

BETWEEN : ROGER JAPHET

Claimant

AND: ELMO JOSEPH

Defendant

Coram: Justice Aru

Counsel: Mr. G. Boar for the Claimant  
Mr J. Kilu for the Defendant

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## JUDGMENT

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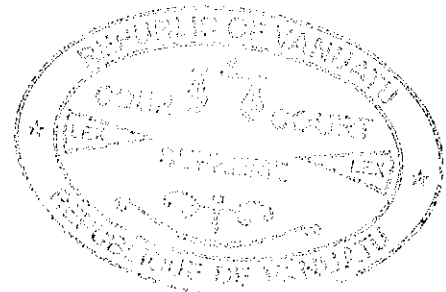
### Introduction

1. The claimant Roger Japeth is alleging in his claim that he is the joint custom owner of Epule Quarry and is seeking orders that the defendant Elmo Joseph account for moneys received from the operation of the quarry and secondly that the defendant release the sum of VT 5,649,796 to him.

### Background

2. The claimant asserts that the Efate Island Court (the EIC) in Land Case No 3 of 1985 declared him joint custom owner of Epule land and Epule quarry sites.
3. The claimant pleads his claim as follows:-

*"1. The claimant is resident of Epule and joint custom owner of Epule land and Epule Quarry.*



2. *The defendant is a resident of Epule land and is also a joint custom owner of Epule land and Epule Quarry sites with the claimant.*

*Particulars*

*Decision of the Efate Island Court (EIC) Land Case No 3 of 1985*

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3. *The claimant and the defendant have one family tree connecting them to chief Manukat, the custom owner of Epule land and Epule Quarry sites.*

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6. *About 2013, the Government released to the defendant the sum of VT 11,299,596 for the said Epule Quarry.*

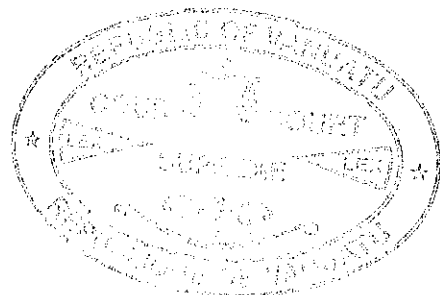
7. *On receipt of the said VT11,299,596 the defendant refused and failed to distribute the money equally between the custom owners and the claimants and has instead withheld all the money to himself and continue to enrich himself,*

....”

4. In response, the Defendant pleads the following at paragraph 1, 2 and 3 of his defence:-

“1. *As to paragraph 1 of the Claim, the Defendant denies same, and say that in the Efate Island Court case disputing the customary ownership of Epule Land, the Claimant supported Marmasoetapau’s ownership claim of Epule Land against the Defendant, and that the result of the Efate Island Court determination declared the Defendant only as the true sole landowner of Wanakopa Land and not Epule Land.*

2. *The Defendant says further that the Claimant and the Defendant were never declared as the joint custom landowners of Epule Land as alleged, but only the Defendant was declared the custom landowner of any land*



*because Marmasoetapau's claim, which the Claimant has supported, failed altogether.*

3. *The Defendant denies Paragraph 2 and says the Defendant is not a custom landowner of Epule Land, but rather is the declared sole custom landowner of Wanakopa Land, and not the joint custom landowner thereof with the Claimant as alleged.*

....”

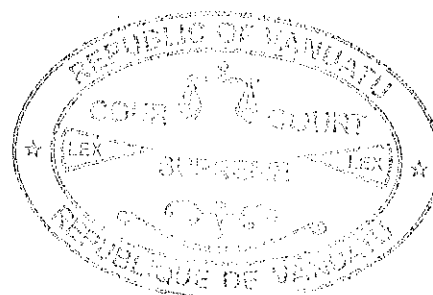
5. On 17 June 2011 the EIC in Land Case No 3 of 1985 dealt with the dispute over custom ownership of Epule and Tangoropo land and made the following declaration in favour of the defendant:-

*“Chief Manukat & Family – He is custom owner of Wanakopa land.”*

6. The claimant seeks to rely on the evidence of his family tree produced in the EIC hearing in Land Case No. 3 of 1995 to clarify the EIC judgment that he is part of the defendant's family. [see: sworn statement of Charley Mala filed on 17 July 2015].

