

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

**Civil**  
**Case No. 21/1046 SC/CIVL**

**BETWEEN: THE PRESBYTERIAN CHURCH OF NEW  
HEBRIDES ASSOCIATION, PO BOX 150,**  
Port Vila Efate  
Claimant

**AND: FAMILY VUTINASUPE ROPO & OTHERS**  
of South Santo  
First Defendants

**AND: FAMILY LIVONACOPA ROPOR & OTHERS**  
of South Santo  
Second Defendants

**AND: FAMILY JOHN SAKSAK & OTHERS of**  
South Santo  
Third Defendants

**AND: FAMILY VIJINAKARAI VUTILOLO &  
OTHERS of South Santo**  
Fourth Defendants

**AND: FAMILY JAMES VUTI & OTHERS of South**  
Santo  
Fifth Defendants

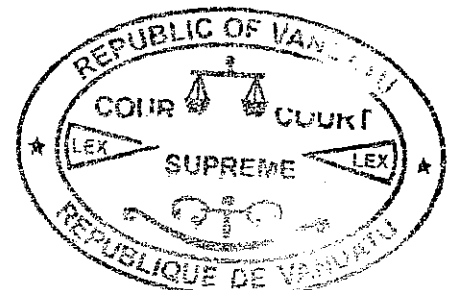
**AND: EMILE HOE MELE Trading as EMILE HOE  
ASSOCIATES of South Santo**  
Sixth Defendants

**AND: FAMILY SOCEPOJJI & OTHERS of South**  
Santo  
Seventh Defendants

**AND: FAMILY SOCEPOJJI**  
Eight Defendant

**Coram: Justice Dudley Aru**

**Counsel: Ms. J. La'au for Claimant**  
**Mr. T. J. Botleng for the First, Second, Third Defendants (no-appearance)**  
**Fourth Defendant (no appearance)**  
**Mr. E. Molbaleh for the Fifth, Sixth and Seventh Defendants (no-appearance)**  
**Eight Defendant (no-appearance)**



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## JUDGMENT

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### Introduction

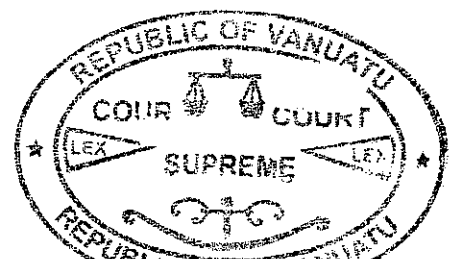
1. The claimant applies for summary judgment to be entered in relation to the claim filed on 7 April 2021. The Presbyterian Church of New Hebrides Trust Association (PCNHTA) is the claimant and is also the registered proprietor of lease title No 04/2932/001 (the Property) which is located at South Santo.

### The claim

2. The claim alleges that all the defendants and members of their immediate families continue to trespass on the property and illegally slaughter the claimant's cattle and livestock. The allegations against the first, second and third defendants are that they have built thatch houses and planted cocoa, coconut and roots crops, cut trees for timber and extracted sand from the Property without authorisation or permission from the claimant. The fourth defendants have also planted crops and removed the claimants' seedlings intended for the claimant's forestry project without authorisation. The eighth defendant is also alleged to have planted crops on the property without the claimant's permission.
3. It is further alleged that the first and third defendants have been operating tours to a waterfall located on the Property without the claimant's permission. The claimant asserts that the illegal activities of the defendants have caused the claimant to suffer some damage to the Property.
4. The orders sought are permanent restraining orders against all the defendants from continuing to occupy the Property, the claimant to have full possession of the Property and damages.

