

**IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU**
(Civil Appellate Jurisdiction)

Civil Appeal Case No. 37 of 2015

**BETWEEN: BARAK TAME SOPE and KALPOKOR
KALSAKAU**

Appellants

**AND: TERIKI PAUNIMANY MANTOI KALSAKAU III,
MASSING LAURU, KALPOVI MANGAWAI,
BUTUA BAKOKOTO, CHARLEY AIONG;
TAWARA KALONIKARA and MANREA
KALORIB**

First Respondents

AND: IFIRA TRUSTEES LIMITED

Second Respondent

Coram: Hon. Chief Justice Vincent Lunabek
Hon. Justice John von Doussa
Hon. Justice Raynor Asher
Hon. Justice Oliver Saksak
Hon. Justice Dudley Aru
Hon. Justice Stephen Harrop
Hon. Justice David Chetwynd

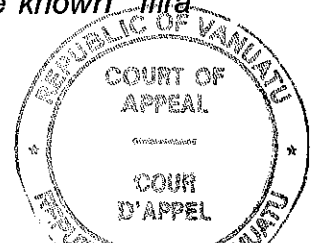
Counsel: Mr. R. Sugden for the Appellant
Mr. M. Hurley for the First and Second Respondents

Date of Hearing: 16 November 2015

Date of Judgment: 20 November 2015

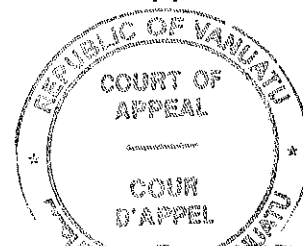
JUDGEMENT

1. This appeal is a sequel to the decision of the Court of Appeal in Sope v. Paunimanu [2013] VUCA 32, Civil Appeal Case No. 35 of 2012 (22 November 2013).
2. The Second Respondent (ITL), a local company, is the trustee of the Ifira Trust which was established by Deed dated 26th June 1978 "to promote the economic and social welfare and health education and general well-being of the beneficiaries both collectively and individually".
3. The "beneficiaries" are defined in the Deed to be "... the indigenous people or any of them declared by the Council of Ifira Island as being members of the four clans the members of which clans comprised the class of people known "Ifira Islanders".



4. ITL on behalf of the Ifira Trust holds considerable land and property which it manages on behalf of Ifira Trust for the benefit of the beneficiaries.
5. For some years, progressively from December 1999, there has been disquiet within the Ifira Community over the management structure of ITL, and two factions have emerged. One faction now represented by the Appellants favours the management structure for ITL where directorships represent Matarau (clan) groups of Ifira people, as was the situation when the Ifira Trust was established, and remains the situation under the present Articles of Association of ITL. The other faction, now represented by the First Respondents, favours a management structure where directors would represent the Warakali (family) groups of Ifira people.
6. Ultimately the differences between the factions led to litigation. The circumstances giving rise to the emergence of these factions and the events which have happened in endeavours to alter the management structure of ITL are recounted in detail in Ifira Trustees Limited v. Sope – Interim Judgment [2013] VUSC 131 and Sope v. Paunimanu.
7. In Sope v. Paunimanu the Court of Appeal resolved a number of issues which had been in dispute between the parties or were unclear. The Court held that as at the date of its decision there remained only three shareholders of ITL: the Paramount Chief, Chief Teriki Paunimanu Mantoï Kalsakau III (although his title remained to be formalised by the transmission of the share to him from his late father's estate; this has now occurred), Barak Sope (Mr. Sope) and Kalpokor Kalsakau (Mr. K. Kalsakau). The power to appoint the directors of ITL lies with the shareholders whoever from time to time they happen to be.
8. The relationship between the shareholders and the beneficiaries of the Ifira Trust was of crucial importance. The court declared:

