

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

Civil
Case No. 21/1393 SC/CIVL

BETWEEN: Philimon Loy as Administrator of the Estate of
Daniel Loy
Claimant

AND: The Republic of Vanuatu
Defendant

AND IN THE MATTER OF:

BETWEEN: Civil
Case No. 21/1631 SC/CIVL
Pauline Loy
Claimant

AND: The Republic of Vanuatu
Defendant

AND IN THE MATTER OF:

Civil
Case No. 21/1713 SC/CIVL

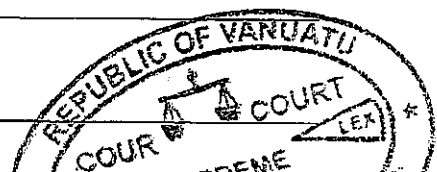
BETWEEN: Family Molbarav represented by Timothy Molbarav,
Kerry Molbarav & Jason Molbarav
Claimants

AND: The Republic of Vanuatu
First Defendant

AND: Family Loy (Pauline Loy, Tom Loy, Marie Loy)
Second Defendants

Date of Hearing: 28TH January 2025
Before: Justice Oliver A. Saksak
In Attendance: Mr Justin Ngwele for Claimant in CC 21/1631 and Second Defendants in
CC 21/1713
Mr Tom Joe Botleng for Claimant in CC 21/1393
Mr Philip Fiuka for Claimant in CC 21/1713
Mrs Jelinda T Tari for the Republic in all three cases

JUDGMENT



1. On 28th January 2025 I heard Counsel's arguments and submissions in relation to an application filed on behalf of Family Loy and Representatives of the Estate of Daniel Loy the Second Defendant in CC 21/1713. This is a proceeding instituted by Family Molbarav represented by Timothy Molbarav, Kerry Molbarav and Jason Molbarav.
2. The application is headed as Urgent Interlocutory Application filed on 15th October 2024. The applicants seek the following orders:
 1. That the Supreme Court claim filed on 28 May 2021 in CC 1713 of 2021 be dismissed.
 2. That the restraining orders of the Court dated 21st July 2021 be dismissed.
 3. That the restraining orders dated 20th October 2020 which restrains Marie Loy from future dealings in relation to the acquisition of Sarautu custom land be dismissed.
 4. Confirmation that ownership of Sarautu custom land was conclusively determined in Loy v Molbarav (1986).
 5. A finding that this Court is functus officio in relation to the Sarautu custom land, and
 6. Payment of monies (VT 390 million) owed under the deed be paid to the account of the Second Defendant's lawyer within 7 days.
 7. That the claimant pays the Second Defendant's costs of the application at VT 150,000.
3. The Claimant/ Applicant in CC 21/1631 posed three questions for determination by the Court which are:
 1. Whether the claimant (Family Molbarav) has legal standing to continue with the claim in CC 21/1713?
 2. Whether the Second Defendant is entitled to monies owed to them under the deed of release?
 3. Whether the Supreme Court is functus officio from revisiting matters that have been conclusively resolved. In particular, whether the basis for granting of restraining orders made on 21st July 2021 to restrain payments owed to the Second defendants are justified



given that the Molsakel Land Appeal Case intends to intrude on matters that have already been adjudicated by the Supreme Court?

4. Mr Ngwele filed lengthy written submissions on 17th October 2024 covering the history of the case of Daniel Loy v Timothy Molbarav and others in Land Appeal Case No. 2 of 1986, ownership and legal standing regarding the Sarautu Custom Land, its boundary, and acknowledging Philimon Loy as the sole surviving Administrator of Daniel Loy's Estate. Counsel supported his arguments and submissions with relevant case law such as Chandler v Alberta Association of Architects, 1989 41 (S.C.C)[1989] 2 S.C.R 848, John Tari Molbarav v Minister of Lands & Acquiring Officer JR No. 11 of 2015 and re Estate of Molivono [2000] VUCA 22.

Finally at paragraph 21 of his written submissions Mr Ngwele argued that the Court orders of 20 October 2020 and of 21st July 2021 are erroneous and should be dismissed.

