

**BETWEEN: Sen Lin representing Sakamoto Plantation
Limited**
Claimant

**AND: RDF Quarry Limited represented by Jean Paul
Virelala**

AND: First Defendant

**Taka Limited represented by Kalkot Kaltatak,
Joseph Kaltapas & David Natuman**
Second Defendant

Date of Hearing and decision: 2nd April 2026

Before: Hon. Chief Justice V. Lunabek

**Counsel: Justin Ngwele for the Claimant
Roger Tevi for the First Defendant
Second Defendant is not present and is not legally
represented (despite being served with the claim, sworn
statement in support and other related documents)**

SUMMARY JUDGMENT

A. Introduction

1. An application for summary judgment was filed on 27th February 2026 with sworn statement of the claimant in support pursuant to Rule 9.6 of the Civil Procedure Rules 2002 (CPR).
2. The application was listed for hearing on the 2nd April 2026. On 2nd April 2026, I heard the application and granted it.
3. The reasons are set out below.

B. Background

4. The claimant, an incorporated private company and proprietor of leasehold title 12/0914/010 ("lease 010") at Club Hippique, Efate Island, Shefa Province filed a claim against the first defendant, RDF Quarry Limited represented by Jean Paul Virelala Club Hippique, Efate Island, the second defendant, Taka Limited represented by Kalkot Kaltatak, Joseph Kaltapas and David Natuman, Club Hippique, Efate Island, on 10 June 2025. The claimant sought (i) an order for damages for trespass on the said lease 010 from 2020 to 2025 in the sum of VT 4, 230, 000; (ii) an order for damages for the destruction of the fence and gate on the claimant's lease title 010 in the sum of VT 300,000 and (iii) interest at 5% and costs.

C. Claim

5. The claimant Company is and was at all material times the owner and entitled to the possession of leasehold title 010 at the Club Hippique, Efate Island.
6. Between 2020 and March 2025, the First Defendant and the Second Defendant and their Agents have been illegally interfering with the Claimant's lease, fence and gate at Club Hippique.
7. The First Defendant and the Second Defendant and their Agents have been using the Claimant's leasehold title 010 to enter their quarry site on leasehold title 12/09/245 in order to transport Quarry out from their stock pile therein.
8. On acquiring the said lease on or about 2020 to date, the First Defendant and the Second Defendant and their Agents did not obtain any permission from the Claimant to enter the said lease.
9. The First Defendant and the Second Defendants and their Agents and their Employees continue to use and interfere with the Claimant's leasehold title 010.
10. The interferences by the Defendants without the claimant's permission amounted to acts of Trespass on the Claimant's leasehold title 010.
11. By reasons of the matters aforesaid, the Claimant suffered loss and damage, the particulars of which are: -

Damages for Trespass @ vt50,000 per month from 2020 to 2025.
Estimated value of the damages for the claimant's lease from 2020 to 2025 in the sum of Vt 4,230,000.
Estimated value of the damages to the claimant's fence and gate in the sum of vt300,000.
12. The Claimants therefore seek the following relief referred to earlier at paragraph 4.

D. Sworn statement in support of the claim

13. Mr. Sen Lin of Club Hippique, Efate, filed a sworn statement in support of the claim on 12 June 2026. The statement shows the following: -
 - a) Sakamoto Plantation Limited is a duly- incorporated Private company. A copy of the certificate of Incorporation is attached and marked "SL1".
 - b) Sakamoto Plantation Limited is the proprietor of Leasehold title 010. A copy of the registration of dealings on the said lease by the Department of Lands is attached and marked "SL2".
 - c) Sen Lin is the Manager Director and shareholder of Baolong Gloria Limited.
 - d) Baolong Gloria Limited is a subsidiary of the claimant company.
 - e) On about 2020, Baolong Gloria Limited bought all the shares of the former shareholder of Sakamoto Plantation Limited (see copy of the transfer of share documents by the Vanuatu Financial Service Commission marked ("SL3")).

