

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

Civil Case No. 11/44 SC/CIVL

- IN THE MATTER OF: THE LAND LEASES ACT [CAP.163],** as amended
(hereinafter referred to as "the Act")
- AND IN THE MATTER OF: THE LAND SURVEYORS ACT [CAP.175],** as
amended (hereinafter referred to as "CAP. 175")
- AND IN THE MATTER OF: THE LAND REFORM ACT [CAP 123]** as amended
(hereinafter referred to as "Act 05/92")
- AND IN THE MATTER OF: THE LAND ACQUISITION ACT NO05 OF 1992** as
amended (hereinafter referred to as "Act 10/98")
- AND IN THE MATTER OF: THE GOVERNMENT CONTRACTS AND TENDERS
ACT NO 10 of 1998** as amended (hereinafter referred
to as" Act 10/98)

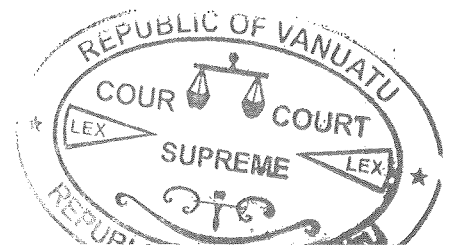
BETWEEN: TONY KANEGAI, care of Blacksands Area, Efate,
Republic of Vanuatu
Claimant

AND: THE REPUBLIC OF VANUATU, care of State Law
Office, PMB 9048, Port Vila, Efate, Republic of
Vanuatu
First Defendant

AND: JEAN MARC PIERRE, care of Port Vila, Efate,
Republic of Vanuatu
Second Defendant

**AND : VANUATU LIVESTOCK DEVELOPMENT
COMPANY LIMITED** a Vanuatu private local company
having its registered office situated at Messrs Geoffrey
Gee & Partners, First Floor, Rafea House, PO Box
782, Port Vila, Republic of Vanuatu
Third Defendant

AND: SINO-VAN FISHERIES LIMITED, a Vanuatu private
local company having its registered office situated at
Marope, Blacksands, Efate, Republic of Vanuatu.
Fourth Defendant



AND: ESAU CHICHIRUA, an indigenous citizen who lives
and resides on Ifira Tenuku, Efate, Republic of
Vanuatu
Fifth Defendant

Coram: *Chief Justice Vincent Lunabek*

Counsel: *Mr. Silas Hakwa for Claimant*
Mr. Frederick Gilu for the First Defendant and Second Defendant
Mr. John Malcolm for the Third Defendant
Fourth Defendant not represented
Mr. Willie Daniel for the Fifth Defendant

Date of Delivery of Judgment: 26th October 2018

JUDGMENT

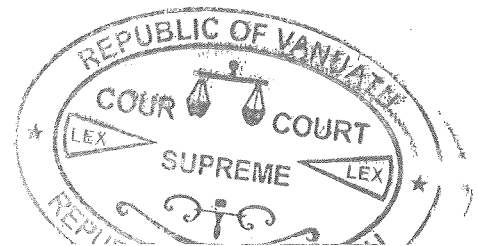
I. Introduction

1. The Claimant says he has an interest in the leasehold property described as Lease Title Number 12/0633/1081 and which is situated at Blacksands and Salili on Efate (and referred to as "the property"). He says his residential home is currently located on part of the land comprising the property and has been living there on since 1993. He further says that following a request made to him by the late George Kano Chichirua (deceased) and late Kaltoi Chichirua (deceased) that he entered upon the land to reside thereon and develop the said land.
2. The property was previously the subject of an Agricultural Lease described as Lease Title Number 12/0633/205 dated 07 January 1998 and registered on 05 February 1998 ("the initial Lease").
3. The late Kano Chichirua (deceased) and late Kaltoi Chichirua (deceased) who were both joint lessees of the initial lease with others were during their lifetime the two most senior members and leaders of their Family Chichirua of Ifira Tenuku which family also claims custom ownership of the land comprising the property. The Claimant says he is also a member of Family Chichirua. The father of the late George Kano Chichirua had a sister (late Toumata Tetrau) who is the mother of his father (Antoine Kanegai).

II. Summary of Pleadings

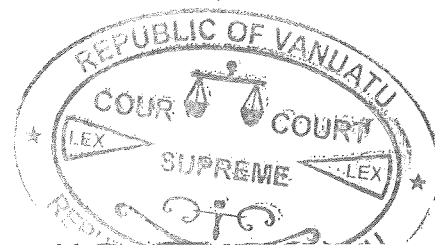
A. Claimant's Pleading

4. At all material times, all the parties to the initial lease were and are fully aware that the Claimant and members of his immediate family were and living on part of the land comprising the property. He says none of the parties concerned has at any time raised any objection to the Claimant's



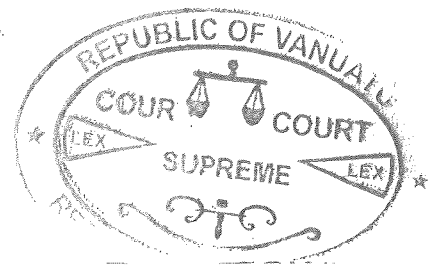
occupation and development of the property or made any demand that the Claimant and/or members of his immediate family leave and vacate the property.

5. The late Kano Chichirua (deceased) died on 11 February 2000.
6. On 11 October 2005 Aloani George Kano (the son of the late George Kano Chichirua) together with the late George Kano Chichirua (deceased), Mahit Kalourai, Dick Kalourai, and Willy Jimmy Tapangararua, the then Minister of Lands acting in the absence of any notice to or consent of the Claimant, executed a Deed of Surrender of Lease whereby it was agreed to surrender the entire initial lease referred to as ("the surrender"). On 12 October 2005, it is said, the Second Defendant without notice to the Claimant or enquiries made to ascertain whether or not the land is vacant wrongfully registered the surrender.
7. On 11 October 2005, Aloani George Kano together with the late Kaitoi Chichirua (deceased), Mahit Kalourai, Dick Kalourai and Minister of Lands acting in the absence of any notice to and consent of the Claimant and land claimants executed an agreement whereby the Minister agreed to lease part of the land comprising the property to Aloani George Kano, the late Kaitoi Chichirua (deceased), Mahit Kalourai and Dick Kalourai referred to as "the Second Lease". On 12 October 2005, the Second Defendant in the absence of any notice to the Claimant or enquires being made to ascertain whether or not the land is vacant wrongfully registered the Second Lease.
8. The survey work and plan required for the Second Lease was undertaken by one Michael Bakeoliu a registered surveyor who was said to act wrongfully in his survey work and plan toward the second lease.
9. On 11 October 2005, the Third Defendant acting together with Aloani George Kano, late Kaitoi Chichirua (deceased), Mahit Kalourai and Dick Kalourai all acting in the absence of any notice to our consent of the Claimant and land claimants wrongfully executed a Deed of Transfer Lease purported to transfer the Land comprising the Second Lease to the First Defendant of the sum of VT25,000,000 referred to as ("the Transfer").
10. On 12 October 2005, the Second Defendant acting in the absence of any notice to the Claimant or enquires being made to the Claimant or enquiries being made to ascertain whether or not the land is vacant wrongfully registered the Transfer.
11. On 31 January 2007, the then Minister of Lands acting in the absence of any notice of consent of the Claimant and land claimants and the Fifth Defendant wrongfully executed an agreement whereby the then Minister of Lands agreed to lease to the Fifth Defendant the rest of the land comprising the property which the Claimant and members of his immediate family now occupy under the new title which is created referred to as ("the Third Lease").
12. It is said the combined effect of the surrender, Second Lease and Third Lease is effectively to remove from the Claimant all the land which the Claimant has resided on, developed and treated as his home since 1993 without his knowledge, consent and/or prompt and adequate compensation. It is said the Fifth Defendant whose father was the late George Kano Chichirua (deceased) knew, knows and is fully aware that the Claimant and members of his immediate family

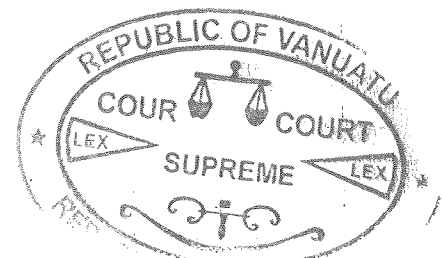


have been in occupation of the land since 1993 and further that was his own father the late George Kano Chichirua (deceased) who had specifically and expressly authorized and permitted the Claimant and members of his immediate family to enter upon the land and build their home on the land further the Fifth Defendant did not give notice of any kind to the Claimant that he intended to take or remove from the Claimant his home, properties and all the fruits of the Claimant's labor, hard work and development on the land without paying for it. It is also said the Third Lease was wrongfully registered on 9 February 2005.

13. It is alleged that on or about 18 August 2005, the Third Defendant acting in the absence of any notice to or consent of the Claimant and land claimants together with the Fourth Defendant wrongfully executed an agreement whereby the Third Defendant purported to sublease part of the land comprising the Second Lease to the Fourth Defendant which is described as sub-lease Title Number 12/0633/1081A ("the Sub-lease"). It is said the sublease was wrongfully registered on 12 October 2005 in the absence of any notice to the Claimant or enquiries being made to ascertain whether or not the land is vacant.
14. It is further said on 22 November 2012 the Third Defendant in the absence of notice to or consent of the Claimant and land claimants together with the Fourth Defendant wrongfully executed an agreement whereby the Third Defendant purported to sub-lease part of the land comprising the Second Lease to the Fourth Defendant which is described as Sub-lease Title Number 12/0633/1081B ("the Second Sub-lease"). On 7 March 2013 it is said the Second Defendant wrongfully registered the Second Sub-lease.
15. The Claimant pleaded following causes of action against the First Defendant.
 1. Breach of statutory actions, as a result:-
 - The surrender, the Second Lease, the Transfer, the Third Lease, the Sub-leave and the Second Sub-lease, each and all are of no effect, invalid, void ab initio and/or amount to a nullity.
 2. Further and/or in the alternative the Claimant claim unjust deprivation of property without prompt and adequate compensation.
 3. Further and/or in the alternative.
 4. Further and/or in the alternative negligence.
16. The Claimant pleaded following causes of action against the Second Defendant:-
 1. Breach of statutory duties as a result:-
 - Wrongfully registering the surrender;
 - Wrongfully registering the Second Lease;
 - Failing and neglecting to note or acknowledge the Claimant or having an overriding interest in the initial lease and/or Second Lease.



- Wrongfully registering the Transfer;
 - Wrongfully registering the Third Lease;
 - Wrongfully registering the Sub-lease; and
 - Wrongfully registering the Second Sub-lease.
2. Further and/or in the alternative Urgent Deprivation of Property without prompt and adequate compensation.
 3. Further and/or in the alternative Bad Faith.
 4. Further and/or in the alternative negligence.
 5. Further and/or in the alternative Fraud
 6. Further and/or in the alternative Mistake.
17. The Claimant pleaded following causes of action against the Third Defendant.
1. Acting with no proper authority or mandate.
 2. Further and/or in the alternative theft or conversion.
18. The Claimant pleaded the following causes of action against the Fourth Defendant.
1. Fraud.
 2. Further and/or in the alternative theft or conversion.
19. The Claimant pleaded following causes of action against the Fifth Defendant.
1. Fraud.
 2. Further and/or in the alternative theft and conversion.
20. The Claimants pleaded following causes of action against all Defendants:
- a. Damages for loss of home, houses, food, gardens and development which he has undertaken on the land since 1993 of VT 82, 500, 000.
 - b. Further or in the alternative at all material times the Claimant and members of his immediate family have acquired their interest in and rights to the property comprised in the initial lease and which interests and rights are protected by the provisions of section 17 of the Act.
 - c. The First and Second Defendants have acted wrongfully by purporting to Lease the entire land which the Claimant and members of his immediate family have been living on and farming since 1993 without their knowledge and without any due consideration given to section 17 of the Act.



