

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

Civil  
Case No. 19/2543 SC/CIVL

**BETWEEN:** Samuel Andrew Kalpoilep  
Claimant

**AND:** Johnston Kalman Tau also  
known as John Tau  
Defendant

*Date of Trial:* 4 April 2023  
*Before:* Justice V.M. Trief  
*In Attendance:* Claimant – Mr J. Tari  
Defendant – Mr S.C. Hakwa  
*Date of Decision:* 24 January 2024

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**JUDGMENT**

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A. Introduction

1. This was a claim for eviction. The Defendant Mr Tau's Counter Claim raised issues as to the custom ownership of the land and seeking compensation if evicted.

B. Pleadings

2. By the Claim filed on 20 September 2019, it was alleged that the Claimant Samuel Andrew Kalpoilep is the registered proprietor of lease title no. 12/0932/117 at Eratap area on the island of Efate (the 'lease'). The registered lessors Family Kalmet and Family Kaltatak were declared as the custom owners of Eratap area on 25 November 2003 by the Eratap Customary Land Tribunal ('ECLT'). Family Kalmet is represented by Andrew Kalpoilep and Jack Kalmet, while Kaltatak Family is represented by Kaltatak and his son Kalkot Kaltatak. Further, that on 4 April 2014, the Court of Appeal held that the ECLT decision is final and binding.
3. It was also alleged that on 27 April 2007, the Eratap area custom owners issued a statement giving 3 months' notice to the public living within the Eratap area to move

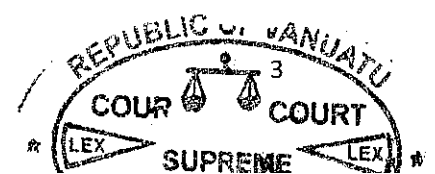
out. Mr Tau has not complied. Further, that Mr Tau and his family continue to live on the land without Mr Kalpoilep's and the declared custom owners' authorization.

4. By the Defence and Counter Claim filed on 29 July 2021, Mr Tau pleaded that he does not agree or concede that the ECLT decision on 25 November 2003 is valid nor that it gives any right to Mr Kalpoilep or Kalmet Family or Kaltatak Family to evict him. Further, that the ECLT decision is the subject of two Applications pending before the Efate Island Court (Land). He alleged that the ECLT decision wrongfully purports to include land which in custom does not belong to either Kalmet Family or Kaltatak Family, but to other families or tribes who were not given the opportunity to defend their ownership rights before the ECLT, and because of the ECLT's wrongful conduct.
5. Mr Tau also alleged that he is a member of the Kalmet Family and is therefore one of the custom owners of the land. He alleged that the registration of the lease was made or procured by mistake and is therefore invalid. He denied receiving any notice to vacate the land, and that he and his immediate family members have occupied and used the land for over 40 years before the Claimant obtained the lease. He alleged that if the remedy claimed was granted, that would amount to a breach of his fundamental right under article 5(1)(j) of the Constitution.
6. It was alleged in the alternative that even if the ECLT decision and the lease were valid, Mr Tau was also a custom owner of the land and therefore cannot be evicted from his own custom land. He alleged that he has an overriding interest in the land. Further, that he cannot be evicted without prompt and adequate compensation for the permanent loss of use of his land together with all loss of properties, improvements and developments made on the land, as well as general damages.
7. The Counter Claim seeks an order dismissing the Claim and costs, or alternatively, orders that the Claimant promptly pay adequate compensation for the loss of the permanent use of the land and of the improvements or developments made on the land, promptly reimburse Mr Tau his costs and expenses to relocate and build his new home elsewhere, and damages.
8. The Counter Claim was opposed. It was alleged that Mr Tau is not part of Family Kalmet but is a member of a different family, Family Kalmermer, and is their representative and spokesman. Further, that his father is from Pentecost yet he is now claiming ownership of land at Eratap on Efate.

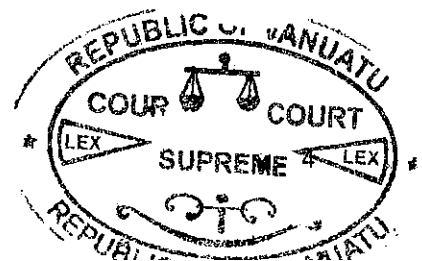
C. Evidence

9. The Claimant **Samuel Andrew Kalpoilep** relied on his Sworn statement filed on 10 June 2020 [Exhibit C1]. The Notice of Objections filed on 9 December 2021 set out objections to parts of that statement. I overruled those objections as not being matters as to admissibility of evidence, but for closing submissions and if necessary, findings by the Court.
10. Mr Kalpoilep deposed in **Exhibit C1** that he is the lessee of lease title no. 12/0932/117, registered on 7 January 2015 [copy of lease attached as **Annexure**

