

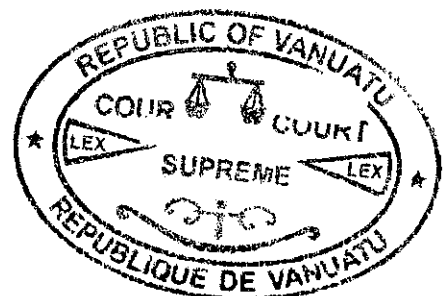
**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Other Jurisdiction)

Land Appeal
Case No. 17/2169 SC/LNDA

- BETWEEN:** Family Kalmermer
Appellant/Applicant
- AND:** Family Kalmet
First Respondent
- AND:** Family Kalpong
Second Respondent/Appellant
- AND:** Family Koriman
Third Respondent/Appellant
- AND:** Family Kalwatong
Fourth Respondent/Appellant
- AND:** Jif Kaltapu & Descendants
Fifth Respondent/Appellant
- AND:** Family Kalonikara
Sixth Respondent/Appellant
- AND:** Family Nase Kalmet Taleo
Seventh Respondent/Appellant
- AND:** Family Fatan Kalmari
Eight Respondent/Appellant
- AND:** Republic of Vanuatu
Interested Party

Coram: Justice Dudley Aru
Counsel: Mr. S. Hakwa for the Appellant/ Applicant
Mr. J. Tari for the First Respondent
Ms. S. Motuliki for the Eight Respondent (no-appearance)
Interested Party - no-appearance
Second, Third, Fourth, Fifth, Sixth and Seventh Respondents – no
appearance

DECISION



Introduction

1. This is an application filed by the appellant/applicant (family Kalmermer) on 12 July 2016 seeking a variation of the stay orders initially issued on 25 March 2008 and varied 24 November 2006 and varied again on 18 December 2008 (the **Stay Orders**).
2. The only response to the application was filed by the first respondent (family Kalmet) opposing the application. Although there are a number of parties in these land appeal, the hearing only proceeded with these two parties after several adjourned hearings.

Application

3. The application was filed and supported by a number of sworn statements deposed by Thomas Tau, Johnston Tau, Mansai Mansen, Ruben Manfei, Andre Kaluat, Kaltau James and Sangoi Kalsong. The main relief sought is to vary the Stay Orders as follows: -

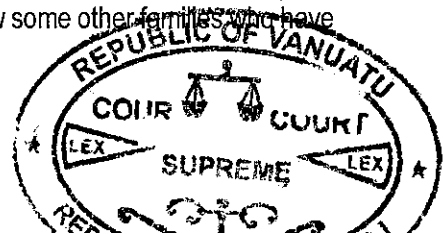
(1). The restraining orders (stay orders) shall not apply to the land which was previously the subject of Lease Title Number 12/0944/218(hereinafter referred to as "the initial lease") which land is situated at Whitesands area and is the subject of this land appeal.

(2). The appellant together with any other person or the Minister of Lands (as the case may be) may lease the land which was the subject of the initial lease (hereinafter referred to as "the Land") to any other person as they shall in their sole and absolute discretion decide and shall have authority to deal in and provide all consents in relation to all transactions thereunder.

(3). The Director of Lands, Surveys and Records and any other officer acting under his authority may register a lease or sublease or several leases which may be created and shall have authority to register all instruments or dealings in relation to such lease, sublease or the land.

(4). For the avoidance of any doubt, this Variation Order only applies to the land and no other land which is the subject of this Land Appeal Case."

4. The grounds for making the application are that the initial Stay Orders were applied for by the appellants to maintain the status quo pending determination of the appeal. Second, members of the Eratap community now wish to develop the land so that they are able to receive and enjoy all benefits from such development rather than simply waiting for the issue of custom ownership of the land to be settled. Third, members of the Eratap community have approached the applicant asking them to obtain a variation order to the Restraining Orders so they or the Minister or Lands (as the case may be) may lease the land and thereby permit the people of Eratap to enjoy and benefit from the use or development of the land. Following the request, the applicant agreed to seek a variation to the Restraining Orders. And finally, that it is in the best interests of members of the Eratap community for this application to be made.
5. The respondent opposes the application and filed a response. They oppose the application on the basis that they are the declared custom owners of the land as declared by the Efate Island Court and the matter is pending final determination before the Court on appeal. Secondly the applicant is asking the Court to vary the restraining orders to allow some other families who have



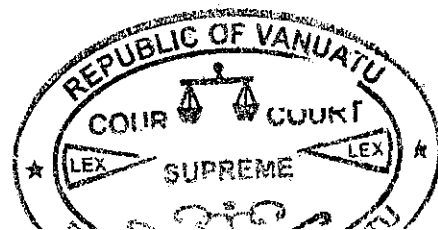
not been declared custom owners to have the right to lease land within the Teuma/Rentapao land boundary. Thirdly family Kalmet does not accept the terms of the orders sought as the orders if granted will remove the rights of family Kalmet who are likely to be declared custom owners after the appeal is heard. And final family Kalmet has respected the terms of the Stay Orders although they were the declared custom owners.

Submissions

6. Mr Hakwa submitted that the original orders were applied for by the applicants and now they wished to vary the same orders. The purpose of the application is to vary the Stay Orders so that they do not apply to the area known as Teuma Beach Resort or White Sands Country Club. An area covered by the cancelled lease title No 12/0944/218.
7. Mr Hakwa relies on the sworn statement of Thomas Tau as the other sworn statements are made in support of his evidence. Thomas Tau confirms he is the spokesman for the appellant and that it was the appellant who first applied for the Stay Orders to maintain the status quo over the disputed area. Mr Tau also confirms that members of the Eratap Community have approached the appellant to seek the variation so that a lease can be issued over the area concerned for their benefit whilst the dispute is pending on appeal.
8. It was further submitted that the declaration of custom ownership has been stayed so there is no declared custom owner.
9. In response, Mr Tari submitted that the Stay Orders are to protect the status quo and his clients oppose any variation as suggested. It was further submitted that family Kalmet are also members of the Eratap community and want the status quo preserved until the appeal is heard. He also relies on the provisions of the Land Reform (Amendment) Act No 31 of 2013 to submit that in any event, all custom owners must be consulted and all the custom owners must give their consent before any lease is issued.

Discussion

10. The application is limited to the issue whether there is a real necessity to vary the Stay Orders at this stage of the proceedings. In his submissions Mr Hakwa concedes that 9 years have lapsed since the filing of the application and has no instructions as to whether the intention is still there. He readily admits that the respondent had initially obtained lease title No 12/0944/218 over the area concerned. This was disputed by the appellant who obtained orders to cancel registration of the said lease on the basis that registration was obtained in violation of the Stay Orders. It was further submitted that the applicant is seeking to register another lease over the same area but wants the Stay Orders varied first.
11. The evidence put forward in support does not identify who or how many members of the Eratap community are seeking the variation or approached the applicant. The respondent who was declared custom owner by the Efate Island Court are also members of the Eratap community but they oppose any variation so that the status quo is maintained pending determination of the appeal.
12. There are also a number of appellants from Erakor and Ifira who have not been heard on this application but have their appeals pending. I am of the view that varying the Stay Orders based



on the evidence filed will only lead to more litigation thus further delaying the hearing of the appeal.

Result

13. On that basis the application must be dismissed and is hereby struck out. The respondent is entitled to costs in the sum of VT 25,000 to be paid before the next conference.

DATED at Port Vila this 20th day of March, 2025

BY THE COURT

Dudley Aru
Judge