- f) Since Sakamoto Plantation Limited took up occupation of the said lease on or about 2020, Sen Lin noticed the defendants and their agents and employees were using the leasehold title 010 for the purpose of entering their quarry site on Lease hold title 12/0914/245.
- g) On or about March 2025, Sen Lin paid for the service of CTF cabinet Topographique & Foncier Limited to identify survey title 12/0914/010 (see receipt marked "SL4").
- h) The first defendant and the second defendants, their agents and employees did not seek their consent to use leasehold title 12/0914/010 for the purpose of delivering quarry out from their quarry site on leasehold title 12/0914/245.
- i) On 6th March 2025 and 11 March 2025, Sen Lin lodged two complaints to the police (see copies of the complaints marked "SL5 and SL6").
- j) On 15 March 2025, Mr. Virelala wrote a letter to Sen Lin titled "*Unlawful Denial of Access to lease title 12/0915/245*" (see a copy of the said letter marked ("SL7")).
- k) On 21st March 2025, Lebo Kalterikie of CFT Cabinet Topographique & Foncier Ltd wrote a letter to Sen Lin confirming that the survey was done correctly and in line with the information from the registered plans 12/0914/010 (see a copy of the letter marked "SL8").
- l) The matter was very urgent. They took the initiative to build a gate, preventing the defendants and their agents from trespassing onto the leasehold title 010 (see a photo of the construction of the gate marked "SL9").
- m) The defendants and their agents cut wires of the said gate and continued to use the leasehold title 010 for the purpose of delivery of quarry out from their stockpile on lease 12/0914/245 (see a photo of the damages to the said gate and fence marked "SL10").
- n) The actions of the first defendant, the second defendant and their agents and employees are very prejudicial to the claimant company.

E. Defence to the claim

14. On 30 June 2025, the first and second defendants jointly filed a defence. They asserted their defence in the following: -
 - a) A registered right of way exists over leasehold title 010, in favour of RDF Quarry Ltd on leasehold title 12/0914/245.
 - b) The second defendants are the declared custom landowners of lease title 010.
 - c) The claimant was only registered as leaseholder on 11th March 2025, long after RDF Quarry Ltd had operated its quarry lawfully with custom landowners' consent.
 - d) The first and second defendants deny any unlawful entry, trespass, or damage, RDF Quarry Ltd has always exercised its legal right of access through the registered easement, with the full knowledge and consent of the custom landowners.
 - e) The registered survey plan explicitly provides a right of way over leasehold title 010 to access the quarry site. That access:
 - Predates the claimant's lease.

- It was consented by the landowners.
 - It is essential to the ongoing operation of RDF quarry Ltd
- f) The claimant, Mr. Sen Lin, is using the Court to dispute RDF Quarry Ltd, with the hidden intent to establish a competing quarry. His actions amount to commercial sabotage, not a genuine protection of leasehold interest.
 - g) The claim for VT 4,530,000 is unsupported by evidence.
 - h) The second defendants, as declared custom landowners of leasehold title 010, reserve the right to forfeit or cancel the lease to Sakamoto Plantation Ltd should the claimant continue to interfere with RDF Quarry Ltd's lawful operations dispute economic use of custom land.
 - i) The defendants request the Court to dismiss the claim in full, affirm RDF Quarry Ltd's right of access over Leasehold title 010; restrain the claimant from further destruction; and award costs against the claimant.

F. Sworn statements in support of the defence to the claim.

15. The defendants also filed sworn four (4) sworn statements in support of their defence against the claim.
16. The First sworn statement was filed on 30 June 2025 by Jean Paul Virelala of Club Hippique, Efate Island. It was to this effect. He is the Managing Director of RDF Quarry Limited, the First Defendant.
17. RDF Quarry Limited lawfully operates a commercial quarry business on Leasehold Title No. 12/0914/245, located at Club Hippique, Efate.
18. Access to this lease has always been via a registered right of way over Leasehold Title 010, as shown in the official survey plan attached as in Exhibit A.
19. This right of way has been lawfully used for years, well before the arrival or incorporation of the claimant, Mr. Sen Lin, or Sakamoto Plantation Limited, who only became registered on 11 May 2025.
20. The Second Defendants, Mr Kalkot Kaltatak and Mr. Joseph Kaltapas, are the declared custom landowners of Leasehold Title 010. They have all times permitted and supported RDF's use of the access route across their land.
21. RDF Quarry Ltd's use of the access route has been peaceful, consistent, and lawful. The Claimant's attempt to restrict this access is an unlawful interference in ongoing, legitimate commercial operation.
22. He has reason to believe the Claimant's motive is to block RDF's operations in order to establish a rival quarry, amounting to abuse of court process for commercial gain.
23. The Claimant has recently erected a gate and barrier across the right of way, blocking RDF's truck and staff from accessing the quarry. This has caused major disruption to operations, revenue loss, and contractual delays.