"... that the shareholders of ITL from time to time (other than the share held by the Paramount Chief) hold their respective share or shares as nominees of the Ifira Trust, and must transfer the share or shares held by them or any of them in accordance with the resolution of the beneficiaries of the Ifira Trust passed at a meeting of these beneficiaries duly convened in accordance with the practice of the Ifira community" (at [80]).
9. The Court of Appeal considered that evidence before the Supreme Court indicated that the Ifira community (that is, the beneficiaries) should have a further meeting or meetings to consider if they presently wish to change the shareholders of ITL, if so to whom, and whether it wished to change the issued share capital in any particular way (at [53 - 54]). To this end the Court of Appeal said:



"69. (4) The Ifira community meetings

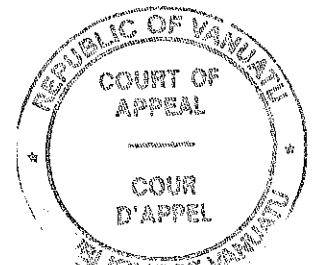
There was little focus on this issue in the appeal hearing. In our view, its meetings (at least so far as they relate to ITL and the Ifira Trust) should be conducted in the normal way for such meetings. No doubt that means that, in the first place, the Paramount Chief should call the meeting and set the agenda (after such consultation as he chooses). The evidence suggests a resolution is carried if it is supported by a majority of those eligible to vote. There is no evidence to suggest a vote is not carried unless it has unanimous support of every community member who are at the meeting.

...

77. There is an obvious problem about the running of ITL in the immediate future. At present there are three shareholders, and at least in a practical sense 31 directors. In our view the sensible thing is to allow things to stand as they are for 4 weeks, while the Paramount Chief if he decides to can call a meeting of the Ifira community to decide whether to nominate others to replace the shareholders who can appoint directors."

10. The Paramount Chief decided to seek the views of the Ifira community. He gave notice calling a meeting of the beneficiaries of the Ifira Trust to be held on Friday 13th December 2013 at the Warwick Le Lagon and Spa Resort Conference Centre (Le Lagon). A meeting was held on that day at the nominated venue when some 728 people attended and were admitted as beneficiaries. The following resolutions were passed by a majority of those present:

- "1. That the 1 ordinary share held by Barak Tame Sope and the 1 ordinary share held by Kalpokor Kalsakau in Ifira Trustees Limited ("ITL") be transferred.*
- 2. That Mr. Sope's and Mr. Kalsakau's respective shares held in ITL be transferred as follows:*
 - i. Mr. Sope's share be transferred to Ephraim Kalsakau; and*
 - ii. Mr. Kalsakau's share be transferred to Russell Bakokoto.*
- 3. That the shareholders of ITL should pass a special resolution to change the issued share capital from 3 ordinary shares to 31 ordinary shares.*
- 4. That in addition to the 1 ordinary share held by the Paramount Chief that 1 ordinary share be issued to the current representatives of each of the 30 Warakalis.*
- 5. That part of clause 5 (a) of the objects of the Memorandum of Association which now reads:*

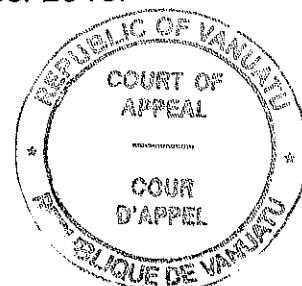


"(being the members from time to time of the Blakniu, Blakuita, Blakmalu and Blaknawi clans)"

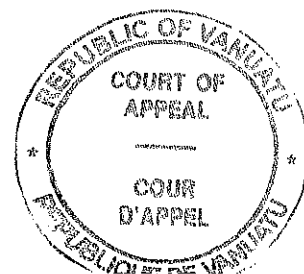
be deleted and replaced by:

"(being the Chief and members from time to time of the thirty (30) Warakalis of Ifira Tenuku more particularly enumerated in the Ninth Clause and herein collectively referred to as "the people of Ifira")".

