

**BETWEEN:** Erick Enock Tovor representing Family  
Tovor  
Claimant

**AND:** Republic of Vanuatu  
First Defendant

**AND:** Chanel Warkon, Sei Yercet, Charlot  
Rorokos, Petro Rite, Manuel Warcon &  
Paulicap Lal  
Second Defendants

*Date of Trial:* 11 March 2026  
*Before:* Justice V.M. Trief  
*In Attendance:* Claimant – Mr R. Willie  
First Defendant – Mr L. Huri, Ms F. Sewen & Ms M. Meltebury, via AVL from Port  
Vila Registry  
Second Defendants – Mr J. Vohor  
*Date of Decision:* 16 March 2026

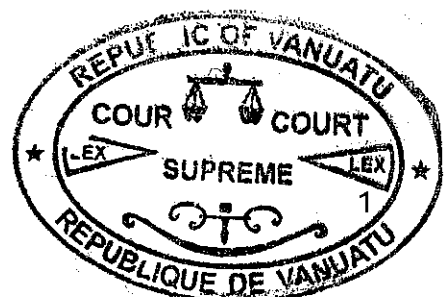
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**JUDGMENT**

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A. Introduction

1. The Claimant Erick Enock Tovor representing Family Tovor filed the Amended Claim seeking an order cancelling the First Defendant the State's rectification of the registered lessor of lease title no. 04/0492/002 from the Claimant to the Second Defendants Chanel Warkon, Sei Yercet, Charlot Rorokos, Petro Rite, Manuel Warcon and Paulicap Lal. It is alleged that that rectification of lessors was obtained by fraud or mistake pursuant to s. 100 of the *Land Leases Act* [CAP. 163] (the 'Act').



2. Despite several Orders giving them the opportunity to do so, the Second Defendants have not filed any evidence. Nor have they paid trial fees. Their counsel Mr Vohor attended the trial but did not cross-examine any witnesses.

3. This is the judgment following trial.

B. Background

4. On 4 November 1997, the Supenatavui Tano Council of Chiefs of Santo island declared Family Tovor as the custom owners of Votalit custom land.

5. On 15 June 2005, the Supenatavui Tano Island Land Tribunal endorsed the decision that that was made in 1997.

6. On 9 July 2009, agricultural lease title no. 04/0492/002 between Enock Tovor for Family Tovor (lessor) and Rolland Tovor (lessee) for 75 years commencing on 30 June 2008 over an area of 111ha 43a 94ca ('lease 002') was registered.

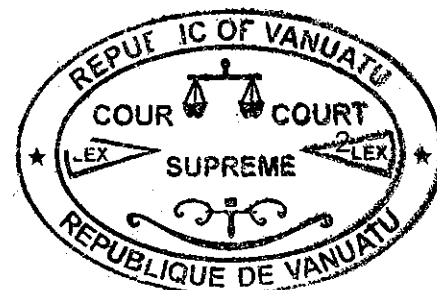
7. On 3 November 2010, the Director of Lands rectified the registered lessor of lease 002 by removing the Claimant's name and replacing it with the Second Defendants' names.

C. The Pleadings

8. By the Amended Claim filed on 24 February 2025, the Claimant is seeking cancellation of the registration of the change in lease 002 registered lessor from his name to the Second Defendants; VT3,000,000 damages against the Second Defendants for logging activities on the leased land from 2009-2022; a claim for vicarious liability against the State for the actions of its Department of Lands officers in rectifying the lease 002 lessor; and VT15,000,000 general damages against both Defendants for the distress suffered since the registration of the lease 002 lessor rectification.

9. The Amended Claim is disputed: First Defendant's Defence to the Amended Claim filed on 22 January 2026 and Second Defendant's Amended Defence to the Amended Claim filed on 20 March 2025.

