

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

**Civil Appeal Case**  
**No's 20/2824 and 20/3037**  
**SC/CIVA**

CAC 20/2824

**BETWEEN: Matova Toatau & Descendants**  
Appellant  
**AND: Henry Cyrel Kalsurai Manlaewia**  
First Respondent  
**AND: Ernest Kaloris & Descendants**  
Second Respondent  
**AND: Vamele Family**  
Third Respondent

CAC 20/3037

**BETWEEN: Ernest Kalorisu & Descendants**  
Appellant  
**AND: Henry Cyrel Kalsurai**  
First Respondent  
**AND: Matova Toatau & Descendants**  
Second Respondents  
**AND: Vamele Family**  
Third Respondent

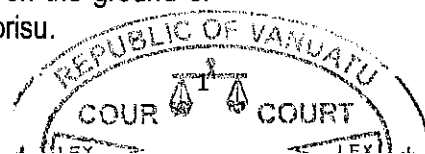
*Date of Hearing:* 9 August 2021  
*Before:* Justice V.M. Trief  
*In Attendance:* Matova Toatau & Descendants, Appellant in CAC 20/2824 – Mrs C.T. Gesa  
Ernest Kalorisu & Descendants, Appellant in CAC 20/3037 – Mr S. Kalsakau  
Henry Cyrel Kalsurai Manlaewia, First Respondent in all CACs – Ms L. Raikatalau  
Vamele Family, Third Respondent in all CACs – no appearance (Mr D. Yawha)

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**DECISION AS TO APPLICATION TO DISQUALIFY ASSESSOR**

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1. On 21 July 2021, the Appellant in CAC 20/3037 Ernest Kalorisu and Descendants filed Application to Disqualify Assessor Robie Peter Sogomapua on the ground of apprehended bias and supporting sworn statement of Earnest Kalorisu.



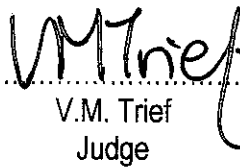
2. I note as a preliminary matter that that I am not functus officio and can revisit my order appointing an assessor, this being a matter of process and protecting the integrity of the Court's process: *Republic of Vanuatu v Natonga* [2016] VUCA 28.
3. No submissions or evidence was filed in response.
4. By his sworn statement, Mr Kalorisu evidenced that he, Mr Sogomapua and the First Respondent Henry Cyrel Kalsurai are or have been members of the Vaturisu Council of Chiefs (the 'Council'). Mr Sogomapua and Mr Kalsurai were members of the Executive of the Council from 2013, the former as Treasurer and the latter as Chairman.
5. Mr Kalorisu evidenced that he attended 4 Council meetings: at Epau in 2013, at Pango in 2014, at Emau in 2018 and at Emua in 2021 where he witnessed the members of the Executive of the Council usually having meetings together and when the whole Council has a meeting, that members of the Executive share living quarters separate from ordinary members of the Council. He saw that Mr Sogomapua and Mr Kalsurai shared the same living quarters at the 2018 meeting at Emau. Both were in attendance at the recent 27 June-1 July 2021 meeting at Emua and Mr Kalsurai made remarks about the appeals in this matter. During the lunch break, Mr Sogomapua said to Mr Kalorisu words to the effect that, "*bae mifala nao l jes lukluk kes blong yufala*".
6. The test for apprehended bias is whether a fair minded lay observer might reasonably apprehend that the decision-maker might not bring an impartial mind to the resolution of the questions which the Court was required to decide: *Matarave v Talivo* [2010] VUCA 3.
7. Mr Kalsakau submitted that given Mr Kalorisu's evidence, a fair minded lay observer would reasonably consider that Mr Sogomapua might not bring an impartial mind to the questions which the Court was required to decide in the current appeals. Accordingly he should be disqualified and the Court appoint a different assessor.
8. Ms Raikatalau submitted that Mr Sogomapua's words to Mr Kalorisu merely confirmed the fact of Mr Sogomapua's appointment as an assessor in the current appeals; they did not show bias. Further, that all three of Mr Kalorisu, Mr Sogomapua and Mr Kalsurai are members of the Council therefore Mr Sogomapua should not be disqualified. Finally, that Mr Sogomapua and Mr Kalsurai's history together confirms the former's knowledge of custom.
9. Having heard counsel and having considered the documents filed, I accept that Mr Sogomapua and Mr Kalsurai are both from Efate island, both were members of the Executive from 2013 to 2019, they have had Executive meetings throughout that time, they have shared living quarters during Council meetings and over the years, Mr Kalsurai has given updates about the Manlaewia chiefly title dispute to the Council. In the circumstances, I consider that a fair minded lay observer would reasonably apprehend that Mr Sogomapua, as an assessor in the current appeals, might not



bring an impartial mind to the resolution of the questions which the Court was required to decide.

10. Accordingly, I order that pursuant to s. 26 of the *Island Courts Act*, Mr Sogomapua is disqualified from hearing the appeals in the present matters. My order for his appointment as an assessor is **set aside**.
11. Having considered the list of Island Court Justices for the Efate Island Court that was provided to me in February 2021, the remaining justice who is from mainland North Efate is Timothy Kalangis. I note that the First Respondent's Response to List of Assessors contains the objection that Mr Kalangis is not knowledgeable in North Efate custom relating to chiefly titles determination. However, the other justices on the list being from South Efate, Efate offshore islands or other islands, I therefore **appoint** Timothy Kalangis as assessor in this matter notwithstanding the objection made.
12. If any party wishes to contest the appointment of Mr Kalangis, they are to do so by filing and serving the requisite Application and sworn statement in support.

**DATED at Port Vila this 30<sup>th</sup> day of August 2021  
BY THE COURT**

  
V.M. Trief  
Judge

