

**AND:** Malasikoto Family  
*Claimant*

**AND:** Damien Boe  
*First Defendant*

**AND:** Custom Land Management Unit  
*Second Defendant*

**AND:** Silas Vatoko, Nakmau Sambo, Edwin Malas &  
Dee- Jones Vatoko  
*Third Defendants*

**AND:** John Amos and Cindy Amos  
*Fourth Defendants*

**AND:** The Director of Lands  
*Fifth Defendant*

**Before:** Justice Oliver A. Saksak

**In Attendance:** Mr Willie Daniel for the Claimants/ Respondents  
Mr Edward Nalyal for Third Defendants as applicants  
Mrs Mary Grace Nari for Fourth Defendants as applicants  
Mr Lennon Huri for First, Second and Fifth Defendants

**Date of Hearing :** 7<sup>th</sup> and 10<sup>th</sup> November 2025

**Date of Judgment:** 13<sup>th</sup> November 2025

---

## JUDGMENT

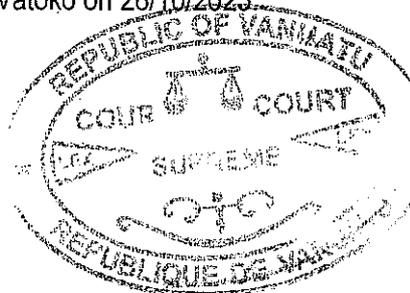
---

### Introduction

1. Two separate applications were made seeking orders to set aside the ex parte orders issued on 28<sup>th</sup> October 2025 and to strike out the application which sought those orders.

### Background Facts

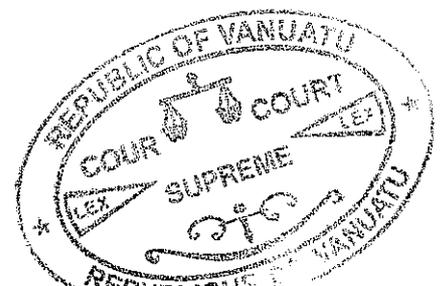
2. The first application was filed by Mr Nalyal at 10:50am on 30/10/2025. In support of the application was a Response filed on 27/10/2025 and a sworn statement by Silas Vatoko on 28/10/2025.



3. The second application was filed by Mrs Nari first in time at 9:00am on 30/10/2025 together with a supporting sworn statement by Cindy Amos. A further sworn statement by Cindy Amos was filed on 5/11/2025.
4. Mr Daniel filed a Supreme Court claim on 5<sup>th</sup> November 2025 at 4:00pm following Court's direction.
5. Earlier on 24 October 2025 Mr Daniel filed an urgent ex parte application together with an undertaking as to damages, statement as to urgency by Seule Malasikoto and a supporting sworn statement by Jennifer Malasikoto.
6. Those documents were served on all the named defendants by Seule Malasikoto on 27 October 2025 who filed proof of service on 28/10/2025.
7. After service, Mr Nalyal filed a Response on 27/10/2025 at 3:35pm.
8. Mr Daniel also filed an urgent application on 27 October 2025 seeking an order to join the Custom Land Management Office as a party to the proceeding and for an order for disclosure of information. The application was supported by the sworn statement of Jennifer Malasikoto filed on the same date.
9. The Court heard the application ex parte and issued the orders sought on 28 October 2025. There is no challenge to those orders.

### Discussion

10. Mr Nalyal and Mrs Nari by their applications seek orders that the orders issued on 28 October be set aside. Mrs Nari went further to seek an order that not only the claimants application but the claim and proceeding be struck out.
11. I heard Mr Nalyal's application separately and reserved my decision pending the hearing of Mrs Nari's application and an opportunity to hear the Attorney General's position as no officer from that office was present at the hearing on 7 November 2025. I therefore adjourned the hearing of Mrs Nari's application to 10 November 2025 at 2:00pm.