10. The State's case is that the Director of Lands registered the rectification of the lease 002 lessor in good faith and on the information supplied pursuant to ss 9 and 24 of the Act. It alleges that on 16 August 2017, the Iarotkar Joint Nakamal declared the Claimant as the custom owner of Votalit custom land, and that he was issued a Certificate of Recorded Interest in Land (colloquially known as a 'green certificate') by the Custom Land Management Office ('CLMO') on 21 September 2017. Further, that

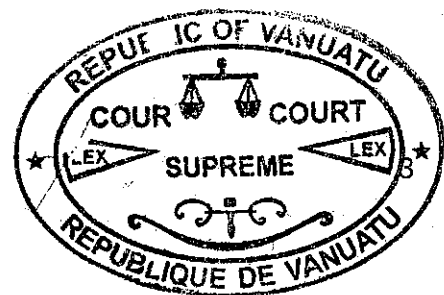


on 6 May 2009, the N'Kep North East Santo Area Land tribunal declared the Second Defendants as the custom owners of Lohenioc custom land part title 699, following which the Director of Lands rectified the registered lessor of lease 002 from the Claimant to the Second Defendants. On 26 May 2009, an appeal was lodged against that tribunal decision to the Island Land Tribunal. It alleges that at the time that the registered lessor of lease 002 was rectified, that it was not aware that an appeal had been lodged against the tribunal decision dated 6 May 2009. It denies that the Claimant has suffered loss and damage as a result of the State's actions, and that no private law cause of action sounding in damages has been pleaded in the Amended Claim. Finally, it alleges that this Court does not have jurisdiction to determine the issue of the boundaries of custom land.

11. The Second Defendants do not know and do not admit that Votalit custom land exists. They allege that the rectification of lease 002 lessor was based on the 6 May 2009 decision of the N'Kep North East Santo Land Tribunal declaring them as the custom owners of Lohenioc custom land as part of pre-Independence title 699. They admit that they conducted logging activities on lease 002 in 2016, 2019 and 2022, but deny that they are liable for damages.
12. The issues between the parties include the following:
  - i. Whether or not the registration of the change in lease 002 registered lessor from the Claimant to the Second Defendants was obtained or made by fraud or mistake?
  - ii. Whether or not the State is vicariously liable for the actions of its Department of Lands officers?
  - iii. Whether or not the Claimant is entitled to damages against the Second Defendants with respect to logging activities on the lease 002 land?
  - iv. Whether or not the Claimant is entitled to general damages against the Defendants?

D. Evidence

13. Mr Tovor relied on his Sworn statement filed on 2 July 2024 [**Exhibit C1**].
14. The State relied on the Sworn statements of Damien Denson Boe, the Acting National Coordinator of the CLMO, filed on 30 October 2005 [**Exhibit D1**] and 22 January 2026 [**Exhibit D2**], and Gordon Willie, the Director of Lands, Survey and Registry filed on 11 November 2025 [**Exhibit D3**] and 22 January 2026 [**Exhibit D4**].



15. The Second Defendants have not filed any evidence.

16. The witnesses were cross-examined.

E. The Law

17. Section 9 of the Act provides as follows:

9. (1) *The Director or any other staff of the Department of Land are not liable for anything done or omitted to be done in good faith in exercising his or her functions or powers under this Act.*
- (2) *Subsection (1) does not apply, if it is proven that the Director or any of his officers acted in bad faith or in dereliction of their duties or exercise of their powers under this Act.*

18. Section 24 of the Act provides as follows:

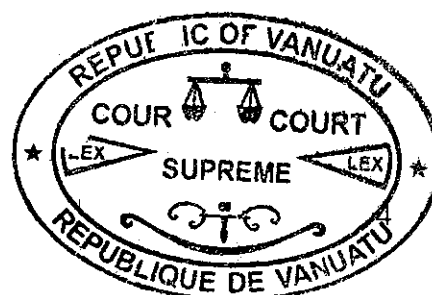
24. *Where by this Act any person is exonerated from enquiring as to any matter of fact relating to a registered interest, or to a power of dealing therewith, or is protected from the effect of notice of any such matter or fact, then, in registering any instrument relating to that interest, the Director shall not be concerned to make any enquiry or search in relation to that interest which such person need not have made nor shall the Director be affected by any notice with which such person need not have been affected.*