24. RDF Quarry Ltd has calculated its daily operational loss as a result of this obstruction to be no less than VT 500,000 per day. They reserve the right to formally bill and pursue the claimant, Mr. Sen Lin, for this amount in damages for every day that access remains blocked.
25. He further note, that the Second Defendants, as custom landowners, have confirmed that they may forfeit the lease granted to Sakamoto Plantation Limited if interference with RDF's legal access continues.
26. He respectfully requests this Honorable Court to:
 - Dismiss the Claimant's application and Statement of Claim;
 - Affirm RDF Quarry Ltd's legal right of access;
 - Restrain any further obstruction;
 - Recognise RDF Quarry Ltd's entitlement to compensation for financial losses.
27. The second sworn statement was made by Joseph Kaltapas. He deposed to this effect. He is from Eratap Village, Efate Island, Shefa Province.
28. He is a Second Defendant in this matter and a declared custom landowner of Leasehold Title 010, located in the Club Hippique area, Efate.
29. He shares custom ownership of the said land with his brother, Mr. Kalkot Kaltatak, and Mr. David Natuman. Their status as custom landowners has been lawfully confirmed.
30. His brother, Mr. Kalkot Kaltatak, is also the registered lessee of Leasehold Title No. 12/0914/245, the land on which RDF Quarry Ltd operates its quarry. This site is assessed through lease Title 010, over which a registered right of way exists as per official survey records (Exhibits A).
31. This access route has been used lawfully and without dispute for years. It was created and exercised long before the Claimant, Mr. Sen Lin, became involved in the area or obtained registration under Sakamoto Plantation Ltd.
32. As a custom landowner and lessor of lease title 010, he has always permitted and supported the use of the right of way by RDF Quarry Ltd. This access is legitimate and cannot be blocked by someone who has no custom authority over the land.
33. The claimant is not a custom owner and he is now abusing the legal process to interfere with quarry operations, even though the land being accessed belongs to his own landlord and neighbour.
34. He further confirms, that if the Claimant continues to obstruct the right of way or disrupt RDF's operations, they, as custom landowners, reserve the right to forfeit or cancel the lease granted to Sakamoto Plantation Limited.
35. He makes this sworn statement in full support of RDF Quarry Ltd and Mr. Kalkot Kaltatak, and he respectfully asks the Honourable Court to:
 - Dismiss the claim in full;
 - Affirm the existence and use of the right of way;
 - Prevent any further obstruction or interference by the claimant.
36. The third sworn statement was made by Bernard Lauto of Erakor Village, Efate Island, disposed to this effect.

