

BETWEEN: ANNA KEMASO KALO
Claimant

AND: MOSES BALMET AND FAMILY BALMET
First Defendant

AND: JAMES NISA AND FAMILY NISA
Second Defendant

AND: THOMAS "TOMA" HARRY AND FAMILY
Third Defendant

Before: Hon. Justice EP Goldsbrough

In Attendance: Kalsakau, S for the Claimant
Moses Balmet- Litigant in Person
Frea Nisa – Litigant in Person
Thomas Harry- Litigant in Person

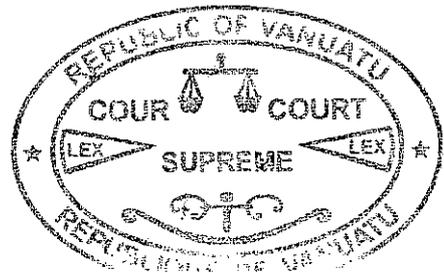
Dates of Hearing: 22nd January 2025
Date of Judgment: 17th November 2025

JUDGMENT

1. Through an amended claim filed on 11 May 2022, Anna Kemaso Kalo seeks eviction of Moses Balmet, James Nisa and Thomas Toma Harry, respectively the 1st, 2nd and 3rd defendants. In the case of each defendant it is also requested that the Court make an order evicting the 'family'. Before proceedings further, it must be said that, even if the amended claim is successful, orders can only be made against named individuals over the age of eighteen years and dependent children. Order may not be made against adults not named in these proceedings.

Background

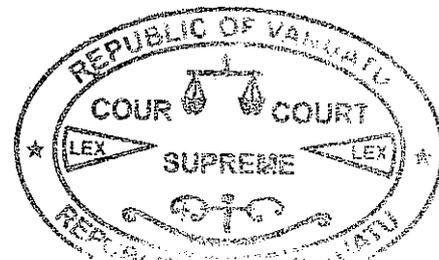
2. The claimant asserts that she represents her family. Firstly as a representative of her father's estate but also personally. Her family is called Timhu Thial. She has not yet been granted Letters of Administration of her late father's estate and so cannot sue in that capacity. She may have the right to represent her family.



3. The land in question is at Kole, East Santo. It is called, according to the claimant, Vetekas custom land. Ownership of that land is declared, according to her, by virtue of a declaration made in 1988. A document was placed into evidence showing that determination.
4. In the early stages of these proceedings, the claimant obtained ex parte interim relief. On application, that interim relief was discharged following a contested hearing on 5 July 2022 in a decision published thereafter. The counterclaim made in these proceedings is rather an application for damages resulting from the interim relief. It extends to damages for emotional distress and embarrassment.
5. Aside from whether the document relied upon by the claimant amounts to a declaration of customary ownership, there is raised the question of whether Vetekas land is entirely within a large area of land called Vatelut Land. It is agreed that, following an order of the Supreme Court, ownership of Vatelut Land was referred, with the consent of all parties, to a Nakamal for a decision to be made on ownership.
6. The claimant was aware of the nakamal meeting and it is her case that she attended but only to find out if the Nakamal meeting was to include a discussion about ownership of Vetekas. When, according to her, she learnt that the discussion was only about Vatelut Land, she took no further part.
7. Neither the Nakamal decision, if indeed it has been made, nor any indication as to whether such decision, if made, has been accepted by the parties, is in evidence in these proceedings.
8. Counsel for the claimant deposed to that question and further indicated that the claimant would call a surveyor to give evidence that Vetekas was not within Vatelut. That statement was not sought to be put into evidence and so was not relied upon by the claimant as evidence, for to do so would have disqualified him from acting further in this matter.

The Evidence

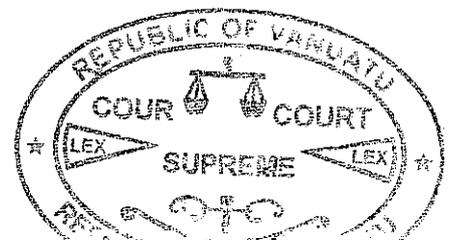
9. The evidence in the trial came from:- sworn statements of Anna Kemaso KALO filed on 21/04/22, and 15/07/22, of Jenery Samsen filed 25/05/22 and 14/07/22, of Paul Kalsei filed 25/10/22. In addition there were statements of Matthew Waen, filed 25/05/22, and John Tari Waen, filed 25/10/24, both of whom were not available for cross-examination although sought by the defendants for cross examination.