The relief sought by Claimant

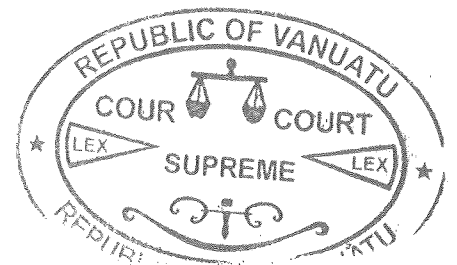
21. The Claimant claims for the following relief:

- i. An order that the Second Defendant forthwith rectify the Registers in relation to Lease Title Number 12/0633/1081, Lease Title Number 12/0633/112; Sub-lease Title Number 12/0633/1081A and Sub-lease 12/0633/1081B by cancelling the registration of these leases and sub-leases.
- ii. An order that the Second Defendant forthwith re-instates Lease Title Number 12/0633/205 onto the lease register which he maintains.
- iii. An order that the First Defendant, Second Defendant, Third Defendant, Fourth Defendant and Fifth Defendant shall be responsible for all claims, costs or expenses which any other person howsoever described may make in relation to or as a consequence of rectification of any lease, sub-lease, surrender or transfer which the Second Defendant is ordered to do under these orders.
- iv. Further and/or in the alternative to orders above, the sum of VT 82, 500, 000.
- v. Damages.
- vi. Costs of and incidental to this claim.
- vii. Such further or other orders as this Court deem fit.

B. The First and Second Defendants' Defence to the Second Amended Claim

22. The First and Second Defendants say the following:-

- a) The Land subject of the lease is currently under dispute and that a customary land owner is yet to be determined;
- b) They say the Claimant's residential home is on different lease title, lease title no.12/0633/112; and
- c) The initial lease was a head lease before it was surrendered;
- d) Chichirua Family are also claiming customary ownership of the land;
- e) The lease was registered based on the information provided to the lands department;
- f) They rely on subsection 17(2) of the Land Surveyors Act [CAP 175] for their full terms and effect;



g) They deny any other allegations in the Second Amended Claim;

23. They also say that:

- a) The lease title No. 12/0633/1081 was registered on 11 October 2005, between the Minister of Lands as Lessor and Mr. Aloani George Kano, Kaltoi Chichirua, Mahit Kalourai and Dick Kalourai as Lessees;
- b) Mr. Mahit Kalourai and Dick Kalourai as Transferors, transferred the lease to the Government of the Republic of Vanuatu as transferee;
- c) At the time of registration, they were not aware that Mr. Bakeoliu had carried out survey work for lease title No.12/0633/1081; and
- d) They were aware that the Claimant was residing on the land prior to the registration of the lease as the Claimant never raised any issue in relation to the lease.
- e) The Minister of Lands as Lessor has the power to grant consents for transfer of lease; and
- f) They deny any other allegations in relation to same.

24. They further say that:-

- a) At the time of registration they were not aware that Mr. Bakeoliu and Maurice Phung had carried out survey work for the leases;
- b) They will rely on subsection 17(2) of the Land Surveyors Act [CAP 175] for its full terms and effect.

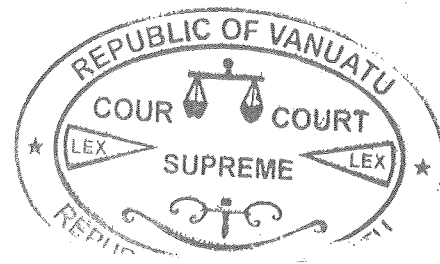
25. They finally say:-

- a) The Claimant does not have any customary interest nor lease interest over the land in which his house is located;
- b) They do not know the circumstances in which the Claimant came to occupy the land;
- c) They deny any and every allegations contained therein; and
- d) The Claimant is not entitled to the relief sought or to any relief.

C. The Third Defendant's Defence to the Second Amended Claim

26. It has no knowledge and denies the assertions in the claim. It also says:-

- a) It accepts on August it subleased part of the title under sublease no.12/0633/1081A but denies wrongdoing; and



b) It denies the Claimant is entitled to any relief sought in the Second Amended Claim.

27. It says as a further and/or alternative defence that:-

- a) It was bona fide purchaser for value; and
- b) As a further and/or alternative defence says:-
- c) The claimed rights of occupation pursuant to section (1) (g) of the Land Leases Act do not give rise to a right to rectification in law, only occupation rights.

D. The Fifth Defendant's Defence to the Second Amended Claim

28. The Fifth Defendant denies all the claim and says the following:-

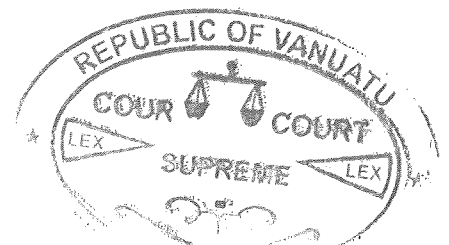
- a) He lives and resides on Ifira Tenuku, Efate and he is one of the sons of the custom land owner of Marope land, the late Pastor George Kano Chichirua of Ifira Island;
- b) The land was given to the Claimant's father to live on while he was still alive but not to the Claimant to be claiming as a property he is entitled to inherit from his late father. The Claimant lived most of his life in Port Vila City renting a house there. The original house the late Antoine Kanegai moved into to reside in was an old colonial wooden house left by early settlers on the land. Antoine Kanegai was brought from Malekula into the land by Pastor George Kano Chichirua;
- c) The late Antoine Kanegai, the Claimant's father while still alive never wanted the Claimant to come live on the land and even told the Family Chichirua to chase the Claimant because he used to argue a lot with his late father.

29. He also says that:-

- a) He does not admit any assertions made in relation to the original lease title on the land 12/0633/205 where Kano Chichirua, Kaltoi Chichirua, Mahit Kalourai and Dick Kalourai but not as claimed by the Claimant;
- b) He denies that the Claimant is a member of Family Chichirua. The late Toumata Tetrau had married out from Family Chichirua to Family Kanegai. In accordance with custom practice and rules, once Toumata Tetrau married out, she is no longer a member of the Chichirua family but her husbands, the Kanegai Family. The late Antoine Kanegai is not a member of Family Chichirua.

30. He further says the following:-

- a) In the Supreme Court Civil Case No.69 of 2005, the Court on 4th November 2008 enclosed consent orders that the custom land owners of Marope land are family Chichirua which comprised of family George Kano Chichirua represented by Aloani George Kano, family



Kaltoi Chichirua represented by Ben Kaltongorua. The Claimant is not part of family Chichirua.

- b) He says the lessees of the original lease title no. 12/0633/205 allowed only the late Antoine Kanegai to live his life time on the land and had never authorized nor gave consent to the Claimant to continue to reside on the land after the death of his father and the Claimant knew this well.
- c) The Claimant knew about the actions of lease title no. 12/0633/205 to surrender the lease and create a subdivision on or about 17 May 2001 and as a result the late Kaltoi Chichirua with the Claimant's support filed a Supreme Court Claim, Civil Case No.167 of 2003 against the lessees Mahit Kalourai and Dick Kalourai for the lease.

31. He says further the following:-

- a) The Claimant knew well about the surrender of the lease as the Claimant challenged it in 2003 with Kaltoi Chichirua.
- b) In 2005, the Claimant was aware that the late Kaltoi Chichirua decided to rejoin his family, Family Chichirua to surrender the original title No. 12/0633/205 against the Claimant's wish.
- c) The Claimant knew well about the creation of the new leases he is challenging.
- d) The surrender of the leasehold title No. 12/0633/205 by the lessees of the land is their lawful right to do so as the leased land is theirs not the Claimant's.

32. He says finally that:-

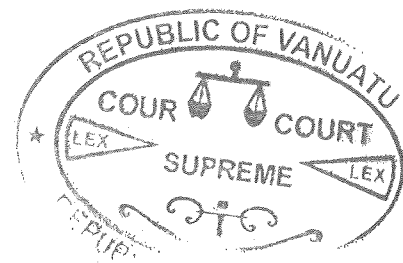
- a) In Civil Case No.167 of 2003, the Claimant in that case (Kaltoi Chichirua) realized he was fighting against his own family Chichirua, came back to join his family again and as a result, they all agreed and gave their consent together with the other lessees of lease title no.12/0633/205, to surrender the said title and create the current household titles no.12/0633/1081 and 12/0633/1122 and sub-lease titles no.12/0633/1081A and 12/0633/1081B.
- b) The land in question is leasehold land and not a custom land and it is therefore under the power of the Minister of Lands to deal with it in the way he did by granting lease title no.12/0633/1112 to him (Fifth Defendant).

33. There is no counter-claim (or cross-claim) filed in this case by any of the defendants.

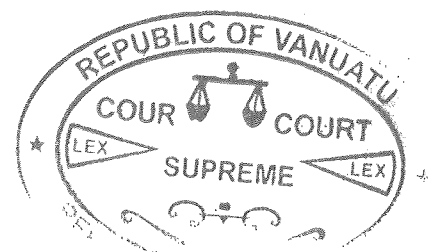
III. EVIDENCE

34. The Claimant relies upon the following sworn statements in support of the claim:

- The Claimant's sworn statement (Exhibit C1);



- Genie Kanegai's sworn statement (Exhibit C2);
 - Daniel Kalorib's sworn statement (Exhibit C3); and
 - Linda M. Olul's sworn statement (Exhibit C4).
35. The deponents of these sworn statements in support of the claim were cross-examined by the other side.
36. The First and Second Defendants rely on the sworn statements and evidence of the following deponents:-
- Jean Marc Pierre – Acting Director General, Ministry of Lands, Geography and Mines (Exhibit D1-1);
 - Paul Gambetta, Acting Director, Department of Lands, Geography and Mines (Exhibit D1-2);
 - Jimmy Pierre, Government Valuer, Department of Lands, Geography and Mines (Exhibit D1-3).
37. The Third Defendant relies upon the sworn statement and evidence of Howard Aru, Director of the Third Defendant Company (Exhibit D3-3).
38. The Fourth Defendant did not defend the claim and the issues are the same with other defendants.
39. The Fifth Defendant relies on the sworn statements and evidence of the following deponents:
- Esau Chichirua (Exhibit D5-1);
 - Mahit Kaourai (Exhibit D5-2).
40. This is a civil case and trial and the Claimant has the burden to prove its claim and assertions on the balance of probabilities.
41. The evidence of this case is contained in the record of the proceedings. What follows is the relevant part of it which will assist the Court in its decision.
- A. Summary of the Claimant's evidence**
42. Tony Kanegai gave evidence to this effect. He lives at Panganivata at an area of land at Salili, Efate. He works at TVL. He filed a sworn statement to support his claim. He made adjustments of his statement at paragraphs 15 and 53. Objections to parts of Mr Kanegai's evidence were dealt with.
43. In his cross-examination, he said he resided on the land since 1993. That was before the leases were made on the said land.