11. Following the meeting Mr. Sope and Mr. K. Kalsakau failed to transfer their shares as directed. Rather, they purported to exercise their powers as shareholders of ITL to call an annual general meeting of members of ITL, and at the meeting then held on 20 December 2013 purported to elect six new directors of ITL (two of whom were Mr. Sope and Mr. K. Kalsakau).
12. The First and Second Respondents commenced proceedings in the Supreme Court, Civil Case 295 of 2013, against the Appellants seeking relief, including the following orders:
 1. ...
 2. *A declaration that the Beneficiaries' Meeting called by the Paramount Chief and held on 13 December 2013 at the Warwick Le Lagon Resort & Spa Conference Centre was held in accordance with the terms of the CA judgement, including, in accordance with the practice and custom of the Ifira Community.*
 3. *A declaration that the resolutions passed at the said Beneficiaries Meeting on 13 December 2013 are valid and binding on the Defendants.*
 4. *That the Defendants shall execute share transfers within 7 days of being provided with them to give effect to the resolutions passed at the said Beneficiaries Meeting on 13 December 2013.*
 5. ...
 6. *Costs".*
13. The appellants in their defence admitted that the meeting on 13 December 2013 was held at Le Lagon, that a large number of people attended, and that the meeting voted almost unanimously in favour of the resolutions referred to above. However they denied that the meeting was convened in accordance with the practice of the Ifira community and pleaded that the resolutions on the motions were not valid. The appellants by counterclaim sought a declaration as to the validity of the appointment of the new directors on 20 December 2013.



14. The appellants also commenced proceedings. They sought orders that the resolutions on the motions passed at the Le Lagon meeting were void and of no effect. By direction of the Supreme Court the issues between the parties were to be determined at the trial of the proceedings brought by the First and Second Respondents.
15. At trial the Supreme Court held that the Paramount Chief had authority to call the meeting of the beneficiaries at Le Lagon, that the meeting was convened in accordance with the practice of the Ifira community, and that the resolutions passed at the meeting were validly passed and binding. Orders were made in terms of paragraphs 2, 3, 4 and 6 of the Respondents' claim (as set out above). The Court also held that the purported appointment of new directors on 20 December 2013 was void and of no effect as the Annual General Meeting had not been duly convened and was in any event in contempt of an injunction the court granted on 19 December 2013. The terms of that injunction and the unsuccessful outcome of an appeal against it are to be found in Sope and Kalsakau v. Ifira Trust Limited & Others [2014] VUCA 5, Civil Appeal Case No. 3 of 2014 (Judgment – 4 April 2014).
16. The Appellants now appeal against the orders made in terms of paragraphs 2, 3, 4 and 6 of the claim, but do not appeal against the finding that the purported appointment of the new directors was void.
17. The appeal raises three distinct issues, and the grounds of appeal have been grouped together to argue them:
 - (a) Whether by holding the meeting of beneficiaries outside Ifira custom land (Le Lagon being on State land which was formerly Erakor custom land) the meeting was not convened in accordance with the practice of the Ifira Community, as contemplated by the Court of Appeal. The Appellants contend that by holding the meeting outside Ifira custom land many beneficiaries had not been given a fair and adequate opportunity to attend the meeting, especially as those convening the meeting on behalf of the Paramount Chief had not taken steps to publicly reassure the beneficiaries who were expressing concern about the venue being held off Ifira that there would be no disruption at the meeting caused by Erakor people. This was the principal ground of appeal;
 - (b) Whether a valid resolution required a majority vote of all beneficiaries, not just a majority vote of those who attended and voted at the meeting.
 - (c) Whether the persons named in the list of beneficiaries used to admit them to the meeting were proved to be validly declared beneficiaries under the Ifira Trusted Deed.



18. The first group of issues immediately direct attention to the observations in the Court of Appeal judgment in Sope v. Paunimanu that:

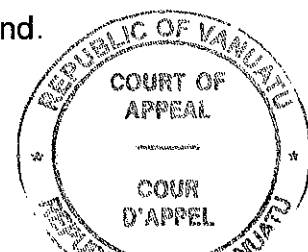
"... meetings (at least in so far as they relate ITL and the Ifira Trust should be conducted in the normal way for such meetings. No doubt that means that, in the first place, the Paramount Chief should call the meeting and set the agenda (after such consultation as he chooses)" [69].

