

**BETWEEN: Silas Vatoko, Morris Kelly Votoko and
Nakmau Sambo**

Claimants/ Applicants

AND: Humprey Tamata

First Defendant/ First Respondent

**AND: Silu Malasikoto, Toriko Malasikoto and
Freddy Malasikoto**

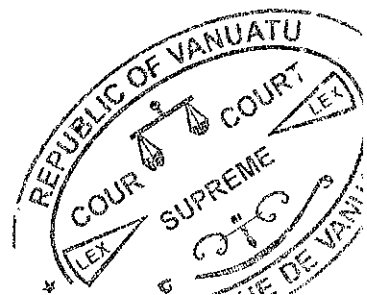
Second Defendants/ Second Respondents

Date of Hearing: *13th October 2021*
Date of Judgment: *15th October 2021*
Before: *Justice Oliver.A.Saksak*
In Attendance: *Mr Roger Tevi- Agent for Philip Fiuka for
Second Defendants as Applicants.
Mr Garry Blake – Agent for Mrs Evelyne
Blake for Claimants as respondents
Mr Sammy Aron for First Defendant/
Respondent*

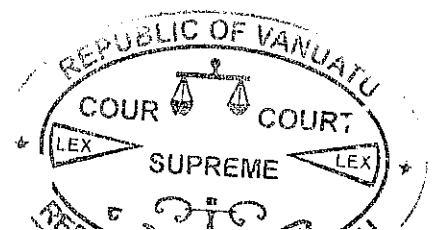
DECISION

1. Chief Silu Malasikoto filed an original application on 24th August 2021 seeking orders that:

- (a) *“This proceeding be reopened and that the Second Defendant on an interim basis be permitted to consent to any dealings on any leases with Pangona land where consent of the lessor is required pending final determinations and declarations of representatives by the Efate Island Court in Civil Case No. 2538 of 2021, and a meeting under section 6H of the Land Reform Act.*
- (b) *Alternatively that Chief Silu Malasikoto (on behalf of Family Malasikoto) on an interim basis, is now the only person who can consent to any dealings on any of the leases within Pangona land where the consent of the lessor is required pending determinations and declarations in the Efate Island Court in Civil Case No.2538 of 2021.*
- (c) *All consent and rental fees are to be paid to Caillard Kaddour (Vanuatu) Limited in trust for family Malasikoto and no payments could be made out of it without the consent of the Court save for deductions of its management and legal fees.*
- (d) *Costs.”*



2. On 7th October 2021 Chief Silu Malasikoto filed a further urgent application seeking leave to amend the urgent application of 24th August 2021.
3. Mr Blake strenuously objected to the applications on the basis of the previous decisions for the Supreme Court dated 12th July 2019 and the Court of Appeal dated 16 July 2021. Mr Blake relied heavily on the statements of the Court of Appeal expressed in paragraphs 44 and 45.
4. Mr Blake submitted there is no ambiguity and that the applications are an abuse of process and should be dismissed.
5. Counsel further submitted the case has now been completed and it is incumbent on the First Defendant Mr Tamata to perform his legal obligation to facilitate a section 6H meeting with these parties where the Vatoko Family are entitled to be present and voting. Mr Blake submitted Mr Tamata is acting in contempt of the Court of Appeal decision in refusing or omitting to facilitate a meeting of the parties in accordance with section 6H of the Land Reform Act.
6. Mr Blake alluded the Court to an application for contempt of Court against the National Coordinator but which should be adjourned pending the outcome of these applications.
7. Mr Tevi urged the Court to consider the submissions of the Second Defendants filed on 8th October 2021. I have read and considered them.
8. I have also read and considered the claimants' responses filed on 16th September 2021 by Mrs Blake.
9. I am indebted and grateful to all Counsel for those helpful submissions.
10. Mr Aron took a neutral position to indicate the State will abide orders of the Court save as to costs.
11. I reject the Second Defendant's submissions and accept the Claimants' submissions that-



- a) These applications are an abuse of process. The case is complete and cannot be re-opened.
- b) There is no ambiguity as suggested by the Second Defendant. No distinction has been made by the Island Court and it is not for the Second Defendant to make that decision. The Court of Appeal in paragraph 45 of its judgment said in very clear terms :

“ As we have noted, that distinction is not in the wording of the Efate Island Court description of the custom owners of Pangona land.” (my emphasis).

12. Accordingly the applications by the Second Defendants are dismissed with costs.

The Orders

13. All members and descendants of the Malasikoto Family including those from the Vatoko Family be required to arrange a meeting for all the members of these families in accordance with section 6H of the Land Reform Act within the next 21 days (by 8th November 2021).
14. The National Co-ordinator shall ensure the said meeting is held and shall ensure a representative of his office be present and to facilitate the said meeting.
15. The claimant’s application for contempt of Court is adjourned pending compliance or non-compliance with the orders in paragraphs 13 and 14 above.
16. The Second Defendants will pay the Claimant’s costs of these applications on the standard basis as agreed or taxed.

DATED at Port Vila this 15th day of October 2021

BY THE COURT


OLIVER.A.SAKSAK

Judge