5. Mr Botleng as Counsel for Philimon Loy in CC 21/1393 also filed a voluminous bundle of documents on 27 September 2023 in support of his client's case in CC 21/1393. Counsel relied on those documents to argue and submit in part in support of the application of Family Loy's interlocutory application but submitted that if the application was successful, the monies owed should be paid to Philimon Loy as the sole surviving Administrator so it can be distributed and accounted for according to law. The reason for making this submission is because the sum of VT 45,690,000 paid to Marie Loy under the deed of release dated 4th December 2020 was never accounted for.
6. Mr Fiuka filed extensive written submissions as well in opposition to the application. He argued the application was an abuse of process being the third in a row which previous applications having been refused by the Court. Further that the applicants had come to Court with unclean hands in view of CC 21/2203 in which Trief J awarded damages in favour of the Vanuatu Agriculture Research and Technical Centre (VARTC) against Marie Loy, Cevu Vocor, Joseph Loy and Pauline Loy to pay jointly and severally damages in the total sum of VT 4,909,500. It is alleged the applicants have not settled that judgment sum of monies released, there is a real risk they would be diverted to settle the judgment debt instead of being distributed to the beneficiaries. Mr Fiuka submitted the application and CC 21/1631 should be dismissed.



7. Mrs Tari filed initial written submissions in 2024 and supplementary submissions only in the morning of 28 January 2025 prior to the hearing. Mr Ngwele opposed the late submissions and submitted they should be rejected. However these were only supplementary to the earlier submissions which Counsel has had the benefit of reading and responding to them. The State's submissions basically support the submissions by Mr Fiuka in opposition to the application. Mrs Tari submitted the application should be dismissed with costs.

Discussion and Consideration

8. This case since July 1986 to this year 2025 it has been some 39 years since Daniely Loy was declared as custom-landowner of part of Sarautu land. It is understandable that the Family Loy, with Philimon Loy included as beneficiaries are persistent in making applications seeking the release of moneys they are legally and rightly entitled to. But for 39 years they have been denied the fruits of the judgment in favour of their father. All they are endeavouring to do is get justice but for cases instituted by the Molbarav Family and now the Molsakels which is pending before the Santo/ Malo Island Court with no certainty of finality, the Family Loy with Philimon Loy included, are being prejudiced and denied the fruit of their judgment, without any valid cause or reasons. They have a deed of release dated 4th December 2020 in their favour under the which the first instalment payment of VT 45,690,000 was made, wrongly of course in my view to Marie Loy instead of to the only sole surviving Administrator, Philimon Loy. The balance remains to be paid but it must be paid to the right person who is Philimon Loy who has the legal duty to ensure the fair distribution to all the beneficiaries of the estate, so there is no room for complaints and more litigation in future. The State is legally bound by that deed to honour its commit by paying the balance due to the Family Loy by instalments as agreed. At no stage has the State challenged the validity of the Deed, therefore the State cannot oppose the release of the balance of the compensation to the Administrator for the benefit of Family Loy simply on the basis of the Molbarav Family case and/or the Molsakel case in the Santo/Malo Island Court. I should also clarify that Family Loy is not just Pauline Loy, Marie Loy and Tom Loy, it includes Philimon Loy and all the direct surviving descendants of Daniel Loy.
9. The judgment of the Supreme Court in the 1986 case binds the Island Court and all other lower Courts or tribunals. It would be upsurd indeed for the Island Court to make decisions to override or overrule the decision of a higher Court but rather they must decide the Molsakel land case consistently with the 1986 judgment.