... in accordance with a resolution of the beneficiaries ... passed at a meeting of those beneficiaries duly convened in accordance with the practice of the Ifira Community ..." [80]

19. Generally speaking, a meeting of shareholders of a company, or of members of an unincorporated group of people will be "*duly convened*" if notice of the meeting is given in a way that brings the notice to the attention of those who are eligible to attend the proposed meeting, the notice specifies the time and place for the meeting, and sets out clearly the proposed business of the meeting. In this case it is common ground that the notice was given by the Paramount Chief and was widely broadcast by public advertisements and radio. No issue is raised about the authority of the Paramount Chief to call a meeting of beneficiaries. It is also common ground that the business of the meeting was properly and clearly identified in the proposed agenda for the meeting, and that the agenda was agreed between lawyers acting for the Paramount Chief and the appellants.
20. Initially the Paramount Chief proposed that the meeting be held on Saturday 14 December 2015 but the date was then changed by the Paramount Chief so as not to conflict with commercial and religious obligations of some members of the Ifira community. No complaint is raised about the time and date for the meeting as it was notified. The only complaint is as to the location of the meeting.
21. Initially the Paramount Chief proposed that the meeting be held at his farea on Ifira Island, and the appellants raised no issue over that. However when the Paramount Chief decided to change the date of the meeting he also decided to change the proposed location to Le Lagon. The Appellants objected to the change of venue. The lawyer acting on their behalf wrote to the Respondents' solicitors saying:

"A meeting held in accordance with Ifira's custom could not, logically, be held anywhere other than Ifira".

The Appellants, through their lawyer, offered to put out tents and install a sound system either at a nakamal, a football field or at the Church on Ifira Island.



22. The Appellants offered a number of reasons in addition to the "logic" of the matter for their opposition to the change of venue. Their lawyer wrote:

"My clients are aware many of the older residents and many of the mother with young children will find it very difficult to go to Le Lagon and would probably not attend if the meeting was held there.

My clients are also concerned as the shareholders of ITL about the expenses of hiring the Convention Centre at Le Lagon considering the lack of justification for doing so."

23. An additional reason was later added. As Le Lagon was on former Erakor custom land a meeting held there could be disrupted by Erakor people.

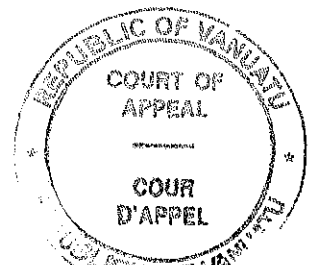
24. The Paramount Chief then gave reasons for the change of venue and stuck to his decision to hold it at Le Lagon. In summary his reasons were:

(a) It was the practice of his father when he was the Paramount Chief, to forbid the holding of ITL or Beneficiaries' meetings at his farea to ensure a clear separation between Ifira under the chieftainship and Ifira interests in business;

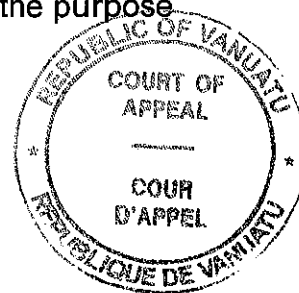
(b) The suitability and capacity at Le Lagon to ensure that all who wished to attend could be accommodated inside to participate in the meeting and for the necessary and proper documentation of the proceedings for future reference. The farea of Ifira no longer has the capacity to hold the presence of all of its members of beneficiaries of the Ifira Trust; and

(c) During previous Beneficiaries' meetings held at his farea in 2010 (i.e. on 6 November 2010 & on 20 November 2010) and in 2011 (at ITL's premises on 19 February 2011) where tents and sound systems were set up, a number of Messrs Sope's and Kalsakau's supporters uprooted the tent poles in an attempt to hurl them at other persons present.

