

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

**Civil Case
No. 23/483 SC/CIVL**

**BETWEEN: Chief Ringiau Komi representing the
nakamals and people of area 1 to 6,
Whitesands, Tanna**
Claimant

AND: Entani Company Ltd
Defendant

Date: 7 September 2023
Before: Justice V.M. Trief
Counsel: Claimant – Mr E. Molbaleh
Defendant – Mr N. Morrison

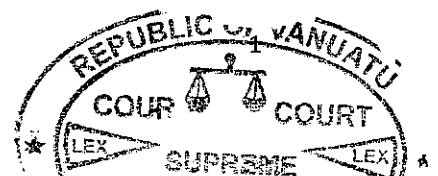
DECISION AS TO APPLICATION TO STRIKE OUT CLAIM

A. Introduction

1. This was an application to strike out the Claim. The parties were given the opportunity to file submissions then the Court would determine the application on the papers after that.
2. This is the decision.

B. The Claim

3. The Claimant Chief Ringiau Komi filed the Claim on 4 May 2023 alleging that he and the people of the nakamals of area 1 to 6 at Whitesands, Tanna are the custom owners of Yasur Volcano at Whitesands on Tanna by operation of the judgment in Land Appeal Case No. 2 of 1984. It is alleged that the Defendant Entani Company Ltd ('Entani') has trespassed onto the Yasur Volcano and has used the money collected from tourists and visitors to the volcano for its own benefit since 2009 until now. The relief sought is a declaration that Entani is a trespasser at Yasur Volcano, damages, costs and interest.

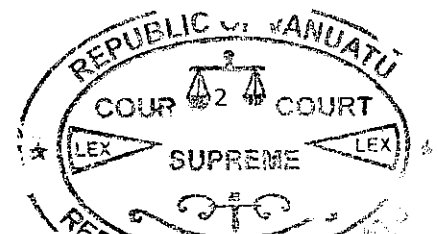


C. The Application

4. On 28 June 2023, Entani filed Application to Strike Out Claim (the 'Application') on the grounds that Chief Komi's cause of action is in trespass and there is no legal or factual basis giving rise to that cause of action.
5. The Further Sworn statement of Samson Busai, Chairman of the Entani Board of Directors was filed in support. Mr Busai deposed that Covid-19 resulted in cessation of economic activity at the Yasur Volcano until July last year when the borders reopened. The company is progressing slowly since it resumed operation a year ago. Its accounts for 2019 and 2020 are in the process of being audited and it will take some time to complete them. The Claimant has no factual basis for trespass because Entani is actually owned by the people of the 6 areas surrounding the Volcano. Further, Chief Komi does not represent the people of the 6 areas around the Volcano as claimed but is acting for his sole benefit and for his subsidiaries.
6. Entani also filed the Sworn statement of Moses Kahu. He deposed that Entani is a registered company under the *Companies Act* and its establishment is for the benefit of people from Areas 1 to 6 of which representatives from these areas were elected and nominated by the people to represent them as Directors of the company. Further, that Chief Komi is bringing this case for self-interests and not for the benefit of the people from the 6 areas surrounding the Volcano as claimed.
7. The Application is opposed. Mr Molbaleh submitted that Entani is a private company which does not represent the 6 areas of Whitesands, Tanna who own Yasur Volcano. He submitted that the directors of Entani should be from areas 1 to 6 only but 11-named directors are not from areas 1 to 6 and are therefore trespassing on Yasur Volcano through the company. A number of sworn statements were filed in support of the submissions in response. The deponents asserted that their people support the Claim and a change in the Entani board of directors.

D. Discussion

8. The Claim as pleaded is a novel interpretation of the cause of action of trespass. That is, that trespass can be committed on land by a person who serves as the director of a company who conducts business on that land. It seems to be common ground that Entani directors would be chosen by the people of the 6 areas to represent them as Directors of the company. However, it does not follow that this Court is the right forum in which to achieve a change in Entani's board of directors. The company is governed by its articles of association. Any change in the board of directors must be done by way of the procedures set out in those articles.
9. In addition, no principle of law or case law has been cited as authority for the idea that trespass can be committed on land by a person serving as the director of a company who conducts business on that land.



10. In the circumstances, I am driven to the conclusion that the ground of the Application is made out that there is no legal or factual basis giving rise to the cause of action of trespass as pleaded in the Claim. The Claim is accordingly **struck out** for failing to disclose a cause of action.

E. Result and Decision

11. The Claim is **struck out**.

12. The Claimant is to pay the Defendant's costs, summarily fixed at VT100,000, within 28 days.

DATED at Port Vila this 7th day of September 2023
BY THE COURT


Justice Viran Molisa Trief

