

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

**Company**  
**Case No. 13/2 SC/COMP**

**IN THE MATTER OF: THE COMPANIES ACT [CAP. 191]**

**BETWEEN: Silu Malasikoto  
Taea Toriki Malasikoto and  
Freddy Malasikoto  
of Mele Village being members acting as the duly  
authorised representatives of Family Malasikoto  
Petitioners**

**AND: MELE TRUSTEES LIMITED  
A company duly incorporated and registered in  
the Republic of Vanuatu  
Judgment Debtor**

**Date of Ruling:** 7<sup>th</sup> July 2020  
**Before:** Chief Justice Lunabek  
**Counsel:** Mr Felix Laumae for the Petitioners  
Mrs Marie Noelle F. Patterson for the Judgment Debtor opposing the Petition  
Mr George Boar for Lakeleo Tau K Nakmau as an Interested Party in support of the Petitions  
Mr Silas C. Makwa for Evergreen Limited Company as an Interested Party and to support to Petitions  
Mr Edward Nalyal for Silas Vatoko, Morris Vatoko as an Interested Party opposing the Petitions

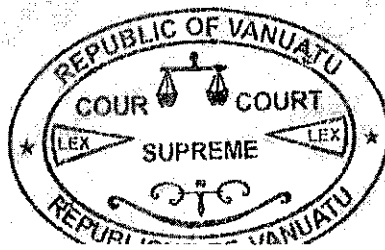
---

**RESERVED RULING**

---

**Petition to Wind Up Mele Trustees Limited**

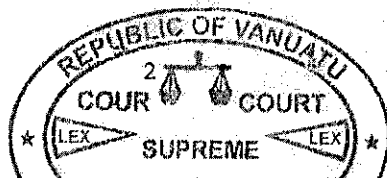
1. A petition was filed on 26 March 2013 to wind up Mele Trustees Limited ("the Company") pursuant to the Companies Act [CAP. 191].
2. The company is said to be indebted to the Petitioner in the sum of Seven Million Six Hundred Sixty Six Two Hundred and Thirteen Vatu (VT7,666,213) pursuant to the settlement under the Consent Order of 9<sup>th</sup> September 2005 in the Supreme Court Civil Case No. 62 of 2005.



3. An affidavit verifying the Petition was filed in support by one Silu Malasikoto of Mele Village, Efate, Vanuatu on the same date. It is said the Petitioner made numerous demands to the Company for payment of the debt but the company had failed and neglected to pay the same or any part thereof (Notices of demand to the Company to pay the outstanding judgment of VT7,666,213 and other notices of demand of payment of the same debt dated respectively on 30 November 2011; 28 November 2012 and 10 December 2012).
4. Orders were made by the Court for Mr Felix Laumae to comply with the provisions of Rule 3.9 of the Civil Procedure Rules to make proper application on behalf of Mr Silu Malasikoto as representatives of Charley Kaltava Malasikoto, otherwise this company case No. 02 of 2013 will be struck out [see Orders of 3 July 2014].
5. Orders were also made for Mele Trustees Limited to file and serve on the parties statements of all monies collected from premium and land rents as from 22 July 2004 to September 2005 (relevant period) form leases Mele Trustees Limited issues over the Pangona land to the claimants in Civil Case No. 62 of 2005 [see Orders made of 3 July 2014].
6. A summons was filed on 12 June 2014 to let Mele Trustees Limited attend the Supreme Court at Port Vila on the 25 June 2014 on the hearing of the Petition of Silu Malasikoto, Taea Toriki Malasikoto and Freddy Malasikoto being members acting as the duly authorized representatives of Family Malasikoto.
7. The summons seek orders:
  - a) That Mele Trustees Limited may be wound up by the Supreme Court under the provisions of the Companies Act;
  - b) Costs and such other orders may be made as shall be just;

#### Response to the Petition

8. The Judgment debtor or Respondent denies indebted to the Petitioner in the sum of VT7,666,213 (Seven Million Six Hundred Sixty Six Thousand and Two Hundred Thirteen Vatus) pursuant to the settlement under the Consent Order of 9 September 2005 in Supreme Court Civil Case No. 62 of 2005.
9. The Supreme court Civil Case No. 62 of 2005 was entered by Consent on 9 September 2005.
10. On 6 December 2005, the Claimant applied for an enforcement warrant in Civil Case No. 62 of 2005.



