

BETWEEN: CHIEF MARAKIMANTAPU TIMATASOMATA ATU  
TARIWER  
Appellant

AND: FAMILY KALTER FELIX  
First Respondent

AND: FAMILY KALSILIK  
Second Respondent

AND: JIF TARISALIU  
Third Respondent

AND: FAMILY LOUIS PAKOA MANASAKAU  
Fourth Respondent

AND: FAMILY SARAU  
Fifth Respondent

AND: FAMILY MARKIPULEMATA AND MARAKITERE  
Sixth Respondent

AND: JIF TARINUAMATA AND JIF TARIWER  
Seventh Respondent

AND: JIF MATARIWORA MASOEMARAMANU  
Eighth Respondent

AND: FAMILY BOBLANG  
Ninth Respondent

Before: Hon. Justice EP Goldsbrough

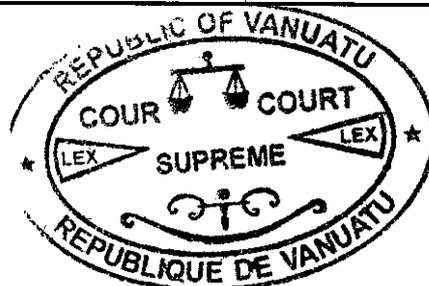
In Attendance: Boe, J for the Appellant  
Kalsakau, S for the 2<sup>nd</sup> Respondent  
Leo, C for the 3<sup>rd</sup> Respondent  
Sarisets A, for the 4<sup>th</sup> Respondent  
7<sup>th</sup> Respondent in person

Date of Hearing: 25<sup>th</sup> August 2025 then subsequent submissions  
Date of Judgment: 17<sup>th</sup> November 2025

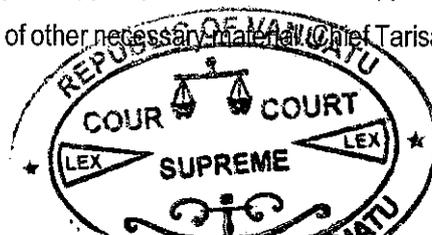
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JUDGMENT

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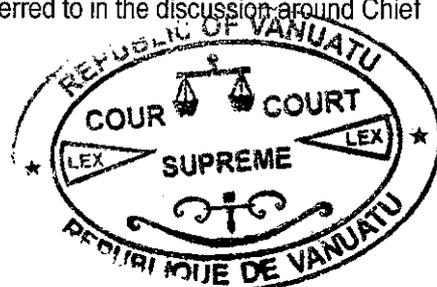


1. On 16 October 2009, the Efate Island Court delivered its decision in Land Case number 4 of 1995. That land case had been heard together with civil case number 4 of 1988 involving some of the same parties, following a decision of the Supreme Court on consolidation.
2. The land the subject of that decision is described as "Title 1940 Kamgo" land. It covered approximately 41 hectares 23 acres and contained within it 130 lots. The parties are described in the judgement as family Boblang, the original claimant, and counter claimants 1 to 9. Counter claimant 1 is family Kalter Felix, counter claimant 2 family Kalsilik, counter claimant 3 Chief Tarisaliu, counter claimant 4 Family Louis Pakoa Manasakau, counter claimant 5 Chief Marakimmantapu Timatasomata Tariwer, counter claimant 6 Family Sarau, counterclaimant 7 Family Marakipulemata & Marakitere, counter claimant 8 Chief Tarinuamata and counter claimant 9 Chief Matariwora Masoemaramanu Tinapuamata.
3. The Efate Island Court was properly constituted when it heard the cases and made its determination. It is against that determination of 16 October 2009 that these two appeals have been made.
4. Counter claimant 3 and counter claimants 4 and 5 in the original proceedings both filed an appeal against the decision. Counter claimant 3 was obliged to seek leave and did obtain leave to file an appeal out of time, but subsequently did not comply with the order to file his appeal by 8 June 2010. He did file his notice of appeal on 11 June 2010. Because of that, we determined that his appeal should be heard regardless of that default, for which no reason has been put forward. It was noted that the notice of appeal although not filed until 11 June 2010 was itself dated 8 June 2010. No party in this appeal took any objection to our proposed course.
5. Counter claimant 5 (referred to in these proceedings as the Appellant) filed and served submissions on the appeal prior to the hearing as ordered. Those submissions were made available to the panel in advance of the hearing which greatly assisted in that hearing. Counter claimant 4 (4<sup>th</sup> Respondent) filed a brief submissions based on the sole ground of appeal raised.
6. Family Markipulemata (6<sup>th</sup> Respondent) also filed a notice of appeal on the same day as Family Manasakau, but thereafter did not take any action such as filing grounds of appeal or entering an appearance in the appeal, even though they had been properly served for these hearings. Their appeal is therefore treated as having been discontinued.
7. Prior to this hearing, several direction hearings were held. At one such hearing, an order was made that evidence should be filed where necessary to support points made on the appeal. At another such hearing, orders were made for the filing of other necessary material. Chief Tarisaliu,



