

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

Civil
Case No. 24/3101 SC/CIVL

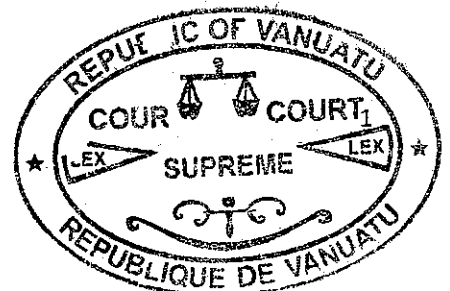
BETWEEN: Claymore Limited
Claimant
AND: Daniel Kalulu Kalsrap
First Defendant
AND: George Taleo
Second Defendant
AND: Republic of Vanuatu
Third Defendant
AND: Patrick Haines representing Family
Shel Kalotiti and Derrick Narsong
Taleo representing Family Kalko Kal
Fourth Defendants

Date of Hearing: 11 March 2026
Before: Justice V.M. Trief
In Attendance: Claimant – Ms V. Muluane, via AVL from Dumbea Courtroom then Registry conf. room
1st & 2nd Defendants – Mr S. Kalsakau, via AVL from Dumbea Courtroom then Registry
conf. room
3rd Defendant – Mr F. Bong, via AVL from Dumbea Courtroom then Registry conf. room
4th Defendants – no appearance (in person)

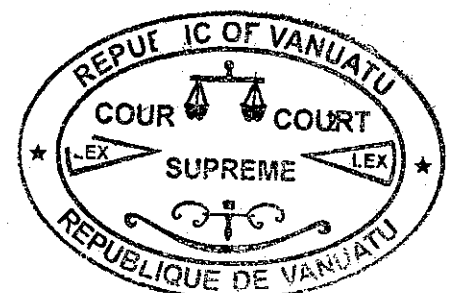
**EX TEMPORE DECISION AS TO THE CLAIMANT'S AMENDED URGENT APPLICATION AND
THE FIRST AND SECOND DEFENDANTS' APPLICATION**

A. Introduction

1. The Claimant Claymore Limited ('Claymore')'s Claim is for a declaration that its lease title no. 12/0844/238 at Honeymoon Beach at Pango on Efate island ('lease 238') is outside



- the disputed custom area of Eleu-Eraukot (EIC 03/92 and LAC 1/2009), and permanent restraining orders against the First Defendant Daniel Kalulu Kalsrap and the Second Defendant George Taleo entering onto lease 238. Mr Kalsrap and Mr Taleo have filed a Defence disputing the Claim, and also a Counter Claim challenging the registration of the 238 lease for fraud or mistake pursuant to s. 100 of the *Land Leases Act* [CAP. 163].
2. In the meantime, interim restraining orders were made in Claymore's favour on 24 December 2024, which orders were varied by Orders dated 17 April 2025 following Mr Taleo's application, which was supported by Mr Kalsrap.
 3. This is the decision in relation to two further applications seeking the setting aside of the restraining orders, variation of the restraining orders and further restraining orders:
 - a) Claimant's Amended Urgent Application to Vary the Restraining Orders of 17.04.25 and for Further Restraining Orders filed on 5 November 2025 ('Claymore's Application'); and
 - b) The First and Second Defendants' Application to Set Aside Orders 8(b)(ii), (iii) and (c) dated 28 December 2024 and to Restrain any Subsequent Dealings filed on 14 November 2025 (the 'Defs' Application').
 4. Claymore filed Undertaking as to Damages on 28 October 2025 and the Sworn statements of: (i) Douglas Reid Patterson on 5 November 2025; (ii) on 18 November 2025; (iii) on 12 December 2025; (iv) 22 December 2025; (v) on 2 February 2026; (vi) Yvon Sahan on 5 November 2025; (vii) Morris Essau on 18 November 2025; and (viii) Lebu Kalterekia on 18 November 2025 in support of its Application.
 5. The First and Second Defendants filed submissions in response on 14 November 2025. Claymore filed submissions in reply on 11 December 2025.
 6. On 14 November 2025, the First and Second Defendants filed an Undertaking as to Damages and the Sworn statements of Mr Kalsrap and Mr Taleo in support of their Application.
 7. Claymore filed submissions in response on 11 December 2025.
 - B. The First and Second Defendants' Application to Set Aside Orders 8(b)(ii), (iii) and (c) dated 28 December 2024 and to Restrain any Subsequent Dealings
 8. During the hearing, Mr Kalsakau formally withdrew para. 1 of the Defs' Application.
 9. I consider the Defs' Application applying the factors which apply to an application for restraining orders or injunction, set out in the Court of Appeal's judgment in *Teaching*



