

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

Civil  
Case No. 23/2145 SC/CIVL

**BETWEEN: Lovite Simaima Kalsong**  
Claimant

**AND: Mark Tarinu, Leipako Tarinu, Telwin  
Olive, Lena Olive, Michel Toara, Lewi  
Toara, Mark Paul, Marie Paul, Moses  
Naliu, Reijim Naliu, Peter Tom Naliu,  
Iasimut Naliu**  
Defendants

*Date:* 28 November 2024  
*Before:* Justice V.M. Trief  
*Counsel:* Claimant – Mr D.K. Yawha  
Defendants – Mr A. Bal

---

**DECISION AS TO URGENT APPLICATION TO STAY PROCEEDING**

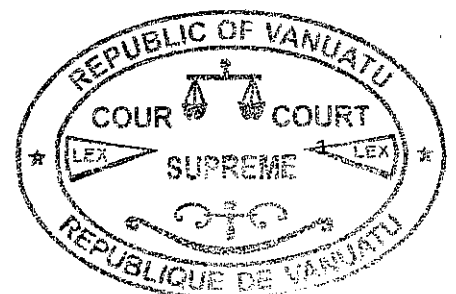
---

A. Introduction

1. On 2 August 2024, judgment was entered for the Claimant Mrs Lovite Simaima Kalsong for the eviction of the Defendants Mark Tarinu, Leipako Tarinu, Telwin Olive, Lena Olive, Michel Toara, Lewi Toara, Mark Paul, Marie Paul, Moses Naliu, Reijim Naliu, Peter Tom Naliu and Iasimut Naliu from leasehold title no. 12/0644/001 located on Efate island (the 'leased land') in the following terms:

9. *Judgment is entered for the Claimant and it is ordered as follows:*

- a) *The Defendants, their families and/or agents are to vacate leasehold title no. 12/0644/001, including removing their fencing, houses, personal properties and garden crops leaving the land vacant, **within 3 months from the date of service of this Judgment;***

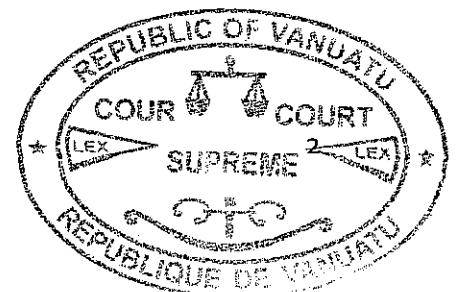


- b) *The Defendants, their families and/or agents are not to enter onto the Claimant's leased land leasehold title no. 12/0644/001;*
- c) *The Claimant is entitled to the costs of the proceeding fixed summarily at VT100,000 to be paid within 28 days of service of this Judgment on the Defendants.*

2. The matter had proceeded to formal proof of the Claim following the striking out of the Defendants' Defence and Counter Claim on 16 July 2024: *Kalsong v Tarinu* [2024] VUSC 343.
3. On 28 October 2024, the Defendants filed Urgent Application to Stay Proceeding (the 'Application') and sworn statements in support. The grounds of the Application include lack of service on some of the Defendants, that adult children of the Defendants and other adults residing on the subject property were not named as parties or served with the Claim, and some of the Defendants were named differently to their names on their national I.D. cards.
4. The Claimant filed three sworn statements in response. Only the Defendants filed submissions as to the Application.
5. I now determine the Application.

B. Consideration

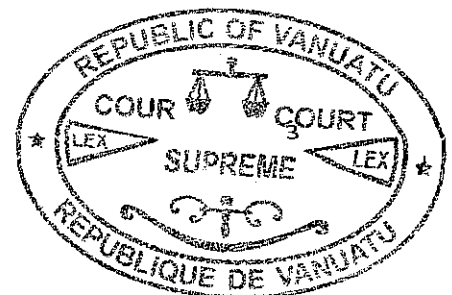
6. The Defendants cited *laus v Noam* [2017] VUCA 40 at [12] in which the Court of Appeal stated that, "*all adults allegedly wrongfully occupying the land should have been named as parties and served*". They also cited *lapatu v Noam* [2018] VUCA 50 at [22], in which the Court of Appeal stated that, "*people could not be evicted by a court order from land unless they were named and served with the application seeking eviction order.*"
7. In accordance with the decisions of the Court of Appeal set out above, the adult children of the Defendants and other adults residing on the leased land may not be evicted pursuant to the Judgment dated 2 August 2024 as they were not named as parties to the present proceeding nor served with the Claim.
8. To avoid doubt, the words, "*their families and/or agents*" must be removed from the orders in paras 9(a) and (b) of the Judgment dated 2 August 2024.
9. The Defendants also cited *Keliu v Billy* [2021] VUSC 28. This decision is distinguished on its facts because the defendants in *Keliu* had secondary and/or usufructuary rights in custom.



10. As to the balance of the grounds alleging lack of service on some of the Defendants, and that some of the Defendants were named differently to their names on their national I.D. cards, neither of these points were raised by Defendants' counsel prior to judgment being entered on 2 August 2024. The six sworn statements of proof of service of the Claim on the Defendants filed on 14 September 2023 showed that one spouse in each of the six married couples who comprise the Defendants was served on 15 August 2023. Further, that that spouse accepted service for their spouse, with the exception of lasimut Naliu whose documents were signed for by another Defendant Reijim Naliu. Then on 13 September 2023, Mr Roger Tevi filed Notice of Beginning to Act for the Defendants. Mr Tevi did not at any time raise in the Defence and Counter Claim, or in an application, or at a conference an issue as to lack of service of the Claim or that the Defendants had been incorrectly named. The Defendants had retained counsel therefore the Court is entitled to rely on counsel hence the Defendants are precluded from now raising lack of service and how they were named.
11. It was also submitted for the Defendants that the persons who served the Claim on the Defendants failed to explain the effect of the Claim to the Defendants. There is no duty in law for the process servers to do so. Where the Defendants have retained a lawyer, it is the lawyer's responsibility to explain the effect of the Claim to them. Accordingly, there is no merit to this submission.
12. The Defendants also submitted that some of the Defendants did not retain and/or give instructions to their previous counsel Mr Tevi. However, the Defendants have not filed any evidence from Mr Tevi as to this point. Further, there is no waiver of privilege adducted to permit him to give evidence. In any event, Mr Tevi filed notice of beginning to act for all of the Defendants. The Court must be able to rely on counsel's word that he acted for all of the Defendants and was entitled to proceed on the basis that he was acting for all of them.
13. For the reasons given, I decline to stay the Judgment dated 2 August 2024.

C. Result and Decision

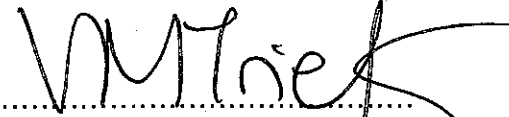
14. The Defendants' Urgent Application to Stay Proceeding filed on 28 October 2024 is **declined and dismissed**.
15. The Orders in paras 9(a) and (b) of the Judgment dated 2 August 2024 are varied by deleting the words, "*their families and/or agents*" and now state as follows:
  - a) The Defendants are to vacate leasehold title no. 12/0644/001, including removing their fencing, houses, personal properties and garden crops leaving the land vacant, **within 3 months from the date of service of this Decision**; and



b) The Defendants are not to enter onto the Claimant's leased land leasehold title no. 12/0644/001.

16. The Claimant is to file proof of service of this Decision.

**DATED at Port Vila this 28<sup>th</sup> day of November 2024  
BY THE COURT**



Justice Viran Molisa Trief

