

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

**Civil**  
**Case No. 21/136 SC/CIVL**

**BETWEEN: Bill Kalpoi Kalsrap**  
Claimant

**AND: Vira Kalpoi**  
First Defendant

**AND: Bruce Kalotiti Kalotrip**  
Second Defendants

**AND: Abel Frank Kalmes-Skature**  
Third Defendant

*Date of Hearing:* 8 September 2023  
*Before:* Justice V.M. Trief  
*In Attendance:* Applicant seeking to be made Fourth Defendant – Mr R.E. Sugden  
Claimant – no appearance (Mrs M. Mala)  
First Defendant – no appearance (in person)  
Second Defendant – no appearance (Mr D.K. Yawha)  
Third Defendant – no appearance (Mr C. Leo)  
*Date of Decision:* 11 September 2023

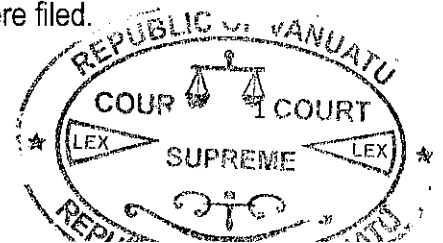
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**DECISION AS TO AMENDED APPLICATION OF KALTERE KALUATMAN TO BE MADE  
A DEFENDANT**

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A. Introduction

1. This was an application by the Applicant Kaltere Kaluatman to be made a defendant.
2. By Orders dated 5 June 2023, this matter was listed on 8 September 2023 for the hearing of the application. Those Orders were emailed to counsel. No explanation has been received for counsel's non-attendance today.
3. Despite the opportunity given, no submissions in response were filed.



4. This is the decision after hearing Mr Sugden and considering the application.

B. Background

5. The lease with title no. 12/0913/087 was registered on 16 July 1997. The lessee is Pango Hill View Company. The lessors were named as follows:

**LESSOR(S):** *Charlie Kalpoi and Noel Kaluatman as Trustees on behalf of the custom owners of the parcel of land described in the attached plan, Pango Village, South Efate.*

6. Both Family Kalpoi and Family Kaluatman are disputing custom claimants for the land in the lease.

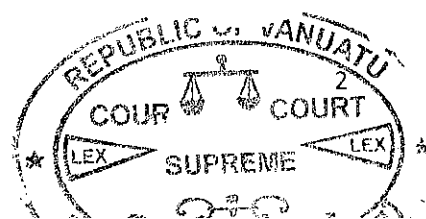
7. Subsequently, lease title no. 12/0913/087 was subdivided. Lessors' consents required were sought from the representative of each family. From 2018 onwards, the Department of Lands recognised Bill Kalpoi as the representative of Family Kalpoi and Kaltere Alick Kaluatman as the representative of Family Kaluatman for the purposes of lessor's consents in respect of the leases derived from the subdivision of lease title no. 12/0913/087.

8. On 27 January 2021, Bill Kalpoi Kalsrap as Claimant filed Claim in the present matter CC 21/136 as Chairman of the family nakamal and authorized representative of Family Kalpoi in his desire to bring an end to the issues pertaining to the rightful and authorized representative of Family Kalpoi to avoid future misconceptions and confusions regarding the matter. Family Kalpoi is lessor of lease titles 12/0913/027 and 12/0913/087. The relief sought included an order that the Defendants be permanently restrained from holding themselves out as the authorized representative of Family Kalpoi, that they be permanently restrained from receiving or obtaining all monies and rents derived from lease titles 12/0913/027 and 12/0913/087, that the Defendants give account of monies received and used, and that the Defendants recompense the Claimant for monies received and used in relation to those leases.

9. On 26 April 2021, the Second Defendant Bruce Kalotiti Kalotrip filed a Defence and the Third Defendant Abel Kalmet filed his Defence.