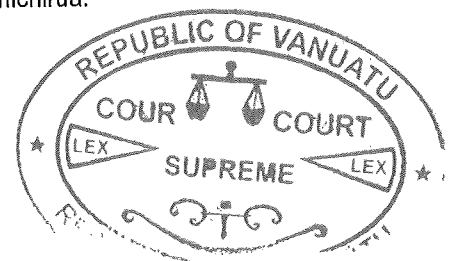


44. His three fathers (Trifala papa) decided to lease the land. But one of them (Kanegai's father's name) was left out. He accepted the two others (George Kano and Chichirua Kaltai) represented the senior members of the family. He was asked:-

Q – The senior members of the family who leased the land decided to surrender the lease – correct?

He answered – *“Taem blong creation blong negotiation blong surrenderem lease ia, mi no bin save one something. One senior member name blong hem I no stap. One I ded finish taem oli surrenderem lease 205.”*

45. He was asked again:- *“Time lease hemi surrendered olgeta lessees nao oli agree 1 hemi representem hem one.”*
46. He was asked since 1993, he resided on the land, lease title 205 was created in 1998 on the land he said he occupied he did not make a complaint. He answered he thought there was a case of Chichirua against Mahit but it was withdrawn. He personally did not complain or make a challenge against title 205. In 1993, he built his house on the land and lived on the land. He said he lived first on the land before his own father came and lived on the said land. George Kano and Kaltai Chichirua took his father to come and live on the land.
47. It was put to him that they put his father (Antoine Kanegai) to live on the land. He answered – *“Mi nao oli talem se bae mi go live long ground.”*
48. He was referred to the Minutes of a Meeting attached at Genie Kanegai's statement as “GK2” when his father referred specifically that the land was empty and Tony must stop being angry. He answered that it meant that he was cross easily.
49. He was asked as to which lease title that affected him which covered the place he built his house.
50. He said it was the second title which created 1081 and out of 1081 then 1112 which covered all the area he worked. Before the creation of title 1112, he worked on title 1081A. He agreed that title 12/0633/1112 was registered as a new lease in 2007.
51. He was asked that title 1081 never covered the area he was working on. He said when they surrendered title 205, they created lease 108 1 which covered all area he was residing on and working on. Inside title 1081, they created 12/0633/1112 and it covered the place he resides on including his house. A sub-lease was created in title 1081A covering the place he worked. He was asked and he clarified he worked on the places covered by lease titles 1081 and 1112.
52. He was not aware that the senior members of the families decided to surrender the leases.
53. He was asked whether there was any written agreement between him and George Kano that was signed to the effect he could go and occupy the said land. He answered there was no written agreement but it was verbal agreement from George Kano and Kaltai Chichirua.



54. Mr. Kanegai accepted when cross-examined by Mr. Malcolm that his case is that to preserve the land, his families asked him to go on the land to keep it for the families. He also accepted that at that point in time, the land in question was title 205 which covered the entire land.

He accepted that the lessees on title 205 were George Kano Chichirua, Kaltoi Chichirua, Mahit Kalurai and Dick Kalurai. He was asked and he accepted that his case was that one more person must be on the lease. But that person's name (Antoine Kanegai) was not on the lease. Antoine Kanegai is Mr Tony Kanegai's father. He passed away in 2009. He was asked if there was a case or agreement that sought to rectify the lease to put the name of his father. He answered yes. It was Kaloi Chichirua is case on behalf of the family. He said they were not the two (2) cases referred to in the sworn statements of Esau Chichirua filed 5 May 2014.

55. He accepted that Esau Chichirua is one of the Chichirua family and Esau's father was George Kano Chichirua. He said the evidence of Esau that when a woman married away then she lost her right to the custom land of her father was not correct.

56. It was put to him and he accepted that his case was that he moved into the land to keep a piece of the land for the family. It was suggested to him that he had a small piece to occupy and the rest are for the all family and he protected the all land boundary for everyone. He answered that the family put him there into the land to look after the land of the family.

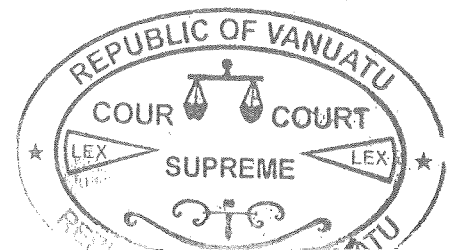
57. He accepted he did not have a lease on title 205. He accepted he did not have any mortgage on the said land. He was asked if he had any written tenancy agreement on the part of the land he was occupying. He said in 1993, there was a verbal agreement between him and George Kano and Kaltoi Chichirua.

58. He accepted he was the Claimant in this case and he must prove his case. It was put to him that he has to prove that he had a right of occupation and where in the said land he was occupying. He accepted and confirmed that proposition.

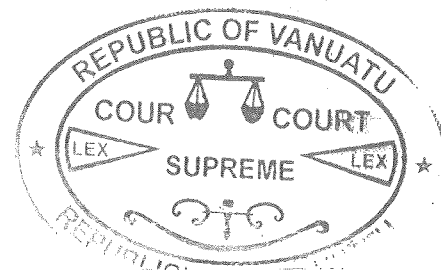
59. He was invited to go back to the map. It was put to him that a person can ascertain the boundary of a land (as stated in the statement of Genie Kanegai). He agreed to that suggestion. He accepted that when he put his claim in 2011, no one stopped him to put his evidence in support of his case.

60. He was asked where he had evidence in the paper that he occupied land shown in the map showing his house and gardens. He was asked about any such plan. He answered the plan here is the plan in the initial lease 205 as he lived on the land already when the title 205 was created in 1998. He was specifically asked for his survey plan showing his house and garden. He said he claimed for all land area he lived and worked on.

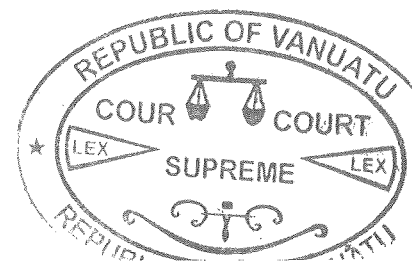
61. He was asked to show the map showing his occupation and area of land he occupied. He answered title 12/0633/112 and 1081A took all the area he lived and worked on. He was showed two separate maps. The first map was the evaluation map under taken by Jimmy Pierre. He said he had never seen that map before. He accepted that map pointed to his house (Claimant's house). It was suggested to him that from that first map, title 1112 is outside the area of title lease 205. He answered title 112 was created after the surrender of title 205.



62. It is suggested to him that when he claimed for occupational right, the area of occupation is specification located in the lease. There is no precise area of claim in this claim. He answered he was on the land before leases are created. After the surrender of title 205, other leases were created, he became a victim that was why we were in Court.
63. He was asked when George Kano Chichirua and Kaltai Chichirua took him to the land. He said sometime in 1993, he could not recall of the date or month. He then said actually, they both decided that they all went into the land to put him there into the land. There was no meeting it was in the middle on 1993.
64. He was living on the land and George Kano asked him to pay the travel of his father who was at Malekula. He said Esau lied.
65. He did not know that Esau Chichirua said that Tonly Kanegai's father asked George Kano to remove him from the land because of the problem he had caused. Referring to the sworn statement of Jimmy Pierre, he was asked to show the building he built in 1993. He said he built the house on the right. His brother died there in 1994. The concrete house is his house.
66. He was asked to show the map of his garden. There is none. He said if we went to the field he could show the Court. He said he paid the electricity for both houses. He did not pay the right of occupation but his father did.
67. It was put to him that his claim has two parts. The first part was about rectification under section 100 of the Land Leases Act. The basis of rectification is fraud or mistake. Any person complaining about a lease must have a locus standi. Again, here, lease title 205 was changed into 1081. He has to prove that he has standing and also he has to show fraud or mistake in order to establish that he has any legal right.
68. He was asked whether he had ever lodged a claim over the land title 205 on the basis that he is the custom owner of that land. He answered that he personally never made a claim.
69. He was asked if he was not a custom owner, or a lessee or if he had no occupational rights, where is the basis of him staying on the lease. He replied, title lease 205 was surrendered. He was on the land. Title 1081 that was created was affected him. He felt he was deprived as Chichirua family.
70. He was asked whether he was a squatter on the land, he said two senior members of his family accepted he occupied the land. It was put to him that no one gave him permission to be on the land as he was a squatter. He said he lived on the land since 1993.
71. He was asked to prove evidence of fraud and mistake. He said the process to acquire the lease was not followed properly. He was asked what he said the state made a mistake in his evidence. He answered that during the proceeding of this case he had just to see whether there was a mistake or fraud.

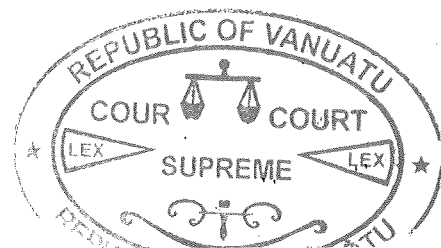


72. Mr Tony Kanegai was cross-examined by Mr Willie Daniel. He was asked of the fact that he was part of the family Chichirua but his name is Kanegai. He said it was correct. It was put to him that he said in his statement that he came out from Tetrau of Ifira and married a Japanese. He accepted Toumata Tetrau lived with Kanegai. Toumata Tetrau and Kanegai had a son called Antoine Kanegai. He confirmed. His father married his mother who is from Ambae. He accepted. He was asked, he was part Japanese, Ifira and Ambae. He said he had blood from different places. It was put to him he did not use the name Chichirua but Kanegai because Chichirua was his grandfather. He said it was correct but Chichirua married with his grand apu Tetrau. Toumata Tetrau is the mother of his mother and George Kano and Kaltai Chichirua are the brother of his mother. That was the reason why he claimed he was Chichirua. His grandmother Tetrau had blood with Chichirua.
73. He was asked to look at the statement of Esau Kano Chichirua in Annexure A. The family trees was annexed comprising of Chichirua namely, George Kano, Kaltai Chichirua and Sena Chichirua. There was no name Kanegai. He accepted his father took the name Kanegai. His grandmother (Ati) married a different man. The name Kanegai is not going to cut out the blood connection he got with the Chichirua. Even if his grandmother (Ati) married outside, he has right in the land of Chichirua. Even if he followed the matrilineal line, he said he has right to the Chichirua land.
74. He accepted George Kano went to Malekula to take Antoine Kanegai back and put him on the said land. The land was a plantation with a basement. There was a wooden house there before they moved in and a cyclone destroyed it. He was on the land first before his father was taken in to reside on the said land.
75. He was taken to the sworn statement of his wife, Genie Kanegai and in particular to the Minutes of the Meetings annexed at "GK1", "GK2" and "GK3".
76. He accepted the meetings happened at Panganifata in 1999 and 2003. He said he built the first part of his house in 1993. His brother built the other part. It was put to him the Minutes of the Meeting did no say that Tony Kanegai was permitted to occupy the land. He said the Meetings were about the land in issues.
77. He accepted he did not have a lease in the land. He was on the land before the leases were created. The senior members of the family decided to lease the land and to secure the land.
78. Annexure B of Esau Chichirua's statement is about a claim of Kaltai Chichirua on the title lease 205. He is not party to that case. He was behind the senior members of the family. Exhibit GK3 showed the meeting was to remove the name of Kalurai on the lease 205. The case was withdrawn.
79. He was asked then he said he was the first on the land his father came after. It was put to him that Mr Antoine Kanegai was brought from Malekula to live on the land but not him. He said Papa George Kano represented the family to talk about Marope land. He was confident. Kano decided to take his father (Antoine Kanegai) from Malekula to live on the land because he had experienced in the plantation. The idea is that his father would look after the land. His father lived in the house of his deceased brother. It was put to him the land was a lease land and the lessees said he did



not have a right to occupy the leased land his father has the right but not him. He said as he had bloodline from Teoumata Tetrau, he has the right too.