### Defence

5. Defences to the claim were filed by all the defendants except the eighth defendants. The fourth defendant in its defence filed on 10 May 2021 says they entered the area twice in December 2017 to plant a flower nursery but have not returned to the area since then. It was further stated that the claimant was informed by letter that they were entering the Property to do gardening.
6. The first, second, third, fifth, sixth and seventh defendants filed their defence on 25 May 2021. They assert in their defence that: -
  - the first and second defendants are the declared custom owners of the area including Vanause Land and Uralapa Island;
  - that they cleared the area and planted coconut, cocoa and their root crops before the lease was issued;
  - that permission was sought from Pastor Philip Baniuri by letter to enter the Property and cut timber and to extract sand;
  - that the organised tours to the waterfall were done with the permission of the claimant;
  - that they slaughtered cattle only when the claimant's cattle entered their gardens and devoured their food crops;



## Evidence

7. The claim is supported by a sworn statement of Jif Patu Lui Navoko Lui which was filed on 8 April 2021. The defendants filed a number of sworn statements namely by:
- Jeffery Vijinakarai Vutilolo on 10 May 2021;
  - Emile Hoe Mele on 1 July 2021 on behalf of the sixth defendant;
  - Vira Hoe Mele on 21 June 2021 on behalf of the seventh defendant; and
  - Kim James Vuti on 21 June 2021 on behalf of the fifth defendants.
8. The first, second, third fourth and eight defendants did not file any evidence despite directions to do so.

## Application

9. The Application for Summary Judgment is made pursuant to rule 9.6 (1) and (2) of the Civil Procedure Rules (CPR) and supported by a sworn statement of Jif Patu Navoko Lui filed on 12 March 2024. In support of the application, the claimant also relies on the Mr Lui's sworn statement filed in support of the claim. The application is made on the basis that the defendants have no real prospects of defending the claim. The grounds listed in support of the application are that:
- The claimant is the registered proprietor of the lease concerned (04/2932/001); and
  - No evidence was filed to support the defences filed.

## Discussion

10. Rule 9.6(7) of the CPR states:

*"(7) If the court is satisfied that:*

*(a) the defendant has no real prospect of defending the claimant's claim or part of the claim;*  
*and*

*(b) there is no need for a trial of the claim or that part of the claim,*

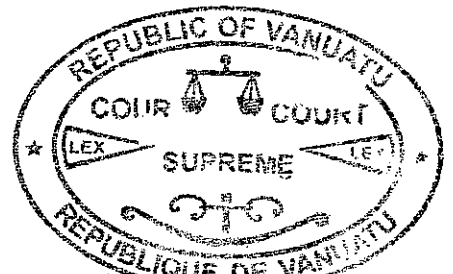
*the court may:*

*(c) give judgment for the claimant for the claim or part of the claim; and*

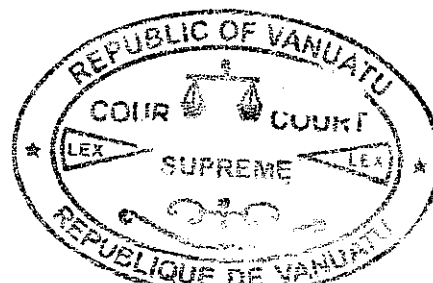
*(d) make any other orders the court thinks appropriate.*

*....."*

11. The thrust of the claimant's claim is that it is the registered proprietor of lease title 04/2932/001 comprised of 55 hectares of land. A copy of the lease is annexed to Mr Lui's sworn statement in support of the claim as **Annexure 'JPNL1'**. The term of the lease is 75 years commencing from 30 July 1980. It was initially entered into with the Minister of Lands on behalf of the custom owners. This was later rectified on 1 June 2006 by replacing the Minister of Lands with the custom owners namely Chief Bani Molirani II, Stephen Leo and Family Rango. The rectification was registered on 22 February 2007. (see **Annexure 'JPNL13'**).