11. An Enforcement conference took place on 8 February 2006.
12. On 7 May 2008, finally the Court registered in its orders that this judgment was enforced, and that the case was finished. There is no outstanding matter in Civil Case No. 62 of 2005.
13. The Judgment Debtor has paid more monies than was owed to the Petitioner (premium and land rents collected from 22 July 2004 to 9 September 2005) – ie. VT4,556,201 was paid and VT3,281,272 was owing.

Interested Parties added to the proceeding

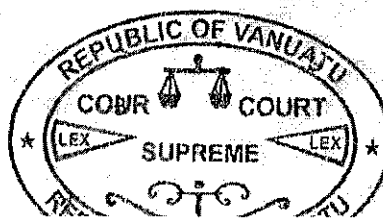
14. In the course of the hearing of the proceeding in the Company Case No. 02 of 2013, following additional Interested Parties were added to the proceeding:
  - Mr Silas Vatoko;
  - Mr Morris Kelly Vatoko;
  - Evergreen Limited;

Application by Silas Vatoko and Morris Kelly Vatoko filed 14<sup>th</sup> August 2014

15. They applied for an order that this proceeding be struck out.
16. They apply for an order that Mr Felix Laumae be disqualified from acting, for any members of Malasikoto Family including, but not limited to, Silu Malasikoto, Taea Tariki Malasikoto and Freddy Malasikoto in this proceeding and any other proceedings in this Court and the Magistrate's Court.
17. They applied also for the costs of the application.
18. Mr Silas Vatoko filed three (3) sworn statements. One on 26 June 2014, and two others on 5 August 2014 in support of the application to strike out the Petition.

Application by Lakelau Nakmau Sambo to be joined as an Interested Party

19. Mr Lakelau Nakman Sambo applied to be joined as an interested party to the proceeding. The subject matter of his application is not because he claimed the company was indebted to him of a specific amount of money but for different purposes. This application was strike out by the Court despite the fact that Lakelau Nakmau Sambo Family had interest in Pangona Customary Land.



Application of Evergreen Limited for an order to be joined as an interested party to this proceeding

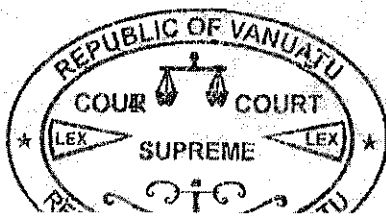
20. The application was granted by the Court on the grounds that: the Applicant is a creditor of the Respondent (Company). The Respondent owes the Applicant the sum of VT1,500,000 referred to as (*the debt*). The debt has been outstanding since 2004. The Respondent is unable or unwilling to pay the debt.
21. The Applicant has filed a notice of his intention to appear and be heard upon the Petition filed herein. A sworn statement was filed by Noel Malas on 11 April 2014 and the Applicant relied on it.

Response to application of Evergreen Limited

22. The respondent company replies to this application as follows:
- a) The Respondent companies denied being indebted to the Applicant Evergreen Limited in the sum of VT1,500,000 (One Million Five Hundred Thousand Vatu) as alleged in the applications and the statement of Noel Malas. The Applicant is not a creditor of the Respondent.
  - b) The alleged debt in this proceeding is an action founded on contract and is therefore subject to the Limitations Act [CAP. 212], Section 3 stating that the section "*shall not be brought after the expiration of 6 years from the date on which the cause of action accrued*". The cause of action accrued in 2004. Ten (10) years ago and falls under Section 3 of the Limitation Act.
  - c) In the alternative, the monies were reimbursed to Evergreen Limited. There is no evidence of letter of demand to the Board of the Respondent.