12. Mr Lennon Huri from the Attorney General's office was present and I gave him the opportunity to be heard in relation to Mr Nalyal's application. Mr Huri indicated the State would abide by orders of the Court, save as to costs. He maintained the same position in relation Mrs Nari's application.
13. Mrs Nari supported Mr Nalyal's application that the ex parte orders be set aside and not only that but that the claim and proceeding be struck out. The basis of this submission were that the claimants have no standing, that there is no serious question to be tried and that the claim is resjudicata. Counsel relied on her written submissions filed on 7<sup>th</sup> November 2025, and on the evidence by sworn statements of Cindy Amos filed on 30<sup>th</sup> October and 5<sup>th</sup> November 2025 respectively.
14. Mr Nalyal relied on his written submissions filed on 7 November 2025 and on the sworn statement of Silas Vatoko filed on 28 October 2025. Counsel submitted the claimants have no serious question to be tried, that there is no evidence showing any cause of action, that there is no contempt of Court or breach of any fiduciary duty for which the Third Defendants should be held liable. Mr Nalyal submitted further that Judicial Review Case 24/2078 was determined in 13 March 2025, upheld by the Court of Appeal on 16 May 2025 and that there are no longer any live issues in that case to be pursued under the current proceeding.

### **Basis of the Claimant's Application**

15. The claimants filed their urgent application pursuant to Rule 7.5 of the Civil Procedure Rules. The Orders issued by the Court on 28 October 2025 are interlocutory orders.

16. Rule 7.5 provides:

*"Application for interlocutory order before a proceeding is started*

**7.5 (1)** *A person may apply for an interlocutory order before a proceeding has started if:*

- (a) the applicant has a serious question to be tried; and*
- (b) the applicant would be seriously disadvantaged if the order is not granted.*

*(2) The application must:*

- (a) set out the substance of the applicant's claim; and*
- (b) have a brief statement of the evidence on which the applicant will rely; and*
- (c) set out the reasons why the applicant would be disadvantaged if the order is not made; and*
- (d) have with it a sworn statement in support of the application.*

*(3) The court may make the order if it is satisfied that:*

- (a) the applicant has a serious question to be tried and, if the evidence brought by the applicant remains as it is, the applicant is likely to succeed; and*
- (b) the applicant would be seriously disadvantaged if the order is not made.*

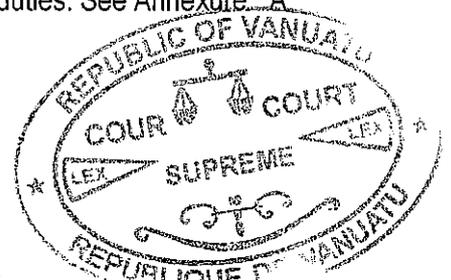


*(4) When making the order, the court may also order that the applicant file a claim by the time stated in the order."*

17. The application filed by Mr Daniel was properly made. It complied with the requirements in Rule 7.5. the substance of the claimant's claims are set out in paragraphs 2-7 of the application. The reasons are also set out from paragraphs 5-7 inclusive. And the application was supported by the sworn statement of Jennifer Malasikoto, Seule Malasikoto, Brian Malasikoto and Kalpa Taea.
18. The claimants were directed to file their Supreme Court claim by 14 November 2025. The claimants have complied by filing their claims on 5<sup>th</sup> November 2025.
19. Their claim is not a judicial review claim. It is not a claim made pursuant to section 100 of the Land Leases Act. It is an ordinary Civil Claim that make assertions against the acts and/or omissions of the Acting National Coordinator ( First Defendant), the Custom Land Management Office ( Second Defendant), the Representatives (Third Defendants), John Amos and Cindy Amos ( Fourth Defendant), and the Director of Lands ( Fifth Defendant). It is a case distinguished from the earlier JR Proceedings which did not include the Fourth Defendants. Therefore there are new issues. Res Judicata does not arise here.

**Serious Question to be tried**

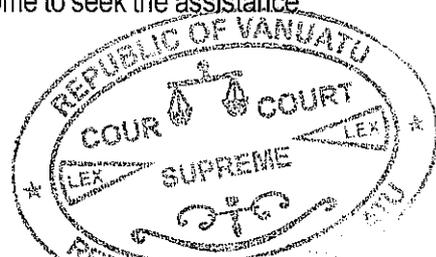
20. The claim makes specific allegations against the Fourth Defendants who are private individuals who have and are taking steps to create and register Lease 12/0814/105 over land reserved for Family Malasikoto who have not been consulted or given consent for such a transaction. See Annexures B to Jennifer Malasikoto's statement of 10 November 2025 showing the Draft Leases, one already signed and the other still unsigned.
21. The claim makes specific allegation against Silas Vatoko and the other representatives, the First, Second and Fifth Defendants for their actions or omissions in assisting the Fourth Defendants to create and register Lease 12/0814/105. See Annexure " A" a letter dated 19 May 2025 to Silas Vatoko.
22. The claim makes specific allegations against the representatives for not acting in the best interests of the custom owners of Pangona Land and for breaches of their fiduciary duties. See Annexure "A" Jennifer Malasikoto's statement of 24/10/2025.



