

BETWEEN: Clement Noel
Appellant

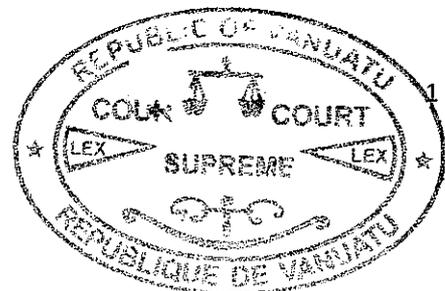
AND: Remy Tusai
Respondent

Date: 23 February 2026
Before: Justice V.M. Trief
Counsel: Appellant – Mr E. Molbaleh
Respondent – Mr B. Livo

JUDGMENT

A. Introduction

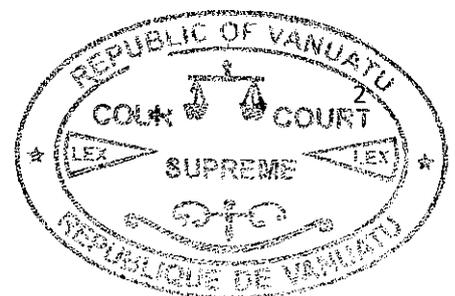
1. This is an appeal against the decision of the Deputy Master dated 26 March 2025 in which she dismissed the appellant Clement Noel's application for letters of administration in respect of the estate of Tabisue Thomas (deceased). He asserted that the estate of the deceased comprised of three plantations at Unmet area at North West Malekula island namely Alnawei coconut plantation, Lamurhapu coconut plantation and Plaklilu coconut and cocoa plantation. The respondent Remy Tusai opposed the application on the ground that the coconut plantations are planted on his customary land hence cannot be part of the deceased's estate. The Deputy Master accepted that the three plantations are on customary land which cannot be administered under a grant of Letters of Administration and dismissed Mr Noel's application: *In the matter of the Estate of the Late Tabisue Thomas* [2025] VUSC 62.



2. On 23 April 2025, Mr Noel appealed against the Deputy Master's decision.
3. The appeal is advanced on three grounds. First, that Mr Noel's application for letters of administration concerned only the three plantations, not the custom land on which they are situated. Secondly, that Mr Tusai has not been declared the custom owner of Alnawei, Lamurhapu or Plaklilu custom lands therefore he cannot claim rights to those plantations or lands. The third and final ground is that there was no agreement between Mr Tusai and the deceased that upon the deceased's death, that the plantations would revert to Mr Tusai.
4. Mr Noel filed Appellant's submissions on 16 September 2025. Mr Molbaleh submitted that Mr Noel's application for letters of administration was only for the three plantations but not for any customary rights to Alnawei, Lamurhapu or Plaklilu custom lands. He submitted that the plantations are personally owned assets which form part of the deceased's estate and not customary rights, citing *In re Estate of Molivono* [2007] VUCA 22 and *Estate of Chichirua, In re* [2015] VUCA 38. Finally, that the deceased was illiterate hence there is no way that he executed a written agreement with Mr Tusai in respect of the plantations.
5. Mr Tusai filed Respondent's submissions on 5 November 2025. Mr Livo submitted that the coconut trees forming the plantations are fixtures attached to the custom land and are not removable property such as vehicles, furniture or other personal assets. He submitted that the trees are integrally connected to the land itself, and their ownership is inseparable from the ownership of the land upon which they stand hence they cannot form part of the deceased's personal estate. He submitted that where a dispute concerns property located on custom land such as a plantation, the matter must be determined by customary institutions under the *Custom Land Management Act* No. 33 of 2013 ('CLM Act'), not the probate court: *In re Estate of Molivono* [2007] VUCA 22. Mr Livo also submitted that it was undisputed before the Deputy Master that the plantations were located on custom land and that Mr Noel did not raise standing or ownership then so is precluded from raising it for the first time on appeal. He also submitted that Mr Noel's argument that there was never an agreement between Mr Tusai and the deceased is being raised for the first time in this appeal which Mr Noel is precluded from doing.
6. Despite the Court's Orders dated 8 September 2025 that Mr Noel could file and serve submissions in response, none have been filed.

B. Discussion

7. The crux of the parties' dispute is whether or not the plantations in question are part of the estate of the deceased. Mr Noel's argument is that the plantations are personal property thus part of the deceased's estate. On the other hand, Mr Tusai's submission is that the plantations are fixtures hence part of the real estate and the land itself.