who had obtained leave to appeal, was required to file a copy of that order and a filed copy of the subsequent Notice of Appeal, none of which were in the court file. He was further ordered to file his submissions on the appeal. None of that order was complied with by the time of this hearing.

8. Counsel for the Appellant had earlier been required to demonstrate service of the appeal on all respondents including those he had omitted from the original appeal. Thus the number of respondents increased from seven to nine. This ensured all families that had participated in the Efate Island Court hearing were served. That increase is now reflected in the heading of this decision.
9. At the start of this hearing on 25 August 2025, there were appearances from the 3<sup>rd</sup> and 4<sup>th</sup> respondents, together with counsel for the appellant Tariwer but was no appearance of counsel for Chief Tarisaliu. As there had been no filing by him to comply with the earlier order, little could be done. At the start of the hearing, counsel for the Respondent told the Court he had received a message from counsel for Chief Tarisaliu. During the morning, a message addressed to the Court was received suggesting that counsel was not well and seeking an adjournment. Counsel present all objected to any such adjournment. The Court considered the application and took into account the failure to file anything in accordance with the earlier direction order and concluded that the application to adjourn should be refused.
10. That decision may have been different had there been compliance and the appeal brought by Chief Tarisaliu ready to proceed. It could not, as the appellant had not filed the necessary material, ordered to be filed by an order of 29 July 2025 by 1 August 2025 nor had any supporting submissions been filed on his behalf. The fact that his counsel was temporarily unavailable for the day was the least significant issue.
11. At a further pre-trial management conference, counsel for all parties who were participating in the appeal were invited to make representations as to the composition of this Court for the hearing of the two appeals. Following those representations, discussion and agreement, a decision was made that the two assessors who would sit with Justice Goldsbrough for the hearing of the appeals would be Kaserei Jonah and Sera Paton.
12. During earlier management conferences the only parties appearing through counsel were the Appellant Family Tariwer, and the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents. The 7<sup>th</sup> Respondent appeared in person and filed a sworn statement on the appeal. It is referred to in the discussion around Chief Tariwer's appeal.

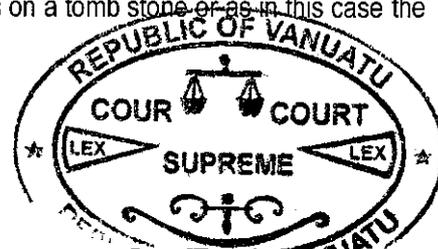


13. The active appellants, then, are Chief Marakipulemata Timatasomata Tariwer (Chief Tariwer) and Chief Tarisaliu (3<sup>rd</sup> Respondent) and Family Louis Pakoa Manasakau (4<sup>th</sup> Respondent). Their respective appeals are hereafter considered separately.
14. An order had been made for counsel to file submissions on the appeals. Only counsel for the appellant Chief Tarisaliu failed to comply. Even so, submissions were eventually, although belatedly, filed by his counsel and were taken into account. Opposing counsel were afforded the opportunity, after the hearing and receipt of those submissions, to respond to them. After that, the Appeal panel met again to consider the further material.