80. It was put to him they were not talking about customary land but the leased land. He said when he moved on the land, there were no lease yet. When the leases were issued they affected him. It was put to him, the lessees wanted to surrender their lease titles to the state and he has no right to stop them. He said he did not dispute that.
81. He was referred to the statement of Linda Olul and that there was no boundary of land he claimed in the map stated therein. It was put to him that the claim of damage of vatu 82,500,000 was just about a guessing figure. He said he could not comment.
82. Tony Kanegai was re-examined. In his re-examination, he confirmed he did not have a lease on the land. He was not a party to the case referred in the sworn statement of Esau Chichirua. He confirmed he was at the meeting of November 1993. The people listed there were all present. He was present at the meeting referred in Genie Kanegai's statements (GK2) and (GK3). He confirmed he moved into the land in middle of 1993. The senior members of his family show him the land at Panganifata. His father was taken to reside to the said land in July 1994. He was on the land since 1993 until today.
83. He said they were the lessees. Three lessees accepted admit but one was not. He said the following were the lessee. Kano Chichirua, Kaltoi Chichirua, Mahit Kalurai and Dick Kalonai. Esau Chichirua's name was not there as a lessee. He confirmed there were minutes of meeting held at Panganifata but the minutes do not show that the senior members of the family told him to leave the land. He did not apply for lease because there were meetings and the senior members of the family said they are going to apply for lease on the land.
84. Genie Kanegai's evidence is to the effect that she lives at Panganifata. She works as the administrator at Child Care Centre. She confirmed her statement made in this case.
85. Exhibits GK1, GK2 and GK3 are admissible as evidence that to the meetings took place. But they are not evidence of the truthfulness of the content of the statement. Her husband is Tony Kanegai.
86. She was not a lessee or lessor on title lease 205. Her husband built her house on the land in 1993 before the lease is carried out. Her husband talked about the land with his father Kaltoi Chichirua. She was not informed of any Court case.
87. The next witness is Daniel Kalorip. He gave evidence that he is the assistant chief of Ifira. He lives at Federation area. He worked in the services of the Government before he retired in 1997. He confirmed he made a sworn statement in support of the Claimant's case. The content was true.
88. Mr Kalorip was cross-examined by Mr Gilu of State Law Office. He said he saw when the Claimant Mr Tony Kanegai moved into the land, there were old houses. Mr Tony Kanegai made development and changed the place where there is a big fishing factory. He said there was a house Tony Kanegai lives in but the other shed was already there. Tony Kanegai's father stayed in that shed.

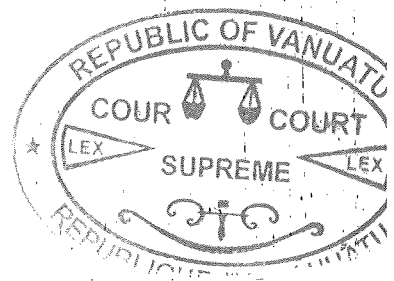


Antoine Kanegai, the father of Tony Kanegai moved in the land in 1997. He noticed Tony Kanegai moved into the land with his wife. Tony's brother was also there before he passed away.

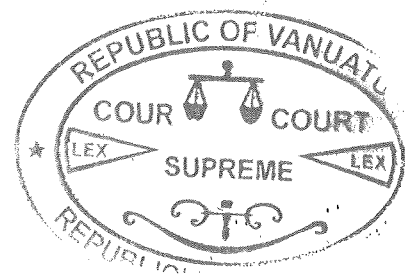
89. He was asked that on Tony's evidence one building was constructed by his brother, he said he might be wrong but when he went on the land, the building was already constructed.
90. When he worked at Toa Farm in 1997, Antoine Kanegai was already on the land. He did not know when or what year Antoine Kanegai moved into the land.
91. Mr Kalorip was cross-examined by Mr Willie Daniel. He recalled when he went to the land, two old houses are already there when Antoine Kanegai moved into the land. There were a wooden house and copper house. There were buildings and coconut in the land. There was a plantation in that land. To his knowledge, Tony Kanegai moved to one of the houses extended it and renovated it as his house (Tony's).
92. He was asked he confirmed the family Chichirua and name Kanegai are not the same. He confirmed Toumata Tetrau was the ancestor of Kanegai. He accepted that Family Chichirua descended from George Kano and Kaltol Chichirua.
93. The last Claimant's witness is Linda M. Olul. She lives at Teoumaville. She is a property value. She made a statement. She was cross-examined. There is a river across the land. That land is an iri land. She made a comparable type valuation. The Claimant showed her 4 hectares as estimated area. The lease was on the other part of the land. As to the registered lease, there was no improvement on it. The improvement was only on the area where the house is located. The house is a semi-permanent building.
94. Linda Olul was cross-examined by Mr J. Malcolm. She said she asked the Claimant if the property was registered. There was not survey plan. She made her assessment of 82 Millions Vatu on the assumption that there was a survey plan.
95. Linda Olul was cross-examined by Willie Daniel. She used different property rate as the property is agricultural property. The assessment was not on the lease property but on an area Tony Kanegai showed her as his.

B. Summary of First and Second Defendant's evidence

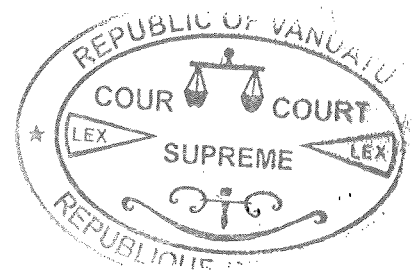
96. Mr Jean Marc Pierre is the first witness for the First and Second Defendants. He gave evidence to the following effect. He filed a sworn statement and confirmed its content. He was appointed as Acting Director General since April 2013. Before that date, he was the Director of lands.
97. He was cross-examined by Mr J. Malcolm. He worked as Director of Lands Records since May 1999. One issue of the claim is the rectify leases subsequent to title 205. The lessees of the lease title 205 were, Kano Chichirua, Kaltol Chichirua, Mahit Kalurai and Dick Kalurai. He was asked and he said as a matter of practice, in land department, a judgment of Island Court would be acceptable document. If a lessee died, the person taken over the estate of Kano Chichirua obtain letter of administration. He accepted that the Court judgment will be accepted.



98. He was cross-examined by Mr Willie Daniel He referred to the Civil Claim in CC 167 of 2003. He remembered the case as he had exchanged correspondence with Mr Hakwa over a caution. The caution was removed. In 2005, the lease was surrendered.
99. Jean Marc Pierre was cross-examined by Mr Hakwa. He worked in the Department of Lands as Director of Lands Records from May 1999 to August 2006. In April 2003, he was the Acting Director General. After 2005, the Government amalgamated the 3 Departments of Lands [Survey – Registry and Records] to one Department. He was responsible for registration and he delegated that registration responsibility to his officers while he was overseeing the work of the Department. Title Lease 205 was registered in 1998 before his time.
100. He was asked he said he administered Land Leases Act, Land Reform Act and Alienated Land Act. In the lands records, the Director delegated the responsibilities to the registration officers to do the work on his behalf. On a lease when a lessee die, a transmission document is registered. The document showed that there is no transmission document in this case on title 205.
101. He confirmed that Marope Land Case is outside this current case. He did not take part in the process of surrender of the leases at the time the Department of Lands (Survey, Records and Registration) was separated in different department. The Delegating Officer signed the documents and correspondences including the letters. He authorized the said officer to sign these documents and letters. He did not know there is someone on the land property as he was not on the land records. He checked the documents and registered the Instruments.
102. In 2005, there was no amalgamated departments of lands. He was only responsible for Lands Records. He was not involved with the surrender documents, somebody else did. He was asked he refuted the question that Michael worked with him as he said Michael was a private surveyor. Michael made surveys on behalf of the private parties but not the government. Private surveys prepared the survey plan and submitted them to the survey general (Martin Sokomanu). He was asked he said when he delegated responsibility, he expected delegated officers to carry out their duties.
103. When he was in Lands Records he did not know that the Claimant was on the land. When he was involved with this case, he become aware the claimant lives on the land. At the time of Title 205, he was at the Land Records.
104. The documents of title lease 12/0633/1081 were made under the Land Reform Act before his time. The Minister signed leases on behalf of the customary ownership representative. Either, the then director of the State Law Office advised the Minister to do so. The Lands Departments prepared and executed the leases as it can be read on the documents Land officers with the Lessees.
105. In situation where a customary land is disputed, the process is that the Department of Lands create a custom owner consent form. The Land Officers used that Form to consul the custom owners like in this case.



106. On title 1081, he was not at the Land Registry. The process was created under the new leases. With the new leases, the standard is that the consent of the lessors must be obtained and filled in the Form. They must give consent to the surrender. In this case, the Minister did it. He was not Acting Director General. Michael Mangawai was.
107. Sub-lease 1081 A was registered on 3 September 2010 but he did not sign the document. The instrument was in order. He did not see why to advise the Minister. The document was on proper Form. The lease was from the government to a company (Sino Vanua Fisheries Limited). The sub lease was correct. The two parties finalized their agreement and brought it to the Lands Departments. They registered the Form. Document showed no consideration. The agreement was made by the government and a company.
108. After the charges based on policies undertaken by the comprehensive Reform Program (CRP), the Departments of Lands no longer prepared the leases. The CRP was since 1997. Where a lessee is a private person, he engaged a real estate to prepare his house. The process he explained was followed after 2006 and 2007. They followed the process after the judgment of the Court of Appeal in the case of Turquoise. He came to tell the Court what he know with documents attached. He repeated he did not know that the claimant was on the land since the proceedings started in this case.
109. Jean Marc Pierre was re-examined. The land which is the subject of this case was part of disputed land claim filed by Pastor Pierre Nikara. He was asked that Mr Hakwa was questioned him that there were no consideration for these leases and he said the documents speak for themselves, he was asked whether he was aware they paid annual rents. He confirmed they paid annual rent on Lease title 1081 of vatu 2,867,680 per year. As to title 1081 A Mr Hakwa asked him if there were consider for that lease, he said the document speak for themselves. He confirmed annual rent paid of VT1,000,000. The annual rent paid on title lease 1112 is of vatu 25,000.
110. Paul Gambetta is the next witness of the First and Second Defendants. He works in the Department of lands Surveys. He was the Acting Director of Land Survey and Registry. He worked for almost 20 years in the Lands Ministry. He confirmed he made a statement in this case. The content was true. He was not cross-examined by Mr J. Malcolm and Mr W. Daniel.
111. He was cross-examined by Mr Hakwa. He was referred to a drawing (G1) and the state and of Jimmy Pierre referred to it to this effect. Title Lease 205 is of 47 ha and title lease 1081 is of 35 ha. He said all land lease title 205 is not land lease 1081. He said the Blue Boundary represents 12/0633/205. He explained that the lessees of title 205 surrendered their consent to subdivide that leased land which included area which had no color on it in the drawing. The subdivision on the side of the road toward Mele with the idea to create a fish factory. The lessees gave away some of their plots and they all amalgamated on Title Lease 1081 so the subdivision was on title 1081. Title 1081 covers sub-lease 1081 A and sublease 1081 B. But Title 1081 does not cover title lease 1112. Title 1112 was previously under Title 205.
112. He and Jimmy Pierre went on the field to visit the land. He agreed that the property of the claimant was with Title Lease 1112. The house of the claimant was inside title 1112. Title 1112 has a border with Title 1081.