8. The starting point must be the statutory definitions of land.
9. There is no definition of "land" in the CLM Act, however "custom land" is defined as followed in subs. 2(1) of that Act:

2. (1) *In this Act, unless the contrary intention appears:*

...

custom land means land owned or occupied, or land in which an interest is held, by one or more persons in accordance with the rules of custom;

10. "Land" is defined as follows in s. 1 of the *Land Leases Act* [CAP. 163]:

1. *In this Act unless the context otherwise requires –*

...

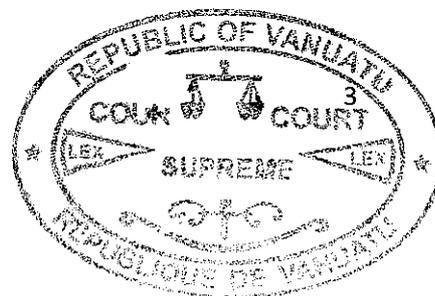
"land" includes land above the mean high water mark, all things growing on land and buildings and other things permanently affixed to land but does not include any minerals (including oils and gasses) or any substances in or under land which are of a kind ordinarily worked for removal by underground or surface working and does not include any rights to the foreshore or any waters adjacent to the land;

[emphasis added]

11. The CLM Act does not define "land", only "custom land." It defines custom land to mean land owned or occupied by one or more persons in accordance with the rules of custom. The *Land Leases Act* defines "land" as including all things growing on land. Trees fall squarely within that definition as they grow on land.
12. Applying the statutory definitions to the present case, I conclude that the coconut and cocoa trees in the three plantations are part of the land on which they grow, therefore it follows that the Alnawei, Lamurhapu or Plaklilu plantations are part of Alnawei, Lamurhapu or Plaklilu custom lands. Accordingly, the ownership and/or occupation of the three plantations is to be worked out according to the rules of custom, not a probate court.
13. The Court of Appeal stated as follows in *In re Estate of Molivono* at p. 2:

But the fundamental point is that either under a will, or under a grant of administration, what will be affected will only be property which belonged to the deceased person in his own right. It does not and never will deal with custom ownership of land. Articles 73 to 75 of the Constitution could not be more clear and unequivocal. Questions of succession to land in custom on the death of a custom owner will be determined in accordance with custom and in the appropriate place which will be an Island Court or a Land Tribunal. Neither a will nor a grant of administration determine the question as to who will succeed to custom land.

[emphasis added]



14. As the Court of Appeal stated in *In re Estate of Molivono*, a grant of administration cannot determine who will succeed to the custom ownership of custom land. I would add that a grant of administration also cannot determine who will succeed to the *occupation* of custom land including of the plantations which form part of that land, as that must be determined by the rules of custom, not a probate court.
15. Given that trees and plantations are part of the land hence part of the real estate, it follows that the plantations are fixtures and not personal property. The plantations, therefore, are not part of the deceased's estate. The first ground of appeal fails.
16. Mr Livo is correct in his submissions that the appellant is precluded from raising an argument for the first time on appeal which was not raised in the court below: *Vita v Castelli No 2 [2000] VUCA 4*. I therefore reject the second ground of appeal which raised for the first time on appeal that Mr Tusai had not been declared custom owner of the three custom lands on which the plantations are located.
17. As for the third ground of appeal, Mr Tusai's opposition to Mr Noel's application before the Deputy Master was partly based on the ground that the deceased planted the plantations on his custom land for use during the deceased's lifetime but on the death of the deceased, the plantations reverted to him. His case was that this was the agreement between him (Mr Tusai) and the deceased. Now on appeal, Mr Noel is seeking for the first time to raise that the deceased was illiterate. He has not applied for leave to adduce fresh evidence as to this. Consequently, there is no evidence before the Court that the deceased was illiterate. Mr Noel is also asserting in this appeal ground that there was no agreement between Mr Tusai and the deceased that upon the deceased's death, that the plantations would revert to Mr Tusai but has not applied for leave to adduce nor adduced any fresh evidence to support his assertion that there was no such agreement. This ground also fails.

C. Result and Decision

18. The appeal is **dismissed**.
19. Costs must follow the event. The Appellant is to pay the costs of the Respondent summarily fixed in the sum of VT75,000 **by 4pm on 25 March 2026**.

DATED at Port Vila this 23rd day of February, 2026
BY THE COURT


Justice Viran Molisa Trief

