

BETWEEN: URBANO MELTELILI & FAMILY
Appellant

AND: PITA MALTURNEIM, VERTINA MALTURNEIM,
ERBERT MALTURNEIM, LAMBERT
MALTURNEIM, JOSEPH ASAOL, GUSTINE
MALTURNEIM, ROMAIN MALTURNEIM
Respondent

Date of Hearing: 6 November 2025

Coram: Hon. Justice Ronald Young
Hon. Justice Richard White
Hon. Justice Oliver Saksak
Hon. Justice Dudley Aru
Hon. Justice Viran Molisa Trief
Hon. Justice Edwin Goldsbrough
Hon. Justice Maree MacKenzie

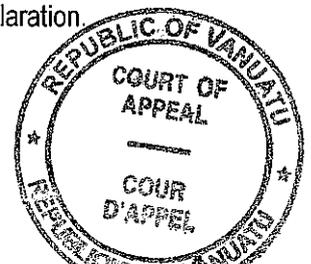
Counsel: Lent Tevi for the Appellant
Anna Sarisets for the Respondents

Date of Judgment: 14 November 2025

JUDGMENT OF THE COURT

Introduction

1. The appellant family has been living, working and developing the Lemel/Loane custom land (*"the land"*) for 4 generations. So, when the respondents also started living on the land and developing it, the appellant filed a claim for trespass and eviction. Underpinning the claim is the appellant's contention they have a lawful right of occupation because they settled on the land first.
2. The respondents, on the other hand, contend they have been living on the land for 11 generations, and that the appellant is not the declared custom owner. Thus, they deny any trespass.
3. Both the appellant and respondents assert ownership of the land. The appellant acknowledged there has not been a declaration of custom ownership but confirmed to us that there is a process underway under the Custom Land Management Act No. 33 of 2103 for such a declaration.



4. The respondents applied to strike out the claim. On 27 August 2025 the claim was struck out: *Maltermeim v Urbano Meltelili and Family* [2025] VUSC 268. In doing so, the primary judge rejected the contention that the appellant had lawful occupation rights because the family had lived on the land the longest.
5. The appellant appeals the decision to strike out the claim, contending there is an arguable cause of action.

Approach to a strike out application

6. As this Court said in *Hocten v Wang* [2021] VUCA 53:

"11. There is no jurisdiction to strike out a Claim in the Civil Procedure Rules, apart from a narrow provision in rule 9.10. However, pursuant to s 28(1)(b) and s 65(1) of the Judicial Services and Courts Act [Cap 270], the Supreme Court has jurisdiction to administer justice in Vanuatu, and such inherent powers as are necessary to carry out its functions. Rules 1.2 and 1.7 of the Civil Procedure Rules give the Supreme Court wide powers to make such directions as are necessary to ensure that matters are determined in accordance with natural justice. The jurisdiction to strike out is essential and must exist to enable the Supreme Court to carry out its business efficiently, so that hopeless or vexatious claims, causing unreasonable costs, do not prevent the Court from hearing proper claims. Such jurisdiction was recognised by this Court in Noel v Champagne Beach Working Committee [2006] VUCA 18.

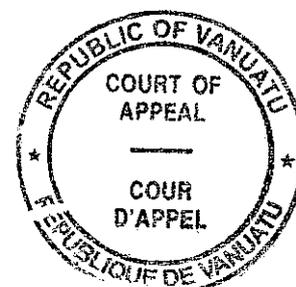
12. The basis for striking out a proceeding is recognised in jurisdictions throughout the Pacific; see the New Zealand High Court Rules, r15.1, and McNeely v Vaai [2019 WSCA 12]. A pleading will be struck out:

- a) if there is no reasonably arguable cause of action;*
- b) the claim is frivolous or vexatious;*
- c) it is otherwise an abuse of the process of the court.*

13. The jurisdiction should be exercised sparingly, and only in clear cases where the Court is satisfied that it has both the material and the assistance from the parties required to reach a definite conclusion. A claim should only be struck out when despite this material and assistance, and the chance to amend the pleadings to reflect that material, it cannot possibly succeed."

Is there a reasonably arguable cause of action?

7. The appellant contended there is a reasonably arguable cause of action because they started living on the land before the respondents, and so are the lawful occupiers. However, as we now explain, that does not establish a legal right to possession of the land.



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:

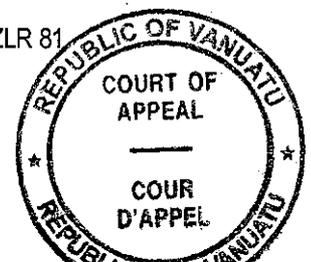
(3) Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot 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:

"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.

¹ See for example - *JA Pye (Oxford) Ltd v Graham* [2003] 1 AC 419(HL) ; *Moore v MacMillan* [1977] NZLR 81



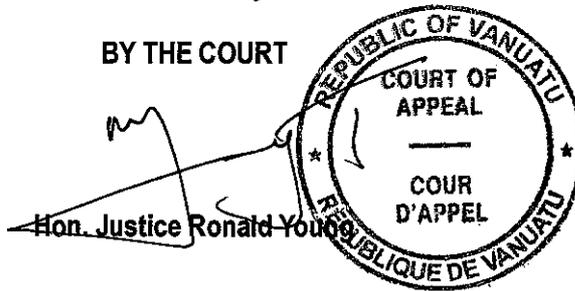
Disposition of the appeal

13. For the reasons given above:

- a) The appeal is dismissed.
- b) The order striking out the claim is confirmed.
- c) The appellant is to pay the respondents' costs of VT 50,000.

Dated at Port Vila, this 14th day of November 2025

BY THE COURT



Hon. Justice Ronald Youso