37. He is the legally registered custom landowner of the land comprised in Leasehold Title 010, (lessor), presently occupied by the claimant. He makes this sworn statement in support of the First Defendant, RDF Quarry Ltd.
38. Following land disputes determined before the Nakamal, the Efate Island Court and the Supreme Court, He was issued with a Green Certificate confirming his customary ownership. A true copy of this certificate, issued by the Custom Land Management Office (CLMO) dated 14 August 2025, is attached hereto and marked "Exhibit 1".
39. He confirms that RDF Quarry Ltd has operated a quarry on Lease Title No. 12/0914/245 since 2013, and that access to this quarry has always been exercised through a right of way located on Lease Title 010.
40. This right of way was established in 2013 following a verbal agreement between himself and the other customary landowners, together with Sakamoto Plantation, to ensure lawful access to the quarry site.
41. The Claimant, being a recent lessee of Lease Title 010, is now attempting to block access to Lease 12/0914/245, even though RDF Quarry Ltd and other land users have lawfully used the right of way for more than a decade.
42. He further states that the Claimant has collaborated with the Director of the Department of Lands to deny existence of this long-standing right of way and to obstruct lawful access recognized by customary landowners.
43. He also questions the conduct and duty of the Director of Lands, particularly how a lease could be issued to the Claimant without providing legal access to the already registered adjoining lease (12/0914/245). Such action is improper and further supports his belief in a deliberate conspiracy between the Director of Lands and the claimant to suppress the right of way.
44. Attached hereto and marked "Exhibit 2" is a true and accurate sketch map of his customary lands, including the relevant parcels, right of way, and areas affected by this dispute.
45. As the rightful and registered custom landowner, He respectfully request the Honourable Court to direct the Department of Lands to:
 - Immediately rectify Lease Title 010 to include the right of way; and
 - Amend the terms and conditions of the lease accordingly.
46. If the Department of Lands does not take immediate action to correct the title, he will seek forfeiture of Lease 010 on the grounds that the Claimant is undermining the rights of customary landowners and longstanding lawful users.
47. He does not accept that a new arrival lessee - the claimant – should be allowed to obstruct or penalise land users who have legitimately operated on his customary land long before the Claimant arrival
48. He therefore respectfully requests the Honourable Court to direct the Claimant to respect the lawful access and rights of all existing users on their customary land and to immediately cease interference with the established right of way.

G. Application for summary judgement

49. On 27 February 2026, the claimant filed an application for summary judgment pursuant to Rule 9.6 of the CPR and the claimant applies to the Court for the following orders: -
- i. An order that summary judgment be entered in favour of the claimant against the defendants on the issue of liability.
 - ii. A declaration that defendants have no lawful right of way or easement over leasehold title 12/0914/010.
 - iii. A declaration that defendants' entry onto the claimant's lease constitutes trespass.
 - iv. Judgment on damages for: -
 - trespass.
 - damage to the claimant's property.
 - loss of business and opportunity (to be assessed if necessary).
 - v. Interest at a rate of 5% per annum and costs.

H. Response to the application for summary judgment

50. Mr. Jean Paul Virelala, the Managing Director of the First Defendant, RDF Quarry Limited, despite the fact that, the First Defendant company has a legal representative, filed two documents on 31 March 2026 entitled respectively:

"First Defendant's response to the claimant's submissions in support of Summary Judgement" and "First Defendant submissions in opposition to the Application for Summary Judgement, Application to join Director of Lands and counterclaim".

I. Hearing, submissions and consideration on the application for summary judgement

51. The Court heard the application for summary judgement on 2nd April 2026 at 9:45 am. On 2nd April 2026, Mr. Ngwele informed the Court that they served Mr. David Natuman (the Managing Director of the Second Defendant) with a copy of the claim, sworn statements in support of the claim. On 1 April 2026, they served David Natuman with the orders of the court dated 17 March 2026 with the application for summary judgment (see proof of service filed by Justin Ngwele dated 2 April 2026).
52. Mr. Ngwele informed the Court that he and Mr. Tevi had discussions and Mr. Tevi had proposed a way forward.
53. Mr. Tevi, then, informed the Court that following the application for summary judgement, the First Defendant, RDF Quarry Limited, agreed that the easement on the title 12/0914/010 was not registered. The First Defendant conceded that his actions in the lease title 010, amounts to trespass on the claimants' property. The First Defendant will not oppose the application for summary judgement on the issue of liability.
54. The Second Defendants filed no response to the application.
55. Rule 9.6 of the CPR provides: -
- (1) This rule applies where the defendant has filed a defence but the claimant believes that the defendant does not have any real prospect of defending the claimant's claim.