Service Commission v Director General in the Ministry of Education and Training [2024] VUCA 7 at [60] and [64], as follows:

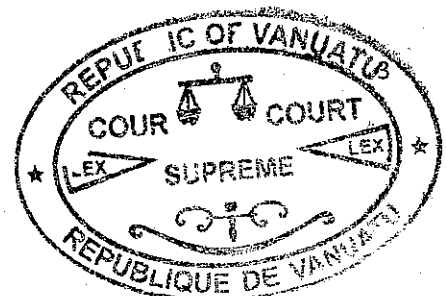
60. Rule 7.5 should not be used by trial courts to assess whether to grant an interlocutory order when the application has been filed at the time or subsequent, to the filing of proceedings. There are good reasons why this is so. A Rule 7.5 application will be before there are any pleadings. It will typically involve an urgent request to stop an action by another. It will typically be sought without serving the other potential party with the relevant documents to the potential litigation. And so, the court will not have the benefit of opposing evidence or submission. These factors all point to the need for caution by the court in granting such an injunction. The standard in R 7.5(3) reflects such a need. The standard an applicant is required to reach for such an interim injunction is therefore properly high. These factors, other than possible urgency, will not apply when there is an interlocutory application in proceedings which are current. The Court will have the benefit of pleadings and a contest on the facts and law.

64. They are in summary:

- (a) The first enquiry is what are the legal or equitable rights in the case before the court and does the injunction relate to those rights in the meantime? The purpose of an injunction is to preserve those rights;
- (b) Is there a serious question to be tried in the litigation? This is the New Zealand test. In Australia the test is perhaps slightly different. In Australia, the test is whether the claimant has made out a prima facie case in the sense that, if the evidence filed at the time of the interlocutory application remains the same at trial will the claimant probably be entitled to the relief sought?
- (c) The balance of convenience test. Here the court must balance the risk of refusing the order and doing a possible injustice to the applicant, against the grant of the order and doing a possible injustice to the respondent. There will be a variety of relevant factors. They are likely to include the attraction of preserving the status quo; the claimant's need to show injury that could not be adequately met by damages; whether there is a viable undertaking as to damages, such that if the injunction is granted whether the respondents may be able to enforce the undertaking if later needed; and
- (d) Overall justice. Here the court might consider whether the applicant comes to court with clean hands. This part will require the judge to make an overall assessment of where justice might lie in granting or refusing the application.

[emphasis added]

10. What are the legal or equitable rights in the case before the Court? The purpose of an injunction or restraining orders is to preserve those rights. Claymore is the registered proprietor of lease 238. On the other hand, the First and Second Defendants assert rights under s. 17(g) of the *Land Leases Act*. However, such rights have not yet been determined. Whether or not they have such a right will be determined after trial in the present proceeding.
11. Accordingly, I decline to grant the orders sought for Claymore to give written notice to the First and Second Defendants before it enters onto its lease 238 land. Granting the orders



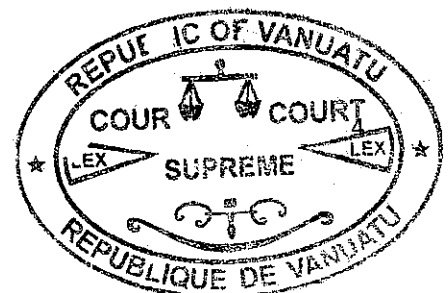
sought by the First Defendants for written notice to be given would not preserve Claymore's rights, it would undermine them.

