

**BETWEEN: HAROLD KENNETH REPRESENTING FAMILY
KENNETH**
Appellants

AND: ROGER & SELMA VEREMAITO
First Respondents

AND: EDSON & DELAILAH VEREMAITO
Second Respondents

AND: TRELEY & SESIL VEREMAITO
Third Respondents

AND: GEORGE MILLER & MARGARET VEREMAITO
Fourth Respondents

AND: MESSIAH & ERNEST VEREMAITO
Fifth Respondents

AND: CHILDSON & CHRISTINA VEREMAITO
Sixth Respondents

AND: DAVID & SESIL VEREMAITO
Seventh Respondents

AND: BEN & HAIDAH MAHIT
Eighth Respondents

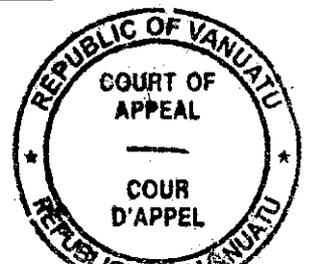
Date of Hearing: 5 February 2026

Before: Hon. Justice Mark O'Regan
Hon. Justice Michael Wigney
Hon. Justice Oliver Saksak
Hon. Justice Dudley Aru
Hon. Justice Maree MacKenzie
Hon. Justice Josaia Naigulevu

Counsel: Mr. E. Molbaleh for the Appellants
Mrs. M. G. Nari for the Respondents

Date of Judgment: 13 February 2026

JUDGMENT OF THE COURT



Introduction

This is an appeal by Harold Kenneth and Family Kenneth (the Kenneth family) from a decision of the Court below in **Harold Kenneth representing Family Kenneth v Roger and Selma Veremaito & Ors** Civil Case No 25/02 where the appellants' claim was struck out on 5 November 2025.

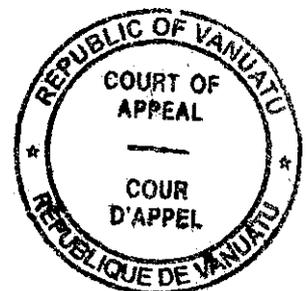
Background

1. What gave rise to the claim is an earlier decision of Cooke CJ in **Bue Manie & Kenneth Kaltabang v Sato Kilman** Land Case No L5/84. In that case the Court was asked to decide the rightful custom owner of Lakatoro which is located on the Island of Malekula. On 5 July 1988 the Court found and held that Kenneth Kaltabang Family, Sanny Mal Family and Sato Kilman Family were the custom owners of the disputed land and that that it shall be equally divided between them.
2. On 17 January 2025 the Kenneth family purportedly relying on the 1988 judgment filed their Supreme Court claim seeking eviction orders and damages with interest against the respondents. The Kenneth family asserted that the respondents were obstructing their access to the wharf to travel to Uripiv Island and that the respondents had been residing on that land without the approval of the Kenneth family as the rightful custom owners.
3. The respondents in their defence to the claim asserted that the Kenneth family failed to plead their custom land and the 1988 judgement did not declare the Kenneth family as custom owners of a specific area of custom land but a portion of Lakatoro land. The respondents also asserted in their defence that they have a certificate of recorded interest in land over Retelemb custom land which covers the area referred to in the claim therefore they were not trespassers as alleged.
4. Before the primary Judge, the respondents maintained that there was no basis for the claim and sought to have it struck out. Directions were then issued by the primary Judge for the appropriate application to be filed with responses from the respondents and the matter to be decided on the papers. The basis of the strike out application was that the claim was misconceived and was supported by a sworn statement of Manfred Veremaito. That statement supported the respondent's contention that the Retelemb custom land covered the land near Lakatoro wharf. The respondents did not respond to the application as directed

Decision under appeal

5. The primary Judge in her consideration of the application noted at paragraph 8 and 9 of her decision that:

"8.there is no pleading in the claim or particulars provided as to what custom land the claimant is a declared custom owner of, what the boundary of that custom land is, or the portion owned by the claimant. Accordingly, the claimant



has not pleaded or provided particulars as to the basis on which it asserts it may seek eviction orders against the defendants.

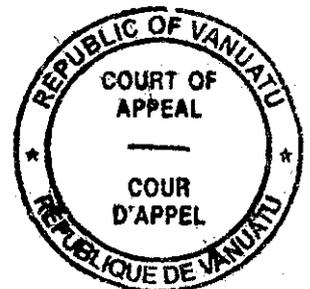
9. *The defendants' case pleaded in the defence and as a ground of the Application is that they have a green certificate over Retelemb custom land on Central Malekula which covers the land area in the claim, therefore the claim is misconceived and has no prospect of success...*
6. And at paragraph 12 the primary Judge said:
 - "12. *Given the claimant's absence of pleading in the claim the basis for it to make a claim in trespass, and in the face of the defendants' custom ownership of Retelemb custom land which covers the area subject to the claim, I consider that the claim does not disclose a reasonable cause of action and has no prospect of success.*"
7. The claim was struck out for lack of proper pleading and the fact that respondents have a certificate of recorded interest in their name recording their custom ownership of Retelemb land which covers the area claimed by the Kenneth family.

Appeal

8. The appeal raises two broad grounds namely that the primary Judge fell into error by striking out the claim and secondly that the primary Judge failed to consider and accept that the land occupied by the respondents had already been declared to the Kenneth family and others but not the respondents.
9. In their written submissions the Kenneth family maintains their reliance on the 1988 judgment that they were declared custom owners over the area occupied by the respondents. It was also submitted that they were currently challenging the certificate of recorded interest granted to the respondents.
10. The respondents on the other hand maintain that striking out the claim was proper as it did not disclose a reasonable cause of action and the claim was misconceived as the respondents' evidence showed they owned the land they occupy.

Discussion

11. The Kenneth family were given the opportunity to respond to the application to strike out by the primary Judge but did nothing to their own detriment. They attempted to file fresh evidence in this Court, but that evidence could have been filed to support their arguments against the strike out. The evidence was available then and is not fresh evidence as such. We reject the application to file fresh evidence.
12. The 1988 judgment held that the Kenneth family and two other parties were the custom owners of Lakatoro and that the land was to be equally divided between them.



13. In our view, the primary Judge was correct in pointing out that the Kenneth family had not pleaded their custom land or its boundaries or the portion of Lakatoro they owned and its boundaries in accordance with the 1988 judgment. This would have been the basis for claiming trespass and seeking eviction orders, however, no leave was sought to cure the apparent defect in the pleading. Rule 4.2 1) (b) of the Civil Procedure Rules requires that a statement of the case must set out all relevant facts on which the party relies.
14. The second obstacle faced by the Kenneth family is the respondents' certificate of recorded interest over Retelemb land which covers the area claimed by the Kenneth family. The respondents were declared custom owners of Retelemb custom land by the Malekula Island Land Tribunal on 16 December 2011. The certificate of recorded interest was issued to the respondents on 24 November 2016. As the decision was made before the coming into force of the Custom Land Management Act No 33 of 2013 (the Act), it is deemed to create a recorded interest in land by s57 of the Act and remains valid unless and until it is set aside. That means a claim for trespass against the respondents in relation to that land could not possibly succeed.
15. We find no error by the primary Judge as she was correct in striking out the claim.

Result

16. The appeal is therefore dismissed. The respondents are entitled to costs in the sum of VT50,000.

DATED at Port Vila, this 13th day of February 2026

BY THE COURT


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Honourable Justice Mark O'Regan