- (2) The claimant may apply to the Court for a summary judgment.
- (3) An application for judgment must:
 - a) be in Form 15; and
 - b) have with it a sworn statement that:
 - (i) The facts in the claimant's claim are true; and
 - (ii) The claimant believes there is no defence to the claim, and the reasons for this belief.
- (4) The claimant must:
 - a) File the application and statement; and
 - b) Get a hearing date from the court and ensure the date appears on the application; and
 - c) Serve a copy of the application and sworn statement on the defendant not less than 14 days before the hearing date.
- (5) The defendant:
 - a) May file a sworn statement setting out the reasons why he has an arguable defence; and
 - b) Must serve the statement on the claimant at least 7 days before the hearing date.
- (6) The claimant may file another sworn statement and must serve it on the defendant at least 2 days before the hearing date.
- (7) If the Court is satisfied that:
 - a) The defendant has no real prospect of defending the claimant's claim or part of the claim; and
 - b) There is no need for a trial of the claim or that part of the claim, the court may:
 - c) Give judgment for the claimant for the claim or part of the claim; and
 - d) Make any other orders the court thinks appropriate.
- (8) If the court refuses to give summary judgment, it may order the defendant to give security for costs within the time stated in the order.
- (9) The court must not give judgment against a defendant under this rule if it is satisfied that there is a dispute between the parties about a substantial question of fact, or a difficult question of law.

56. The case turns on a single, dispositive issue, "Whether the Defendants have any legally valid easement or right of way over the Claimant's registered lease?"

57. The Claimant submits that:

- (a) No easement has been registered under the Land Leases Act [CAP 163];
- (b) The Defence discloses no arguable legal basis; and
- (c) The matter is appropriate for summary determination without trial.

58. Rule 9.6 provides that the Court may enter summary judgment where:

- (a) The Defendant has no real prospect of successfully defending the claim; and
- (b) There is no need for a trial

59. The Rule further recognises that Summary judgment may be entered on all or part of a claim, including liability alone.

60. The jurisdiction is designed to avoid the cost and delay of trying cases where the outcome is predictable.

61. In *ANZ Bank (Vanuatu) Ltd v Traverso* [2012] VUSC 222, the Supreme Court confirmed: Summary judgment is appropriate where there is no arguable defence and no triable issue.

62. In *Westpac Banking Corporation v Brunet* [2005] VUSC 148; CC 237 of 2004, the Court held: Summary judgment may be entered where the defence has no arguable basis in law.

63. In *Bokissa investments Ltd v R.A.C.E. Services Pty Ltd (In Liquidation)* [2003] VUCA 22; Civil Appeal No.21/2003 (7 Nov 2003): Summary judgment available where defendant has no real prospect of successfully defending (r.9.6(7) | *Swain v Hillman* test). Where the factual matrix clearly supports the claimant and no genuine factual dispute exists, summary judgment is appropriate even on novel or unusual factual scenarios.

64. The approach is consistent across jurisdictions. In the *Three Rivers District Council v Bank of England (No 3)* [2001] UKHL 16; [2003] 2 AC 1. The Court cited that Summary judgment only where there is no real prospect of success.

65. The principles in *Three Rivers v Bank of England (No 3)* make clear that a claim should only be struck out where it is plain and obvious that it cannot succeed. This is not such a case. The Claimant 's case raises serious triable issues, particularly as to [knowledge, intention and breach], which must be tested at trial.

66. The governing principle is: "Where a defence has no real prospect of success and raises no triable issue, summary judgment must be entered."

67. The Land Leases Act [CAP 163] establishes a Torrens-style system of title. Registration is conclusive. An easement:

- Must be created by instrument; and
- Must be registered in the Land Leases Register.