19. Section 100 of the Act provides as follows:

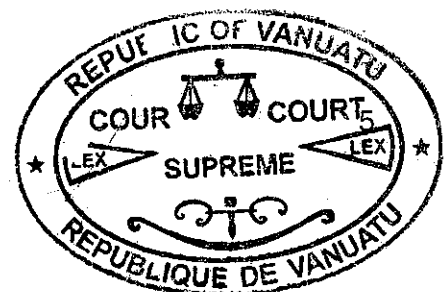
100. (1) *Subject to subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is so empowered by this Act or where it is satisfied that any registration has been obtained, made or omitted by fraud or mistake.*
- (2) *The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the interest for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.*

F. Issue 1: Whether or not the registration of the change in lease 002 registered lessor from the Claimant to the Second Defendants was obtained or made by fraud or mistake?

20. The Claimant's case is that Family Tovor was the declared custom owner of Votalit custom land pursuant to the 15 June 2005 decision of the Supenatavui Tano Island Land Tribunal, endorsing the 4 November 1997 decision of the Supenatavui Tano Council of Chiefs.

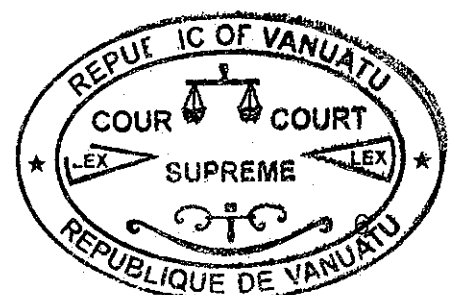


21. It is accepted by both Defendants that the registration on 3 November 2010 of the change in lease 002 registered lessor from the Claimant to the Second Defendants was based on the 6 May 2009 decision of the N'Kep North East Santo Land Tribunal declaring the Second Defendants the custom owners of Lohenioc custom land as part of pre-Independence title 699 [**Exhibit D3**, Attachments "**GW2**"-"**GW4**"].
22. As at 3 November 2010, the Claimant had only the 15 June 2005 endorsement decision of the Supenatavui Tano Island Land Tribunal. Undoubtedly, the endorsement of the Chiefs' decision was made because of the Court of Appeal judgment in *Valele Family v Touru* [2002] VUCA 3 in which it was held that a council of chiefs could not make a binding decision regarding ownership of custom land and that such authority or jurisdiction lay with the Island Court and, by extension, the customary land tribunals: *Wells v Nalwang* [2024] VUCA 48 at [6].
23. On the other hand, the Second Defendants were the declared custom owners of Lohenioc custom land part title 699 by way of a 6 May 2009 decision of the N'Kep North East Santo Land Tribunal. A customary land tribunal has jurisdiction to make a binding decision regarding ownership of custom land: *Wells v Nalwang* [2024] VUCA 48 at [6]; *Valele Family v Touru* [2002] VUCA 3.
24. However, Mr Willie submitted that the Second Defendants do not have a final decision as to the custom ownership of Lohenioc custom land because on 26 May 2009, an appeal was lodged with the Island Land Tribunal against the 6 May 2009 tribunal decision in favour of the Second Defendants. He submitted that the CLMO letters dated 25 January 2017 and 30 August 2017 [**Exhibit D2**, Attachments "**DDB3**" and "**DDB4**"] are proof of the State's knowledge of the appeal against the 6 May 2009 decision.
25. In response, the State's case is that on 3 November 2010 when the registered lessor of lease 002 was rectified, that it was not aware that an appeal had been lodged against the tribunal decision dated 6 May 2009. Mr Willie's evidence is that at the time that the lease 002 lessor was rectified, that the Department of Lands was not aware that an appeal had been lodged against the 6 May 2009 tribunal decision [**Exhibit D4** at [2]].
26. Significantly, there is no evidence contradicting the State's evidence that on 3 November 2020, when the Director of Lands registered the rectification of the lease 002 lessor from the Claimant to the Second Defendants, that he was aware that the an appeal had been lodged against the 6 May 2009 tribunal decision. Mr Willie confirmed in cross-examination that he only became aware of that appeal recently when the State's sworn statements were drawn and being finalised for filing. The CLMO letters dated 25 January 2017 and 30 August 2017 do not prove that the



