

IN THE MAGISTRATES' COURT
OF THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil. Case No. 65 of 2015

**BETWEEN: DENNY KALMET & TIM
TEO KALMET**

Applicant

Claimant's lawyer:
Kiel Loughman of KIEL
LOUGHMAN LAWYERS
Port Vila, Efate, Republic of
Vanuatu

AND: LEON LALIER

First Respondent

AND: MAXIM CARLOT KORMAN

Second Respondent

**AND: SOUTH EFATE COUNCIL
OF CHIEFS**

Third Respondent

Respondents' lawyer:
Mary Grace Nari of NARI &
CO LAWYERS, Port Vila
Efate, Republic of Vanuatu

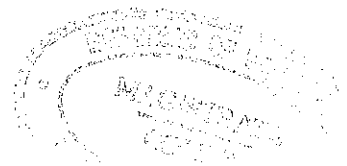
Coram: Moses Peter

Appearances: Kiel Loughman for Applicants

Mary Grace Nari for Respondents

RULING ON URGENT APPLICATION

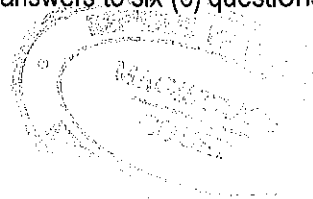
1. Applicants filed claim against Respondents on 12 August 2015 and sought for orders that:



- The nomination and or choosing of the First Defendant as the chief of Erakor Village is unlawful and is in breach of the Efate Island Court Judgment dated 7 August 2002 and 11 June 2010.
 - The purported nomination of the First Defendant is unlawful.
 - The purported nomination of the First Defendant be quashed.
 - The Efate Island Court Judgment dated 11 June 2010 remains standing and needs to be enforced or carried out.
 - The Defendants and their Agents be restrained from holding themselves out as Chief of Erakor Village.
 - The First, Second and Third Defendants and their Agents be restrained from interfering with Chief Nmak's First Bloodline duties to appoint and ordain the new chief of Erakor Village.
 - Costs and any other orders the court deems fit.
2. Besides the substantive claim, the Claimants also filed on same date, urgent application seeking on interim basis the following orders
 - That the First, Second and Third Respondents be restrained from holding the First Respondent as chief of Erakor Village.
 - That this order shall remain in place until further orders of this court
 - Costs
 3. The claim and the urgent application were supported by sworn statements of Timteo Kalmet and Denny Kalmet. A separate sworn statement of urgency was filed by Tim Kalmet.
 4. The court scheduled the hearing for the urgent application on 17th August 2015 at 9.30 am and returned the documents to Applicant to serve the Respondents.
 5. On hearing of the urgent application, Mr. Loughman appeared for the Applicants and Mrs. Nari appeared for the Respondents.
 6. I had to consider the application by asking myself the following question:

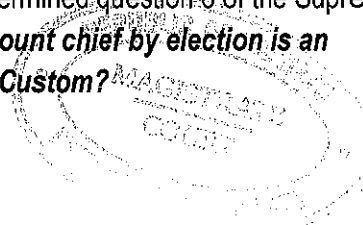
Do I have the jurisdiction to entertain the Applicants' application?

7. Chiefly title disputes are custom issues that can be dealt with in the local village court of the area in which the dispute arises. However, if the disputing parties elects to have their disputes heard in the court, then the Island Court of the Island where the disputed arises has jurisdiction to determine the dispute in accordance with custom of that particular area.
8. The sworn statements of Tim Kalmet confirmed a decision of the Efate Island Court declaring Kalmetabil Nmak as rightful Chief of Erakor Village.
9. The decision of the Efate Island Court of 2002 was successfully appealed to the Magistrates' Court.
10. However, the decision of the Magistrates' Court was appealed to the Supreme Court and then to the Court of Appeal which the Court of Appeal allowed the appeal but send the matter back to the Efate Island Court to determine answers to six (6) questions



which asks the following question. *"Whether choosing a paramount chief by election is an acceptable practice according to the Erakor Custom?"*