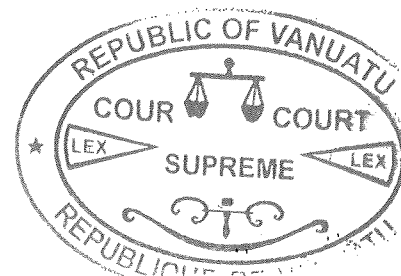
113. Jimmy Pierre was the last witness of the First and Second Defendants. He worked with the Land Department as a valuer since 2013. He made a statement and he confirmed its content to be true. He was not cross-examined by Mr Malcolm and Mr Daniel.
114. He was cross-examined by Mr Hakwa. He confirmed he and Gambetta visited the land. He confirmed the claimant's property was within title 1112. He said the main building of the claimant was within Title 1112 but the other building was on Title 1081 A. He was asked and he did not know whether title 1081 and 1112 had common boundaries. When he visited the land, there were just these two titles.

C. Summary of Third Defendant's Evidence

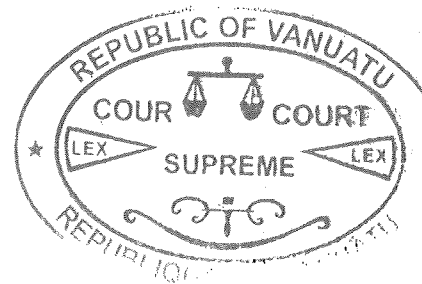
115. Mr Howard Aru is the only witness of the Third Defendant. He lives at Beverly Hills, Port Vila. He is the Director General of Agriculture and Fisheries. He confirmed his statement and its content. He was shown Jean Mark Pierre statement with the land title leases. He confirmed them. He said Vanuatu Livestock Development Company Limited paid for the land of vatu 25,000,000. He said he is also the chairman of the Vanuatu Livestock Development Company Limited. He was not cross-examined by Mr Gilu and Mr Daniel.
116. He was cross-examined by Mr Hakwa. He was appointed as Director General of the Ministry of Agriculture and Fisheries in July 2013. He accepted that the activities in the proceedings happened before his appointment and his evidence is based on the reading of the records of the Third Defendant. He is a director of the company. There were other directors of the company. There were other directions of the company. The shareholders are the Minister of Agriculture and the Minister of Finance. The Third Defendant had a lease on the land. He said the property of the Third Defendant is title 1081. He denied the owner of the property is the government as the Directors of the company had meeting about the leased property. The property title 1081 was made out of a transferred lease. The property was sub divided into sub-lease property to Sino Vanua Fisheries Limited. Vanuatu Livestock Development Company Limited as own property. The directors of the company met from time to time. The decision of the VCDC does not need to go to the council of Ministries.

D. Summary Fifth Defendant Evidence

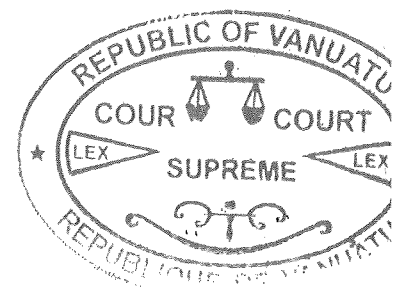
117. He worked at Ports and Harbour for 30 years. He is 50 years old. He confirmed his statement and the content. Mr Malcolm and Mr Gilu did not cross-examined this witness.
118. Mr Hakwa cross-examined Esau Chichirua. His father is George Kano Chichirua. He is the lessee of title 1112. He got that lease in 2005 and registered it in 2007. He applied for this lease after Lease Title 205 was surrendered. He applied for the lease on 2006 as that land is his father's land. The lease was prepared by the Officers of the Land Department. He signed the lease and he knew the land as he was gardening on the said land before. He did not go and live on the said land. Tony Kanegai was already on the land.



119. He confirmed he was at the meetings referred to in the statements of Genie Kanegai (GK1, GK3). He attended the meeting of 1999. That was their last meeting after the Family dispute in 2003. When he applied for Lease he know Tony Kanegai was on the land. He said his father gave that land to Tony Kanegai's Father (Antoine Kanegai) to live on it but they did not give that land to Tony Kanegai since the death of his father in 2000, he did not take any step to remove Tony Kanegai on the land. He had no paper agreement that after the death of his father, he will take out the land from Tony Kanegai. The land he referred to is Land Title 1112. He accepted that the land was in dispute but he said it is his land.
120. He was asked whether he was present when his father (George Kano Chichirua) told Tony Kanegai to go and live on the said land. He responded that when they were talking, his father went and took Antoine Kanegai from Malekula to live on the land. But Tony was on that land when he extended an old foundation house as his house and lives in it until now. He said when they went on Malekula, Tony Kanegai did not yet live on that land. Tony Kanegai was renting accommodation everywhere in Port Vila town. The last place he rented a house was Collardeau before he moved on the said land. The timber house was repaired and Antoine Kanegai lived in it. That timber house was a colonial house. It was no longer there as it was destroyed by a cyclone. He no longer went to Panganifata as they have a dispute in 2003.
121. He was asked of the statement in paragraph 7 of his statement, he said Antoine Kanegai told Family Chichirua to remove Tony Kanegai from the land because Tony used to argue a lot with his late father. Antoine Kanegai told him of that. His father and Uncle Kaltai Chichirua never told him that they put Tony Kanegai to live on the said land.
122. He accepted Tony Kanegai is part of the Family Chichirua because he descended from his grandmother Toumata Tetrau but as far as the right over customary land is concerned, Tony Kanegai has no right over that land. He said it was not part of Ifira custom over custom land. He said also the subject land in the land was not Marope Land, it was part of the Marope Land.
123. He was referred to paragraph 12 of his statement, he said Tony Kanegai was aware of all of this when Tony was adding Kaltai Chichirua and they challenged this lease. He explained that Tony Kanegai's name was not in the case but Tony was Kaltai Chichirua and they challenged this lease. He explained that Tony Kanegai's name was not in the case but Tony was with Kaltai Chichirua when the case CC 167 of 2003 was made in the Court. That was the first claim, the second claim was the case now before the Court. It was put to him that what he stated is not correct as Tony Kanegai has never challenged any Family Chichirua until Civil Case No. 44 of 2011 (present case). He maintained that Tony Kanegai was with Kaltai Chichirua and challenged that lease. In 2003, he said CC 163 of 2003 was the case of his small papa Kaltai Chichirua but Tony Kanegai advised Kaltai Chichirua on what to do. But in the end the case was withdrawn and, Kaltai Chichirua returned back to Chichirua Family.
124. He was asked about Marope Land that Family Chichirua was not a party but Naflak Tenfi was. He answered it was true but through his father who was declared custom owner and Naflak Tenfi was the perpetual owner.



125. He confirmed he paid rent on the said lease (title 1112) of more than 4 hectares. He confirmed he sent one Richard Dick to value his property. He agreed with Richard's assessment report. There were houses and trees on the said land. Tony Kanegai built the house and planted the trees on the land. He never lives on the land.
126. Esau Chichirua was re-examined. He confirmed when he did gardening on the land, Tony and his Father (Antoine) were already on the land. He knew Tony was on the land he applied for lease on the land because he knew his father (George Kano Chichirua) never told Tony Kanegai to live on the said land. His father never told him that he gave the land to Tony Kanegai. He repeated his evidence that in Ifira when a woman unmarried out of the family, she lost her right over land. She is a member of the family but she has no longer right over land. He clarified his evidence that the case that Kaltoi Chichirua with the assistance of Tony Kanegai was title lease 205. He clarified Antoine Kanegai was living in the old brick house.
127. Mr Mahit Kalurai was the next witness of the Fifth Defendant. He filed a statement and confirmed its content. Marope Land Case was the land next to title land lease 205. Title 205 land lease was in dispute he is one of the claimants with Tenfi Ifira. He never allowed and told Tony to live on the land. He was not cross-examined by Mr Malcolm and Mr Gilu.
128. Mr Kalurai was cross-examined by Mr Hakwa. He confirmed lease title 205 was surrendered. He said lease 1081 was owned by the government as lessees. He was asked the government was the lessor and he was one of the lessees. He said no as they transferred it to the government. Pastor George Kano, Kaltoi Chichirua, Dick Kalurai and he were the lessees. He said this was not Marope Land. There was no customary declaration as to the ownership of that land from an Island Court, Tribunal or a body from the new Land Act.
129. Since 1993, they talked to bring Antoine Kanegai back to this land while Antoine was on Malekula. Tony Kanegai did not say he is the custom owner of the land. Tony Kanegai is not a lessee of the land. Land Title 1112 was Esau Chichirua's Lessee. They asked a Real Estate to prepare the lease document. (Paul Simeon). They signed the lease of Esau Chichirua. Esau Chichirua paid an amount of money for this land otherwise the government would not sign this lease. Esau Chichirua cannot reside on the land because Tony Kanegai threatened all people on this land with his gun. Aloane, Ben, Michel and Dick have some existing title, some are registered, and others are not registered. Tony Kanegai disturbed anyone who came to live on the land. The land does not belong to Tony Kanegai.
130. He accepted he is not family Chichirua but Kalurai. When they signed the lease for Esau Chichirua, there were a Judgment of the Efate Island Court which they used as the basis to sign the lease for Esau Chichirua.
131. In his re-examination, Kalurai confirmed his evidence that the Claimant expanded the house in 1994 – 1995 when they applied for lease, they made a survey plan. They walked on the land. They used the government survey plan. He walked on the land with his uncle Kaltoi Chichirua and his uncle George Kano. They allowed them to go and walk on the land.



132. Richard Dick was the last witness for the Fifth Defendant. He is from Malekula Island. He is a private Valuer from Vanuatu property appraisal. He worked previously in the government as a Senior Valuer. He confirmed a statement he made in this case and its content.
133. Mr Malcolm and Mr Gilu did not cross-examine this witness. They said they objected to the amount of compensation/damage. The report was relevant on its making but not to the truth of what it contained.
134. Mr Hakwa asked and he said he went to the land saw where Tony Kanegai was on the land lease title 1112.
135. That is the end of evidence in this proceeding.

IV. **Fact Findings.**

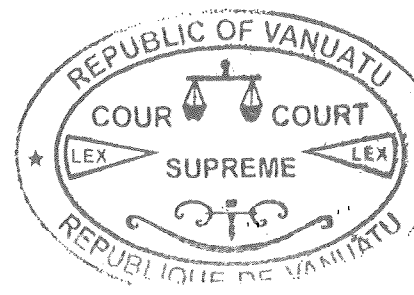
136. On assessment of the evidence the following facts were established:-

A. **Location of the subject land and its status in 1993.**

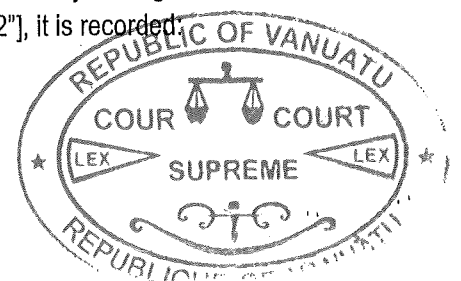
137. The "land" the subject of the initial title 12/0633/205 is located at the area beyond the Tagabe Mele Road towards the Blacksands/Salili area (Lease 205). The said land was part of Old Title 571 and 57M.
138. The said land is located next to the boundaries of the land known as "Marope Land" the ownership of which was determined and declared in favour of George Kano Chichirua Family and Naflak Teufi Ifira in February 1994 by the Efate Island Court.
139. Pastor Kano Chichirua and family Chichirua also claimed the ownership of the land the subject of lease title 12/0633/205. Other family or groups also disputed the customary ownership of that said land (Family Nikara of Imere). It was a custom ownership disputed land.