### **Chief Tarisaliu's appeal**

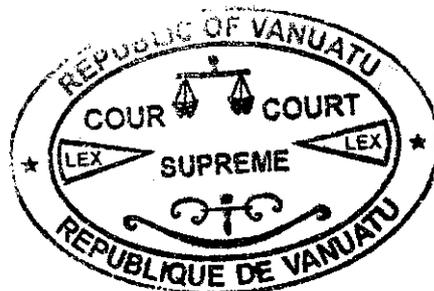
15. The grounds of his appeal were set out in his Notice and Grounds of Appeal filed 11 June 2010. The grounds are: -

1. "THAT the Court erred in law in that Justice Jimmy Meameadola was biased and should have disqualified himself from sitting in this case for reasons that he was directly concerned as to the result of the case by virtue of him being the Secretary of the Vaturisu Council of Chiefs whose custom law Chapter 11 states that "man Island ino save owem (land) long Efate"
2. THAT the Court erred in law and/or fact or mixed fact and law in not giving proper consideration and weight to the Appellant's evidence.
  - (a) The Judgement does not record the fact that Jean Kalsilik speaking for Family Kalsilik when asked in court did not object to or deny the family Tree linking the Appellant to Family Kalsilik and Family Kalter Felix as presented by Alick Matapu, the Appellant's third witness.
  - (b) The Judgement does not record the fact that Jean Kalsilik speaking for Family Kalsilik admitted in court that he was a descendant of Ofa Pongi who was a younger brother of Chief Tumaui Tarisaliu and further added that the Appellant was his brother and questioned as to why he was not personally approached by the Appellant.
  - (c) The Judgement does not record the fact that the Appellant's third witness, Alick Matapu clarified in court that the chiefly Tittle" Tarisaliu" was a living custom title and that it was tabu to print live chiefly titles on a tomb stone or as in this case the Marble Stone.

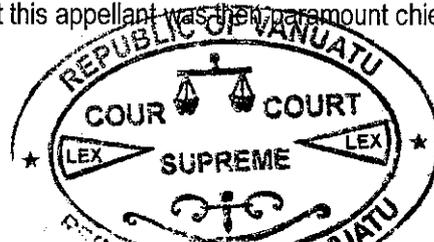


The names which appeared on the marble Stone were regarded as "Nasata" meaning "titles with no chiefly authority or honorary titles" but they all held the title of Tarisaliu and at the time of their passing the title was passed on to their living successor.

- (d) The Court erred in finding that the Appellant was from the female blood line with Family Kalter Felix whereas they are both from the family tree with Family Kalsilik but the Appellant is from the male blood line as well as Family Kalsilik whereas Family Kalter Felix was adopted from the female blood line by Family Kalsilik.
3. THAT the Court erred in law in declaring that Kaonta Klamaint 2 (Family Kalsilik) was the only custom owner of Title 1940-KARNGO land contrary to the evidence before the Court.
4. THAT the Court erred in law and custom when at page 63 paragraph 2 it purportedly relied on the Vaturisu Kastom land Law Chapter 11 as a good source of custom law of Efate which stated that "Man Island ino save ownem (land) long Efate" which is contrary to Article 73 and 74 of the Constitution of the Republic of Vanuatu.
16. That first ground of appeal concerns the composition of the Efate Island Court and in particular whether Island Court Justice Jimmy Meameadola should have sat on the panel.
17. In that regard, it is noted that, on page 4 of the decision, when the Island Court began its deliberations, no objection was raised to the constituted panel, which included Justice Meameadola.
18. The objection now taken to the justice is his membership, as secretary to, and of the Vaturisu Council of Chiefs. In particular, reference is made to a statement of the Vaturisu Council of Chiefs about people who do not originate from a particular area cannot own land on the island of Efate.
19. No further details are provided to support the objection. There is no information provided to suggest that this information was not known to the appellant at the time of the hearing or why no objection was raised at the time. There is no information provided as to when the appellant became aware of the statement of the Vaturisu Council of Chiefs or what role, as secretary, the justice had in formulating or endorsing the statement.

