

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

**Judicial Review**  
**Case No. 19/1175 SC/JUDR**

**BETWEEN: McClory Nagole Kalsakau representing Family  
Kalsakau of Ifira**  
*First Claimant*

**AND: Russel Bakokoto representing Naflak Teufi of Ifira**  
*Second Claimant*

**AND: Vauvautalo Sope**  
*Third Claimant*

**AND: Sauwi Kalpukai representing family Naperik Mala**  
*Fourth Claimant*

**AND: Humprey Tamata acting as the National  
Coordinator of the Custom Land Management  
Office**  
*First Defendant*

**AND: Paul Gambetta acting as the Director of Lands**  
*Second Defendant*

**AND: Family George Kano represented by Andrew  
Chichirua**  
*Third Defendant*

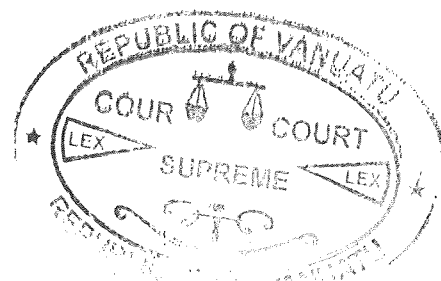
**Coram:** *Justice Aru*

**Counsel:** *Mr. S. Kalsakau for the 1<sup>st</sup> Claimant*  
*Mr. D. Yawha for the for the 2<sup>nd</sup> Claimant*  
*Mr. J. Tari for the 3<sup>rd</sup> and 4<sup>th</sup> Claimants*  
*Mr. S. Aron for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants*  
*Mr. W. Daniel for the 3<sup>rd</sup> Defendant*

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**JUDGMENT**

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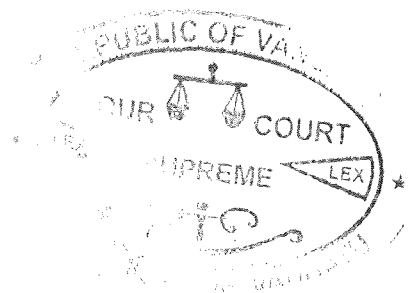


## Introduction

1. This is a judicial review (JR) claim. The claimants are McClory Kalsakau, Russel Bakokoto, Vauvatalo Sope and Sauwi Kalpukai as representatives of Family Kalsakau, Naflak Teufi of Ifira, Family Sope of Imere and Family Nunu Naperik Mala respectively. The claimants are challenging a decision of the Coordinator of the Custom Lands Management Office (CLMO) to issue a Certificate of Recorded Interest to Family George Kano represented by Andrew George Kano Chichirua as custom owner of Marope land.
2. For the purposes of rule 17.8 of the Civil Procedure Rules, at the first conference I needed to be satisfied of the claimants' case otherwise I must strike it out. The first conference was held on 29 July 2019 and I reserved my decision for consideration.
3. This is my ruling and the reasons for the decision.

## Background

4. On 25 February 1994 the Efate Island Court (EIC) in **Family Sope Imere (Mele Village) v Mala** [1994] VUIC 2 (Land Case No 1 of 1993) declared the custom owners of Marope land on Efate.
5. That decision was then appealed to this Court in **Family Sope Imere v Family Nikara** [2003] VUSC 70 (Land Appeal Case No 001 of 1994). On 23 December 2003 the appeal was dismissed and the decision of the Efate Island Court was upheld.
6. As the EIC in its judgment gave certain rights to parties other than the custom owner, in its orders, it allowed the parties with rights to apply to seek clarification of those rights. In **Family Sope of Imere & Ors v Estate of George Kano** Civil Case No 36 of 2008 the parties applied for clarification. On 24 December 2008 the EIC directed Pastor George Kano to negotiate the applicant's rights in accordance with the decisions of the EIC and Supreme Court.
7. On 5 July 2018 the National Coordinator for the Custom Lands Management Office issued a certificate of recorded interest in Land to Andrew George Kano Chichirua as representative of family George Kano. This is the decision being challenged in this proceedings.
8. On 10 May 2019 the Court of Appeal in **Kalsakau v Director of Lands** [2019] VUCA 33 issued a memorandum declining to hear the appellants' appeal until the question of representation are resolved and urged the appellants to file fresh proceedings in this Court once their representation are resolved.