10. Mr Fiuka referred to a consent restraining Order of 27th April 2018 by the Court of Appeal in CC 18/598 in paragraph 52 of his submissions filed on 18th October 2024. However that case did not concern or involve Daniel Loy or any of the applicants before the Court in these proceedings, therefore those orders do not bind them. That case concerns Belbarav land and not Sarautu land.
11. Mrs Tari also took objection to the fact that the value of the estate as per the Administration Letters granted on 20th October 2010 was only VT 250,000,000 and that it was over a customary asset, not a registered lease.
12. Be that as it may, the amount was only an estimate and it is irrelevant because the real value is as was determined by the Acquiring Officer in his valuation, the result of which the Deed of Release was executed, which in turn guaranteed a lease to be registered, but has not yet been as expressly agreed by the Parties to the Deed. That appears to be a serious breach in my view.
13. For those reasons I reject Mr Fiuka and the State's submissions that the application is an abuse of process. Further the cases of the Molbarav Family and the Molsakel Family are obstacles to the finality of the 1986 judgment. They are instituted to merely obstruct the course of justice for the Family Loy for some 39 years now.
14. I have to accept therefore Mr Ngwele's submissions that the ownership of Sarautu land has been conclusively determined by the Supreme Court in 1986 in the case of Loy v Molbarav and that the Court is now functus officio to go back into it, some 39 years later.
15. I am however mindful of the damages case against Marie Loy, Cevu Vocor, Joseph Loy and Pauline Loy in CC 21/2203 which bear negatively on Marie Loy and Pauline Loy. I accept Mr Fiuka's submission including the State's submission that they have come with unclean hands. I am of the view they are the beneficiaries of the estate of Late Daniel Loy but to apply for release of monies as administrators due to Saul Loy's and Zecharia Daniel's passing is highly improper, without them providing any evidence that they have been granted letters of administration over their husband's estates. They have acknowledged in submissions that Philimon Loy is the only surviving Administrator of the Estate of Daniel Loy. As such only Philimon Loy should and can apply for the release of the balance of the monies, not Marie or

Pauline Loy. They could not apply as they have as administrators, but only as beneficiaries of the estate of Daniel Loy.

16. I note Mr Botteng supports the application for the release of the monies but that it should be made to Philimon Loy to account for them properly under law as the only surviving Administrator, and further in view of the fact that Pauline Loy did not account for the first instalment payment made to her for the benefit of the Family Loy.

17. For the foregoing reasons I answer the questions by Mr Ngwele as follows:-

1. Whether the claimant (the Molbarav Family) has legal standing to continue with the claim in CC 1713 of 2021? The answer is "No".

2. Whether the Second Defendant (the Family Loy including Philimon Loy) are entitled to monies owed to them under the Deed of Release dated 4th December 2020?

The answer is "Yes"

3. Is the Supreme Court functus Officio from revisiting the matters?

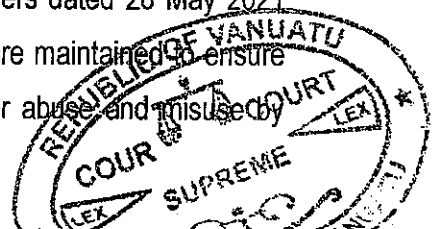
The answer is " yes' where it concerns ownership of Sarautu land and " no' where it concerns the execution of the judgment or enforcement of it, as here, the release of monies for the beneficiaries of the estate.

Conclusions

18. In view of the answers to the three questions in paragraph 17 above, Pauline Loy is only partly successful in her claims not as administratrix, but only as a beneficiary. CC 21/1631 is dismissed in part.

19. Philimon Loy is however successful in his claims in CC 21/1393. Judgment is entered in his favour.

20. Having answered the issues raised above, I therefore vacate the orders dated 28 May 2021 and of 21 July 2021. The restraining Orders dated 20 October 2020 are maintained to ensure the rights of the Administrator Philimon Loy are not subject to further abuse and misuse by



other beneficiaries of the Estate. Mr Ngwele did not include the orders dated 15th October 2021 perhaps by oversight. Only paragraph 6 (a) is hereby vacated.

21. Further I Order that CC 21/1713 be struck out in its entirety.
22. Finally I Order that the balance of the compensation monies under the Deed of Release dated 4th December 2020 be paid by instalments as agreed to Philimon Loy as the sole surviving Administrator, to distribute and account for according to law. Payments should only be made after 30 days of the appeal period have expired.
23. In the unusual circumstances of these cases, there is no order as to costs. Each party is to bear their own costs.

DATED at Port Vila this 4th day of February 2025

BY THE COURT


Hon. Oliver A Saksak

Judge