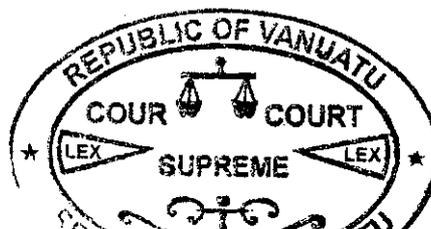


20. The Island Court Rules provide for disclosure by Justices of their interests prior to and at the start of any hearing, and for objection to be made by a party. That, no doubt, explains the statement made in page 4 of the judgment of this Island Court.
21. The opportunity had been afforded to this Appellant to file evidence on the appeal. That may have included information about when the Appellant first became aware of the Island Court Justices role within the Vaturisu Council of Chiefs, either prior to or after the original hearing, what the role of the Secretary was, either in formulating the policy of the Council or merely a functionary recording the same. Nothing was filed in that regard.
22. We therefore find that this ground of appeal is not made out. If known to the appellant when the matter came before the Island Court, it should have been raised then. If not then known, for it to succeed now required evidence to be adduced of the statement, the Justices involvement in the statement and further detail of the scope of such statement in the context of the findings of the Island Court. Justices are chosen because they have local knowledge. It is an integral part of their role on the hearing of land appeals in the Supreme Court, to advise the Court of local applicable custom.
23. The remaining grounds of appeal, as well as suggesting that the bias raised in ground 1 infected the entire proceedings, go to suggest that the evidence put forward by the parties to the hearing in the Efate Island Court was not properly considered. That is not made out when one considers the judgment. In the judgment, careful consideration is given. That is clear from the judgment itself. The submission that, as counsel describes it, 'it was agreed unanimously that such evidence would not be recorded which manifestly shows that the Efate Island Court failed miserably to discharge its functions fairly', is both improper and offensive.
24. It is improper because it is not supported by any factual basis made out on this appeal. It is offensive for the same reasons. It goes much further than an allegation of actual bias when it suggests that all of the panel colluded with the Secretary to omit all the evidence which might favour this Appellant. It is a submission made without any foundation. It makes a serious allegation of corruption without any factual basis.
25. There is a clear finding in the decision that there is not enough evidence to show that this appellant was a custom owner of the land described as Land Kamgo Title 1940. That finding is based on the evidence, or lack of it, pointing to ownership. There is a summary of evidence produced by this appellant in the Island Court which begins at p 17 and continues to p 22. There is a clear connection with Tongoa shown. It is said that this appellant was then paramount chief



of Farealapa Nampangasuduku from Purau village, and according to him, that he originated from within the disputed area from before he went to Tongoa.

26. The claimant then sets out how he proposes to prove ownership following five rules, including names, places, patrilineal ancestry, songs and boundary markers. The evidence presented for and on behalf of this appellant is then analysed beginning at p 53. It is here that the Efate Island Court demonstrates that it did, indeed, take into account the evidence presented to it.
27. In the relevant declaration, the Island Court notes what the appellant said about his current position within Tongoa and then concludes that there is insufficient evidence to show his landownership within this disputed area on Efate. What the Efate Island Court does not say is that a chief from Tongoa cannot own land on Efate.
28. That, in itself, destroys the notion of bias and subsequent 'infection' of the Efate Island Court proceedings if the decision itself demonstrates that a person presently from somewhere other than Efate, if they can demonstrate a sufficient connection with Efate, may be a landowner there. That may well be what the statement of the Vaturisu Council of Chiefs actually means, either born on Efate or possessing a sufficient other linkage, as counsel for Family Kalsilik submits. Regardless of that meaning, which is not established on this appeal by any evidence, the Efate Island Court implicitly acknowledged that state of affairs when it referred to a lack of evidence to support Efate land ownership. If the Efate Island Court had indeed adopted a narrower approach, as counsel for this appellant submits, of land ownership on Efate, it would not have been looking for sufficient evidence linking a Tongoa chief to Efate land but would have concluded without further mention that a man Tongoa cannot own land on Efate. That is not what this decision says.
29. The sworn statement filed by the 7<sup>th</sup> Respondent requires consideration at this point. In that statement filed 27 August 2025, he says that Chief Tariwer during cross-examination was struggling to answer the many questions raised. The witness was present at the hearing and observed Chief Tariwer answer:- "Yufala I askem tumas kwestem, mi blong Tongoa ia".
30. The Efate Island Court in the decision reminds itself of the obligation to apply customary law. It is correct to suggest that it regards Chapter 11 of the Vaturisu Kastom Land publication a useful source of information concerning the customary law applicable to the island of Efate. But it does not suggest that the same document is in any way definitive.
31. Applying customary law, in particular the custom law in force where the land is to be found, is exactly what the Island Court is charged with. It is not a tenable submission that such customary



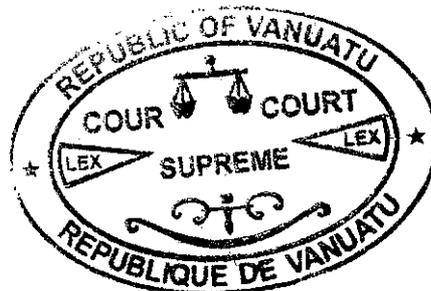
law is itself discriminatory. Nor, because it has not been put into evidence on this appeal, is it possible to find that the Vaturisu Kastom Land law requires any link to be blood based.