9. On 2 July 2019 I granted leave to the claimants to file their JR out of time. As the third defendant also filed an application to strike out the claim, I informed the parties that I will list the first conference and hear the claimants and deal with the application to strike out at the same time.

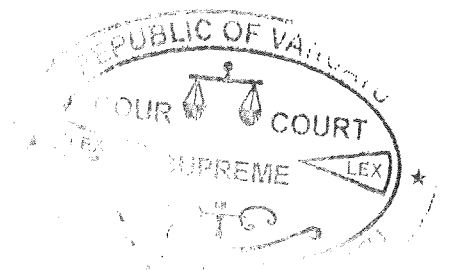
#### Pleadings

10. The claim was filed on 20 May 2019. In summary, the claimants allege that they are the declared custom owners of part of Marope land and not the third defendant. They allege that Pastor George Kano was not a separate party before the Island Court but was the spokesman for Naflak Teufi and that his role was to administer the claimants' rights.

11. The orders sought by the claimants are:-

- a. to quash the decision of the first defendant cancelling the certificate of recorded interest to the claimants as being wrong in law;
- b. to quash the decision of the first defendant dated 5 July 2018 wherein he issued a certificate of recorded interest to the third defendant;
- c. to declare that the claimants are joint declared custom land owners of part of Marope land;
- d. to declare that Pastor George Kano was the representative of Naflak Teufi and was declared custom land owner on behalf of his naflak but not of himself;
- e. to declare that by Ifira custom, Pastor George Kano's rights as chief of his naflak do not pass on to his son but reverts to the naflak whose members then decide who to take up the leadership role;
- f. to declare that the third defendant including Family Chichirua were not a party to the Efate Island Court claim in respect of Marope land and therefore have no rights to Marope land;
- g. to direct the first defendant to immediately and without delay issue a green certificate to the claimants; and
- h. costs

12. The first and second defendants on the other hand filed a defence saying that they will abide orders of the court. The third defendant says that the claimants are not entitled to the orders sought. He relies on the Efate Island Court judgment and says that the claim must be dismissed. That is the basis for his application to strike out the claim.



Law

Rule 17.8 (3), (4) and (5) of the Civil Procedure Rules

13. At the first conference, rule 17.8 (3) provides that I will not hear the claim unless I am satisfied that:-

“.....

(3) ...

- (a) *the claimant has an arguable case; and*
- (b) *the claimant is directly affected by the enactment or decision; and*
- (c) *there has been no undue delay in making the claim; and*
- (d) *there is no other remedy that resolves the matter fully and directly.”*

14. Under sub rule (5) If I am not satisfied about these matters then I:-

“....must decline to hear the claim and strike it out.”

15. To be satisfied I may consider the papers filed in the proceeding and hear argument from the parties. (sub rule (4) )

Custom Land Management Act No 33 of 2013 (the Act)

16. Under the Act, custom owners is defined to mean:-

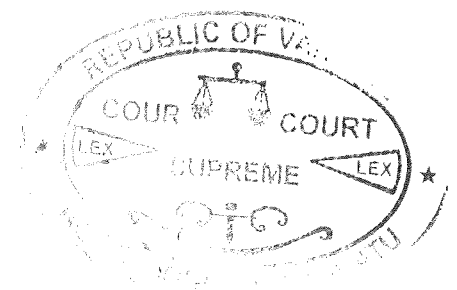
*“any lineage, family, clan, tribe or other group who are regarded by the rules of custom, following the custom of the area in which the land is situated, as the perpetual owners of that land and, in those custom areas where an individual person is regarded by custom as able to own custom land, such individual person;”*