10. Subsequently, the parties presented Consent Orders that were sealed by the Court dated 20 August 2021 in the following terms:

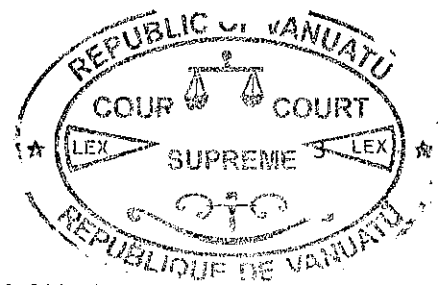
1. *That this proceeding is stayed pending the determination of Land Appeal Case No. 1 of 2009.*
2. *That until Land Appeal Case No. 1 of 2009 is resolved, any land rents or monies collected from the Leases within the boundary, the subject of Land Appeal Case No. 1 of 2009, must be paid to the Chief Registrar's Trust Account to be held in Trust for future declared custom owners.*
3. *Each party to bear its own costs.*



11. On 7 December 2021, the Second and Third Defendants filed Application to Vary Consent Orders.
12. By Orders dated 27 January 2022, I stated that that application was misconceived as the parties had agreed consent orders therefore any variation of those Orders was not a matter for the Court to determine but for the parties to agree and then forward signed consent orders containing the variation. I declined therefore to list that application for hearing.
13. The parties forwarded new consent orders which the Court signed and sealed dated 4 March 2022 in the following terms:
  1. *That this proceeding is stayed pending the determination of Land Appeal Case No. 1 of 2009.*
  2. *That the Claimant, the First, Second and Third Defendants are to sign consents for transfers and mortgages on behalf of the custom land owners on all derivative leases from former title 12/0913/087 within Le Plateau subdivisions and Ellouck to facilitate transactions urgently required by the Lessees to enjoy their benefits without any further encumbrances.*
  3. *That all land rents and land benefits from Le Plateau Subdivisions and Ellouck be retained by the Claimant, the First, Second and Third Defendants on the basis of trusteeship on behalf of the Custom Land Owners until the appeal is finally determined.*
  4. *Each party to bear its own cost.*
14. The Consent Orders by agreement of the parties have been varied on a further two occasions, and sealed by the Court, dated 31 March 2022 and 30 January 2023.
15. In the meantime, Mr Kaluatman's Application had initially been filed on 6 May 2022 but had not been listed (amended application filed in June 2023). No counsel for the Claimant or First-Third Defendants brought to the Court's attention that new consent orders were being presented for the Court's sealing while there was a pending application by Mr Kaluatman that required the Court's determination.
16. The file was not brought up and the matter listed for hearing until May 2023 after repeated correspondence from Mr Sugden in April and May 2023.

C. The Application

17. On 1 June 2023, the Amended Application of Kaltere Kaluatman to be made a Defendant was filed (the 'Application').
18. Kaltere Kaluatman filed his sworn statements in support on 6 May 2022 and 1 June 2023. On 30 May 2022, a Sworn statement as to Urgency by Mr Sugden was also filed.
19. The orders sought are as follows:

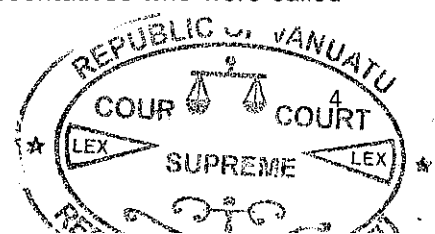


1. *That he be made the fourth defendant in this proceeding in order to defend the proceeding.*
2. *That the Consent Orders dated 4 March 2022 be set aside and the Application pursuant to which they were granted, be reheard.*
3. *That the Claimant and the Defendants fully disclose all consents that they have signed pursuant to Order No. 2 of the Orders of 4 March 2022 and provide to the Court and the Applicant an account of all payments and benefits they have received pursuant to Order No. 3 of the Consent Orders.*
4. *That the Claimant and the Defendants pay the Applicants' costs of and incidental to this Application.*

20. The following grounds of the Application were advanced:

1. *On 16 July 1997, when registration occurred of registered lease 12/9013/087, the lessors recorded by the Director of Land Records were the Kalpoi Family represented by Charlie Kalpoi and the Kaluatman Family represented by Noel Kaluatman.*
2. *One representative from each of the two families, called trustee, was registered on behalf of his family as a lessor of registered lease 12/0913/087.*
3. *The Applicant is now the representative of the Kaluatman family for the purposes of the aforesaid lessorship and was recognized as such by the Director of Land Records in November 2018.*
4. *The Orders numbered 2, 3 and 4 of the Orders of March 2022 have removed the rights of Family Kaluatman as custom claimants and as Lessor of the land in question to:*
  - a) *be a recipient of the rents and income from the leased land and to ensure that the trust in which such rents and income must be held until the determination of the land appeal is properly maintained;*
  - b) *be heard, as a lessor, as to the giving of subleases and dealings with them that is guaranteed by the requirement in the Land Leases Act that their consent to any dealing with the 12/0913/087 and any sublease or other interest in the land within that title be obtained before any such dealing can be registered.*
5. *As to costs:*
  - (i) *The Claimant and the Defendants were aware that the Family Kaluatman were custom claimants and lessors and were represented by the Applicant.*
  - (ii) *It was their duty under the Civil Procedure Rules to assist the Court by ensuring that the Applicant and any other interested parties were afforded the opportunity to be heard before Orders 2, 3 and 4 of the Orders dated 4 March 2022 were made.*