Consideration of position of Evergreen Limited as an Interested Party to the Petition

23. The statement of Noel Malas does not establish the existence of a debt owed to Evergreen Limited by the Respondent company. There was a letter dated 18 May 2004 which was attached to the statement of Noel Malas from Freeman Langa, Chairman of the Board of the Respondent Company referring to a cheque of VT500,000 as a confirmation deposit for securing an interest in Land Lease title 12/0822/014. A receipt dated 18 May 2004 bearing No. 1243144 was issued by the Respondent Company. There was no evidence of a Notice of demand by Evergreen Limited to the Respondent Company in the sum of VT1,500,000 as a debt. The existence of the debt of the VT1,500,000 has to be established. It is not. A deposit payment of VT500,000 is showed. No demand of re-payment by Evergreen Limited is produced.



24. The deposit payment was made on the basis of some contractual arrangements made between the Evergreen Limited and the Board of the Respondent company on 18 May 2004. Six years have passed without a claim. Section 3 of the Limitation Act applies to this situation.
25. The Evergreen Limited company's support to the Petitioner's for an order to wind up the Respondent company (Mele Trustees Limited) fails and is dismissed. The Respondent company is entitled to costs against Evergreen company in the sum of VT20,000 to be paid by the Evergreen Company to the Respondent company by 20 July 2020.

Consideration of the Petition and summons to wind up the Respondent Company (Mele Trustees Limited)

Brief background

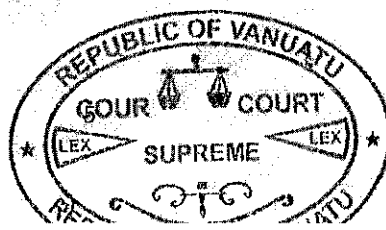
26. Charlie Kaltava Malasikoto, Lakelotaua Nakmau Sambo, Silas Vatoko and Morris Kelly were representatives of Malasikoto Family of Mele Village who were declared custom owners of the Pangona customary land in the Efate Island Court declaration and orders dated July 22, 2004.
27. Family Malasikoto and their representatives have issues with the Respondent Company (Mele Trustee Limited) over the management and issuances of lease on Pangona customary land which culminated in the Civil Case No. 62 pf 2005 and incidentally this proceeding in Company Case No. 02 of 2013.
28. On 9<sup>th</sup> September 2005, Justice Patrick Treston issued consent orders with the agreement and consent of the parties and their respective counsel in Civil Case No. 62 of 2005 between Charlie Kaltava Malasikoto, Lakelotaua Nakmau Sambo, Silas Vatoko and Morris Kelly representatives of Family Malasikoto of Mele Village, Efate and Mele Trust Limited. These consent orders are reproduced below for ease of reference:

"CONSENT ORDERS

*BEFORE THE HONOURABLE JUSTICE PATRICK TRESTON THE 9<sup>th</sup> DAY OF SEPTEMBER, 2005.*

*UPON HEARING Mr Felix Laumae T. Kabini of counsel for Family Malasikoto (the Claimants) and Mr Collin Leo of counsel Defendant AND UPON CONSENT of the parties, IT IS ORDERED that:*

1. *The Defendant must abide by the declaration and orders of the Efate Island Court dated July 22, 2004 and respect the rights of the Claimants as custom owner;*
2. *The Defendant shall forthwith restrain from giving consent, negotiating and issuing any lease in Claimants' land to any person or company;*



3. *The Defendant shall pay all monies collected from premium and land rents as from 22 July 2004 to date from leases it issued over the Pangona land to the Claimants;*
4. *The Defendant shall relinquish its name as Lessor from all leases it issued over Pangona land and ensure that Claimant's names appears in those leases as lessor;*
5. *The Director of Lands Records is orders to effect the rectification;*
6. *The Defendnat shall provide a full and complete record of leases and other dealings with Pangona Land;*
7. *Costs in relation to this matter be paid out from the trust money.*

*DATED the 9<sup>th</sup> day of September 2005.*

*We consent to these orders:*

*Felix Laumae T. Kabini for and on behalf of Trans-Melanesian Lawyers Solicitors for the Claimant  
Collin B. Leo for and on behalf of GEORGE VASARIS & CO Solicitors for the Defendant*

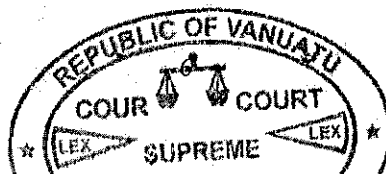
*Perfected, Signed and Sealed this 9<sup>th</sup> day of September 2005.*