17. Section 19 provides for the creation of a recorded interest in land and states:-

***“19 Creation of a recorded interest in land***

*(1) Where the custom owners are determined by a nakamal, the custom land officer must ensure that the written record of the determination is filed with the office of the National Coordinator.*

*(2) When a determination is filed with the office of the National Coordinator, the written record of the custom owner determination and the area of land that is owned by the group will become a recorded interest in land that may not be challenged except on the grounds of improper process or fraud.*



*(3) The National Coordinator is responsible for maintaining a list of all of the decisions that have become recorded interests in land and where requested by a custom owner will provide a certification of the names of the custom owners and the representatives of the custom owners. ”*

18. Section 57 provides for existing decisions of the Island Court and Supreme Court in relation to the creation of a recorded interest in land and states:-

***“57 Existing decisions of Island Court and Supreme Court***

*Decisions of the Supreme Court and an Island Court which determine the ownership of custom land and which were made before the commencement of this Act are deemed to create a recorded interest in land in respect of the person or persons determined by such Court to be the custom owners and will enable the custom owners so recorded to be identified for the purpose of consenting to an application for a negotiator’s certificate or a lease, or is to provide the basis for rectification of an existing lease instrument. ”*

The Constitution

19. Articles 73, 74 and 75 of the Constitution relates to ownership of custom land and recognises and states that:-

***“73. Land belongs to custom owners***

*All land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants.*

***74. Basis of ownership and use***

*The rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu.*

***75. Perpetual ownership***

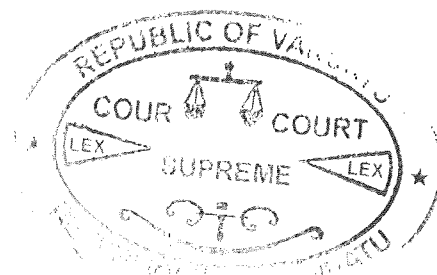
*Only indigenous citizens of the Republic of Vanuatu who have acquired their land in accordance with a recognised system of land tenure shall have perpetual ownership of their land.”*

Discussion

Representation

20. On the subject of representation of the claimants before me, that is disputed by members of the families they purport to represent and has not been resolved. The Court of Appeal at paragraph 8 of its Memorandum in **Kalsakau v Director of Lands** said:-

*“8. Who is the rightful person to act as the titular head of Family Kalsakau and as the custom owner of interests in the relevant part of the Marope Land is a*

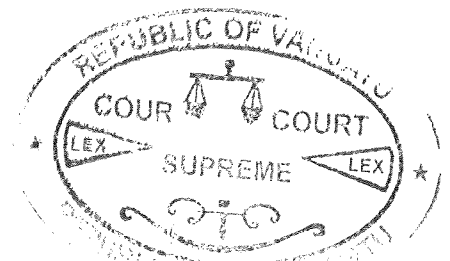


*matter that this Court does not have jurisdiction to determine. That is a custom matter within the jurisdiction of the Island Court.”*

21. Again at paragraph 18 the Court said:-

*“18. Whilst this Court has declined to hear the present appeal until the question of representation of the parties is resolved, the outcome of the appeal may not lead to the JR proceedings being reinstated. The resolution of the custom rights issues is urgent. Rather than await the uncertain and delayed outcome of the appeal this Court urges the parties to engage constructively in fresh proceedings to get the custom rights issues before the Supreme Court. Once fresh proceedings are underway there should be no need for this appeal to proceed. If the fresh proceedings are taken and defended in the names of individual members of the different families, hopefully arguments over representation can be avoided.*