12. As to serious question to be tried, I previously dealt with this in the Decision as to the Second Defendant's Urgent Application to Vary the Court Orders dated 17 April 2025, *Claymore Ltd v Kalsrap* [2025] VUSC 94 at [12](h), in which I stated as follows:

12. ...

(h) *As to the second enquiry, I consider that there are serious questions to be tried in the litigation including the Defendants' asserted rights pursuant to para. 17(g) of the Land Leases Act and whether permanent restraining orders be granted against the Defendants. It is also foreshadowed in the First Defendant's Defence that a Counter Claim will be filed alleging that the registration of the 238 lease was made or obtained by fraud or mistake contrary to s. 100 of the Land Leases Act;*

13. Next, I consider the balance of convenience. I have dealt with the orders sought in the Defs' Application for Claymore to give the First and Second Defendants written notice that it wishes to enter its own property. Such orders would not be maintaining the *status quo* but altering it.
14. The remaining order sought in the Defs' Application is an order restraining Claymore from developing, clearing, building and dealing with the lease whether by sublease, letting, granting licences, selling, transferring, mortgaging or making any alteration to the land or the ownership of the lease.
15. This is ironic as all the evidence points to the First and Second Defendants undertaking developments on the land. All the bush clearing, tree cutting, building (Mr Kalsakau stated that Mr Kalsrap had recently re-roofed the two toilets on lease 238) and the erection of new fencing has been done by Mr Kalsrap on lease 238 land in connection with his Honeymoon Beach business.
16. Ms Muluane submitted there is no evidence of Claymore undertaking further leasehold dealings with lease 238. However, on Claymore's own evidence, it is putting in for the first time survey pegs to mark the boundaries of lease 238. For the first time, it will be clear on the ground what the boundaries of the leased land are. I consider that with the boundaries clearly marked out on the land, there is a risk of new leasehold dealings with lease 238 along with the attendant risk that the Court's Orders following trial would be undermined.
17. For the foregoing reasons, I make an order restraining Claymore from further or subsequent dealings with lease 238.
18. Accordingly, the Defs' Application is **granted in part**.



C. Claimant's Amended Urgent Application to Vary the Restraining Orders of 17.04.25 and for Further Restraining Orders

19. By its Application, Claymore is seeking:

- a) Variation of the Orders dated 17 April 2025 so that that variation of orders applies only to the Second Defendant; and
- b) The balance of the orders sought are for further restraining orders to maintain the *status quo*. These include orders restraining the First and Second Defendants, their families, agents, assigns, employees and associates from clearing bush and cutting trees on the leased land, from destroying or removing the survey pegs to demarcate the boundary of lease 238, to remove the new fencing erected near survey peg 3 and to restrain any development work until further order of the Court.

20. As to variation of the Orders dated 17 April 2025, I declined to amend those orders so that they apply only to the Second Defendant because as set out in the Decision dated 17 April 2025, the First Defendant on 11 April 2025 filed submissions supporting the application then made by the Second Defendant. In those submissions, the First Defendant joined or adopted the Second Defendant's application. Accordingly, following the granting of the Second Defendant's application, I made Orders which applied to both the First and Second Defendants.

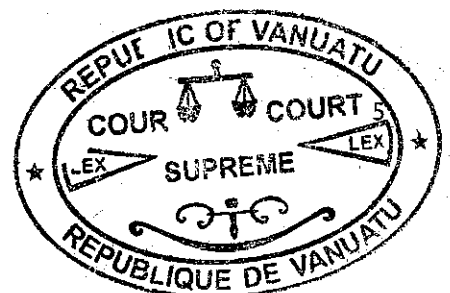
21. I turn now to the balance of Claymore's Application for further restraining orders.

22. I am satisfied on the evidence that the First Defendant has erected new fencing along the boundary of lease 238 which borders the public road, that bush has been cleared and trees cut inside lease 238, that Claymore's first survey peg was removed and destroyed, and that in December 2025, Claymore was denied access altogether from its leased property 238 such that its director Mr Patterson and its CTF surveyors had to cut a 4-metre portion of the new fencing just to gain access onto the lease 238 land.