*BY THE COURT*

*JUSTICE PATRICK TRESTON*

*Judge."*

29. This proceeding in the Company Case No. 02 of 2013, is an enforcement of the Consent Orders dated 9 September 2005 in the Supreme Court Civil Case 62 of 2005 (CC62 of 2005), in particular Order 3 of the Consent Orders requiring payment, by the Defendant (Mele Trustees Limited) to the Claimants, of all monies collected from leases within Pangona Customary Land.
30. On 06 December 2005, the Claimants applied for an enforcement warrant in Civil Case No. 62 of 2005. An enforcement conference took place on 08 February 2006. On 07 May 2008, the Court finally registered its orders that the judgment (Consent Orders – Order 3 these orders) was enforced, and that the case was finished. This information was provided to the Court by Mr Felix Laumae Kabini, counsel for the Claimants, Family Malasikoto on 7 May 2008.
31. Mr Felix Laumae Kabini informed and advised the Court on 07 May 2008 in the Civil Case No. 62 of 2005 that the Consent Orders made in that case on 9 September 2005 were enforced and the case was finished.
32. Mr Felix Laumae, as counsel for Family Malasikoto, has privilege information from the Claimant, Family Malasikoto and the Defendant company, Mele Trustees Limited leading to the information he provided to the Court on 07 May 2008 in Civil Case 62 of 2005 to the effect that the Consent Orders



of 9 September 2005 were enforced and the case was finished. The first information was the agreement between Mele Trustees Limited and Malasikoto Family dated 31<sup>st</sup> August 2006 to settle the accounts of Family Malasikoto. The agreement of 31 August 2006 is hereby reproduced:-

"AGRIMAN BLONG SETELEM AKAON WETEM MALASIKOTO FAMILY

*Mele Trustees Ltd I agri mo disaid blong kliarem VT7,706,213 outstanding I stap wetem Malasikoto Family againsen amount we Rene Laurent I promis blong givim long Mele Trustees Ltd.*

*Mele Trustees Ltd  
Director*

*Mele Trustees Ltd  
General Manager*

*Malasikoto Family  
Representative*

*Date: Thursday, 31<sup>st</sup> August, 2006  
Time: 9:53am"*

The second information was another agreement between Mele Trustees Limited and Malasikoto Family dated 13 September 2006. That agreement is also hereby reproduced:

"AGRIMAN BETWEEN MELE TRUSTEES LTD MO MALASIKOTO FAMILY

*Mi understand se Mele Trustees I gat financial problems. Mifala i agri se long evri end blong 3 manis bambae Mele Trustees Ltd I save givim VT300,000 long Malasikoto Family Representatives.*

*Mbae family I kontiniu blong resivim payment kasem taem we MTL I resivim wan full peimen ikam from Rene Laurent, mo mbae I offsetem Outstanding Account wetem Malasikoto Family.*

*Bambae mifala I agri blong risivim mani dipen long Cash Flow blong kampani.*

MALASIKOTO REPRESENTATIVES:

*Charlie Malasikoto*

*Morris Vatoko Kaitalo Sambo*

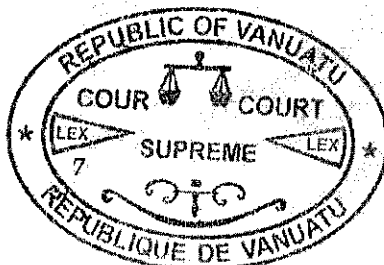
*Silas Vatoko*

MELE TRUSTEES LTD:

*Freeman Langa  
Acting on behalf of  
MTL Director*

*Litiana Chilla  
General Manager*

*DATE: 13/9/06  
TIME: 2:32"*



33. Mr Felix Laumae Kabini was the counsel representing Family Malasikoto and receiving instructions from the representatives of Family Malasikoto from 2004 to 23 December 2011 when he wrote a letter to Malasikoto Family of Mele Village and advised Malasikoto Family he ceased to act for Family Malasikoto as Family Malasikoto failed to pay funds demanded pursuant to his retainer arrangement.
34. The letters of 31 August 2006 and 13 September 2006 were attached to the second sworn statement of Silas Vatoko in support of the application filed 5 August 2014.
35. Based on these letters and upon the information given to the Court as counsel for the Claimants, Malasikoto Family on 07 May 2008, the Civil Case No. 62 of 2005 has been enforced and the case was finished and completed.

