

**BETWEEN:** Litu Sikala and Family

Claimants

**AND:** Vanuatu Forest Industry Limited

First Defendant

**AND:** John Olo Aru Mele

Second Defendant

**AND:** Peter Andre Aru representing Family  
Kue

Interested Party

*Date of Trial:* 14 April 2023  
*Before:* Justice V.M. Trief  
*In Attendance:* Claimants – Mr L. Tevi  
Defendants & Interested Party – Mr E. Macreveth  
*Date of Decision:* 28 April 2023

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**JUDGMENT**

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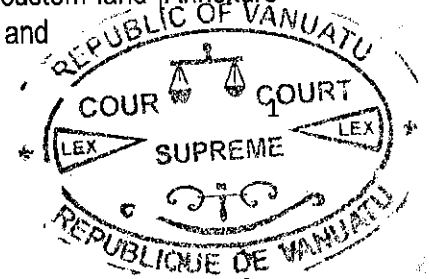
A. Introduction

1. This is a claim for damages for trespass and for the extraction of white gravel for road construction without the Claimants Litu Sikala and Family's consent.

B. Background

2. It is common ground that both the Claimants and the Interested Party John Olo Aru Mele are declared custom owners of the same land but by different customary land tribunal decisions:

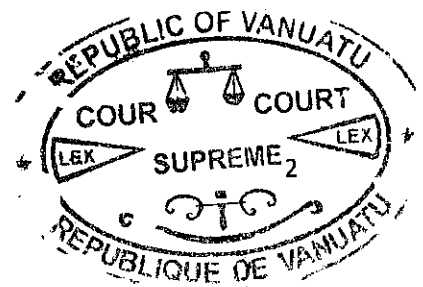
- a. On 30 August 2003, the South Santo Area 2 Lands Tribunal declared the Claimant Litu Sikala as the custom owner of Boura custom land [Annexure "BL1" to Sworn statement of Bruce Litu, **Exhibit C1**]; and



- b. On 5 November 2009, the Vaturan Land Tribunal declared Family Andre Kue as the custom owners of East Patliu custom land [Annexure "JO1" to Sworn statement of John Olo Aru Mele, **Exhibit D1**; and Annexure "PA1" to Sworn statement of Peter Andre Kue, **Exhibit D2**].
3. It is also common ground that the sketch map used in both the Claimants' and Family Kue's declaration is the same or similar.
  4. Boura custom land is located at South Santo and covers a large area of land including Narango, Waparana and Namakun villages.
  5. East Patliu custom land is located at South Santo and covers a large area of land including Narango, Jarailan, Mavun and Velijo villages.
  6. On 3 November 2016, the Claimants obtained a Certificate of Recorded Interest in Land ('green certificate') in relation to Boura custom land [Annexure "BL2", **Exhibit C1**].
  7. On 28 June 2017, Family Andre Que obtained a green certificate in relation to East Patliu custom land [Annexure "JO2", **Exhibit D1**; and Annexure "PA2", **Exhibit D2**].
  8. In October-December 2021, the Defendants extracted white gravel from four different locations on the subject land for road construction purposes.
  9. The Claimants allege that the white gravel was extracted without their consent and authorisation. Damages of VT7,000,000 are sought.
  10. The Claim is disputed on the basis that Mr Mele as declared custom owner and South Santo Area 2 community chiefs authorised the Defendants' gravel extraction and that they were not aware until this proceeding commenced that the Claimants were also declared custom owners of the subject land.

C. Discussion

11. It is accepted that both the Claimants and the Interested Party Family Kue are declared custom owners of the subject land.
12. There is no evidence that the Defendants knew before this proceeding commenced that the Claimants were also declared custom owners of the subject land. I accept therefore that they did not know of the Claimants' custom ownership prior to the commencement of this proceeding.
13. As the Defendants did not know at the time of the Claimants' custom ownership and had obtained Family Kue's authorisation and consent to extract gravel, they cannot be held liable in trespass in the particular circumstances of this case.
14. However, in the future, the Defendants will need to obtain both Family Kue and the Claimants' consent.
15. For the reasons given, the Claim will be dismissed.



D. Result and Decision

16. The Claim is **dismissed**.
17. The restraining Orders dated 29 June 2022 are **discharged**.
18. Given the outcome where the Defendants had the consent of the Interested Party who they knew to be the declared custom owner but now know that the Claimants are also declared custom owners, costs are to lie where they fall.

DATED at Port Vila this 28<sup>th</sup> day of April 2023  
BY THE COURT

  
Justice Viran Molisa Trief