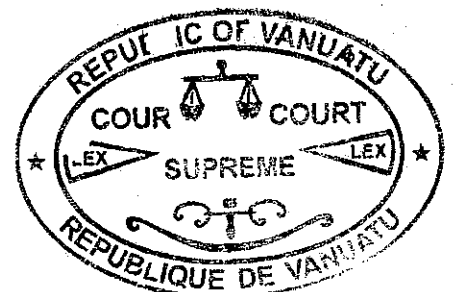
23. The hindering of Claymore's access onto its leased land was in breach of para. 8(b)(ii) of the restraining orders dated 24 December 2024.

24. Indeed, Mr Kalsakau's instructions is that the new fencing erected near Survey Peg 3 [Sworn statement of Douglas Reid Patterson filed on 5 November 2025 at p. 10], in other words, along the boundary of lease 238 which borders the public road up to and joining up with Mr Taleo's cattle fencing, has been erected since or subsequent to the making of the restraining orders.

25. I will therefore order that Claymore is permitted to install a new gate or gates in the new fencing along the boundary of lease 238 which borders the public road, which gate or gates



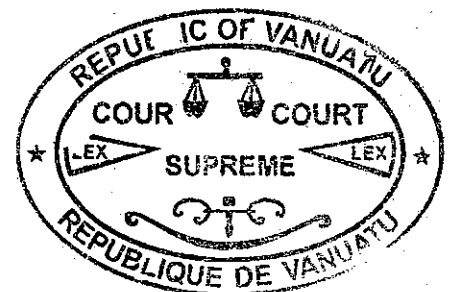
- are to be controlled by Claymore for access in and out of lease 238. It will therefore be obvious to Mr Kalsrap and anyone else observing that if someone has keys or other lawful means to use that gate, then they have been authorised by Claymore to do so and to enter onto the lease 238 land.
26. There will also be an order that the First and Second Defendants are not to interfere with Claymore's access onto lease 238 through that gate.
 27. The effect of the 24 December 2024 restraining orders and the variation of orders made on 17 April 2025 permitted the First and Second Defendants' continued access to a portion of lease 238. In the Second Defendant's case, for gardening and cattle farming. In the First Defendant's case, for continued access to and use of the two toilets located on lease 238, which toilets are used by visitors who are customers of Mr Kalsrap's Honeymoon Beach business.
 28. It is clear from the photographs in Mr Patterson's evidence that there is a grass lawn area located behind the two toilets and towards the public road. It is also clear that there has been clearing of bush not only in that area but also along the boundary of lease 238 which borders the public road. There has also been cutting of trees on lease 238. The bush clearing and felling of trees was such as to create a clear line of sight from the public road through to the toilets and the beach and the sea.
 29. Lease 238 is located on part of the foreshore of Honeymoon Beach. Mr Kalsrap is permitted access to and the use of the two toilets located on lease 238 for his Honeymoon Beach business.
 30. However, facing the two toilets, the rest of the lease 238 land to the right of the two toilets is not permitted for the First Defendant's Honeymoon Beach business. Mr Taleo attached to his sworn statement a map that he drew on Google Maps showing a rough idea of the location of lease 238 in respect to what he says is his custom land and in respect of what Mr Kalsrap says is his custom land [Sworn statement of George Taleo filed on 14 November 2025, Attachment "GT8"]. Mr Kalsakau confirmed that the vast portion of Honeymoon Beach lies outside lease 238; that lease 238 faces onto a minor portion of Honeymoon Beach. Given that the larger part of Honeymoon Beach lies outside lease 238, Mr Kalsrap's occupation and continued use of lease 238 is limited to access to and use of the two toilets on the leased land, but not the rest of the lease 238 land to the right of the two toilets and from that point on, back up to the boundary of lease 238 bordering the public road.
 31. Accordingly, further restraining orders will be made restraining the clearing of bush and cutting of trees to the right of the two toilets on lease 238 and from that point all the way back up to the public road. Further restraining orders will also be made restraining Mr Kalsrap and his assigns from access to and use of the lease 238 land to the right of the



two toilets on lease 238 and from that point all the way back up to the public road for the purposes of his Honeymoon Beach business and for any other purpose, except as authorised by Claymore. Further restraining orders will also be made in respect of the destruction or removal of Claymore's survey pegs. Finally, further restraining orders will be made restraining the building of temporary or permanent structures on the land, new fencing, clearing of the bush or cutting of trees, except as set out above.