22. McClory Kalsakau in his sworn statement says that he is the authorised representative of Family Kalsakau. Russell Bakokoto likewise says that he represents Naflak Teufi of Ifira, Vavautalo Sope says that he represents Family Sope Imere and Sauwi Kalpukai says that he is the authorised representative of Family Nunu Naperik Mala.
23. The third defendant filed opposing sworn statements from members of the claimants’ families disputing those representing the claimants. Joshua Kalsakau says that he is the authorised representative of family Kalsakau and not McClory Kalsakau. He says that they have an arrangement in place with Naflak Teufi of Ifira, Family Sope of Imere and Family Nunu Naperik Mala to work together to manage their resources.
24. Chief Nunu Naperik Mala Soalo George says that he is the authorised representative of Family Nunu Naperik Mala as he was bestowed the title of Nunu Napeik Mala .He disputes Sauwi Kalpukai as representing Family Nunu Naperik Mala. He confirms that his family has an arrangement with Naflak Teufi of Ifira, family Sope of Imere and Family Kalsakau to work together to manage their resources.
25. Daniel Anatu says that he is the authorised representative of Famil Sope of Imere not Vauvatalo Sope. He confirms their solidarity with Andrew Kano Chichirua and Naflak Teufi of Ifira as the true custom owner of Marope land.
26. Finally Mahit Kalourai says that he is the authorised representative of Family George Kano and Naflak Teufi of Ifira and disputes Russell Bakokoto as representative of Naflak Teufi of Ifira. Andrew Kano Chichirua in his sworn statement says that Mahit Kalourai was the Spokesman for his family since his grandfather’s time and he is also the representative of Naflak Teufi of Ifira since the judgment of the EIC on Marope land. Mr. Chichirua says that Russel Bakokoto has never represented Naflak Teufi of Ifira.



27. The evidence before me shows that there is a dispute within the claimants' families as to who has the right to represent each of the families. The named representatives of the claimants are being disputed by members of their own families. The Island Court gave perpetual rights of use to the claimant families. These families are now disputing who the titular head of each family should be. That is not a matter that can be decided by this Court. Only the Island Court as a matter of Custom should make that determination as suggested by the Court of Appeal in relation to Family Kalsakau referred to above.

EIC Decision

28. In **Family Sope Imere (Mele Village) v Mala** custom ownership of Marope land was declared to two persons as custom owners namely Pastor Pierre Nikara and Pastor George Kano.

29. The claim in this proceeding only relates to declarations made to Pastor George Kano as custom owner and those having perpetual rights under him namely Naflak Teufi of Ifira, Chief Nunu Naperik Mala and family, Family Sope of Imere and family Kalsakau.

30. Accordingly the EIC made the following declarations :-

“.....

*4. The court is satisfied and thus declares Pastor George Kano the owner of the land marked blue on the map. The land area covers:*

*\* Narrowby Land Title: 57J, 57K, 57L, 57N, 497, 2904, 1964, 1231/3/760, 3762, 3899, 128, 2910.*

*\* Malaaroa land Title: 534, 111, 129.*

*\* Ebooka Land Title: 378.*

*\* Mapuana Nattapu Land Title: 519*

*\* One part of Erango Rango Land Title: 519.*

*The court decision does not affect Land Title 57I, 57M, which are on the map, both areas are outside the boundary claimed.*

*5. The court is satisfied and declares that:*

*(a) Natlak Teufi Ifira (LC.2) and their descendants;*

*(b) Chief Nunu Naperik Malaa and his family (LC.1) together with their descendants;*

*(c) Family Sope of Mele village and their descendants;*

*According to custom laws, have perpetual rights to occupy, use and enjoy the area on the map marked in blue. These areas cover the Land Titles of:*

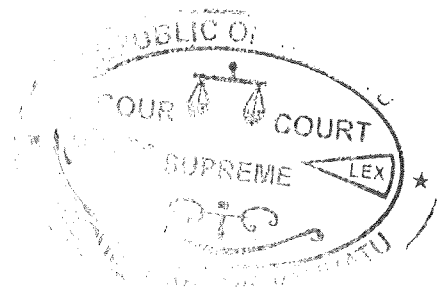
*\* Narrowby Land Title: 57J, 57K, 57L, 57N, 497, 2904, 1964, 1231/3/760, 3762, 3899, 128, 2910.*