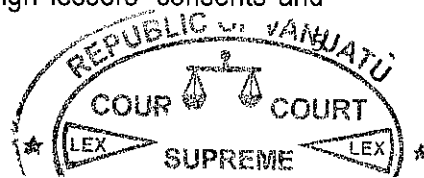
21. Mr Kaluatman deposed in his Sworn statement filed on 1 June 2023 that many years ago, his village chief was approached by the Lands Department to find out who the Custom Owners of the land were and he sent back a form that the Department gave him. In the form it stated that his family and the Kalpoi Family were the custom owners and their families were named as the two lessors in the lease with the registered title no. 12/0913/087 through the family representatives who were called 'trustee' for their respective families.



22. Mr Kaluatman deposed in his Sworn statement filed on 6 May 2022 that prior to 4 March 2022, the Claimant and Defendants through First National real estate agents approached him to sign consents to dealings with titles to land created from the subdivision of land within lease title no. 12/0913/087. He told them that he would sign consents jointly with Bill Kapoi, as the trust required, but that he would not sign consents to which the three Defendants were also signatories. He also said that the lease payments and other land benefits should be paid jointly to Bill Kalpoi and him as the trust required but not to the three Defendants.
23. He stated that he did not hear anything further until he became aware of the Orders dated 4 March 2022 in this matter and he is concerned that consents are now being wrongly signed and moneys that should be coming into the trust of which he was a trustee are being paid to the Defendants and the Claimant.

D. Discussion

24. I accept from the copy of the registered lease title no. 12/0913/087 [Annexure "A", Sworn statement of Kaltere Kaluatman filed on 6 May 2022] that Mr Kaluatman and Charlie Kalpoi are the lessors and trustees on behalf of their Families Kaluatman and Kalpoi in respect of the custom land covered by that lease. That lease was registered on 16 July 1997 and from then on, those two trustees were responsible for signing lessors' consents required for registered dealings with that lease and the derivative leases arising from the subdivision of that titles.
25. It is not explained how it is that Bill Kalpoi Kalsrap subsequently became the trustee on behalf of Family Kalpoi in Charlie Kalpoi's place.
26. In any event, I accept that in January 2021, Mr Kalsrap filed the Claim in the present matter to bring to a head issues within Family Kalpoi as to who was the rightful and authorised representative of the family including for the purposes of registered land dealings in respect of lease titles 12/0913/027 and 12/0913/087. The relief sought included a permanent restraint on the Defendants from holding themselves out as the authorised representatives of Family Kalpoi and from receiving or obtaining all monies, rents and fees derived from lease titles 12/0913/027 and 12/0913/087.
27. It appears two out of the three Defendants filed Defences then the Claimant and Defendants presented consent orders to this Court agreeing that from 20 August 2021 (the date of the first consent orders), that land rents and monies collected from the leases must be paid into the Chief Registrar's Trust Account to be held in trust for the future custom owners.
28. After that, application was filed to vary the consent orders but I stated that this could not be determined by the Court but required agreement between the parties.
29. Subsequently, the parties presented the consent orders dated 4 March 2022 that stated that the Claimant and three Defendants are to sign lessors' consents and

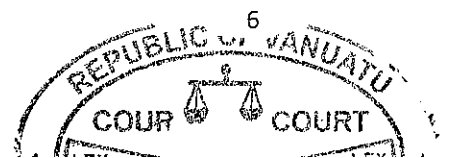


mortgages on behalf of the custom owners in respect of the derivative leases arising from the subdivision of former title 12/0913/087 to facilitate transactions urgently required by the lessors.