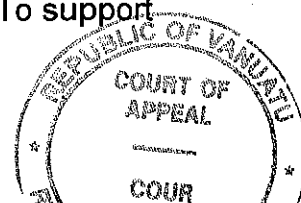
25. The facilities at Le Lagon suited a large meeting and the adequacy of the those facilities has not been questioned by the Appellants. This appeal has been argued on the basis that custom required that a meeting of beneficiaries must be held on Ifira land if the resolutions are to have any binding effect on the shareholders of ITL. Any meeting held elsewhere would not have been "duly convened in accordance with the practice of the Ifira Community", and could not be treated as valid. It will be noted that there has been a none too subtle change in the position adopted by the appellants through their lawyer from their initial objection to the change of venue, to the basis of their argument advanced on this appeal.



26. The “*logic*” of the situation has become a fixed and immutable requirement of custom. Whilst the logic of the situation was initially tempered by very sensible practical concerns about the difficulties for older residents and mothers with children, and the expense of hiring the convention centre, before this Court practical issues of that kind are, by implication, wholly irrelevant. The Appellants’ position now is that the alleged custom must rule, regardless of practical or other issues.
27. The evidence at trial showed that Le Lagon provided modern facilities that enabled the meeting, which was anticipated to be a long one, to run smoothly. To address the situation of people who could have travel difficulties in attending Le Lagon, public transport was made available and the adequacy of those arrangements is not criticised by the Appellants.
28. Custom is a concept based on the long observance of practices that stretch far back in history. It is often said to describe practices in a community that have existed “*from time immemorial*”. But like all practices that exist in a community they are prone to change over time to accommodate influences from the surrounding environment – natural, physical and economic – in which the community functions. In this case examples of change are numerous. The calling of meetings by newspaper and radio advertisement is a new practice, as is the use of Western law concepts of a trust and a corporate structure to manage important aspects of the economic life of the community. Resort to the legal system and the courts established under the Constitution of the Republic of Vanuatu to resolve disputes within the community is another example of the community moving with the times. The practical concerns about the change of venue for the meeting first raised by the appellants recognised the reality of day to day life in 2014 as it affected residents of Ifira.
29. There is an air of unreality about the appellants’ stand. The appellants’ argument before this Court did not seek to deny that practices in custom will change over time, some being abandoned and some new ones evolving. They accepted that Ifira Trust, a non-traditional, non-custom entity had emerged over some 35 years as a very important entity in the affairs of the community. It has assets managed by a corporate entity that is again a non-traditional, non-custom concept. These entities have to operate on an efficient commercial basis to maximise the benefits of their assets in pursuit of the objects of the trust. As the appellants’ evidence disclosed these entities administer the community’s business affairs and have to do so in the setting of the wider economic, social and political structures of Vanuatu, and indeed of the wide international community. To deny the Paramount Chief the authority to call a meeting of beneficiaries at the place he considers for good practical reasons to be a safe and reasonable one would seem to be inconsistent with the purpose and object of the business conducted by the Ifira Trust.

