment in the Malasa LAC.
61. MTD's submissions relying on only one aspect of the Malasa LAC judgment as to Mr Kalsurai's bloodline due to his father being from Norfolk Island were a misrepresentation of the Malasa LAC judgment and are roundly rejected. Similarly, its submissions that Solomon Manlaewia never legally held the title, "*Manlaewia*" to pass it to Mr Kalsurai cannot be raised now in the chiefly title dispute proceedings given the Supreme Court's findings and judgment in the Malasa LAC. In the circumstances, the Magistrates' Court was correct that the EIC decision was not properly made.
62. For the reasons given, no error has been demonstrated on the part of the Magistrates' Court that it 'ignored' or misapplied the judgment of the Supreme Court in the Malasa land case therefore I answer Question (A), "**No.**"
  - I. Did the Magistrates' Court err in holding that on Mr Kalsurai's death, the "*Manlaewia*" chiefly title must revert to the original patrilineal lineage through the sons of Thomas Solomon Manlaewia?
63. It is uncontested that the sons of Thomas Solomon Manlaewia were not party to the proceedings.
64. It was submitted on Mr Kalsurai's behalf that the question of who the "*Manlaewia*" chiefly title would pass to after Mr Kalsurai (in their words, the question of "internal succession") was not in issue in the proceedings. I agree.
65. The proceedings concerned the ownership of the "*Manlaewia*" chiefly title; the question of who would succeed Mr Kalsurai to the title was never in issue.
66. As the question of internal succession was never in issue, it is not surprising that there was no finding as to the applicable custom by the Magistrates' Court.
67. Accordingly, the Magistrates' Court erred in holding that on Mr Kalsurai's death, the "*Manlaewia*" chiefly title must revert to the original patrilineal lineage through the sons



of Thomas Solomon Manlaewia. This order of the Magistrates' Court must be set aside.

68. The question of who the "*Manlaewia*" chiefly title will pass to after Mr Kalsurai must, if necessary, be determined in future proceedings.
69. Mr Molbaleh submitted that there was an unfairness in the process as Thomas Solomon Manlaewia's sons had never been party to the proceedings therefore the matter should be remitted to the Magistrates' Court for hearing *de novo*, citing *Kofi v Mafe* [2020] VUCA 34. However, this error by the Magistrates' Court is cured by the setting aside of the order at para. 69(5) of the Magistrates' Court judgment. The balance of the Magistrates' Court judgment stands therefore remittance of the matter to the Magistrates' Court does not arise.
70. MTD submitted that the Magistrates' Court erred as it did not decide the true holder or owner of the title. I disagree. The Magistrates' Court order at para. 69(5) of its judgment will be set aside but the balance of the judgment stands. In that judgment, the Magistrates' Court determined the ownership of the "*Manlaewia*" chiefly title. I therefore reject the submissions made.
71. In light of the foregoing, I answer Question (B), "**Yes.**"

J. Result and Decision

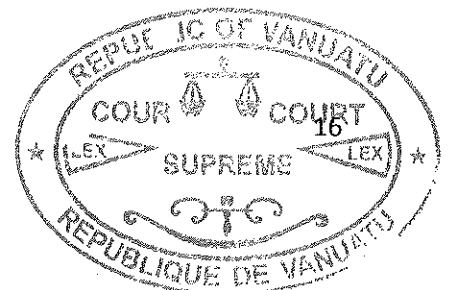
72. For the reasons given, the appeal is **allowed in part** and it is ordered that the order at para. 69(5) of the Magistrates' Court judgment dated 9 October 2020, which is as follows, is **set aside**:

5. *While the patrilineal inheritance of the title Manlaewia was broken when Solomon Manlaewia gave the title to Henry Cyrel Kalsurai, we are of the view that the Appellant (Henry Cyrel Kalsurai) should only enjoy the right given in custom as Napumas by Solomon Kalsurai Manlaewia but cannot transfer the title to his sons. Therefore, at his passing (Henry Cyrel Manlaewia), the title Manlaewia must revert to the original patrilineal lineage through the sons of Thomas Solomon Manlaewia.*

73. The order at para. 69(3) of the Magistrates' Court judgment dated 9 October 2020 is **substituted** by the following:

3. *The Appellant namely Henry Cyrel is declared the Paramount Chief of Paungangisu Village/Malasalaiu Land boundary as declared by the Supreme Court in the case Manlaewia v Maripongi [2018] VUSC 257; Land Appeal Case No. 01 of 2010 (30 November 2018).*

74. The balance of the Magistrates' Court judgment dated 9 October 2020 stands.





75. The restraining orders issued by this Court are **discharged**.
76. Costs in favour of the First Respondent to be taxed failing agreement.

**DATED at Luganville this 24<sup>th</sup> day of February 2025  
BY THE COURT**

  
.....  
Justice Viran Molisa Trief

