

**BETWEEN:** BERRY KALOPONG  
Claimant

**AND:** ASael WAYANE KALOPONG, JIMMY JOSEPH,  
PERIS KALOPONG, MANGAU SAMUEL KALTAK,  
JIMMY JOSEPH, CHIEF KALOMTAK KALSAUR  
Defendants

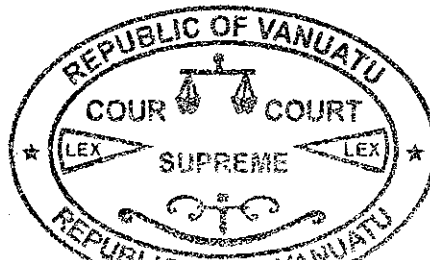
**Date of Hearing:** 5 December 2024  
**Before:** Hon. Justice Oliver A. Saksak  
**Counsel:** CB Leo for the Claimant  
No appearance for the Defendants (JI Kilu, deceased)  
**Date of Judgment:** 11 March 2025

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### JUDGMENT AS TO DAMAGES

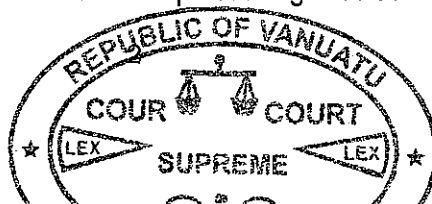
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1. On 17 October 2023, this Court entered judgment as to liability against the defendants and reserved the issue of damages to be assessed pending the filing of further evidence.
2. On 20 October 2023 the Court issued direction orders requiring the claimant to file and serve sworn statements within 21 days by 10 November 2023 and for the defendants to file and serve their responding evidence by 24 November 2023.
3. On 28 November 2023 Mr Leo sought extensions of the orders by a further 7 days, however a further request was made by Mr Leo on the returnable date being 5 December 2023 on which date the Court allowed further 14 days for submissions to 19 December 2023 for the Claimants and to 3 January 2024 for the Defendants.
4. Mr Leo filed sworn statements in support of the Claimant's claims for damages on 5 December 2023 and a further sworn statement on 9 July 2024, and the claimant's legal submission also on the same date.



5. The Defendants did not and have not complied with the Court's directions to file responding sworn statements and/or written submissions. It is understood that their legal counsel Mr Kilu has passed away.
6. The claimant claims first damages for what he terms as high-handed trespassing by the defendants or their agents onto his leasehold property and demanding that he and his family leave the land. These trespasses occurred on 12 March 2022, 17 March 2022, 31 March 2022, 5 May, 10 May 2022, 25 April 2022 and 31 October 2023. He deposed that the trespasses are ongoing. He claims the sum of VT3,000,000 as damages for those actions.
7. The second claim relates to stress and emotional harm and suffering he suffered as a result of the defendants' ongoing unlawful actions. He relies on the medical report by Mr Tokon annexed as "BK2" to his sworn statement filed on 5 December 2023.
8. The medical report dated 31 October 2023 does confirm that as a result of the defendants' unlawful actions the claimant suffered a mental breakdown for 3 months and included numbness and paralysis to the left arm and that his wrist and fingers were fixed in a flexed position.
9. The doctor also included in the report that: *"Mr Kalopong became severely depressed and his behavior became abnormal, erratic and inappropriate. This made his family life difficult. His wife and children were worried and they are still worried about his physical and mental health state. The family sough herbal medicines and massage for his conditions. Mr Kalopong has recovered from his left arm paralysis and mental disorders. On examination, Mr Kalopong is mentally and physically normal"*.
10. The claimant paid VT20,000 of the medical examination and report.
11. The evidence of the claimant is unchallenged and unrebutted by the defendants. The claimant's evidence show that he did suffer stress and mental disorder for a time and recovered. But he suffered as a result of the unlawful actions of the defendants in 2022 and 2023. He is entitled to damages for trespass. He is also entitled to recover his medical expenses of VT20,000.
12. In conclusion the claimant's claims for damages is successful and judgment is allowed in his favour for:
 

(a)	Damages for trespass - .....	VT3,000,000;
(b)	Medical expenses - .....	<u>VT20,000;</u>
	Total .....	VT3,020,000.
13. Finally, the claimant is entitled to his costs of the proceeding fixed at VT1,000,000.



14. The defendants are jointly and severally liable to pay the claimant's damages in the sum of VT3,020,000 plus costs in the sum of VT1,000,000 within 30 days from the date of this judgment, unless they file an appeal and apply for a stay within 28 days from the date hereof or upon being served with a copy of this judgment.
15. The matter be returnable for an enforcement conference on 25<sup>th</sup> April 2025 at 8:30am in Chambers.

**DATED at Port Vila, this 11<sup>th</sup> day of March, 2025.**

**BY THE COURT**