Director of Lands had any such knowledge on 3 November 2010. Accordingly, I find that on 3 November 2020, when the Director of Lands registered the rectification of the lease 002 lessor from the Claimant to the Second Defendants, that he and the State were not aware that the an appeal had been lodged against the 6 May 2009 tribunal decision.

27. Mr Willie submitted that the Director of Lands' lack of knowledge until late 2025 or early 2026 when the State's sworn statements were finalised proves that the 3 November 2010 rectification was made by mistake. I am unable to agree. The Director of Lands registered the rectification on 3 November 2010 on the information supplied to him and as I have found, he did not at that point in time know about an appeal against the 6 May 2009 tribunal decision. I reject counsel's submission.
28. The State's evidence includes that on 16 August 2017, the Iarotkar Joint Nakamal declared the Claimant as the custom owner of Votalit custom land, and that on 21 September 2017, he was issued a green certificate related to that interest. Both of these occurred after the 3 November 2010 rectification of the lease 002 lessor; therefore do not assist the Claimant to prove his case that that rectification was obtained or made by fraud or mistake.
29. For the foregoing reasons, the Claimant has failed to prove on the balance of probabilities that the registration on 3 November 2010 of the change in lease 002 registered lessor from the Claimant to the Second Defendants was obtained or made by fraud or mistake. My answer to **Issue 1** is, "No."
- G. **Issue 2: Whether or not the State is vicariously liable for the actions of its Department of Lands officers?**
30. Given that the Claimant has not proved that the rectification of the 002 lease lessor was obtained or made by mistake or fraud, his claim for vicarious liability against the State must fail.
31. Even if he had succeeded to prove that aspect of the Amended Claim, I consider that s. 100 of the Act does not give right to a cause of action sounding in damages for which the State may be held vicariously liable. Unlike causes of action in the law of tort where it is alleged that a person has committed a tort and that his employer or principal be held vicariously liable for the resultant damages, I consider that the statutory cause of action prescribed in s. 100 of the Act does not give rise to any cause of action to seek damages against the Director of Lands or the officers of the Department of Lands, and for the State to be held vicariously liable in respect of their actions. My answer to **Issue 2** is, "No."



H. Issue 3: Whether or not the Claimant is entitled to damages against the Second Defendants with respect to logging activities on the lease 002 land?

32. The Second Defendants admit that they conducted logging activities on lease 002 in 2016, 2019 and 2022. However, there is no evidence detailing what those logging activities nor of any loss or damage caused to the Claimant resulting from the Second Defendants' logging activities. Accordingly, I find that the Claimant has failed to prove this aspect of the Claim. My answer to **Issue 3** is, "No."

I. Issue 4: Whether or not the Claimant is entitled to general damages against the Defendants?

33. Given that the Claimant has not proved that the rectification of the 002 lease lessor was obtained or made by mistake or fraud, his claim for general damages against the Defendants must fail.

34. Even if he had succeeded to prove that aspect of the Amended Claim, I agree with the First Defendant's submission that no cause of action sounding in damages has been pleaded in the Claim. This aspect of the Amended Claim was doomed to fail. My answer to **Issue 4** is, "No."

J. Result and Decision

35. The Amended Claim is **dismissed**.

36. Costs must follow the event. Mr Huri submitted that VT200,000 costs were reasonable. Accordingly, the Claimant is to pay to the First Defendant costs fixed in the sum of VT200,000 **by 4pm on 16 April 2026**.

37. The Second Defendants are to bear their own costs.

**DATED at Luganville this 16<sup>th</sup> day of March, 2026  
BY THE COURT**

*VM Trief*

Justice Viran Molisa Trief