10. For the defence the following sworn statements were relied upon:-

Thomas NISA	filed	19/07/22
Fred NISA	filed	24/11/22
		05/12/22
		08/11/24
		08/11/24
Thomas HARRY	filed	02/12/22
		30/05/22
		08/11/24
Moses BALMET	filed	07/12/22
		08/11/24
Moses Waen	filed	19/07/22
Alick James BAKEO	filed	19/07/22

11. All witnesses, save those two referred to above who were not available to give evidence, were cross examined. Whilst their evidence was admitted as their evidence in chief, it weight is reduced given that it could not be tested by cross-examination.
12. The Claimant said in her evidence that she relied upon a 1988 decision signed by several chiefs which suggested that her father was the declared custom owner of Vatekas Kole 1 area East Santo. It bears the name and signature of seven chief, from Kole, Nalawa, Hog Harbour and Maniock. She confirmed that there have been no other proceedings about ownership of that same land.
13. She said that she had applied for Letter of Administration of her late father's estate but that they had not yet been granted. She made reference to a dispute between herself and sisters but suggested that this dispute had been settled.
14. She said that it was in 2010 that people first moved on to the land, but that was stopped. She had asked one of her witness to look after the land to see that no one else tried to move in, and took steps when that witness, Mathew Waen, told her of trespassers.
15. In her statement filed 21 April 2022 she speaks of a claim brought by the second defendant, Thomas Balmet, related to her through her mother. She says that his claim is of a very big piece of land that covers her father's piece of land and that she is a party to that case to defend her father's land.
16. She goes on to say that regardless of those proceedings, the land belongs to her father and unless a different declaration is made, she has the sole right to it. Only she may give permission to enter into the land, she asserts.



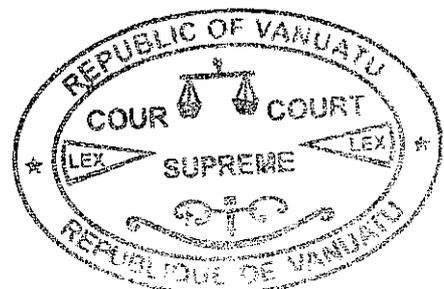
17. Jenery Kavten Samson supported the notion that the claimant's father owned Vatekas, and that this was evidence from the 1988 declaration. Paul Kalsei also supported that notion. He says that the defendant Nisa is claiming only Vatelut, not Vatekas. Mathew Waen supported that evidence.
18. The defendants in their evidence suggest that the 1988 declaration was not made by a competent tribunal after a hearing but was the result of a request to identify a landowner for the purposes of running a water supply. This is supported, they assert, because the letterhead of the 1988 Declaration is that of the Department of Energy and Water Supply. They point out that the two sections of the Declaration where an indication should be given if there is a dispute over ownership or if there is no dispute over ownership is left blank. The Declaration bears no seal of any Area Council of Chief, only signatures and the Department of Lands stamp.
19. The balance of evidence from the defendants includes the amounts sought in damages, and includes evidence that the claimant filed an undertaking for damages at the time she sought the interlocutory relief. They were not question in cross-examination about those claims for damages.

Discussion

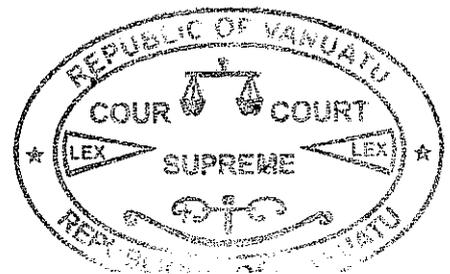
20. It is not only a person who has a valid and final declaration of land ownership who may sue for trespass, or eviction. A person with a less right may also sue. The test is set out in *Vuroese Family v Ave* [2010] VUCA 22 where it is said:-

"As a matter of law it is not necessary for a plaintiff in a trespass case to prove actual ownership of the land. An action in trespass protects a plaintiff's immediate right to possession. A plaintiff with only a leasehold interest in land, or a licence to occupy land, can bring an action in trespass against someone coming onto the land and using it without his authority. The relevant question is not whether the plaintiff is the owner of the land, but whether the plaintiff's right to possession of the land is superior to that of the defendant."

