

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

Civil
Case No. 25/2600 SC/CIVL

BETWEEN: Brian Lenga

Claimant

AND: Isaac Sar, Sam Sar & Jeffrey Sar

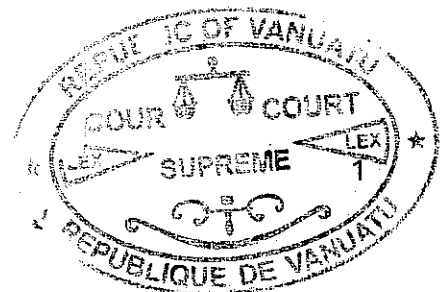
Defendants

Date of Hearing: 16 March 2026
Before: Justice V.M. Trief
In Attendance: Claimant – Mr L. Tevi
Defendants – no appearance (in person)
Date of Decision: 17 March 2026

JUDGMENT

A. Introduction

1. The Claimant Brian Lenga filed the Claim seeking restraining orders against the Defendants Isaac Sar, Sam Sar & Jeffrey Sar to prevent them damaging his property on a parcel of land that he occupies pursuant to an Agreement for Lease of Land. Also sought are orders restraining the Defendants from entering the Claimant's parcel of land and that they remove all their properties from the Claimant's parcel of land.
2. On 22 September 2025 and 20 October 2025, Mr Lenga filed proof of service of the Claim. The Defendants have not filed a defence.
3. Mr Lenga filed his Sworn statement in support of the Claim on 11 November 2025.
4. Mr Lenga served the last Orders dated 15 December 2025 giving notice of either a conference or hearing of formal proof of the Claim on 16 March 2026, whichever was required. On 2 February 2026, he filed proof of service of those Orders.



5. The Defendants did not attend Court on 16 March 2026. They have not filed a defence. The matter proceeded to hearing of formal proof of the Claim.

6. I now determine the Claim.

B. The Pleadings

7. Mr Lenga alleges in the Claim filed on 1 September 2025 that on 30 May 1991, that he and the Defendants' father (deceased) entered into an Agreement for Lease of Land for 40 hectares of land. He then entered onto the land and worked and developed it. He alleges that in 2025, after the Defendants' father died, that they demanded that he pay a lease premium to them but that he refused because there is not yet any custom ownership declaration for the land. He also alleges that in 2025, the Defendants entered onto Mr Lenga's parcel of land without Mr Lenga's consent and authorization, and planted kava, coconut trees and other agricultural produce contrary to the Agreement to Lease.

8. The issues for the Court's determination include the following:

a) Whether or not Mr Lenga is entitled to orders evicting the Defendants and restraining them from entering his parcel of land?

b) Whether or not Mr Lenga is entitled to orders restraining the Defendants from damaging his property?

C. Issue 1: Whether or not the Claimant is entitled to orders evicting the Defendants and restraining them from entering his parcel of land?

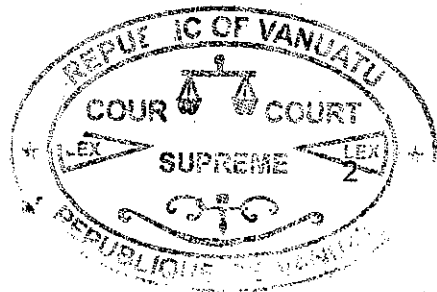
9. Mr Lenga is seeking orders restraining the Defendants from entering the Claimant's parcel of land and that they remove all their properties from the Claimant's parcel of land.

10. The Court of Appeal held as follows in *Meltelili v Malturheim* [2025] VUCA 44 at [8]-[12]:

8. To establish a cause of action in trespass, the appellant must be in actual possession of the land. It is well settled that actual possession consists of two elements: the intention to possess the land and the exercise of control over it to the exclusion of other persons.^[1]

9. In *JA Pye (Oxford) Ltd v Graham*, the House of Lords approved the following statement of law:

[41] In *Powell's case* (1977) 38 P&CR 452 at 470-471 Slade J said:



(3) Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed ... Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.

10. As this Court said in *Vuroese Family v Ave* [2010] VUCA 22 that:

As a matter of law it is not necessary for a plaintiff in a trespass case to prove actual ownership of the land. An action in trespass protects a plaintiff's immediate right to possession. A plaintiff with only a leasehold interest in land, or a licence to occupy land, can bring an action in trespass against someone coming onto the land and using it without his authority. The relevant question is not whether the plaintiff is the owner of the land, but whether the plaintiff's right to possession of the land is superior to that of the defendant.

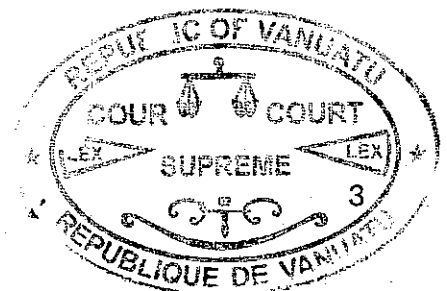
11. What the appellants had to establish was the right to exclusive possession of the Lemel land, which could have been established in various ways; by a declaration of custom ownership, a leasehold title, or a licence to occupy the land. There is no evidence of exclusive possession in any of those ways. Rather, as we have said, the appellant's asserted possessory right is that the family started living on the land before the respondents. That is not an exclusive or a superior right to possession of the land. Both the appellant and the respondents are living and working on the land, and there was no evidence demonstrating that either party had an exclusive or superior right to possession of the land.

12. As the pleadings and evidence did not establish that the appellant had the exclusive right to possession of the Lemel/Loane land, there is no reasonably arguable cause of action for trespass. Therefore, the primary judge did not err in striking out the claim.