Conflicting interest of Mr Felix Laumae Kabini, counsel for Malasikoto Family

36. On 16 September 2011, Mr Felix Laumae Kabini on behalf of Malasikoto Family wrote a letter confirming and clarifying the representatives of Family Malasikoto, he acted and represented them in Court. The letter of 16 September 2011 is self-explanatory and it reads:-

"September 16, 2011

TO WHOM IT MAY CONCERN

RE: REPRESENTATIVES OF FAMILY MALASIKOTO

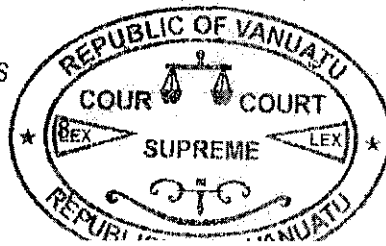
*This is to confirm that the lawful representatives of family Malasikoto are Charlie Kaltava Malasikoto, Lakeleotau Nakmau Sambo, Silas Vatoko and Morris Kelly. The said people are leaders of Malasikoto Family who were involved and pursued cases in relation to Pangone Customary Lands which was declared in favour of family Malasikoto by the Efate Island Court in Land Case No. 1 of 1997 on 22 July 2004. The said judgment was enforced in Civil Case No. 62 of 2005 (Malasikoto Family v Mele Trustees Ltd) on 9 September 2005.*

*One of the representatives of the family late Charlie Kaltava Malasikoto died early January 2011. This leaves Lakeleotau Nakmau Sambo, Silas Vatoko and Morris Kelly the remaining lawful representatives of family Malasikoto.*

*Be advised, after death of late Charlie Kaltava Malasikoto, the only people who have right to sign leases, give consent to land dealings/transaction on behalf of Malasikoto family are Lakeleotau Nakmau Sambo, Silas Vatoko and Morris Kelly.*

*Any further queries must be directed to the writer who is lawyer of the Malasikoto Family.*

Respectfully,  
TRANS-MELANESIAN LAWYERS





*Felix Laumae T. KABINI*

37. On 19<sup>th</sup> December 2011, Mr Laumae requested from Family Malasikoto's Real Estate Agent, Caillard Kaddour (Vanuatu) Limited (CK), payment of VT2 million (VT2,000,000) from trust funds of Malasikoto Family. CK assisted Family Malasikoto to sell land within Pangona land and held moneys for family Malasikoto. This letter of 19 December 2011 reads:-

"19 December 2011

*Mr. Loic Bernier  
Caillard Kaddour (Vanuatu) Limited  
P. O. Box 112  
Port Vila*

"URGENT PLEASE"

*Dear Sir,*

**RE: REQUEST FOR PAYMENT OF VT2,000,000 FROM MALASIKOTO TRUST FUNDS**

*I refer to our meeting in regards the above and request that you pay my firm the above amount as part of my legal fees. The amount will be deducted from fees fro numerous cases which I represents Malasikoto Family in respect to Pangona land.*

*I have substantial bills yet to be produced to Malasikoto for works that I carried out for the family since 2004.*

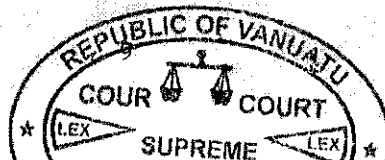
*As I mentioned, I will be relocating my office and I need the funds to move my office as well as to go out for holiday and medical checkup overseas. I intend to go on holidays on 27 December 2011.*

*I believe you understand my situation and release the funds to me to help my situation.*

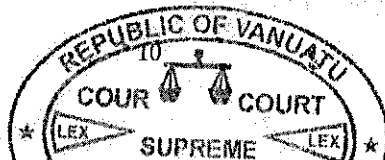
*I thank you for your cooperation and assistance.*

*Respectfully yours,  
TRANS-MELANESIAN LAWYERS  
Felix Laumae KABINI*

38. Family Malasikoto and its representatives never authorized, or agreed nor were consulted by Mr Laumae Kabini made the request for payment of Family Malasikoto's trust fund held by CK. Representatives of Family Malasikoto stopped payment of the VT2 millions to Mr Laumae. Representatives of Family Malasikoto, however, approved payment of VT500,000 to Mr Laumae for his retainer which was paid to him on 27 December 2011.