23. In my considered view, these are serious questions to be tried. I therefore reject the submissions by Mr Nalyal and Mrs Nari that the claimants have no serious questions to be tried.
24. With the Draft Lease Documents as annexed , if the orders sought were not granted, the claimants would be seriously disadvantaged.

### Standing

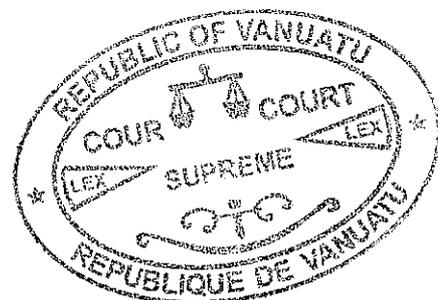
25. Next, does the claimant have standing? In my view the Malasikoto Family have clear standing to bring the claim. They are the declared custom land owners of Pangona land. They are represented by the ordained Chief representing the patrilineage side of the Malasikoto Family.
26. As such the balance of convenience favours the claimant to benefit from the ex parte orders of 28<sup>th</sup> October 2025.
27. The claimants are crying out for the calling and holding of a new section 6H meeting. They are the custom owners who are encumbered to call for such a meeting. From the evidence, they issued a Notice by letter dated 19<sup>th</sup> May 2025 to their representative, Silas Vatoko to organize the meeting. It has not happened and yet Mr Vatoko has engaged in negotiating Lease 12/0814/105 to the Fourth Defendants which are in draft. One draft is actually signed. It has been six months since that letter. Mr Vatoko has deposed to a sworn statement opposing the claimant's ex parte orders. However he has not given any evidence as the reasons why he as the representative of the Malasikoto Family has not acted according to the request of the Family as per the letter of 19<sup>th</sup> May 2025.
28. Mr Nalyal was right in submitting that neither this Court nor the Court of Appeal have made any specific orders directing the First Defendant, the Second Defendant or the Representatives to call and hold a section 6H meeting to elect new representatives. It is correct to submit that there can be no contempt of Court in the absence of an existing order. Nonetheless it was the clear view of the Court that the Custom Owners are entitled to call and have a new meeting.
29. Again the Court stresses that the custom owners have issued a notice to call such a meeting 6 months ago in May 2025. It has not happened and so the claimants have come to seek the assistance of the Court.



30. It is therefore apparent that it is the Representatives of the custom owners who are playing delay tactics to the detriment of the custom owners for whom they are only representatives or mouth pieces.
31. The family group represented by Chief Silu Malasikoto are obviously not happy about Silas Vatoko and they want a change. They wish to be fairly and equally represented on the Certificate of Recorded Interest. Currently they are not fairly and equally represented.
32. Looking at the Certificate dated 11 November 2023 Family Malasikoto is represented by Silas Vatoko, Family Lakeleo Tava Nakmau is represented by Nakmau Sambo, Family Elmu Kaltamate Thomas is represented by Edwin Malas and Family Vatoko is represented by Dee- Jones Vatoko.
33. In reality Family Vatoko has two representatives or voices through Silas Vatoko and Dee-Jones Vatoko, meaning that Family Malasikoto has no voice. It is no wonder that they are crying out for fair representation so they can be heard or be part of transactions about creation and registration of leases and benefit from the transactions. It appears that at the moment they are not benefiting resulting in their allegations about failures to perform fiduciary obligations expected from the representatives of custom owners appearing on the certificate. Where is fairness and equality in all these? And this is where the problem lies. And it must be resolved quickly.
34. Therefore in this case common sense must prevail and a new section 6H meeting must be summoned and convened as soon as possible. Unless that is done, the exparte orders issued on 28 October 2025 must be maintained.

### The Result

35. The applications by Mr Nalyal and Mrs Nari are therefore declined and dismissed.
36. It appears to me that the Third and Fourth Defendants have come to Court with unclean hands.



37. I order that they pay the claimant's costs of the application on the standard basis, to be agreed or taxed.

DATED at Port Vila this 13<sup>th</sup> November 2025

BY THE COURT



Hon. Justice Oliver A Saksak