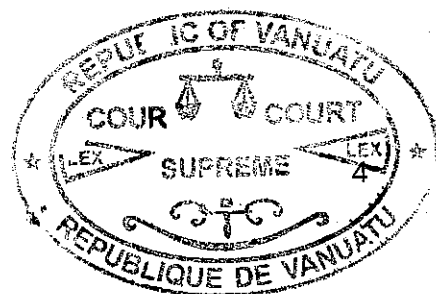
[emphasis added]

11. Accordingly, to establish a cause of action in trespass, Mr Lenga must be in actual possession of the land. That is, that he has the intention to possess the land and the exercise of control over it to the exclusion of other persons: *Meltelli v Malturheim* at [8] and [9].

12. As to the latter, the relevant question is whether Mr Lenga's right to possession of the land is an exclusive or superior right to possession of the land: *Vuroese Family v Ave* and *Meltelli v Malturheim* at [10]-[12].



13. I will deal first with whether or not Mr Lenga has a right to exclusive possession of the land and then with whether or not he has the intention to possess the land.
14. As the Court of Appeal held in *Meltelili v Malturheim* at [11], a claimant can establish his or her right to exclusive possession of the land by a declaration of custom ownership, a leasehold title or a licence to occupy the land.
15. Mr Lenga deposed that on 30 May 1991, he and Roman Sar (the Defendants' father) entered into an Agreement for Lease of Land of 40 hectares at Saraura custom land at Stone Hill/Fanafo area on Santo island ('Agreement for Lease') [Attachment "BL1"]. He also deposed that that in 2024, he received threats from the Defendants that he should pay a lease premium for the land that he occupies but that he refused because no custom ownership declaration has been made yet. He stated that in 2024, he applied for a negotiator's certificate to begin the process of obtaining a lease with the Land Management and Planning Committee ('LMPC') and the Custom Land Management Office ('CLMO') [Attachment "BL3"]. Mr Lenga's evidence has not been contradicted. I accept it.
16. By Mr Lenga's own evidence, there is not yet any declaration of custom ownership. He is party to the Agreement for Lease but that is simply an agreement to lease; it is not a registered leasehold title. I find that he does not have a leasehold title in respect of the land. Mr Lenga also does not have a licence to occupy the land granted by a custom owner or a registered proprietor of the lease.
17. Mr Lenga's asserted possessory right is effectively that he started living on and occupying the land before the Defendants.
18. However, as the Court of Appeal stated in *Meltelili v Malturheim* at [11], that is not an exclusive or superior right to possession of the land. An owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time: *Powell's case*, cited in *Meltelili v Malturheim* at [9].
19. Accordingly, I find that Mr Lenga has not established that he has an exclusive or superior right than the Defendants to possession of the land.
20. I turn now to whether or not Mr Lenga has the intention to possess the land. Mr Tevi submitted that Mr Lenga has proved his intention to possess the land because he entered the Agreement to Lease. I am not certain that Mr Tevi is correct in that submission but I do not have to determine that because I have already found that Mr Lenga does not have the right to exclusive possession of the land.



21. For the foregoing reasons, I find that Mr Lenga has not established actual possession of the land hence he has not established a cause of action in trespass.
 22. Accordingly, I find that Mr Lenga is not entitled to orders evicting the Defendants and restraining them from entering the land that he asserted to be his parcel of land. My answer to **Issue 1** is, "No."
- D. Issue 2: Whether or not the Claimant is entitled to orders restraining the Defendants from damaging his property?
23. Mr Lenga deposed that his property on the subject land includes cattle on the land, cattle fencing, 2 houses on the land that he and his family live in when they are not at their properties in Luganville, gardens and kava plantations. He stated that after he refused in 2024 to pay a lease premium to the Defendants, that they entered onto his land, damaged his property and plants and made gardens for themselves. He said that the damage was done usually in his absence, but he believes that the Defendants did it because they want him to pay a lease premium and because they told him that they intend to occupy parts of the land covered by the Agreement to Lease.
 24. This evidence is not contradicted. I accept it.
 25. Accordingly, I find that Mr Lenga occupies part of the land the subject of the Agreement to Lease (Saraura custom land at Stone Hill/Fanafo area on Santo island) and that he has property on the land including cattle, cattle fencing, 2 houses on the land that he and his family live in when they are not at their house in Luganville, gardens and kava plantations.
 26. Mr Tevi submitted that Mr Lenga occupies only 4 hectares out of the 40 hectares referred to in the Agreement for Lease. However, there is no evidence to that effect. Mr Lenga's evidence covered only what specific property he has on the land. He has not said anything about the size of land area on which his property is situated. I reject this submission.
 27. I also find that the Defendants have damaged Mr Lenga's property on the subject land including his plants and gardens.
 28. For the reasons given, I find that Mr Lenga is entitled to orders restraining the Defendants from damaging his property including houses, cattle, cattle fencing, gardens and kava plantations situated on part of the land the subject of the Agreement to Lease dated 30 May 1991 between Mr Lenga and Mr Roman Sar in respect of Saraura custom land at Stone Hill/Fanafo area on Santo island.

E. Result and Decision

29. Judgment is **entered** on the Claim in part and it is **ordered** as follows:

- a) The Defendants are **restrained** from damaging the Claimant's property including houses, cattle, cattle fencing, gardens and kava plantations situated on part of the land the subject of the Agreement to Lease dated 30 May 1991 between him and Mr Roman Sar in respect of Saraura custom land at Stone Hill/Fanafo area on Santo island.

30. Costs are to lie where they fall.

**DATED at Luganville this 17th day of March, 2026
BY THE COURT**

VM Trief

Justice Viran Molisa Trief