B. **Family Chichirua and Family Kanegai – Relationship and the current land.**

140. In 1993, there were concerned by Chichirua Family that other persons who were neither claimants or from Ifira Tenuku were moving onto and occupied parts of the said land. The concern was that there should be preserved sufficient land for use by members of Chichirua family and their future descendants.
141. Tony Kanegai's (the claimant) grandmother [Toumata Tetrau] is the sister of the father of George Kano Chichirua [Kaltou Gorua]. Tony Kanegai and his Family are related to the Chichirua Family on the matrilineal line of Chichirua family.
142. Family Chichirua and family Kanegai has meetings and discussions over the Marope Land and also over the current land the subject of this proceeding in 1993, 1999 and 2003 among others (see GK1, GK2 and GK3 evidence of Genie Kanegai).



143. The records of the Minutes of the meeting of 11 November 1993 of Family Chichirua and Family Kanegai at "GK2" showed it was a meeting to establish a Family Committee to carry out work undertaken by the senior members of the two families to look after the families and land.
144. The Minutes recorded the following persons present at that meeting of 11 November 1993:-
1. Pastor Kano Chichirua
 2. Kaltai Chichirua
 3. Aloan Chichirua
 4. Iso Chichirua
 5. Abei Chichirua
 6. Simeon Chichirua
 7. Jean Claude Kanegai
 8. Michel Kanegai
 9. Gilbert Kanegai
 10. Tony Kanegai
 11. Anthony Kanegai
 12. Nadia Kanegai
 13. Antoinette Kanegai
 14. Marinette Kanegai & Allan
 15. Felina Kanegai
 16. Jeane.
145. The meeting took place at the house of Jean Claude and Lindia Kanegai. The record of the meeting showed, among other matters, that Pastor George Kano Chichirua stated that he was struggling for the land since 1975 for the true family. Naflak Teufi did not have the rights to control the land. Family had priority because the Family had priority because the Family was the right owner of the land (see page 2 of the records of that meeting). Naflak Teufi and its members were just witnesses for Family Chichirua.
146. This meeting of 11 November 1993 took place before the judgment of Efate Island Court in February 1994.
147. Another meeting between Family Chichirua and Family Kanegai took place on 19 June 1999 at Panganifata (See GK2), those present were: Gilbert Kanegai, Michel Kanegai, Tony Kanegai, Aloan Chichirua, Apei Chichirua, Kano Chichirua, Kaltai Chichirua and Antoine Kanegai. (Esau Chichirua and Ben Chichirua were absent).
148. This second meeting took place on 19 June 1999 at Panganifata after the judgment of the Efate Island Court on Marope Land in 1994.
149. The records of the minutes of the second meeting showed that Family Chichirua and Family Kanegai discussed over situations of the land Family Chichirua had leased with others and land not yet leased. The record stated Kano Chichirua apologized and gave reasons for the move they took to lease the land the subject of the current proceedings without Family Kanegai when questioned by Tony Kanegai, in the middle of page 5 of the minutes ["GK2"], it is recorded:



*"Long wanem yufala I stap go thru long hem, mi save yufala I stap filim pein true. Sori blong talem, mo sori from mifala I no bin aprojem yufala blong yufala I save long ol mov ia. Be risen blong muv ia I from se yufala I forgevem ol olfala finis. Mifala I putum ol man long land blong mifala I kakai. Be yet, of man ia oli stilim back mifala oli no makem wanem we oli sapos blong makem. Confirmem se mi nao mi putum Jack, from wan pepa ia ...
Smol pis land we mifala I lisim I blong olgeta pikinini, kasem taem we wan gud answa I kamaot long Court..."*

From we mifala ol olfala oli laev yet, ples we oli lisim, I putum long hand blong ol pikinini blong work long hem. Askem yufala ol pikinini from sam part blong land blong leavim mifala ol olfala I kakai long hem fastaem.....

Risen we mifala I putum ol man long land I from se ol pikinini I no moa tingting long ol olfala. Ol man I stap long land I blong karem smol mani blong bred."

150. The third meeting of Family Chichirua and Kanegai took place on 5 April 2003 at Panganifata at Tony Kanegai's house. Those present were:

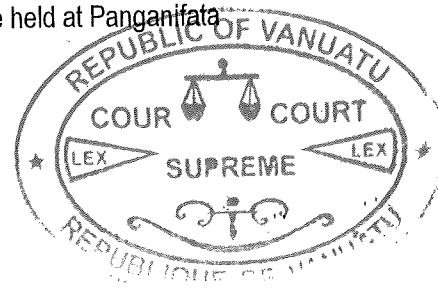
- Kaltai Chichirua
- Esau Chichirua
- Aloan Chichirua
- Antoine Kanegai
- Jelly Kanegai
- Gilbert Kanegai
- Tony Kanegai
- Alison Kanegai
- Genie Kanegai
- Michel Kanegai
- Irma Kanegai
- Jack Kaljiolua Kanegai
- Nadia Kanegai

151. George Kano Chichirua did not take part in the third meeting as he passed away in 2000.

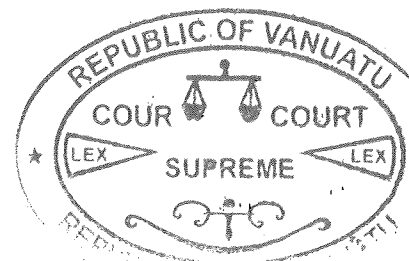
152. They specifically talked about Land Lease Title 12/0633/205. The discussions were surrounding the fact that Mahit Kalurai and Dick Kalurai were including as lessees on the title 205 while Antoine Kanegai was not included as a lessee on the said Title Lease 205. They decided to remove the name of Mahit Kalurai and Dick Kalurai on the said lease.

153. It was a fact that Pastor George Kano Chichirua participated actively on the first and second meetings of Family Chichirua and Family Kanegai and the second meeting was held at Panganifata on June 1999 on the land where the Claimant [Tony Kanegai] lives.

154. It was also a fact that Kaltai Chichirua participated in the three meetings between the two families (Chichirua and Kanegai) and the second (1999) and third (2003) also were held at Panganifata where the Claimant [Tony Kanegai] lives.



155. It is an accepted fact by the Claimant and the Defendants and particularly the Fifth Defendant [Esau Chichirua] that Kano Chichirua took Antoine Kanegai [Tony Kanegai's father] to place him on the land the subject of the present proceeding and to live on the said land sometime in 1994.
156. The Claimant moved on the land in 1993 before his father. He extended an old existing foundation into a semi-permanent house and lives in it with his family. When his father lived on the said land, he lived in a concrete shed near Tony Kanegai's house. Tony Kanegai's brother lived also on the land until his passing away in 1994.
157. Tony Kanegai said he was taken and shown the place he was living on the land by Kano Chichirua and Kaltoi Chichirua in 1993. This was disputed by Esau Chichirua, the second son of George Kano Chichirua and his father had never told him that he permitted the Claimant, Tony Kanegai, to move on the land, build his house and make developments on the land. There was no specific evidence that Kano Chichirua and Kaltoi Chichirua took Tony Kanegai and put him on the said land to live on it.
158. However, the records of some of the meetings between Family Chichirua and Family Kanegai indicated that the two families discussed over issues on Marope Land and issues over the present land the subject of the current proceedings [see GK1, GK2 and GK3]. George Kano Chichirua and Kaltoi Chichirua participated actively in these Family meetings. The second and third meetings took place at Panganifata, the place on the land where the Claimant built his house and lives with his family. George Kano Chichirua and Kaltoi Chichirua passed away (2000 and 2007). It is impossible to have evidence from these two deceased persons. In this case, it can be inferred from the records of the meetings between the two families (Chichirua and Kanegai) that took place at Panganifata the place where the Claimant lives, George Kano Chichirua participated in the two first meetings where the second was at Panganifata. Kaltoi Chichirua participated at the three meetings where the second and third were held at Panganifata where the Claimant lives suggested that the Claimant, Tony Kanegai, was accepted to live and built his house and occupy the land at Panganifata. The rational conclusion is that he was permitted to live on the land also with his father by the senior members of Chichirua family (Kano Chichirua and Kaltoi Chichirua). It is more probable than not that this is what happened as a fact. The version of facts put forward by the Fifth Defendant [Esau Chichirua] on this aspect of the fact is rejected.
159. It follows from these facts that when George Kano Chichirua and Kaltoi Chichirua permitted Antoine Kanegai and Tony Kanegai to live and occupy the land the subject of this case the said land was part of Title 57I and 57M, a disputed ownership customary land as found earlier.
160. Antoine Kanegai and Tony Kanegai were permitted to live and occupy the said land for and on behalf of the family Chichirua as intended custom owners and on extended family basis for Family Kanegai (as reflected in the minutes of the meetings in GK1, GK3).
161. Tony Kanegai and Family Kanegai had no customary ownership claim over the said land old Titles 57I and 57M.



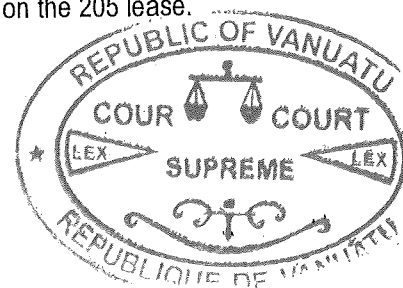
162. What custom to apply on the said customary land whether the patrilineal or matrilineal and whether or not the Family Kanegai had right in custom in relation to custom land owned or intended to be owned by Family Chichirua is a matter to be determined on another time and before the relevant tribunal.
163. It is the fact that as of 1993 to January 1998, the land the subject of the present proceeding was and is still a disputed customary land. Kano Chichirua and Kaltoi Chichirua and Family Chichirua were not declared custom owners of the said land.

C. Leasehold Title 12/0633/205 and Leasehold Title 12/063/1081 and subsequent leases and sub-leases on the said or part of the said land.

164. In 1997, Pastor George Kano Chichirua and others negotiated and applied to lease the current land which was part of Old Title 57I and 57M.
165. On or about 5 February 1998 Lease Title No. 12/0633/205 (Lease 205) was registered between the Minister of Lands as lessor and Kano Chichirua, Kaltoi Chichirua, Mahit Kalorai and Dick Kalorai as the lessees (Annexure "JMP1" to the statement of Jean Marc Pierre).
166. According to the records of the Minutes of the meeting between Family Chichirua and Family Kanegai and in particular the second meeting of 19 June 1999 at Paunganifata, Pastor Kano Chichirua explained to those attending the meeting and in particular the claimant, Tony Kanegai, the reasons for the move they took to lease the land the subject of 205 lease which were, among others, to the following effect:

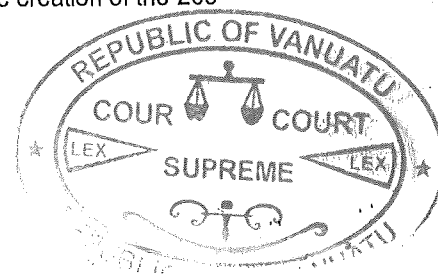
"... sori blong talem, mo sori from we mifala ino bin aprojem youfala blong yufala isave long ol move ia. Be risen blong mov ia ifrom se yufala iforgetem ol olfala finis. Mifala iputum ol man long land blong mifala ikaikai ... Risen we mifala iputum ol man long land ifrom se ol pikinini ino moa tingting long ol olfala. Ol man istap long land iblong karem smol mani blong bred ..."