39. On 23<sup>rd</sup> December 2011, Mr Felix Laumae wrote a letter and advised Malasikoto Family at Mele Village, Efate, that he had ceased to act for Malasikoto Family due to failure to pay funds demanded pursuant to his retainer arrangement.
40. Family Malasikoto and its representatives took steps to instruct other lawyers to act on their behalf.
41. On 26 March 2013, the male line/group of Family Malasikoto represented by Silu Malasikoto filed the petition in Company Case No. 02 of 2013 to wind up Mele Trustees Limited (Judgment Debtor) on the basis that the company is indebted to the Petitioner in the sum of Seven Million Six Hundred Sixty Six Two Hundred and Thirteen Vatu (VT7,666,213) to pursuant to the settlement under the consent order of 9 September 2005 in Supreme Court Case No. 62 of 2005.
42. However, the problem I see with the Company Case No. 02 of 2013 is that it was to enforce order 3 of the Consent Orders of 9 September 2005 in Civil Case No. 62 of 2005. The Court records show that based on the orders of 07 August 2008, Mele Trustees Limited did not owe any more debts to the Claimants as Mr Felix Laumae acting on behalf of Malasikoto Family advised the Court in Civil Case No. 62 of 2005 that Order 3 of Consent Orders of 9 September 2005 which is sought to be enforced in the company case No. 02 of 2013, had already been enforced and the case was finished.
43. The best evidence in support of this is the sworn statement of Philip Malastapu filed 5 August 2014 showing that on 06 December 2005, the Claimants applied for an enforcement warrant in Civil Case No. 62 of 2005. An enforcement conference took place on 08 February 2006. On 07 May 2008, finally the Court registered in its Order that this judgment was enforced, and that the case was finished.
44. There is, therefore, no outstanding matter in Civil Case No. 62 of 2005.
45. It is the fact that the judgment debtor has paid more monies than was owed to the Petitioner (premium and land rents collected from 22 July 2004 to 9 September 2005) ie. VT4,556,201 was paid and VT3,281,272 was owing.
46. There is no other evidence on the debts or no other evidence on the position of the judgment debtor provided by the claimants in support of the Petition, apart from making assertions.
47. The Petition has to be dismissed. The internal dispute between Family Malasikoto does not assist the resolution of any dispute nor any debt.
48. The issue of the custom chief bestowed on Silu Malasikoto is the new development of the Management of the properties of Malasikoto Family. It does not involve Civil Case No. 62 of 2005 and the institution of the Company Case No. 02 of 2013 has no basis in law as Mr Laumae, counsel for Family Malasikoto informed the Court at the enforcement Warrant relating to Order 3 of the Consent Orders of 9 September 2005 have been enforced and the case was finished and completed.



49. On the basis of the above, the Court makes the following orders:

### ORDERS

- (a) The Petition is dismissed as there is no debt owed by the company, Mele Trustees Limited to the Claimants, Family Malasikoto leading to filing of the Company Case No. 02 of 2013 [see Orders of the Supreme Court dated 07 August 2008 in Civil Case No. 62 of 2005].
- (b) The amalgamated situation illustrated a serious position of conflict by Mr Felix Laumae Kabini in filing the Company Case No. 02 of 2013 on behalf of the Male group of Family Malasikoto against the Female group represented by Silas Vatoko and others using the privilege information of Family Malasikoto represented by the First representatives of Family Malasikoto (Silas Vatoko and others) that Mr Felix Laumae himself also represented.
- (c) The judgment debtor – Mele Trustees Limited is entitled to costs against the Petitioners.
- (d) Such costs have to be agreed or assessed.
- (e) I set a conference on 10 August 2020 at 8am to check if an agreed costs have been reached between the parties and the way forward, failing which I will send the matter to the Master for the costs to be assessed.

DATED at Port Vila, this 7<sup>th</sup> day of July, 2020

BY THE COURT

Vincent LUNABEK  
Chief Justice