32. For the reasons given, Claymore's Application is **granted in part** and further restraining orders are made as follows pending the determination of the Claim and Counter Claim or until further Order of the Court:

- a) The Claimant is hereby **restrained** from registered dealings with the lease title no. 12/0844/238 including selling, transferring or mortgaging the lease title;
- b) The Claimant, its workers, agents, assigns, contractors and associates are hereby **permitted** to install a new gate or gates in the new fencing which has been erected along the boundary of lease 238 which borders the public road, which gate or gates are to be controlled by the Claimant for access in and out of lease title no. 12/0844/238;
- c) The First and Second Defendants, their families, agents, assigns, employees and associates are hereby **restrained** from hindering, interfering or otherwise disturbing the Claimant's installation of its gate or gates as set out in the preceding paragraph, and are **restrained** from hindering, interfering or otherwise disturbing the Claimant's access and/or entry onto lease title no. 12/0844/238 through that gate or gates;
- d) The First Defendant's occupation and continued use of lease 238 is **limited** to access to and use of the two toilets on the leased land title no. 12/0844/238, but **not** the rest of the lease title no. 12/0844/238 land which, facing the two toilets and towards the public road, lies to the right of the two toilets and from that point on, back up to the boundary of lease title no. 12/0844/238 bordering the public road, for the purposes of the First Defendant's Honeymoon Beach business or for any other purpose, unless authorised by the Claimant;
- e) The First Defendant and his families, agents, assigns, employees and associates are hereby **restrained** from access to and use of the lease title no. 12/0844/238 land which, facing the two toilets and towards the public road, lies to the right of the two toilets and from that point on, back up to the boundary of lease title no. 12/0844/238 bordering the public road, for the purposes of the First Defendant's Honeymoon Beach business or for any other purpose, unless authorised by the Claimant;
- f) The First and Second Defendants, their families, agents, assigns, employees and associates are hereby **restrained** from clearing bush or cutting trees in that part of the lease title no. 12/0844/238 land which, facing the two toilets and towards the



public road, lies to the right of the two toilets and from that point all the way back up to the boundary of lease title no. 12/0844/238 bordering the public road;

- g) The First and Second Defendants, their families, agents, assigns, employees and associates are hereby **restrained** from destroying or removing any survey pegs installed to demarcate the boundary of lease title no. 12/0844/238;
- h) The First and Second Defendants, their families, agents, assigns, employees and associates are hereby **restrained** from building temporary or permanent structures, or erecting new or further fencing, on lease title no. 12/0844/238;
- i) That the Sheriff and/or Vanuatu Police Force officer(s) deliver a copy of these Orders to, and file proof of service, **by 4pm on 24 March 2026**:

- (i) The Director of Lands, Port Vila, Vanuatu to place in the lease file of lease title no. 12/0844/238;

- (ii) All known immediate families, agents, assigns, employees and associates of the Defendants not limited to:

1. Daniel Kalsrap;
2. Roger Kalulu;
3. McGlen Kalulu;
4. Danken Kalulu;
5. Kalulu Kalsrap Family;
6. George Taleo;
7. Reuben K. Taleo; and
8. Nelly K. Taleo.

33. Given the result, the Claimant, and the First and Second Defendants are to bear their own costs of the Claimant's Amended Urgent Application filed on 5 November 2025 and the First and Second Defendant's Application filed on 14 November 2025.

**DATED at Luganville this 11th day of March, 2026
BY THE COURT**


Justice Viran Molisa Trief

