

**IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU**
(Civil Appellate Jurisdiction)

Civil Appeal
Case No. 25/1914 COA/CIVA
[2025] VUCA 28

BETWEEN: FAMILY IOLU NOANALAM
Appellant

AND: Kiel Wilson and JEFFREY MOSES
Respondent

Date of Hearing: 5th August 2025

Coram: *Hon. Chief Justice V Lunabek*
Hon. Justice Mark O'Regan
Hon. Justice Oliver A Saksak
Hon. Justice Anthony Besanko
Hon. Justice Viran Molisa Trief
Hon. Justice M Mackenzie

Counsel: *Mr Leon Malantugun for the appellant*
Mr Daniel Yawha for the respondents

Date of Judgment: 14th August 2025

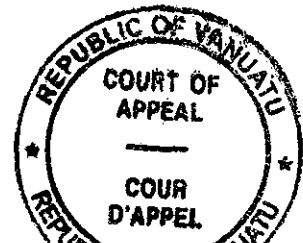
JUDGMENT OF THE COURT

Introduction

1. This appeal is against the decision of the primary Judge in the Supreme Court dated 20 June 2025. The Judge decided the claim of the claimants (respondents) was successful and ordered that Iolu Tray (defendant) vacate the properties in Leasehold Titles No. 14/2234/059 and 14/2234/061 and to deliver up vacant possession to the claimants.

Grounds of Appeal

2. There were two grounds of the appeal. First the appellant asserted that the primary Judge had failed to consider the materials presented at trial such as:
 - a) The land known as Nemruerne is still under dispute with a pending appeal before the Supreme Court;
 - b) The named respondents were and are not parties in the proceedings in the Tanna Island Court;
 - c) The named respondents have no declaration from a competent Court, no Certificate of registered negotiator or a certificate of registered interest in relation to the disputed land;
 - d) That sections 6 and 8 of the Land Reform Act [Cap 123] were not complied with in circumstances where ownership of land is still in dispute;



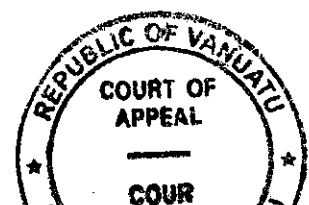
- e) That Leases 059 and 061 were not registered, and
 - f) That on 25th April 2012 the Tanna Island Court issued declarations and orders declaring Family Iolu Naoanalam as one of the five (5) custom land-owners of the disputed land.
3. Secondly, that the appellant was prejudiced by the Court's failure in not taking the facts as stated in ground 1 into account.

Background

4. By way of background, the respondents are proprietors of Head Lease No. 14/2234/019. In 2019 the respondents subdivided the Head Lease creating two Lease titles No. 14/2234/059 and 14/2234/061. These were allotted to Iolu Tray as he was in occupation and asserted ownership over the land. But the allocation of the two leases to the appellant was made pursuant to an oral agreement between the parties that upon possession of the two leases, Iolu Tray would pay 10% of the lessors benefit and annual rents of VT 4,000 for each of the leases.
5. The particulars of their agreement were that:
- a) For Lease 059 the purchase price was VT 2,500,000.
 - b) For Lease 061 the purchase price was VT 1,500,000.
 - c) The purchase prices were waived but the defendant was to pay 10% of lessors benefit for both leases at VT 250,000 for Lease 059 and VT 150,000 for Lease 061.
 - d) The respective sums were to be paid by the defendants to the claimant's office upon the defendant taking possessions.
 - e) Upon proof of receipts of lessors benefits, the claimants would prepare and execute the transfers of the leases to the defendant, and to have the leases duly registered.
 - f) The defendant would continue to pay annual land rents at VT 4,000 for each lease.
6. Iolu Tray failed to pay the respective sums including the annual rents, resulting in the respondents filing their claim on 19 June 2024, claiming an eviction order, mesne profits, interest and costs. The parties named in the Supreme Court claim are Kiel Wilson and Jeffrey Moses as the claimants, and Iolu Tray as the defendant.

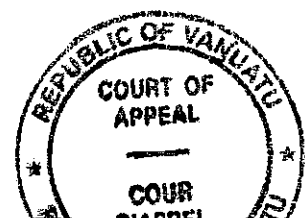
The decision

7. The primary judge issued a judgment on 20th June 2025. He recorded the background by way of introduction, paragraphs 1-3. He recorded the evidence, paragraphs 4-9. He considered the submissions made by Counsel, paragraphs 10-12. He discussed the defence and the issues raised, paragraphs 13-22. And he recorded his decision in favour of the claimant and ordering eviction against the defendant and costs, paragraphs 23-24.