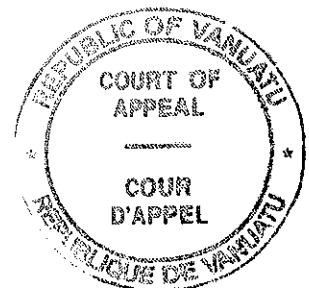


30. The trial judge was required to analyse and evaluate a large volume of written and oral evidence on the topic of the alleged immutable custom that community meetings must be held on Ifira. Differing and sometimes conflicting views were given by witnesses aligned either to the position adopted by the appellants or to that of the respondents. In the end the trial judge accepted the evidence of the respondents' witnesses. In our opinion it was plainly open for her to do so, and, moreover, we consider the weight of the evidence supports her conclusion.
31. The conclusion of the trial judge reflected the evidence of the Paramount Chief, which she accepted, that he had absolute authority in custom to decide where a meeting of the beneficiaries of the Ifira Trust is held. Specifically the trial judge concluded:
- The undisputed evidence is that the Paramount Chief is the head of the Council of Ifira Island and previously the head of the Council was his father, Paramount Chief Graham Kalsakau II. Accordingly, the Paramount Chief has the absolute authority in custom to decide where a meeting of the beneficiaries of the Ifira Trust is held.
 - The matarau leaders were not members of the Council of Ifira Island (or Chief's Council) during Chief Graham Kalsakau II's time (from when the Ifira Trust and ITL were established in 1978); they were only appointed to be members of the Chief's Council since the ordination of the current Paramount Chief in 1991.
 - The matarau leaders are appointed by their respective mataraus and can be terminated by their respective mataraus, including during their lifetime.
 - The following evidence by the Paramount Chief was unchallenged during cross-examination:
 - a) all beneficiaries cannot fit inside the farea;
 - b) transport was arranged to pick up beneficiaries from various locations;
 - c) Saturday 14 December 2013 was a cruise ship day during which a large proportion of the women of Ifira are vendors at the Ifira Wharf.
32. We are not persuaded that these conclusions are in error. In our opinion there are amply supported by the evidence.
33. The appellants contend that because the meeting was not held on Ifira a large of number of beneficiaries who wished to attend did not do so, because they would offend the custom that community meetings must be on Ifira. To support

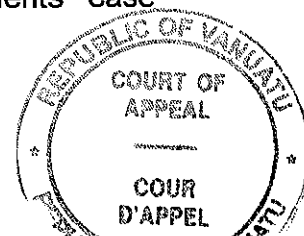


this argument pro-forma sworn statements were filed from 843 persons who asserted that they were beneficiaries. Common grounds advanced in these statements were that the deponents knew of the notice calling the meeting but as it was to be held off Ifira land contrary to Ifira custom and because of the risk of violence from Erakor people, they did not attend. Many said that they had been told by their matarau chief not to attend (by inference because the meeting would not be on Ifira land). These statements were subjected to close analysis and argument at trial. Thirteen statements were incomplete and were rejected on that ground. Those tendered totalled 843. However evidence from Fatani Sope (unchallenged in cross-examination) was that 301 persons who swore a pro-forma statement were not beneficiaries. That left 542 statements from people who were eligible beneficiaries (see below the discussion about the evidence concerning the list of beneficiaries maintained by ITL).

34. Of these, 173 deponents said that they had been advised not to attend by their matarau chief. However the trial judge accepted the evidence of that matured chief, Kapala Lauru, that he did not tell anyone not to attend the meeting at Le Lagon. This led the judge to conclude that 173 of the deponents of the pro-forma statements were not to be believed. Apart from these matters, the trial judge concluded that because the deponents were adopting statements drafted by someone else they did not necessarily accurately express the deponent's view, and could not be treated as reliable. She concluded that little weight should be given to those statements. We agree.
35. The evidence at trial revealed that the Paramount Chief had in advance of the Le Lagon meeting conducted a custom ceremony with the chief of Erakor, and the Erakor chief raised no objection to the Ifira meeting being held at Le Lagon. Further, the Paramount Chief had arranged for police to attend the meeting to ensure that the peace was kept. However the appellants said that these steps did not assist the respondents' position as they did not tell the appellant and those aligned with them about this. Thus, those fearing violence from Erakor people were not reassured before the meeting. The evidence about feared Erakor violence comes largely from these sworn statements that were given little weight, but that apart, the alleged fear of violence as a reason for not attending seems to undermine the assertion that the deponents could not attend as the meeting was not on Ifira land.
36. Whatever the reason that motivated the 369 eligible beneficiaries whose statements were not rejected as unbelievable, the plain fact is that they knew of the meeting. They chose not to attend. But even if they had attended and in concert voted against each motion, the result of the meeting would be the same (see below for the attendance and voting figures). Their evidence for what it is worth cannot invalidate the outcome of the Le Lagon meeting.