32. The appeal of Chief Tarisaliu is dismissed.

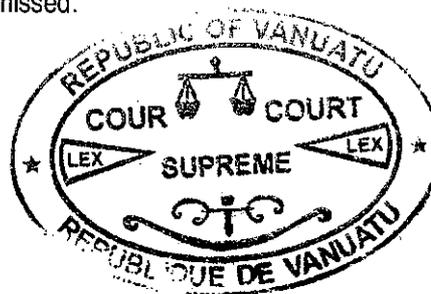
### Chief Tariwer's appeal

33. The grounds of appeal are: -

1. The Efate Island Court erred in law and fact when it declared under Declaration Number 10 that **Chief Marakimantapu Timatasomata Tariwer is the Paramount Chief of Kokorua Meriu Village of Tongoa Island** whereas Chief **Marakimantapu Timatasomata Tariwer** is the ancient **Paramount chief of Forari/Maniura** with a clear boundary.
2. The Efate Island Court erred in law and fact in its declaration under Number 10 stated that **there is lack of evidence to say that Chief Marakimantapu Timatasomata Tariwer is customary owner of KARNGO** title because title 1940 is inside the customary boundary for **Chief Marakimantapu Timatasomata Tariwer**.
3. The Efate Island Court was in **breached of the Supreme Court Order** when it failed to **Consolidate Civil Case no.4 of 1995 between Kalter Felix-v-Family Boblang** and Family Kasilik-v- Chief Tarisaliu-when it went ahead instead to issue notice only for case No.4 of 1995 between Family Felix and Family Bolang Kalsilik.
4. The Efate Island Court erred in law and fact when it failed to recognize that the true customary boundary of Eton starts at Eton Village to Ewo River.
5. The Efate Island Court erred in law and fact when in its deliberation on land case No. 4 of 1995 failed to look at the interest of **Chief Marakimantapu Timatasomata Tariwer** when it failed to decide on the whole customary boundary of Forari/Maniura **but instead decided only on dispute over KARANGO title 1940**.
6. The Efate Island Court erred in Law and fact in declaring that **Chief Marakimantapu Timatasomata Tariwer** is a Chief from Kokorua of Meriu Village, Tongoa Island but failed to see that he is a big custom chief of **ancient Forari with his nakamal at Woitas called Malair on a hill at Forari**.



7. The Efate Island Court erred in law and fact when it declared **family Kalsilik customary owner of Karngo Down title 1940 because family Kalsilik is not a custom title** to have perpetual ownership of customary land.
34. The rationale behind this first ground is said to be the principle set out by the Court of Appeal in Raupepe v Raupepe [2002] VUCA 6. Raupepe determined only that any person making a claim should be allowed to become a party to a dispute, for two good reasons, natural justice and subsequently being bound by the decision. The principle set out in Raupepe has been met given that this appellant was a party to the proceedings in the Island Court. He has been afforded an opportunity to be heard. Raupepe is not authority for the proposition that anyone who makes a claim to land must be successful.
35. When the Efate Island Court was directed by the Supreme Court to follow the order consolidating the two cases referred to at the opening of this decision, it was following a binding direction of the Supreme Court. For the same reason, it was obliged to consider only the land which had previously been advertised in the proceedings. It cannot be said that the Efate Island Court was in error when it followed those binding directions of the Supreme Court. This is ground three of this appeal.
36. Ground four continues the complaint that the Efate Island Court did not consider an area of land bigger than the area it was told to consider by the Supreme Court. It has no merit.
37. Ground five merely repeats the same complaint. It equally has no merit.
38. Ground six does no more than assert that the Efate Island Court decision to declare Family Kalsilik custom owners is wrong. It does nothing to support this appeal.
39. In closing his submission, counsel for this appellant suggests his client had usufructuary rights on Forari land. He points out that a court must consider those rights when looking at customary ownership – see Kalwatsin v Willie [2009] VUCA 47. It is not possible to determine how this submission supports the appellant within this appeal.
40. The Efate Island Court made a decision, based on the evidence that is set out in p 27 – 31 and analysed at p 58/59. From that reasoning, the Efate Island Court made it clear why the evidence of this appellant was not found to be convincing.
41. The appeal has no merit and must be, and is, dismissed.