Discussion

8. First in relation to the customary ownership of the land within Leases 059 and 061, the primary Judge recorded in paragraph 1 of the judgment that customary ownership of the land still under dispute *"is not an issue in this proceeding."* As such it could not be ground of appeal of the appellant. The Judge made this finding based on the evidence of Jeffrey Moses recorded in paragraph 5 of the judgment.
9. Secondly, in relation to the appellant's submission that section 6 and 8 of the Land Reform Act [CAP. 123] were not complied with in circumstances where ownership of land is still in dispute. Mr Yawha objected to this submission on the basis it was never pleaded in the defence of the defendant in the Court below or raised in submissions for consideration by the primary Judge. We accept Mr Yawha's objection that the appellant should not be permitted to raise these issues for the first time on the appeal.
10. Thirdly, that Leases 059 and 061 were not registered. Mr Yawha's objections concerned this issue as well. Again it is obvious the defendant's defence did not plead this as an issue, therefore it was not open to the defendant to raise it as an appeal ground in this Court.
11. Fifthly that on 25th April 2012 the Tanna Island Court issued declarations declaring Family lolu Naonalam as one of the five custom land owners of the disputed land. This is asserted in paragraph 5 of the defendant's defence.
12. Despite that assertion, the Judge correctly recorded the legal position in paragraphs 19 and 20 of the judgment that as there was no challenge to the leases by the defendant, the claimants had indefeasible title pursuant to section 15 of the Land Leases Act which cannot be defeated, except in accordance with the provisions of the Act.
13. In relation to all these factors under ground 1 of the appellant's appeal, we find no errors demonstrated by the appellant against the Judge's judgment.
14. Finally in relation to the prejudice issue in ground 2, we note first that in Land Case No. 1 of 2000 Family lolu is named as Land Claimant No. 2 (See "*Annexure IT2*"). On page 3 of the Judgment that the Court traced the history of Family lolu and found that Kiel Wilson, one of the two claimants is the direct descendant of lolu Rima, who is declared one of the land owners of Lenapus land within Louinio. The defendant, lolu Tray is not mentioned in the history of lolu.
15. In Land Appeal Case No. 2 of 2012 Family lolu is named as the Third Respondent. The appeal was dismissed leaving the five families, including Family lolu declared by the Island Court in 2000 as the custom land owners of the disputed land, until such time as the decisions are overturned on an appeal. From this scenario, Family lolu is Kiel Wilson as their representative.
16. On the Lease documents relating to 059 and 061 Kiel Wilson is recorded as lessor and the lessees are himself and Jeffrey Moses. That accords with the custom land ownership declaration of the Tanna Island Court in Land Case No. 1 of 2000 which remains a valid decision to date.
17. That being the position, it is the respondents who are prejudiced more than the appellant. The defendant lolu Tray was sued as an individual, not as Family lolu Naonalam which now has been named as the appellant. This appeal is therefore misconceived.



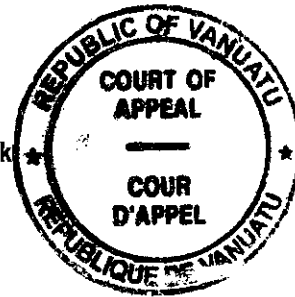
Decision

18. No errors have been demonstrated in the judgment of the primary Judge. The appeal is dismissed.
19. The appellant will pay the respondents' cost of the appeal which we fix at VT 75,000, to be paid within 28 days.

Dated at Port Vila this 14th day of August 2025

BY THE COURT

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Hon. Chief Justice, Vincent Lunabek



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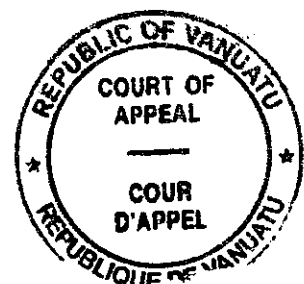
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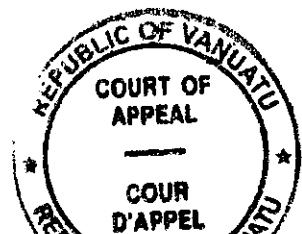
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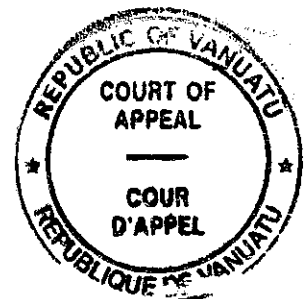
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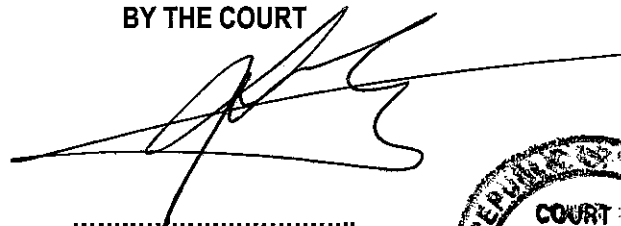
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Hon. Chief Justice, Vincent Lunabek