37. The topics which the second and third groups of issues raised by the grounds of appeal are not specifically mentioned in the conclusions of the trial judge set out in paragraph [31] above. However they had been dealt with and rejected by the trial judge before she stated these conclusions. Like the trial judge, we do not think either of these groups of issues assists the appellants. They do not provide a ground for invalidating the meeting or the binding effect of the resolutions passed at it.
38. The argument that a valid resolution required a majority vote of all beneficiaries, not just a majority vote of those who attended and voted at the meeting, has two limbs. The first limb is that the Court of Appeal in Sope v. Paramanu so required. The second limb is that each beneficiary held an undivided joint interest in each ITL share so that a majority of the individual joint holders was required to direct a shareholder. We consider both these contentions to be without merit. They can be disposed of briefly. We are unable to read the judgment of the Court of Appeal as requiring anything other than a resolution passed by a majority of those present at the meeting and entitled to vote. In the circumstances being considered in Sope v. Paunimanu a person would only be eligible to vote if that person was present at the meeting. That is the accepted notion of how meetings both formal and informal are normally conducted and this must be the meaning intended.
39. The question of the ownership of the ITL shares was one of the central issues in Sope v. Paramanu. The Court held that the shares were held in a representative capacity on behalf of the beneficiaries, and not in trust for them. If the shareholders were trustees they would have been free to exercise the rights attaching to the shares as they thought fit. The very point of the Court of Appeal decision is that the holders of the shares could not act in this way, but must act according to the wishes of the beneficiaries. As the holders of ITL shares are not trustees there can be no possibility of them holding the shares in trust jointly for each and every of the beneficiaries.
40. The grounds of appeal argued under the second group of issues must therefore fail.
41. The remaining grounds of appeal grouped together argued that the persons whose names appear in the list of beneficiaries used to admit beneficiaries to the Le Lagon meeting were not proved to be beneficiaries within the definition contained in the Ifira Trustee.
42. Much evidence was led by the appellants at trial, and responded to by the respondents, to question whether there now existed a body in the Ifira community which met the description "*Council of Ifira Island*" contained in the definition of "beneficiaries". The appellants argued that the respondents' case



failed to prove that any of the persons named in the list had been declared to be beneficiaries by the Council of Ifira Island.

43. It will be noted that there is an ambiguity in the definition of beneficiary as to whether each individual person must be declared a beneficiary by the Council, or whether it is sufficient that the Council declares clans whose members become beneficiaries. Much evidence was led at trial by the appellants concerning the appointment and role of the matarau chiefs, their roles in appointing a paramount chief, and their entitlement to a position on the Paramount Chief's Council. The evidence questioned whether the Paramount Chief's Council which is presently constituted by the Paramount Chief is one and the same body as the Council of Ifira Island. After considering all this evidence the trial judge concluded that the Chief's Council and the Council of Ifira Island was one and the same. Beyond that the trial judge did not go in analysing whether the Council had vetted the eligibility of each person whose name is on the list of beneficiaries maintained by ITL. She considered it was unnecessary to go too deeply into what was a very detailed explanation of Ifira Islanders custom and ownership of land. She simply accepted that those people whose names were on the list of beneficiaries maintained by ITL, and given to Mr Michael Mangawai, were beneficiaries of the Trust. Mr Mangawai had been appointed by the Paramount Chief as presiding officer and polling clerk 1 for the purpose of conducting the Le Lagon meeting.
44. The appellants argued that the trial judge erred in accepting that the list of names established who were the beneficiaries within the meaning of the Ifira Trust Deed. They did not proffer any other or better list of names. They simply said that the respondents were required as a matter of strict proof to establish that each and every person had been declared by the Council of Ifira Island to be a beneficiary.
45. We do not consider that the circumstances of this case required such strict proof. The evidence of both the appellants, which was consistent with the respondents' evidence, was that a function of ITL was to maintain and from time to time update a list of beneficiaries. Both the appellants relied on that list as their reference point to determine who was a beneficiary. ITL used the list it maintained to distribute benefits from the Trust to people within Ifira community. In particular the list was used to distribute Christmas vouchers every year to each beneficiary. No evidence was led by the appellants to prove significant error in ITL list. On the contrary the evidence showed that the list was the accepted reference point in the management of the Ifira Trust. We consider that the trial judge was correct to receive the list into evidence, and to act on it. The list was the best evidence available to identify beneficiaries.
46. One of the grounds challenging the validity of the meeting advanced on the appellant's behalf at trial and before this Court was that some extra names