- “**SAK1**”]. The lessors of the lease are Kalmet Family & Kaltatak Family, and the lessee is named as Samuel Pakoa Andrew. He also attached a copy of the ECLT decision dated 25 November 2003 [**Annexure “SAK3”**]. On 23 November 2017, he issued three months’ notice informing all people residing on the land to vacate the lease.
11. Mr Kalpoilep also relied on his Sworn statement filed on 11 June 2022 [**Exhibit C2**]. The Notice of Objections filed on 27 June 2022 set out objections to parts of that evidence. Having heard counsel, I struck out paras 2-6, 8, 10, 11 and the second sentence of para. 12 for relevance and legal submissions.
  12. Mr Kalpoilep deposed in **Exhibit C2** that Mr Tau has no authority to decide who is going to represent Family Kalmet because he is not a member of Family Kalmet but a member of Family Kalmermer. He also deposed that Claimant’s counsel Mr Tari has been acting for Family Kalmet since 2005 and acts for them in Land Appeal Case No. 071 of 2006 which Defendant’s counsel Mr Hakwa filed on behalf of Mr Tau and Family Kalmermer.
  13. In cross-examination, Mr Kalpoilep confirmed that he is the registered proprietor of lease title no. 12/0932/117 in which he is named as “Samuel Pakoa Andrew.” He agreed that following the ECLT decision on 25 November 2003, the declared custom owners were issued a ‘green certificate’, that is, a Certificate of Recorded Interest in Land. In 2003, Mr Tau and his family were already residing on the land. He did not know how long they had resided there or what year Mr Tau built his house. He agreed that he did not personally speak to Mr Tau about the lease before it was registered. He was asked why he wanted to evict Mr Tau. He replied that Mr Tau and his family have not cooperated with the declared custom owners for quite some years now.
  14. He agreed that he is not the sole lessee of the property now; that the Lianbang company became a lessee with him in 2018 or 2019. Lianbang is a joint venture company between him and his families and an investor.
  15. He was shown **Annexure 15** to Mr Tau’s sworn statement filed on 22 March 2021 [**Exhibit D1**]. He agreed it is from the Land Leases Register, showing that on 29 June 2017, the lease was transferred to him and Lianbang International Company Limited (“Lianbang”). He stated that he did not think it was necessary to include this document in his evidence because the transfer was a matter between the declared custom owners and the investor. It was put to him that his statement in para. 2 of **Exhibit C1** is untrue that he is the registered lessee of the lease. He said it is true. It was put to him that there is no authorisation from Lianbang nor Board resolution in evidence authorising him to bring the Claim. He responded that to his knowledge, they understand. He stated that he is a director of the company.
  16. He agreed that **Annexure 15, Exhibit D1** is a copy of the three months’ notice given in 2017 to people residing on the land. When asked if he gave a copy to Mr Tau, he said it was a public notice displayed on a public notice board at Eratap. He agreed that Lianbang was not named in the public notice, and did not sign it.



17. He agreed that various lessors were the company shareholders. He was not sure if there were minutes or a resolution to show that the company shareholders authorised the Claim in the present proceedings, but that the case had already begun before Lianbang became a lessee therefore Lianbang had knowledge of the case. It was put to him that the Claim was filed on 20 September 2019, two years after the lease was transferred to him and Lianbang on 29 June 2017. He said to look at the public notice. He was then asked if the public notice was given after the lease was transferred to him and Lianbang? He said it could be a mistake or error, because when he began the case, there was not yet a transfer to Lianbang. He stated that he and Lianbang had not discussed compensation to persons evicted. He agreed that he had seen that Mr Tau has built his house on the land. He was asked about an "MOA" in Mr Tau's evidence. He agreed there was no agreement with people on the land to pay him rent. It was put to him that Lianbang is an international company and therefore cannot engage in business within Vanuatu. He replied that he did not know.
18. There was no re-examination.
19. Mr Kalpoilep was plainly wrong in his evidence that the present proceedings had already begun before Lianbang became a lessee because it became a lessee on 29 June 2017 then the Claim was filed over two years later, on 20 September 2019. I therefore considered that I could rely on Mr Kalpoilep's evidence only where it was supported by other evidence.
20. After the lunch break, Mr Tari informed the Court that the Claimant would not call its other witness Willie Andrew Kalpoilep because his evidence relates to the custom ownership of the land, which will not be determined by this Court. I have not given any weight to his evidence.
21. The Defendant **Johnston Kalman Tau** relied on his Sworn statement filed on 22 March 2021 [Exhibit D1]. He deposed that the people of Eratap living on the land have rights of ownership and inheritance from their forefathers, and have lived on the land for over 100 years. The ECLT decision is invalid, for reasons that he set out in some detail. That decision is the subject of two applications pending before the Island Court (Land). He and others were not given any notice before the lease was created. He is not the spokesman of Family Kalmermer but is the true bloodline of Family Kalmet.
22. Mr Tau also relied on his Sworn statement filed on 2 November 2021 [Exhibit D2]. This statement was wholly addressed to the matters raised in Willie Andrew Kalpoilep's evidence.
23. Finally, Mr Tau relied on his Sworn statement filed on 27 June 2022 [Exhibit D3]. He set out Mr Hakwa's involvement in various litigation, then addressed the remainder of the statement to matters related to the ECLT decision. He attached a copy of a letter to the effect that he is a member of Family Kalmet.
24. There was no cross-examination.



