

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

**Civil**  
**Case No. 20/1584 SC/CIVL**

- BETWEEN:** **Original Nohalnipina Tribe Iru as represented by Willie Iata, Iau Tuan and Reynold Noukout**  
Claimant
- AND:** **Family Kapalu Mita as represented by Kapalu Mita**  
First Defendant
- AND:** **Nesiko Tribe (Original Claimant) as represented by Iesul Nalau**  
Second Defendant
- AND:** **Family Kwanmane Tribe**  
Third Defendant
- AND:** **Namip Nasak Mai**  
Fourth Defendant
- AND:** **Family Kapalu Leivanga**  
Fifth Defendant
- AND:** **Family Iapit**  
Sixth Defendant
- AND:** **Family Musu (Tafan)**  
Seventh Defendant
- AND:** **Family Wehia Ihokumas (Ierapia)**  
Eighth Defendant
- AND:** **Nesiko Tribe (Counter Claimant No. 8)**  
Ninth Defendant
- AND:** **Republic of Vanuatu**  
Tenth Defendant

*Date of Trial:* 27 January 2022  
*Before:* Justice V.M. Trief  
*In Attendance:* Claimant – Mr J. Ngwele  
First Defendant – Mr W. Kapalu  
Second Defendant - no appearance  
Third Defendant – Mr J.W. Taiva, holding papers for Mrs M.G. Nari  
Fourth Defendant – no appearance (Mr D. Yawha)  
Fifth Defendant – no appearance (Mr A. Bal, for Mr L.J. Napuati)  
Sixth-Ninth Defendants – no appearance  
Tenth Defendant – no appearance (Mr H. Tabi)



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## JUDGMENT

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1. On 4 June 2012, the Tanna Island Court declared the Claimant Original Nohalnipina Tribe Iru as the custom owners of Imasu custom land on Tanna island. The Tafea Co-operative is located on Imasu land. The Island Court decision was appealed in Land Appeal Case No. 5 of 2012; *Kapalu Mita Family v Original Nohalnipina Tribe Iru*. In 2019, by consent the 4 June 2012 decision was quashed and the matter remitted back to the Tanna Island Court for a new hearing. The dispute remains pending before the Tanna Island Court.
2. By its Claim, the Claimant seeks injunctive relief to maintain the status quo on Imasu custom land pending the Tanna Island Court's determination of its custom ownership.
3. The Claimant filed Reynold Noukout's evidence in support. He evidenced that there is ongoing extraction of sand, clearing and cultivation of land for agricultural purposes, construction of permanent and non-permanent buildings and erection of fences on Imasu land. There is no evidence to the contrary. I accept Mr Noukout's evidence.
4. The Claim has been proved on the balance of probabilities.
5. The First and Third Defendants do not oppose the Claim, agreeing that orders be made to maintain the status quo.
6. Judgment is entered for the Claimant and it is ordered that:
  - a. All existing structures and houses erected and built on Imasu custom land (the 'land') shall remain and continue to exist under further Order of the Court;
  - b. Any of the parties who have homes, gardens and animals on the land shall continue to remain until further Order of the Court;
  - c. All parties, their relatives and agents are to respect each other and their property and no party or its agents shall threaten or use any physical violence against another party or its agents;
  - d. No new development shall take place within the boundary of the land, including the construction of any new building or home, until further Order of the Court;
  - e. The State shall pay all monies payable in relation to the land including annual land rents to the Custom Owners Trust Account;
  - f. Upon any breach of these Orders, the person or persons concerned shall be ~~arrested upon complaint with the Police and the Police are authorized to arrest~~ and bring the person before the Court to show cause why they should not be punished for contempt of Court orders;



- g. Upon a final determination of the custom ownership of the land, the successful party is at liberty to apply for these Orders to be set aside; and
- h. The Defendants are to pay the Claimant's costs as agreed if not taxed.

**DATED at Port Vila this 27<sup>th</sup> day of January 2022  
BY THE COURT**

*V.M. Trief*  
Justice V.M. Trief