*\* Malaaroa land Title: 534, 111, 129.*

*\* Ebooka Land Title: 378.*

*\* Mapuana Nattapu Land Title: 519*

*\* One part of Erango Rango land Title: 3922.*



*This customary right includes the right to grow crops, make gardens, build houses, and live on the land subject to any government restrictions. This right also includes right to receive rents or any other form of profit.*

*6. The court is satisfied and declares that the Kalsakau Family (LC.3) and their descendants have the same perpetual rights to occupy, use or enjoy the Narrowby and Title: 57J, 57K, 57L, 57N, 497, 2904, 1964, 1231, 3760, 3762, 3899, 128, 2910, with the Naflak Teufi Ifira and their descendants, Chief Nunu Naperik Malaa and his descendants and the Sope family of Mele village and their descendants.*

*This customary rights which the Kalsakau family have obtain includes the right to grow crops, make gardens, build houses, and live on the land subject to any government restrictions. This right also includes right to receive rents or any other form of profit.*

*7. Perpetual right to occupy, use or enjoy the land and the other entitlement is to be instated under the control and direction of the custom land owner.*

*8. The court would generally accept application by any party to clarify the rights issued from the judgement of this Court.*

*....”*

31. The findings made by the EIC as to the custom to be applied in declaring custom ownership of Marope land were as follows:-

*“Outline of general consideration applied by the court to define custom land ownership, and to determine the true custom owners of Marope Land.*

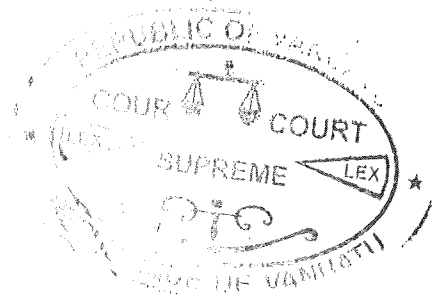
*1. According to Efate custom, particularly the Marope Land area, land ownership passes to the Malaes. Custom Land ownership follows the Patrilineal system.*

*2. The custom land owner is norMalaly a chief, sometimes there are exceptions when the custom owner is not a chief. The custom chief owns land on behalf of his people, who live and work on the land. The custom chief acquires land on behalf of his people who occupy the land.*

*Custom ownership is based on representation. The custom chief represents the custom boundary of the land he and his people live and work on. The custom land belongs to the custom chief and his people. Custom land ownership is different from individual ownership. The individual land owner may dispose off / sell land in whatever way he wishes.*

*On the other hand, a custom chief cannot dispose off or sell custom land at his own free will.*

*3. Every person under the authority of the custom chief has an interest or custom right, which is a perpetual right of occupying and using land which is owned by the custom chief.*





4. According to the system of customary, land tenure, the chief is the custom owner of the whole boundary, and like his people he owns, small portion of land within the whole boundary.

5. The custom chief may observe his own tribe, or he may also have to lead a different tribe, hence it would make him the chief of different little tribes.

6. Custom land ownership is transferred from father to son (grandfather, to father, and then to son). Customary land ownership is a birth right.

7. If a custom owner dies, then customary land ownership transfers to the brother after him. If the custom owner doesn't have a brother, then this right gets transferred to the first son of his eldest sister, in that way land gets transferred through the "uncle relationship".

8. In the case of polygamy, land ownership rights go to the first born of the senior wife.

9. If a person marries more than once, customary land ownership goes to the first son of the first marriage.

10. Criteria of the first occupant of the disputed land. If a land claimant says that the disputed land was occupied by his forefathers, he should prove to the court such claim. The test of proof would be evidence of custom nasara (meeting place) and rocks, a Nambanga (Banyan) or a namele tree (palm tree), Nakamal and taboo places. (A Title or Deed of Sale may be included too)."