30. The two families who are the lessors of lease title no. 12/0913/087 of course were not just Family Kalpoi but also Family Kaluatman.
31. However, the wording of those consent orders assumes that the Claimant and the three Defendants are the only ones to sign lessor consents without making any reference to their doing so "on behalf of Family Kalpoi" and that those consents must also be signed by the trustee and representative of Family Kaluatman. It makes sense then that as Mr Kaluatman evidenced, after he refused to sign consents involving the three Defendants, that he did not hear anything further but obviously lessor consents after that in respect of lease title no. 12/0913/087 and its derivative leases were signed only by the Claimant and Defendants without any reference to him as the trustee and representative of Family Kaluatman.
32. In the circumstances, I agree with the applicant Mr Kaluatman that he should be made a party to this proceeding. Given the scope of the Claim however, I consider that it is not for Mr Kaluatman to defend the Claim as he is not part of Family Kalpoi in order to have a say as to who should be its authorised representative. However, he does have an interest as trustee for and representative of Family Kaluatman to jointly with the Family Kalpoi representative sign lessors' consents in respect of lease title no. 12/0913/087 and to be given disclosure as to all consents signed excluding him and an account of all payments and benefits received without reference to him. Accordingly, I consider he should be made an Interested Party, that orders issue as to such disclosure and account and that possibly, that the wording of the consent orders be varied to make clear that the Claimant and three Defendants sign lessors' consents for and on behalf of Family Kalpoi only but not for and on behalf of Family Kaluatman.

E. Result and Decision

33. For the reasons given, the Amended Application of Kaltere Kaluatman to be made a Defendant filed on 1 June 2023 is **granted** and it is ordered as follows:
  - a. That Kaltere Kaluatman is added as a party to this proceeding, namely "Interested Party". This change will be reflected in the entitling in future Court Orders;
  - b. That the Claimant and Defendants fully disclose all consents that they have signed pursuant to Order No. 2 of the Consent Orders dated 4 March 2022 and the Consent Orders dated 31 March 2022 and 30 January 2023 **by 4pm on 11 October 2023**;
  - c. That the Claimant and Defendants provide to the Court and the Interested Party an account of all payments and benefits they have received pursuant to Order No. 3 of the Consent Orders dated 4 March



2022 and the Consent Orders dated 31 March 2022 and 30 January 2023 **by 4pm on 11 October 2023**;

- d. That the Claimant and Defendants are **restrained** from signing any further consents for transfers, mortgages, variations and any other registered dealings with land in respect of all derivative leases from former title 12/0913/087; and
- e. That the Claimant and Defendants are required to attend **at 1.20pm on 20 October 2023** at the Supreme Court Registry to show cause why the Consent Orders dated 4 March 2022 and the subsequent Consent Orders dated 31 March 2022 and dated 30 January 2023 should not be set aside.
34. I considered varying the wording of Order 2 of the Consent Orders dated 4 March 2022, of Orders 2-4 of the Consent Orders dated 31 March 2022 and of Orders 2-7 of the Consent Orders dated 30 January 2023 to make clear that the Claimant and Defendants are to sign lessors' consents for and on behalf of Family Kalpoi only but not for and on behalf of Family Kaluatman. However, I am uncertain if that is the right course as it seems to me that suggests that Family Kalpoi is a declared custom owner of the subject land but they are not – they are disputing claimants for the custom land as is Family Kaluatman and no doubt others. In those circumstances, I am unsure that the present proceeding should be used to authorise parties to act for and on behalf of Family Kalpoi in respect of the derivative leases from former title 12/0913/087 when it was not that family nor Family Kaluatman that was appointed as a trustee and lessor in the registration of that lease but a particular person from each family being Charlie Kalpoi and Noel Kaluatman. Accordingly, I considered I could not proceed to vary the wording of any of the Consent Orders but must give the parties the opportunity to be heard hence will proceed with a show cause hearing on 20 October 2023.
35. The Claimant and Defendants had a duty under the *Civil Procedure Rules* to assist the Court by advising that there was some other person with an interest as lessor for lease title no. 12/0913/087 and ensure that that person and any other interested parties were afforded the opportunity to be heard before any of the Consent Orders were made. Accordingly, the Claimant and the Defendants are to pay the Interested Party's costs of and incidental to this Application as agreed or taxed by the Master. Once settled, the costs are to be paid within 28 days.
36. The Sheriff is requested to serve this Decision on the Claimant and the Defendants and to file proof of service **by 4pm on 20 September 2023**.

DATED at Port Vila this 11<sup>th</sup> day of September 2023  
BY THE COURT

  
Justice Viran Molisa Trief

