

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

Judicial
Case No. 21/3402 SC/JUDR

BETWEEN: Charlot Nawen Rutau Maseimerman
Claimant

**AND: Jack Kalon, Kalmet Family, Kaltatak
Family**
First Defendants

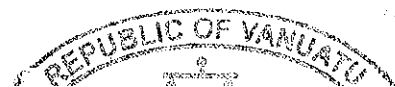
**AND: Estate of Andrew Bakoa Kalpoilep &
Kalkot Kaltatak**
Second Defendants

AND: Republic of Vanuatu
Third Defendant

Date of Rule 17.8 Conference: 26 July 2022
Before: Justice V.M. Trief
In Attendance: Claimant – Mr B.K. Kalotrip
First and Second Defendants – Mr J. Tari
Third Defendant – Mr T. Loughman

DECISION AS TO RULE 17.8 MATTERS

1. The Claim and Sworn statement of Charlot Nawen Rutau were filed on 14 and 28 October 2021 respectively. The Claimant's additional sworn statement was filed on 24 June 2022.
2. The Third Defendant's Defence and Sworn statement of Linda Mala Olul were filed on 5 and 8 November 2021 respectively.
3. The First and Second Defendants' Defence was filed on 3 March 2022 but no sworn statement in support of the grounds of the defence as they relied on previous Court judgments that the Court could take judicial notice of.
4. Having considered the documents filed and having heard counsel as to the matters set out in rule 17.8(3) of the *Civil Procedure Rules*:
 - a. Section 6H of the *Land Reform Act* [CAP. 123] provides:
 - 6H. (1) *All representatives of the custom owner group are appointed by the custom owners and must not act without the consent of the custom owners.*
 - (2) *Custom owners may at any time meet and pass a resolution by consensus to vary their representatives. All members of the custom owner group or all members listed as descendants if original members*



have died must be present at a meeting to vary the representatives of the custom owners.

- (3) The custom owner group must inform a custom land officer of the date and time of a meeting of the custom owner group to vary the names of their representatives.
- (4) The custom land officer must attend the meeting referred to in subsection (3) and record in writing, the resolution to vary the representatives of the custom owners. The resolution must be signed by all the custom owners and by the custom land officer as a witness to the signature of the custom owners.
- (5) Any variation made to the names of the representatives of the custom owner group must be filed with the office of the National Coordinator;

- b. I am not satisfied that the Claimant has an arguable case (rule 17.8(3)(a)) as the process for changing Family Maseimermerman's name on a Certificate of a Recorded Interest in Land ('green certificate') is set out in s. 6H of the *Land Reform Act*. The Court cannot make the Orders sought in the Claim as the statutory process exists and must be followed by Family Maseimermerman to choose their authorised representatives whose names can then be recorded on a green certificate;
 - c. It is accepted that the Claimant is directly affected by the decision under challenge (rule 17.8(3)(b));
 - d. No issue was taken that there was undue delay in making the Claim (rule 17.8(3)(c)) – the delays have been by Family Maseimermerman itself in not yet undertaking the process set out in s. 6H of the *Land Reform Act*;
 - e. I am satisfied that there is another available remedy which resolves the matter fully and directly which is for Family Maseimermerman to comply with s. 6H of the *Land Reform Act* to choose its authorised representatives; and
 - f. Family Maseimermerman would choose its authorised representatives only. The other 2 families namely Kalmet Family of Eratap and Kaltatak Family of Eratap (see Decision dated 31 March 2016 in *Kaltatak v Kalpoilep*; Civil Case No. 171 of 2015) already have the names of their authorised representatives on the green certificate; their names would remain on the certificate and not be affected by any changes in the names of the authorised representatives of Family Maseimermerman.
5. Given that the Claimant does not have an arguable case, I must decline to hear the Claim and strike out the proceeding.
 6. This proceeding is **struck out**.
 7. The Claimant is to pay the Defendants' costs as agreed and if not, taxed by the Master.

DATED at Port Vila this 26th day of July 2022

BY THE COURT

Justice Viran Molisa Trief