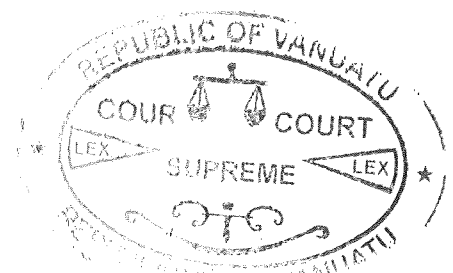
32. The EIC found that the custom ownership of Marope land area follows the patrilineal system. Custom land ownership is transferred from father to son (grandfather, to father, and then to son). Customary land ownership is a birth right.

33. As to the first claimant, the EIC found that the "Kalsakau Family are not the custom owners of the diputed land..... however, the court accepts the fact that the Kalsakau family has some interest in the land. It is not satisfied that the family is the custom owner of the Marope Land."

34. Concerning the rightful custom owner of the disputed land the Court found that:-

"According to the customary laws, George Kano is therefore entitled to customary ownership on the disputed land. (Area marked blue on the map).

The court is satisfied that George Kano is the descendant of Toumata Tetrau and is the owner of the disputed land:



<u>Narrowby</u>	<u>57J, 57K, 57N, 497, 2904, 1964, 1231,</u>
<u>Titles:</u>	<u>2910, 3760, 128, 3762,</u>
	<u>3899.</u>
<u>Malaaroa</u>	<u>534, 129.</u>
<u>Titles:</u>	
<u>Ebooka</u>	<u>378.</u>
<u>Title:</u>	

Maruana Natapu Title: 519.

Half of Erango Rango Title: 3922. ”

(emphasis added)

35. As for those entitled to have customary rights the EIC 's findings were that:-

*“The court is satisfied that Chief Nunu Naperik Mala and his family have customary rights to occupy and use some land sold by chief Nareo.*

*The court is also satisfied that the original land claimant, the Sope family of Mele have customary rights to occupy and use land that sold by chief Nareo, and also land within the disputed area.*

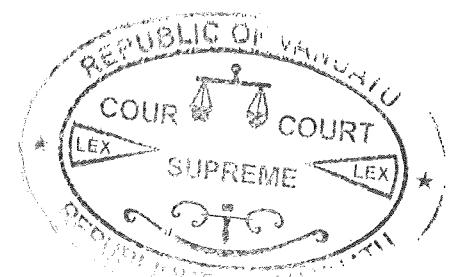
.....

*In the case of the Sope family of Mele village, according to custom laws, land rights should revert to the Sopes of Ifira. However, the Sope family of Ifira is not a party to the claim, they were witnesses to the Ifira Community claim.*

*Therefore with respect to the application of justice in this case, all customary rights to occupy and use land goes to the Sope Family of Mele village. ”*

36. The rights which were declared to the first claimant are perpetual rights to occupy, use or enjoy “including the right to grow crops, make gardens, build houses, and live on the land subject to any government restrictions. This right also includes right to receive rents or any other form of profit.” These rights were restricted to “Narrowby and Title: 57J, 57K, 57L, 57N, 497, 2904, 1964, 1231, 3760, 3762, 3899, 128, 2910, ”. The first claimant has the same rights over these areas with “Naflak Teufi Ifira and their descendants, Chief Nunu Naperik Mala and his descendants and the Sope family of Mele village and their descendants.”

37. The EIC ordered that the grant of perpetual rights to occupy, use or enjoy the land and other entitlements was to be under the “control and direction of the custom land owner” namely Pastor George Kano.



38. Johsua Kalsakau and Chief Nunu Naperik Mala Soalo George confirm in their sworn statements that they have an arrangement with Naflak Teufi of Ifira, Sope family of Mele and Pastor George Kano as to how they will manage the resources within the areas they share.