## Discussion

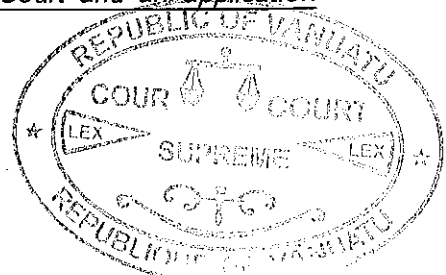
7. At the outset despite the assertions of the claimant, the EIC made no declaration that the claimant is joint custom owner with the defendant of Epule land, none. What the EIC said is *chief Manukat and family are custom owners of Wanakopa land*. Epule and Wanakopa lands are identified on the map annexed to the EIC judgment as two separate areas. It was quite obvious that some clarification of the EIC Judgment was required as the claimant's assertions are contrary to the declarations made. A trial was listed but was then adjourned for the parties to first address the court on the following preliminary issue:-



Issue: whether the Supreme Court has jurisdiction to clarify a decision of the EIC as to custom ownership of land ie. Epule Quarry land .

8. The parties were then directed to file and serve their written submissions on the issue and agreed that judgment be issued on the submissions. The claimant submits and relies on section 28, 31 and 48 of the Judicial Services and Courts Act [CAP270] (the JSC Act) to say that this court has jurisdiction to clarify a decision of the Island Court as to declaration of custom ownership of land.
9. That submission in my view is misconceived. Parliament has by virtue of section 10 of the Island Courts Act [CAP 167] vested jurisdiction in the Island Court to apply customary law. In doing so the Island Court determines disputes as to custom ownership of land. An aggrieved party pursuant to section 22 of the Island Courts Act then has a right of appeal to the Supreme Court which only has an appellate jurisdiction in as far as disputes over custom ownership of Land are concerned and whose decision is final.
10. Section 31 of the JSC Act does not help the claimant as it deals with the Supreme Court's powers to review convictions by a Magistrate and to reserve questions for determination by the Court of Appeal. Likewise section 48 also does not help him as that deals with appellate jurisdiction of the Court of Appeal.
11. The question of clarification of a Court's judgment can only be made by the Court which made the decision. This is what the Court of Appeal said in **Kalwatsin v Willie** [2009] VUCA 47 at paragraph 17 of its judgment that:-

"17. The clarification of any judgment is a matter for the Court that delivered the judgment to undertake. Accordingly any clarification of the Malekula Island Court's decision was a matter solely for the Malekula Island Court and an application



should have been made to the Malekula Island Court to clarify its decision. This much is clear from the recent judgment of this Court in Republic of Vanuatu v. Bohn [2008] VUCA 6 Constitutional Appeal Case No.03 of 2005 (30th April 2008) where it observed in the penultimate paragraph of its judgment:

"If there was any uncertainty as to what he (the trial judge) was directing or requiring then questions should have been asked. It is of course true that once a judge makes an order which is clear and unambiguous, a litigant either follows it or appeals. That does not have to mean that parties cannot seek legitimate clarification where there is a degree of uncertainty."

*(emphasis added)*

12. Applying what the court said in **Kalwatsin**, the clarification of the EIC judgment is a matter solely for the EIC. It is up to the claimant to apply to the EIC to clarify its decision whether he is a member of the defendant's family and therefore also a custom owner as declared.

#### Conclusion

13. This court therefore does not have jurisdiction to clarify the judgment of the EIC. The claim is therefore dismissed and the defendant is entitled to costs to be agreed or taxed by the Master failing agreement.

DATED at Port Vila this 2 day of September, 2016

BY THE COURT

.....  
D. ARU

Judge