68. The Act defines "to register" as making an entry in the Land Leases Register.

69. Accordingly, an unregistered interest is not legally recognised.

70. In *Wu Kim Ming v Republic of Vanuatu*; Constitutional Case 3610 of 2017, the Supreme Court held that a lease, once registered, creates an interest in land and the lessee's rights are proprietary in nature.
71. The Claimant's registered lease constitutes a proprietary interest in land protected under Article 5(1)(j) of the Constitution. As confirmed in *Wu Kim Ming v Republic of Vanuatu (2021)*, such rights derive from both the lease instrument and the register and are constitutionally protected property. Any alleged easement not recognised by registration cannot lawfully burden or diminish those rights.
72. The Defendants' alleged right of way is not merely unproven but, it is legally incapable of existing outside the statutory registration framework. As affirmed in *Wu Kim Ming*, proprietary interests in land must be legally recognised and certain. An unregistered easement cannot override or burden a registered lease.
73. In the present case, the Claimant is the registered proprietor of Lease Title 010.
74. There is:
- No registered easement;
 - No instrument creating such right;
 - No entry in the Land Register.
75. Accordingly, the Defendants' alleged right of way is legally non-existent.
76. The defence has no real prospect of success.
77. The Defendants in the Defence rely on a survey and suggest that there is an easement which grants them the right to use the land. They also suggest that they have been using this right of way before the Claimant's lease was registered:
- Survey plans;
 - Historical use;
 - Custom assertions.
78. A survey plan defines land boundaries only but does not create legal rights.
79. The Land Leases Act [CAP 163] establishes a Torrens-style system of title. Under that system, interests which burden land—such as easement—must be created by instrument and registered; otherwise, they are not legally recognised.
80. In the present case, the evidence is that the Claimant has reviewed the register and confirms there is no registered easement, right of way, or encumbrance recorded against the Lease that permits the Defendants to enter or use the land.
81. The Claimant also relies on the High Court of Australia decision in *Westfield Management Ltd v Perpetual Trustee Co Ltd* [2007] HCA 45, which is persuasive in Vanuatu given the shared Torrens rationale. In *Westfield*, the Court emphasised the central Torrens feature that the Register and the registered dealing provide the information by which third parties (and courts) comprehend the extent state of title and interests. This promotes certainty and protects registered proprietors from unregistered or unrecorded burdens.
82. Importantly, *Westfield* confirms that disputes about the scope of rights over Torrens [and are resolved by construction of what is registered, and courts should not enlarge or create proprietary

burdens by reference to external "contemplation", intention, or extrinsic material which is not manifested on the Register]. The point is straightforward: persons dealing with Torrens land are entitled to rely on what the Register discloses, not unregistered narratives.

83. Applying *Westfield* to this case, the Defendants' reliance on matters such as survey markings, historic use, or other informal assertions cannot create, substitute for, or expand a right of way that is not created by registrable instrument and not recorded as an encumbrance on the Claimant's lease.
84. There is no evidence of a registered encumbrance or a legally recognised overriding interest.
85. Therefore, the Defence is legally untenable. The material facts are not in dispute:
 - Claimant's ownership of the lease;
 - Entry by the Defendants on the lease without lawful justification; and
 - Absence of registration.
86. The issue is purely one of law. There is no factual dispute requiring trial.
87. The trespass is established. The law of trespass in Vanuatu is settled. In ***Remy Usua Kunuan & Ors v Reva & Ors*** (Supreme Court, 2022), the Court confirmed that a person who wrongfully enters or remains on land is liable as a trespasser, and that the proper claimant is the person entitled to immediate and exclusive possession of the land.
88. In the case of registered land, that right of possession vests in the lessee.
89. Trespass is therefore established where there is (i) exclusive possession, (ii) entry by the defendant, and (iii) absence of consent or lawful justification.
90. Applying those principles, the Claimant being the registered proprietor/lessee-has immediate and exclusive possession of the land. There is no registered easement or right of way burdening the Lease, and the Defendants have nonetheless entered and used the land without consent. In the absence of any legally recognised right, their entry is without lawful justification and constitutes trespass as a matter of law.
91. While the claim in *Remy v Reva* was dismissed, that case is readily distinguishable. There, the claim failed because the claimants did not prove their entitlement to possession or the absence of consent.
92. In contrast, in the present case, the Claimant's registered title conclusively establishes exclusive possession, and the absence of any registered easement eliminates any lawful basis for entry. Accordingly, unlike in *Remy v Reva*, the essential elements of trespass are clearly satisfied, and the Defence discloses no arguable answer.
93. Applying Rule 9.6, there is no real prospect of defence that exists; and there is no need for trial that arises.
94. This is a classic case where the outcome is inevitable and the matter should be summarily determined.
95. The Claimant is entitled to damages for trespass; to property; and for loss of business and opportunity.
96. In this case, the Defence is legally unsustainable. There is no triable issue.

97. The first defendant is not opposing the application for summary judgment on the issue of liability.

98. The Court makes the following orders: -

J. ORDERS

1. An order that summary judgment be entered in favour of the claimant against the First and Second defendants on the issue of liability.
2. The costs are in the cause.

Dated at Port Vila, this 2nd April, 2026.

BY THE COURT

Hon. Chief Justice Vincent Lunabek