39. When the matter was appealed to this Court in **Family Sope Imere v Family Nikara**, Treston J dismissed the appeal and upheld the EIC judgment. The findings of the Court on appeal were that *“the learned Magistrate was careful to set out the custom basis on which he arrived at his conclusions.”* This was in relation to the custom applicable for determining custom ownership of land in the Marope land area ie that it follows the patrilineal system from father to son. The Judge went further to say that:-

*“In my view there can be no criticism of the statements of principle set out therein”*

40. Concerning the first claimant the Judge said:-

*“The rejection of the Family Kalsakau claim as to custom ownership of the land was likewise properly reached after a full and fair process. The learned Magistrate found that George Kaltoi Singari Kalsakau had failed to show any landmarks on the disputed land”.*

41. In his concluding remarks Treston J said:-

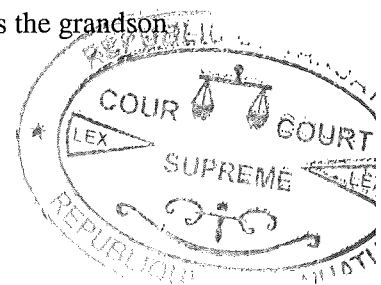
*“Under the Constitution itself, as the Island Court recognised, Article 73 provides that all land in the Republic belongs to the indigenous custom owners and their descendants who, under Article 75, shall have perpetual ownership of their land and under Article 74 the rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu. The decision in the Island Court is in accordance with that. ”*

42. This Court has confirmed as the final Court on appeal that according to the custom of the Marope land area, ownership of custom land passes to males. Custom ownership of land is transferred from grandfather to father then father to son as found by the EIC. In applying these findings the EIC declared Pasto George Kano as one of the two custom owners of Marope land. Treston J confirmed that this accords with Articles 73, 74 and 75 of the Constitution.

43. Accordingly Andrew George Kano Chichirua is entitled to be issued the certificate which records the decision of the EIC.

Certificate of recorded interest in land

44. The claim purports to challenge the Certificate issued to Andrew George Kano Chichirua on 5 July 2018 as representative of family George Kano. He is the grandson of Pastor George Kano.



45. In his sworn statement he says that:-

“ ...

4. *I am the representative of the custom owner of Marope having inherited such right and title through our custom from my late father, Aloani George Kano...*
5. *My late father inherited from my grandfather, late pastor George Kano of Ifira Island the customary land rights of Marope land as declared by the Efate Island Court on 25 February 1994 in Land Case No1 of 1993.*
6. *I am the eldest son of late Aloani George Kano and therefore by virtue of our custom have inherited the land rights of Marope land from my late father who died on 26 November 2015.*

...”

46. A recorded interest in land is defined in section 2 of the Act to mean:-

*“a decision made by a customary institution and to who the custom owners of an area of land are which when recorded, will be used by the National Coordinator as a basis for:*

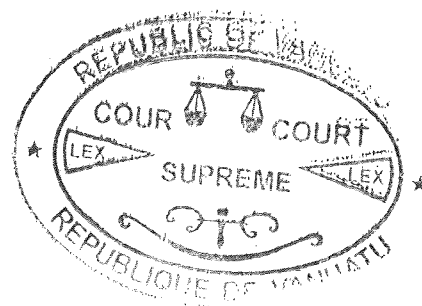
*(a) the identification of custom owners for the purposes of a negotiator’s certificate application under the Land Reform Act [CAP 123]; or*

*(b) the rectification of lessors in leases in existence prior to the commencement of this Act,*

*and to avoid doubt a Supreme Court or Island Court decision made prior to the commencement of this Act is deemed to create a recorded interest in land.”*

47. A recorded interest is created when a decision of the nakamal is filed with national coordinator. (s19). Decisions of an Island Court and the Supreme Court which determine the ownership of custom land which were made before the commencement of the Act also create a recorded interest in land in respect of the person or persons determined by such Court to be the custom owners. (s57)

48. The decision of the EIC of 25 February 1994 which was upheld on appeal was made prior to the commencement of the Act. It therefore created a recorded interest in land in respect of Pastor George Kano as the declared custom owner .