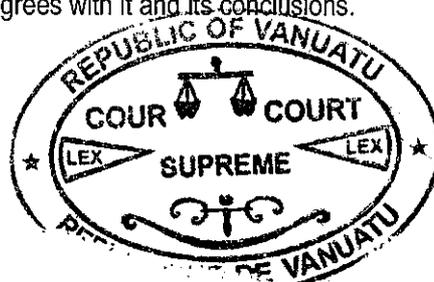


### Family Louis Pakoa Manasakau

42. The sole ground of appeal put forward, after seeking leave to extend time to file grounds of appeal after filing the original appeal on 16 November 2009 is that the Efate Island Court was wrong when it set out Declaration 9. It is said that the Island Court misdirected itself when it concluded that there was some probability that the family were from Efate, but went on to find that there was not enough evidence to find that Family Manasakau were the custom owners of the land.
43. Declaration 9 says "Famili Louis Pakoa Manasakau, igat some probability se Manasakau ikamaot long Efate, but ino clear se which part blong Efate. Kot ia ino gat enough evidence blong talem se Manasakau hemi custom owner blong land Kamgo Title 1940."
44. The Efate Island Court, in making those findings, was doing no more than it was supposed to do. It heard evidence, took it into account and set out its findings based on that evidence. It found that in all probability, the family were from Efate but which part of Efate they came from was not established by the evidence. It was for the party to satisfy the Tribunal with its evidence and the party did not discharge that burden. The standard of proof required is that on the balance of probabilities and from the language used, that is the standard applied.
45. It is therefore, in our view, wrong to submit that, as the 4<sup>th</sup> respondents do, if they had some connection with the land they must be declared custom owners. The Efate Island Court found that they were from Efate, not necessarily from Kamgo Land Title 1940. That is not a finding that the party had any connection with the land, just the island of Efate.
46. For that reason, their appeal must fail.

### Discussion

47. The decision published on 16 October 2009 contains not only a summary of the evidence taken during hearings but an analysis of that evidence setting out why some was accepted and some rejected. It is both thorough and comprehensive. The declarations made at the end of the judgment deal with each and every aspect of the proceedings heard by the Efate Island Court following the direction of the Supreme Court.
48. The 7<sup>th</sup> Respondent in their submissions support the findings made by the Efate Island Court and set out in their submissions exactly why they arrive at that conclusion The Court is grateful for that submission made by the 7<sup>th</sup> Respondent and agrees with it and its conclusions.

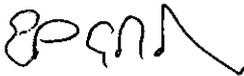
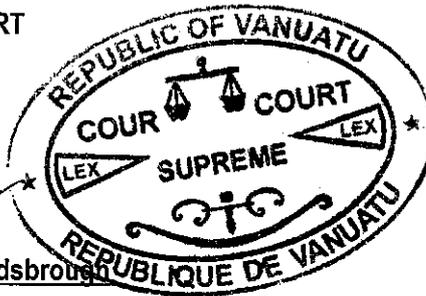


**Decision**

49. These appeals are each dismissed for the reasons set out in the discussions if the individual appeals. As each appellant has failed in their respective appeals, an order should be made for them to pay costs of and incidental to the appeal hearings. The 7<sup>th</sup> Respondent did not appear through counsel and therefore cannot (and did not) seek costs. Family Kalsilik filed submissions and was present throughout. An order for costs is made in favour of Family Kalsilik for VT100,000 to be paid by Family Tarisaliu and VT 75,000 each from Family Manasakau and Chief Tariwer, making a total of VT 250,000.

**Dated at Port Vila this 17<sup>th</sup> day of November 2025**

**BY THE COURT**

Hon. Justice EP Goldsbrough