

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

Civil
Case No. 24/1386 SC/CIVL

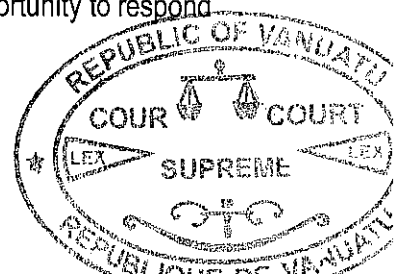
**BETWEEN: FAMILY KOUREN, FAMILY NEMTAWEI, FAMILY RAWANA,
FAMILY NARUN NAIIO, FAMILY TAURA NASEP represented
by THOMAS TAURA**
Claimants

AND: FAMILY ANDREW KUAU
Defendant

Date: 21st day of May, 2024
Before: Justice W. K. Hastings
Distribution: Mr. L. Malantugun for the Claimants
Defendants- Self-represented

RULING

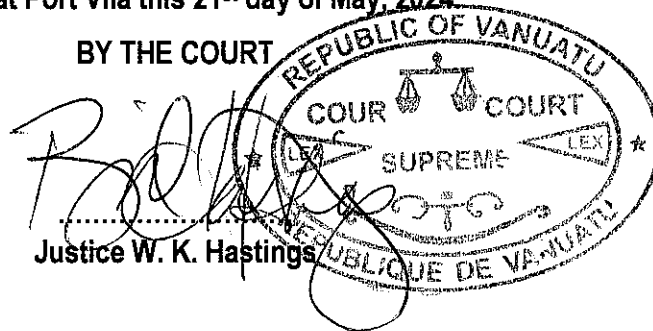
1. Mr Malantugun filed a claim seeking eviction of the Defendants, as well as an application for urgent interlocutory ex parte eviction orders, on 6 May 2024. Both allege that the Respondents for some 40 years have been showing disrespect to the Applicants and their Nakamals, fishing in a tabu conservation area, maltreating and killing animals as well as, allegedly, killing a person, on land upon which the applicants gave them permission to reside.
2. In his sworn statement filed on 6 May 2024 in support of the application, Thomas Taura deposes that the Yeni Nikoletan Island Council of Chiefs ruled on 16 June 2023 that the Respondents were to vacate the Kamanatuan Mene tribe. A custom ceremony was held, but the Respondents did not vacate the land.
3. Mr Malantugun has not served the claim and has made the application ex parte because, he says in the application, otherwise the respondents will be put on notice "that will give chance to the Respondents to cause further damage and or problems to the Nakamals of the Applicants and their people."
4. I decline to hear the urgent application for ex parte eviction orders for these reasons:
 - a. This is an interlocutory application which, if granted, would finally determine the claim without evidence being tested at a trial in which both sides present their cases.
 - b. It is an abuse of the Court's process to want to surprise the Respondents with an eviction order made in their absence. Audi alterem partem is a fundamental principle of justice. No person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them.



- c. I would need to hear submissions on whether the Supreme Court has jurisdiction to become involved in custom, given that what is sought is enforcement of a ruling of a Council of Chiefs that involved a custom ceremony.
5. If the claim continues to be pleaded as a claim to enforce a decision of a Council of Chiefs, the Court will require submissions on whether or not it has jurisdiction to hear such a claim.
6. If the claim is repleaded as a fresh claim for eviction, it will need to specify each person for whom eviction is sought. A Claimant cannot file eviction proceedings against a Defendant as a family or group. The right to evict an individual will depend on the evidence relevant to that individual. Without proper service of the claim on each named individual, including adult women, whom the claimant alleges are wrongfully occupying land and whom he wishes to evict, the individual cannot be evicted: *Willie v Bule* [2024] VUCA 6, confirming *Iaus v Noam* [2017] VUCA 40.
7. In either case, the claim must be served on the Defendants.

DATED at Port Vila this 21st day of May, 2024

BY THE COURT



Justice W. K. Hastings