49. The Court of Appeal in **Kwirinavanua v Toumata Tetrau Family [2018] VUCA 15** clarified the use of certificates of recorded interest in land at paragraph 22 and 23 as follows:-

*“22. A certificate of recorded interest is a document of limited importance in the scheme of the CLM Act. It is a document that has an evidential function and only for the purposes mentioned below.*

*23. A “recorded interest in land” is defined in s.3. The definition reads:-  
Recorded interest in land is a decision made by a customary institution as to who the custom owners of an area of land are which when recorded, will be used by the National Coordinator as a basis for:*

- (a) The identification of custom owners for the purposes of a negotiator’s certificate application under the Land Reform Act [CAP 123]; or*
- (b) (b) The rectification of lessors in leases in existence prior to the commencement of this Act,  
and to avoid doubt a Supreme Court or Island Court decision made prior to the commencement of this Act is deemed to create a recorded interest in land.”*

50. And at paragraph 24 it said:-

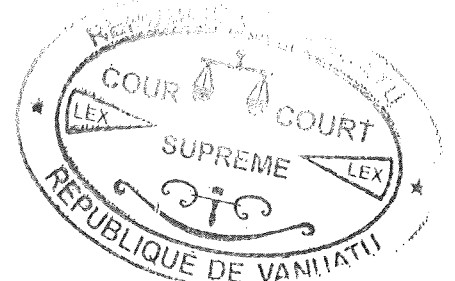
*“24. The recorded interest may be used for either of the two purposes in (a) and (b). Section 57 which deals with existing decisions of Island Court and Supreme Court also provides that the recording of those decisions under the CLM Act is only for those same two purposes. The actual event that determines the title of a custom owner is not the recording of an interest, but the decision of the relevant customary institution or Court. If there is a dispute about who is the custom owner, that will be determined by going to the decision of the customary tribunal or Court, not to a certificate issued by the Coordinator.”*

*(emphasis added)*

51. The court went further to say that:-

*“30. We have no doubt that the coordinator has power to cancel a certificate if he discovers the information in it is not correct, or that it was for any other reason wrongly issued.”*

52. The purpose of the certificate of recorded interest in land is to identify custom owners for purposes of negotiator certificate applications and secondly rectification of lessors in leases. The Certificate issued on 5 July 2018 to Andrew George Kano Chichirua in my view is in line with the EIC decision. Andrew Chichirua as representative of family George Kano is the grandson of Pastor George Kano and in accordance with the custom of Marope land area is next in line to inherit the custom ownership of Marope after his father Aloni George Kano.



## Conclusion

53. For the above reasons, I am not satisfied that the claimants have an arguable case. The claimants have perpetual rights as declared by the EIC and these rights are not affected by the issuance of the certificate of recorded interest to Andrew George Kano Chichirua. Custom ownership of Marope land was determined by the EIC and the certificate issued on 5 July 2018 is reflective of the decision.
54. This Court has no jurisdiction now to alter or vary the decision of the EIC and make the various orders sought by the claimants in their claim. The appeal against that decision was dismissed on 23 December 2003.
55. There is no undue delay in making the claim. Orders of the Island Court allowed parties to apply to clarify their rights in the judgment. That is a remedy available to the claimants. The custom owner has been declared by the EIC and the decision is final after the appeal was dismissed.
56. There is no need for leave to be given for further submissions and the application for leave is dismissed.

## Result

57. The claim is hereby struck out.
58. The defendants are entitled to costs to be agreed or taxed.

**DATED at Port Vila this 27<sup>th</sup> day of August, 2019**

**BY THE COURT**

.....  
**D. Aru**  
**Judge**