21. The claimant asserts that her right to possession is superior to that of the defendants. She is entitled to assert that, and she may be correct. She is obliged, though, to prove her assertion on the balance of probabilities. It is her claim and it is for her to establish that she has made it out to the requisite standard. She must also demonstrate that she is entitled to sue in her own right, given that she has no other authority, and to clear off the evidence brought concerning any dispute between her and her sisters.



22. In assessing her evidence, I have taken into account that within her own sworn statement, the claimant contradicts herself. Most tellingly she says in her statement that she is involved in a land claim brought by one of the defendants who has claimed a large piece of land which includes her father's land. She says that she had joined that dispute to 'defend her father's land. That contradicts her assertion that Vatekas is not within Vatelut land, but a different area of land altogether.
23. Vatekas being a separate piece of land is a major part of her case. It is destroyed when she makes that statement contained in her own statement.
24. I also take into account that the evidence of an event said to have taken place over Easter of 2022 which prompted the application for relief was subsequently withdrawn and also removed from the claim when it was amended.
25. The interim relief was discharged when it was found that she had failed to disclose material facts in her application, which is an obligation on a party who seeks interim relief on an *ex parte* basis. Then, there must be full disclosure. It was not disclosed that there was indeed a land dispute. That was wrong, but subsequently makes it less likely that a Court will accept the evidence of the claimant as reliable. She has contradicted herself.
26. Looking at all of the evidence, and even some of the evidence presented by the defence itself must be suspect, I cannot find that the claimant has discharged the burden of showing on the balance of probabilities that her right of occupation is superior to that of the defendants. The evidence that they did something in March/April 2022 has been withdrawn, and so the claimant leads no evidence of when the defendants moved into her father's land, leaving only the evidence of the defendants that they have occupied the land for a long time. They agree that they come originally from Malekula, so they must rely upon a gift to them of the land as they do not claim it by bloodline from the area, but neither, according to them, does the claimant's father.
27. In response to what the defendants call a counterclaim, the claimant agrees that an undertaking as to damages was filed by the claimant. It is submitted, though, that the defendants have not established a cause of action. I do not consider that the defendants are obliged to do so, merely to establish on evidence that the damages incurred were a direct result of the injunctive relief. In the main, damages are sought due to crops not being harvested and therefore withered. That resulted in a loss to the defendants.



28. As there was no challenge to the figures claimed for damages, orders will be made substantially as claimed when actual damage to crops is concerned. I am not satisfied that the claims for emotional distress and the figures attached to them are made out to the requisite standard and so will reduce them. I would find it difficult to attribute those claims directly to the effect of the interlocutory relief, as opposed to the proceedings themselves.
29. The defendants represented themselves. They cannot seek costs other than disbursement and costs to attend the hearing and so forth. There has been an exchange of material setting out those disbursement and so orders will be made based on those unchallenged figures.
30. The trial was not completed immediately as time ran out, so further trial dates had to be fixed and were not always kept. That was not the fault of either particular party. Finally submissions following the hearing of the case were not filed on time by counsel for the claimant. That meant, inevitably, that the defendant's submissions were not filed in good time. Nothing turns on this but it explains why the decision came out when it did.

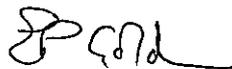
DECISION

31. The claim as amended is dismissed. An award of damages incurred as a direct result of the interlocutory relief sought and obtained by the claimant, for which she filed an undertaking as to damages is made, substantially in the terms requested.
32. Those terms are:

Moses Balmet VT 613,000 damages and VT 15,000 expenses
James Nisa VT 15,000 expenses
Thomas Harry VT 813,000 damages and VT 15,000 expenses
ordered to be paid by the claimant.

Dated at Port Vila this 17th day of November 2025

BY THE COURT



Hon. Justice EP Goldsbrough