11. The Island Court on 16th April 2004 rendered judgments on the six questions and also upheld its previous judgment of 7th August 2002.
12. A subsequent Island Court decision of 11 June 2010 ordered that the Chiefly title dispute is now an internal matter for the Nmak Family to choose the next chief from the first born blood line.
13. The judgment of the Efate Island Court was again appealed to the Magistrates' Court and which the Magistrates' Court in its judgment dated 26 March 2010 sets aside the Efate Island Court orders dated 11 June 2010.
14. The Magistrates' Court judgment was appealed to the Supreme Court which on 7 July 2012, the Supreme Court quashed the Judgment of the Magistrates' Court dated 26 March 2012.
15. The Applicants says that the Supreme Court by quashing the decision of the Magistrates' Court dated 26 March 2012 means the Efate Island Court orders of 11 June 2010 and the judgment of 7 August 2002 still stands.
16. Sworn statement of Leon Lalier filed on 19th August 2015 illuminates the position of this case which he discloses the decision of the Supervising Magistrate of the Efate Island Court who ordered for the parties to file specific pleading in answer to question six (6) of the Supreme Court in the Efate Island Court in 28 days.
17. The Supervising Magistrate also orders for the Application for Review of the Efate Island Court decision be filed by Respondent and was at that time listed for hearing on 11th March 2015 at 2.00 pm.
18. Order 3 of the Supervising Magistrate's order reads *"That a further enforcement conference will be called as soon as the issues in order 1 and 2 above are determined"*.
19. Order 4 reads: *In the interim, parties are ordered to keep the peace and to work together and in consultation with each other in all matters and affairs of the community for the interest of everyone in the Erakor Community"*.
20. Sworn statement of urgency in support of the Application filed by Tim Kalmet says in paragraph 2 that on 15 August 2015, the Presbyterian Church will host the General Assembly at Erakor Village. It is a big event because delegates from around Vanuatu will be attending the event.
21. He said he have reasons to believe that the First and Second Respondent plans to take advantage of the Church Assembly to declare that the First Respondent is the chief of Erakor Village.
22. He also says it is clear that the First Respondent intends to attend the Church Assembly as the Chief of Erakor Village and will give speech during the assembly as the chief of Erakor Village.
23. The court considered the remedies sought in the urgent application as a prerequisite of the substantive claim, however having taken consideration of the decision of the Supervising Magistrate dated 11th February 2015, this court is of the view that this claim will not succeed unless the Efate Island has determined question 6 of the Supreme Court which says ***"whether choosing a paramount chief by election is an acceptable practice according to the Erakor Custom?"***



24. In Rule 7.5 (3) (a) (b) The court hearing an application for interlocutory order before a proceeding has started can make the orders sought if it is satisfied that the Applicant has serious questions to be tried and if the evidence brought remains, it is likely that the Applicant will succeed. Secondly, if the court is satisfied that the Applicant would be seriously disadvantaged if the order is not made.
25. The Applicants have relied on Efate Island Court judgment of 2002 and 2010 which declared Nmak Kalmetail as the rightful chief. However, considering the stage where this case is currently at, it is apparent that the determination of the sixth question of the Supreme Court in the Island Court remains an outstanding issue.
26. If the Applicants are given the full benefits of the Efate Island Court Judgment of 2002 and 2010, then they have all the time to enjoy the fruit of those judgments, but had decided to wait until 2015 to run back to court and ask for a restraining order on the Respondents only because the Presbyterian Church is conducting its General Assembly on Erakor Village and there is a belief that the First Respondent will hold himself out as the chief of Erakor Village during the Assembly of the Church.
27. The Claim does not show any legal issues for determination. The issues transpired are all customary in nature, thus, are not within the jurisdiction of the Magistrates' Court.
28. Only if this court finds that the issues transpired in the claim are legal issues, it will have power to deal with the urgent application as if the orders were granted, then the orders will be interim orders pending outcome of the substantive issues in the claim.
29. On that basis, the court hereby orders that:
- The Claim is misconceived.
 - The Application for urgent relief is hereby refused.
 - Applicants have liberty to file their application before the court dealing with their appeal.
 - Case be deregistered from the court registry and the Applicant's court fee of VT 8,000 be refunded.
 - Parties meet their own cost.

Dated at Port Vila this 17th day of August 2015

BY THE COURT

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MOSES PETER
Senior Magistrate