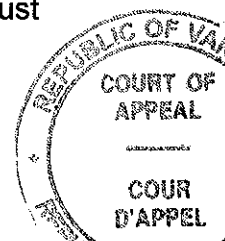
were added to the list of beneficiaries by Mr Mangawai to create the final typewritten list used to check the eligibility of people attending the meeting, and that thereafter a further 82 handwritten names were added of people who attended but whose names were not on the typewritten list. The original ITL list contained 1,533 names. Mr Mangawai's revised typed list contained 1607 names. A further 82 handwritten names were added at the meeting giving a final total of 1689 persons eligible to attend as beneficiaries. It seems that the extra 82 names added in handwriting reflected a statement by the Paramount Chief at the meeting that he would accept children and women of Ifira as eligible for the Christmas vouchers about to be distributed.

47. Of those whose names appeared on the list of beneficiaries 728 people attended the meeting at Le Lagon. Voting on the first motion put to the meeting (that shares in ITO held by Mr Sope and Mr K. Kalsakau be transferred) was by secret ballot and carried, 696 votes for and 36 votes against. Thereafter voting on the remaining motions was by a show hands. Each motion was carried by an overwhelming majority of those present.
48. It may be, as the appellants argued, that the list of beneficiaries maintained by ITL was not wholly accurate, at least at the date of the Le Lagon meeting. However the inaccuracy that might be inferred from the addition of some extra names by Mr Mangawai is small in comparison with the total number of names on the list and the number of votes cast in favour of the resolutions. Any such inaccuracy could not have altered the voting outcome of the meeting.
49. The grounds of appeal included in the third group of issues must be rejected.
50. For these reasons we consider that the appeal fails and must be dismissed.
51. In the event that the appeal is dismissed the parties are agreed that a cross-appeal by the respondents should be allowed to amend the final order made at trial, so that the order will now read:

"a declaration that the resolutions passed in accordance with motions 1 and 2 at the Beneficiaries' Meeting are valid and binding on the Defendants; and

that the then registered shareholders of Ifira Trustees Limited should consider the resolutions passed in accordance with motions 3, 4 and 5 at the said Beneficiaries Meeting on 13 December 2013".

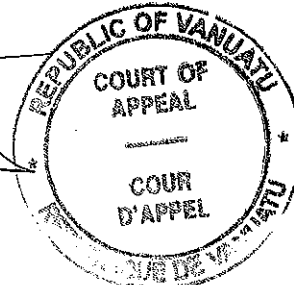

52. The orders will be amended accordingly. For the removal of doubt, as there has been some variation in the evidence about the numbering of the motions passed at the meeting, the numbering referred to in the amended orders just set out refers to the motions as numbered in paragraph 10 of this judgment.



53. The appellants are ordered to pay the respondents' costs of this appeal.

DATED at Port Vila, this 20th day of November, 2015.

BY THE COURT



The seal is circular with the text "REPUBLIC OF VANUATU" at the top and "COURT OF APPEAL" in the center. Below the center, it says "COUR D'APPEL". The bottom part of the seal is partially obscured by the signature.

Hon. Vincent LUNABEK
Chief Justice