25. I accepted Mr Tau's evidence however most of it is not relevant to the issues for the Court's determination, discussed below in relation to the Counter Claim.

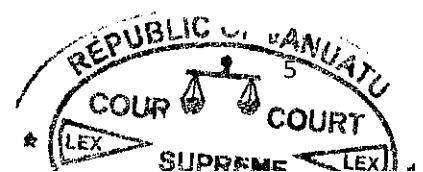
D. Discussion

*The Claim*

26. Despite Mr Kalpoilep's assertion that he is "the" registered lessee of lease title no. 12/0932/117, he accepted in cross-examination that on 29 June 2017, the lease was transferred to Lianbang International Company Limited and him [copy of Lease Register in **Annexure 15, Exhibit D1**].
27. There is no evidence that Lianbang International Company Limited is aware of the present proceedings, or that it has authorised Mr Kalpoilep to bring the proceedings.
28. I find therefore that Mr Kalpoilep is not authorised to bring the present proceedings.
29. Mr Tau denied receiving any notice to vacate the land, yet the only copy of a notice to vacate the land in evidence was adduced by Mr Tau [first page of **Annex 15, Exhibit D1**]. That notice purported to give three months' notice to vacate, from 22 August 2017 to 22 November 2017. By then, the transfer of lease to Mr Kalpoilep and Lianbang had already been registered. However, only the lessors and Mr Kalpoilep signed the notice. There is no mention of Lianbang in the notice nor any signature on Lianbang's behalf in the notice.
30. Accordingly, I find that Mr Tau has not been given any notice from both registered proprietors of the lease to vacate the land.
31. In the circumstances, I find that the Claimant has not proved the Claim and is not entitled to the relief sought.
32. By way of Defence, Mr Tau alleged that he is a member of the Kalmet Family and is therefore one of the custom owners of the land, therefore cannot be evicted from his own custom land. Whether or not Mr Tau is a member of the Kalmet Family is a matter of custom that requires determination in the Island Court or by *nakamal* meeting under the *Custom Land Management Act* No. 33 of 2013. That is not a matter that this Court can determine in the present proceedings.
33. Mr Tau's evidence that he and others on the land have occupied and used the land for over 100 years is not contradicted. However, I need not consider this further given that the Claim must be dismissed.

*The Counter Claim*

34. Despite the matters pleaded in the Defence and Counter Claim as to the validity or otherwise of the ECLT decision, this Court cannot decide whether or not that decision




is valid in the present proceedings given the absence of the ECLT and the other parties to the ECLT matter as parties to the present proceedings.

35. It was also pleaded in the Defence and Counter Claim that the lease registration was made or procured by mistake and is therefore invalid. No particulars of the mistake were provided. It was not pleaded what registrable interest Mr Tau has such that he has standing to challenge the lease under s. 100 of the *Land Leases Act* [CAP. 163]. The lessors of the lease and the State must be parties to such a challenge, yet they have not been named as parties to the present proceeding. This Court also cannot decide the validity or otherwise of the lease in the present proceedings.
36. This Court also cannot determine allegations of breach of Constitutional rights in the present proceeding. Such allegations must be raised by way of a Constitutional Application: rules 2.2-2.4 of the *Constitutional Procedures Rules*.
37. For the reasons given, this Court cannot determine the matters raised by way of Counter Claim, and it must be dismissed.

E. Result and Decision

38. The Claim and the Counter Claim are **dismissed**.
39. The parties are to bear their own costs.

**DATED at Port Vila this 24<sup>th</sup> day of January 2024  
BY THE COURT**

  
Justice Viran Molisa Trief