12. It was further submitted that the claimant has not approved the presence and activities of the respondents on the Property and has issued them with: -
- warnings (**Annexure 'JPNL15'**),
  - notices to vacate (**Annexure 'JPNL16'**) and
  - notices to quit (**Annexure 'JPNL17'**)
13. Despite these warnings, the claimant submits that the respondents have remained on the Property to date and refused to vacate. As a result, the claimant has come to Court to seek relief.
14. The fourth defendant in its defence says they informed the claimant by letter that they were entering the Property to do gardening. No evidence is given of any permission granted by the claimant to enter the Property to do gardening. Jeffery Vijinakarai Vutilolo confirms they entered the Property after informing the claimant by letter. **Annexure 'JPNL12'** is a copy of the letter signed by Jeffery Vutilolo. It is not a request to do gardening but it asserts the fourth defendant's claim of custom ownership over the land without any evidence of any declaration of their custom ownership over the area covering the Property. The other defendants also did not show in their evidence that they had permission to conduct the activities alleged against them. Vira Hoe Mele said he was an employee of the sixth defendant and entered the Property to cut trees for timber. That they were requested by the first and second defendants to enter the Property to cut timber and that the claimant was notified by the first and second defendants. No evidence is given to support such assertion or that the claimant gave permission. Kim James Vuti is also an employee of the sixth defendant and gave similar evidence to Vira Mele Hoe without any evidence in support.
15. No evidence was filed to show that the first and second defendants were the declared custom owners of the area covering the Property contrary to those who are on the register as custom owners.
16. Emile Hoe Mele contradicts Vira Hoe Mele's evidence by saying that he on behalf of his company the sixth defendant approached the first and second defendants to cut timber within the Property. He confirms carrying out logging activities on the Property around November 2017. He says the money received for the logs were shared with the custom owners. No evidence was filed to show that the first and second defendants are the declared custom owners or how much money was received for the logged trees or that it was shared with Chief Bani Molirani II, Stephen Leo and Family Rango.
17. The claimant is the registered proprietor of leasehold title 04/2932/001. Section 14 of the Land Leases Act [CAP 160] states:
- " .....the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease together with all implied and expressed rights belonging thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease."*
18. As the registered lessee, the claimant's interest can only be defeated by proceedings brought under the Land Leases Act (s 15 and s100). There is no evidence that the defendants have brought such proceedings.



19. Under the terms and conditions of the lease specified in the schedule to the lease, at clause 2 a), the lessors granted the lessee rights "to use the demised premises as a Mission station including:-

- i) Presbyterian Theological Training School;
- ii) Agricultural Training School;
- iii) An area for agricultural development; and
- iv) Any other activity that is related to the proper functioning and operation of the Mission."

20. The lessee was also given rights to quiet enjoyment of its lease to carry out the above activities with out any interference from the lessors and their agents or anyone asserting custom ownership of the area. Clause 6 a) provides:-

"Quite enjoyment  
6. the lessors agree with the lessee as follows:

a) to permit the lessee on his paying the rents hereby reserved and performing the stipulations and provisions herein contained peaceably to hold and enjoy the demised land without any interruption by the lessors or any person deriving title under or in trust for them.

..."

21. The actions of the defendants amount to trespass as they are interfering with the claimant's enjoyment of his registered interest. They have not obtained any permission from the claimant to conduct their activities on the claimant's property.

## Result

22. Following my consideration of the defendants' defences and evidence filed in support or the lack thereof, I am satisfied that the defendants have no real prospects of defending the claim. There is no need for a trial and I enter judgement for the claimant.

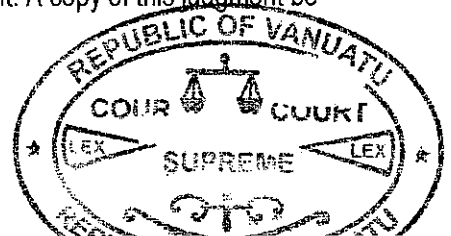
23. As the claimant did not pursue the claim for damages, I make no orders as to the damages claim.

24. The final orders are: -

- a) The first, second, third, fourth, fifth, sixth, seventh, and eighth defendants and their immediate families, servants or agents are permanently restrained from trespassing and continuing to remain in occupation of leasehold title 04/2932/001;
- b) The claimant to retain and remain in possession of leasehold title 04/2932/001;
- c) Costs to be agreed or taxed

## Enforcement

25. Pursuant to rule 14.37 of the *Civil Procedure Rules* ('CPR'), I now schedule an **Enforcement Conference scheduled for 11.00 am on 6 September 2024** for the Defendants to show that they have complied or how they intend to comply with this judgment. A copy of this judgment be



served immediately by the Sheriff in Luganville, Santo on each Defendant and proof of service filed.

DATED at Port Vila this 6<sup>th</sup> day of August, 2024  
BY THE COURT

Dudley Ann  
Judge