167. The record of the Minutes of the second meeting of 19 June 1999 between the two (2) families also showed that Tony Kanegai: *"Kwestenem papa Kano se: 'From wanem signedja blong Mahit mo papa blong hem istap long lis document' ... Papa Kaltoi (answered) 'From se Mahit isave gud hao blong handelem ol issue blong land mo tufala nao istap resemip fund blong lis ...'"*
168. The record of the said second meeting also showed that Tony Kanegai *"Askem long papa Kano blong mas withdrawem signedja blong Mahit mo papa blong hem". "Papa Kano (responded): 'Mi acceptem blo withdrawem signedja blong tufala. Muv blong mas tekemap."*
169. On 11 February 2000, Pastor George Kano Chichirua passed away (Annexure "TK3" to the statement of Tony Kanegai).
170. It is also a fact Kaltoi Chichirua assisted by Tony Kanegai filed a Supreme Court case Civil Case No. 163 of 2004 trying to remove the names of Mahit Kalurai and Dick Kalurai on the 205 lease.



As noted earlier, that case has been withdrawn (see cross-examination of witness Esau Chichirua evidence by Mr Hakwa).

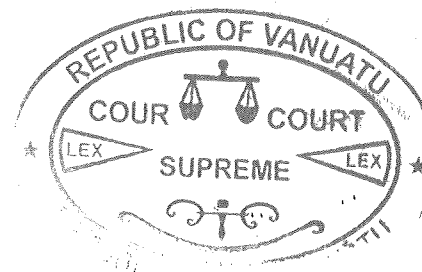
171. As a result of the withdrawal of that case Mahit Kalurai and Dick Kalurai are and remain Lessees with Geroge Kano Chichirua and Kaltol Chichirua on the initial 205 lease.
172. On 12 October 2005, Lease Title 12/0633/205 was surrendered (annexure "JMP2" to the sworn statement of Jean Marc Pierre).
173. After the passing of Pastor George Kano Chichirua, there was a dispute in the Family Chichirua as to who is to replace him on behalf of Family Chichirua to exercise his rights and obligations. An issue arose in custom as to who to exercise Pastor George Kano Chichirua's rights and obligations in the custom of Ifira, Efate. That issue arose between the first son of Pastor George Kano Chichirua, Aloan George Kano Chichirua and Pastor George Kano Chichirua's brother Kaltol Chichirua. The matter was brought before the Efate Island Court and the Efate Island Court gave its decision in favour of Aloan George Kano Chichirua on 28 October 2004. The relevant part of the Efate Island Court judgment is set out as follows:
 - "1. *Kot hemi faenem aot se folem stret custom blong man Efate taem papa ided right we hemi kat igo stret lo first born son blong hem hemi klia nomo se taem we late Pastor George Kano ided, right we hemi kat iko stret long son blong hem we hemi Aloan George Kano.*
 2. *... Kaltol Chichirua hemi no follem custom blong man Efate blong hemi takem over right blong brother blong hem late Pastor George Kano (Annexure "C" to the sworn statement of Esau Chichirua).*
174. In this case, there was no letter of administration issued permitting Aloan George Kano to execute the transmission of the rights of deceased Pastor Geroge Kano Chichirua into his son Aloan George Kano Chichirua.
175. During cross-examination, Jean Marc Pierre gave evidence to the effect that the authority for Aloan George Kano to execute the surrender is the Judgment of the Efate Island Court in Civil Case No. 12 of 2004 dated 28 October 2004 (see also Annexure "C" to the sworn statement of Esau Chichirua).
176. On 12 October 2005, new commercial/industrial lease title No. 12/0633/1081 was created and registered between the Minister of Lands as lessor and Aloan George Kano, Kaltol Chichirua, Mahit Kalorai and Dick Kalorai as the lessees (Annexure "JMP4" to the sworn statement of Jean Marc Pierre).
177. It is a fact that there were no complaint made by the other lessees nor lessor against the name of Aloan George Kano in the register in place and lieu of the name George Kano Chichirua.
178. The claimant, Tony Kanegai, was not a lessee or lessor nor have mortgage on the said 205 lease. There was no evidence that he had applied to be a lessee or lessor before the creation of the 205 lease, lease title 12/0633/1081 and lease title 12/0633/1112.



179. On 12 October 2005 Lease Title No. 12/0633/1081 was transferred to the Government of the Republic of Vanuatu represented by Vanuatu Livestock Development Company Limited with a consideration of VT25,000,000 (see sworn statement of Howard Aru).
180. On 9 February 2010, Lease Title 12/0633/1112 was registered between the Minister of Lands as the Lessor and Esau Chichirua as the Lessee (Annexure "JMP8" to the sworn statement of Jean Marc Pierre). It is not disputed that Esau Chichirua paid annual rents on his lease as he said in his evidence
181. On 3 September 2010, a sub-lease was created from lease title No. 12/0633/1081 being this sub-lease title 123/0633/1081A and is registered between the Government of the Republic of Vanuatu represented by Vanuatu Livestock Development Company Limited as the sub-lessor and Sino-Van Fisheries Limited as the sub-lessee (Annexure "JMP6" to the sworn statement of Jean Marc Pierre).
182. On 7 March 2013, the second sub-lease title 12/0633/1081B and is registered between the Government of the Republic of Vanuatu represented by Vanuatu Livestock Development Limited as the sub-lessor and Sino-Van Fisheries Limited as the sub-lessee (Annexure "JMP7" to the sworn statement of Jean Marc Pierre).

V. The Law

183. The relevant provisions of the law in the present case are sections 8 of the Land Reform Act [CAP. 123], Sections 17 and 100 of the Land Leases Act [CAP. 163]. They are set out as follows:
184. Section 8 of the Land Reform Act [CAP. 123] provides:
- (1) *The Minister shall have general management and control over all land –*
 - (a) *occupied by alienators where either there is no approved agreement in accordance with sections 6 or 7 or the ownership is disputed; or*
 - (b) *not occupied by an alienator but where ownership is disputed; or*
 - (c) *not occupied by an alienator, and which in the opinion of the Minister is inadequately maintained.*
 - (2) *Where the Minister manages and controls land in accordance with subsection (1) he shall have power to –*
 - (a) *consent to a substitution of one alienator for another;*
 - (b) *conduct transactions in respect of the land including the granting of leases in the interests of and on behalf of the custom owners;*



- (c) *take all necessary measures to conserve and protect the land on behalf of the custom owners.*

185. Section 17 of the Land Leases Act [CAP. 163] provides:

Unless the contrary is expressed in the register, the proprietor of a registered lease shall hold such lease subject to such of the following overriding liabilities, rights and interests as may, for the time being, subsist and affect the same, without their being noted on the register –

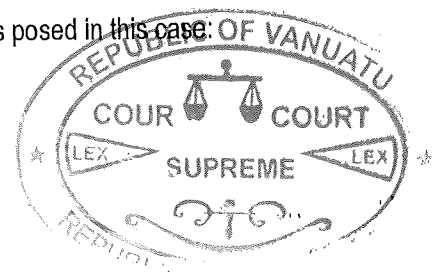
- (a) rights of way, rights of water, easements and profits subsisting at the time of first registration of that lease under this Act;
- (b) natural rights of light, air, water and support;
- (c) rights to sites of trigonometrical stations and navigational aids conferred by any law;
- (d) rights of compulsory acquisition, resumption, entry, search and user conferred by any law;
- (e) the interest of a tenant in possession under a sublease for a term of not more than 3 years or under a periodic tenancy;
- (f) any charge for unpaid rates or other moneys, which, without the condition of registration under this Act, are expressly declared by any law to give rise to a charge on land;
- (g) the rights of a person in actual occupation of land save where enquiry is made of such person and the rights are not disclosed; and
- (h) rights and powers relating to electric supply lines, telegraph and telephone lines or poles, pipelines, aqueducts, canals, weirs, dams, roads and ancillary works conferred by any law;

Provided that the Director may direct registration of any of the liabilities rights and interests herein before defined in such manner as he may think fit.

186. Section 100 of the Land Leases Act provides:

- (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.*

187. I now consider the following issues in order to answer to the legal questions posed in this case:

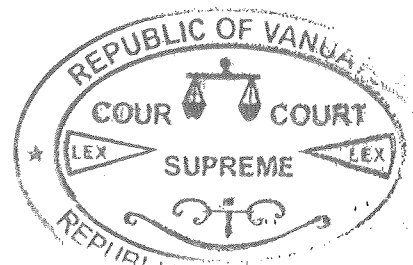


1. Whether the claimant has occupational rights on the land the subject of this proceeding;
2. Whether the claim for rectification under Section 100 of the Land Cases Act was justified;
3. Whether the claimant was entitled to damages of VT82,500,000.

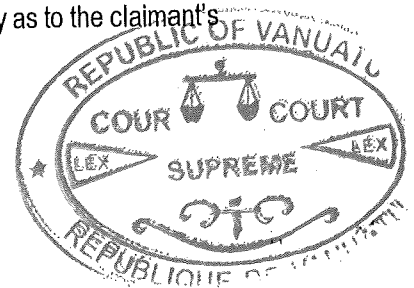
VI. Application of Law to the Facts of this case

A. Whether the Claimant has occupational rights on the land the subject of the current proceeding pursuant to sections 17(g) of the Land Leases Act?

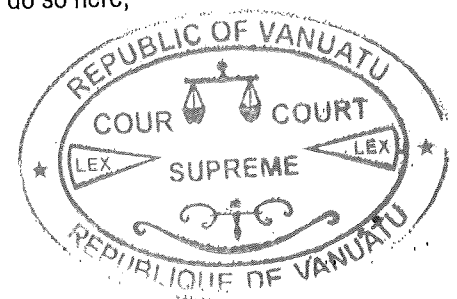
188. The Claimant says the provisions of 17(g) of the Land Leases Act apply totally and in full to him. The Claimant is a person who is in actual occupation and possession of the land. He lives in an area of the said land called "Panganifata". He has extended a condominium foundation as his home and lived there and developed the land since 1993. His father and brother also lived there in a concrete shed on the land before they each passed away.
189. As found, Tony Kanegai was permitted to live and occupy the said land for and on behalf of Family Chichirua. He has no custom ownership claim over the said land.
190. The land was and is still a disputed customary ownership land.
191. Late Pastor George Kano Chichirua and late Kaltoi Chichirua or any of the Chichirua Family is not declared custom owners of the said land. There were also custom owners claim of that land outside the Chichirua Family.
192. In such a circumstance, the said land is under the control of the Minister of Lands pursuant to Section 8 of the Land Reform Act.
193. Section 17(g) provides that an overriding interest unless the contrary is expressed in the register, the proprietor of a registered lease shall hold such lease subject to such of the following overriding liabilities, rights and interests as may be for the time being, subsist and affect the same without their being noted on the register – (g) the rights of the person and actual occupation of land save where enquiries are made of such person and the rights are not disclosed.
194. The case on point in Vanuatu is Williams v Williams [2004] VUCA 16. The position is rightly summarized in Mr Malcolm's submissions.
195. Pursuant to the William's Ruling, the Court of Appeal has set out the basic rules in respect to Section 17(g) and they are as follows:
- "a. *Where no lease exists over the land the custom owner can give occupation rights on such terms as he/she thinks fit within custom. The terms of occupation are pursuant to custom or as stipulated on granting such rights. At the time of the purported occupation in this case (1993) there was no lease over the land and the land was apparently under the guidance of the Minister of Lands pursuant to section 8 of the Land Reform Act.*



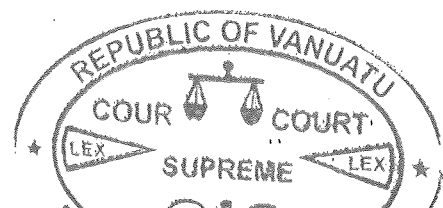
- b. *If a Lessee or Lessor provides an occupation right to a third party the maximum terms of such occupation is for the term of the lease. Pursuant to Williams where a lease exists a custom owner cannot give rights to occupation without the consent of the Lessee. Where there is no lease and occupation rights are granted there are three possibilities in respect to the lease namely:*
- i. *Prior to taking the lease the Lessee makes no enquiries in which event his lease is subject to the occupational rights without registration;*
 - ii. *If enquiries are made by the Lessee and the occupier does not disclose his interest as a lawful occupier, the lease take priority over such rights of occupation;*
 - iii. *Where a Lessee makes enquiries and is advised in respect to the occupier then in those circumstances he can negotiate with either the occupier or the custom owner for a reduced lease term or to pay the occupier out;*
 - iv. *Rights of occupation have to be lawful rights granted by the custom owner or the Lessee and not a situation where someone has without the authority of the Lessee or custom owner simply moved onto the land and taken possession and held onto the same by whatever means."*
196. In the present case, it is said on behalf of the Claimant that the late Pastor George Kano Chichirua (deceased), late Kaltai Chichirua (deceased), Mahit Kalorai and Dick Kalorai had actual notice of the claimant's occupation before or after the registration of the first lease ("205 lease"). It is said the overriding right of the Claimant, therefore, attaches to and/or apply for the total duration of the first lease which is 75 years from 18 December 1997.
197. It is further said that the surrender of the first lease is made in breach of the provisions of Section 17(g) of the Land Leases Act and/or in breach of the claimant's overriding interests attaching to the first Lease.
198. It is advanced also that there is sufficient evidence provided to the Court as proof that:-
- (a) The claimant is a member of Family Chichirua;
 - (b) Family Chichirua also claims ownership of the land;
 - (c) The claimant has acquired rights to occupation, possession and/or development of the land from the date Pastor George Kano Chichirua (deceased) who were joint lawful proprietors of the property comprised in the first lease;;
 - (d) Throughout the claimant's continuous and actual occupation of the land since 1993 and continuing to date neither the initial registered proprietors of the property comprised in the first lease nor Aloa George Kano Chichirua, the late Kaltai Chichirua (deceased), Mahit Kalorai, Dick Kalorai, Willie Jimmy Tapangararua, Maxim Carlot Korman, Esau Chichirua or anyone else had objected to his occupation of the land;
 - (e) Aloa George Kano, the late Kaltai Chichirua (deceased), Mahit Kalorai, Dick Kalorai had actual notice of the claimant's occupation but nobody made any enquiry as to the claimant's occupation;



- (f) Willie Jimmy Tapangararua, the First Defendant and/or Second Respondent (as the case may be) had actual or constructive notice of the claimant's occupation of the land but nobody made any enquiry as to the claimant's occupation;
- (g) The Fifth Defendant had actual notice of the claimant's occupation of the land but made no enquiry as to the Claimant's occupation;
199. In the present case, the lease 205 was issued on or about 18th December 1997. The Claimant was given permission to move onto the land in 1993 and occupy the land for and on behalf of Family Chichirua. There were no enquiries made as to the occupation by the claimant of the said land property.
200. As found, the land is a disputed customary ownership land and remains so. It is under the control of the Minister of Lands pursuant to Section 8 of the Land Reform Act. The legality of the occupation of the said land by the Claimant is in issue. In circumstances where all of the purported custom owners agree to an occupation then occupation rights can exist on the same principle as in the case of Turquoise v Kalsuak [2008] VUCA 22.
201. In Turquoise, where in the event a Minister wishes to effect custom land lease entitlements he has to, pursuant to Turquoise, attempt to confer with all the custom owners. Here, the Court has been given no evidence by any party as to which custom owners were consulted in respect to the asserted consent to occupy by Mr Tony Kanegai. Mr Kanegai's evidence is that the only party who gave him consent was Pastor George Kano Chichirua. The evidence of the Fifth Defendant's witness, one of the purported custom owners being Mahit Kalorai was that at no stage was he consulted nor gave consent to Mr Tony Kanegai occupying the land. As the land the subject of this proceeding was a disputed custom owner land and remains so and at the time of occupation in 1993 to become a lawful occupant the occupant requires the consent of all of the purported custom owners then there is no valid or lawful occupation in a situation where only one was so consulted or provided consent.
202. Further, in the alternative, as the court did also here, the Court accepted that the said land property is under the control of the Minister of Lands pursuant to Section 8 of the Land Reform Act, then such consent to occupy is required to be given by the said Minister of Lands. There is no evidence before the Court that the consent of the Minister of Lands was requested or given in respect to Mr Kanegai's occupation of the said land property. The claim in its entirety is to be dismissed without further consideration.
203. For completeness, the buildings and gardens of the claimant are all located on Title No. 1112 owned by Esau Chichirua. It is the obligation of the claimant to prove what he was given and where. In the case of a lease where it covers the entire lease, the boundaries are set by the survey plan. In this case, there is no evidence whatsoever and the obligation was on Mr Kanegai to provide a survey plan of the following:
- i) The house and curtilage and gardens he was given in 1993 and possibly a comparison with the gardens that he currently managed. The claimant has failed to do so here;



- ii) As to Mr Kanegai's assertions that he was not consulted in respect to the issue of the 205 lease or the subsequent surrender and reissues, he is not entitled to any such consultation as a matter of law. There is no lawful right or demand that he be consulted, it is at the risk of the Lessee, not at the risk of the occupant;
 - iii) A further issue in respect to Section 17(g) is that on Mr Kanegai's evidence in 1993 and 1994 the said land property was also occupied by his brother and his father;
 - iv) Occupation rights under Section 17(g) are rights to the individuals ie. Personal rights, they are not proprietary rights that can be passed on, on death, they exist at the best for the life time of the occupier. The possible question is whether in those circumstances the claimant has occupation rights in respect to the shed he was not so occupying.
204. The claim itself is also convoluted in that the claimant has not been asked to leave the property, there is no eviction notice or application for eviction and there is no cross-claim in respect to this matter. The claim is entirely that of the claimant's and issued presumably because the Fourth Defendant had built a building on Titles 1081A and 1081B. There is no evidence whatsoever that those buildings have adversely impacted on the occupation by the claimant or his gardens and the contrary evidence is that the buildings and gardens of the claimant are all located on Title 1112 owned by Esau Chichirua.
205. In the way the claim is made and the purpose for which it is made, in the circumstances of this case, Section 17(g) does not apply to the Claimant, Mr Tony Kanegai.
- B. Rectification of the Leases Titles No. 12/0633/205, 12/0633/1081 and Lease 12/0633/1112 and sub-lease 12/0633/1081A and sub-lease 12/0633/1081B on the basis of Fraud and Mistakes.**
206. The claim for rectification is pursuant to Section 100 of the Land Leases Act. The Claimant's case is that he was put on the land by Pastor George Kano Chichirua in 1993. In 1993, the said land was a disputed custom ownership land. The said land is not a custom owned land by the Chichirua Family. The said land was registered in 1998 as Lease 205. It was then transferred and a new lease was created and registered as Title No. 12/0633/1081. Another lease was created on the said land as title No. 12/0633/1112 and owned by Esau Chichirua. Two sub-leases titles 12/0633/1081A and 12/0633/1081B were created and registered out of the Lease 12/0633/1081.
207. The status of the claimant was that he was put on a customary disputed land in 1993. He has no custom ownership claim over the said land. The claimant was not a lessee or a lessor. He is not a custom owner or a potential custom owner. He has no sub-lease and no tenancy agreement. He has no mortgage arrangement on the said land.
208. His only possible entitlement to challenge any of the leases would be a person with an interest under Section 17(g). He would have to prove fraud or mistake. There is no evidence of fraud. There is evidence as to possible issues with the leases.
209. For example the surrender of Lease 205 was made on the basis of a court order. The issue and re-issues of leases and surrenders of the leases were made at the time the Department of Lands



were amalgamated and there were delegations of responsibilities in relation to their registrations and one of the leases was issued without a negotiating certificate. There was no evidence of any fraudulent activity.

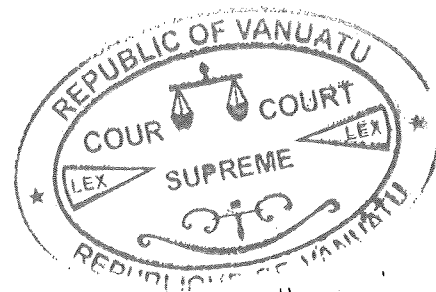
210. The claimant's main argument was that he was not consulted in respect to the lease or the sub-leases and therefore there was a mistake in respect to the same in line with Turquoise case. That is misconceived. The Claimant has no right of audience or consultation and any lease issued without consulting him as an occupier is absolutely irrelevant. It is not a mistake or a fraud.
211. As to the property being on sold to the Government of Vanuatu represented by the Third Defendant, there is nothing wrong with that albeit it seems a bit strange that the Third Defendant would pay VT25,000,000 and not get the property in its own name. However, the evidence from Mr H. Aru was that the Third Defendant's property is wholly owned by the Government of Vanuatu and there might be advantages at that time of the sale. Either way that is not fraud or a mistake.
212. As to his other complaints under the Government Tenders Act, the accepted fact is that there is no evidence of any breach of any tender.
213. In these circumstances, Mr Kanegai has no right of occupancy at all and he had no locus standi at all.

C. Damages

214. There is no evidence of any damage to the Claimant. The claimant's evidence is that he was entitled to occupancy in terms of the land at now Title 1112. There has been no adverse development on Title 1112. As he is not lawful occupier he is not entitled to any damages in any event. The only possible way in which he could be entitled to damages or compensation as an occupier is if he proved himself to be a lawful occupier of a piece of land and was subsequently and unlawfully ejected from that land by force regardless of his rights of occupancy and subsequently prevented re-occupying the land. No such action has occurred here and there are no damages. If he is an occupier his rights of occupancy continue pursuant to whatever he was allowed in 1993. None of that has been taking away from him and there is no damage.

D. Results

215. This whole claim itself is convoluted in that the claimant has not been asked to vacate the property, there is no eviction notice or application for eviction and there is no cross-claim in respect to this matter. The claim is entirely that of the claimant's and issued presumably because the Fourth Defendant had built a building on Titles 1081A and 1081B. There is no evidence whatsoever that those buildings have adversely impacted on the occupation by the claimant or his gardens and the contrary evidence is that the buildings and gardens of the claimant are all located on Title 1112 owned by Esau Chichirua. There is no evidence of any damage to the claimant. There has been no adverse development on Title 1112.
216. The whole claim is misconceived. It is therefore dismissed.




E. Costs

217. The First and Second Defendants, the Third and Fifth Defendants are entitled to costs to be assessed on indemnity basis against the claimant.

Dated at Port-Vila, this 3rd Day of December 2019

BY THE COURT


Vincent LUNABEK
Chief Justice

