

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

Civil Case No. 164 of 2010

**IN THE MATTER OF: THE COMPANIES ACT [CAP. 191] AS
AMENDED**

AND IN THE MATTER OF: IFIRA TRUSTEES LIMITED
First Claimant

**AND: TERIKI PAUNIMANU MANTOI KALSAKAU III,
MASSING LAURU, KALPOVI MANGAWAI,
BUTUA BAKOKOTO, CHARLEY AIONG,
TWARA KALONIKARA, MANDREA KALORIB**
being Executive Directors of the First Claimant
Second Claimant

**AND: BARAK SOPE, KALPOKOR KALSAKAU,
NATOIKA TAIWIA, TAPALU LAURU, PETER
TULANGI, IETONGA AYONG, KIRKIR
BAKOKOTO, VIRASEN BAKOKOTO, EDDIE
KALPUKAI, KALTAKI LABAN, JEFFREY
TOKATAAKE, TOM KALSAL, TARILASI
SAUREI, JOSEPH SAUREI and WILLIE LOKIN**
First Defendants

**AND: THE VANUATU FINANCIAL SERVICES
COMMISSION**
Second Defendant

Coram: Justice D. V. Fatiaki

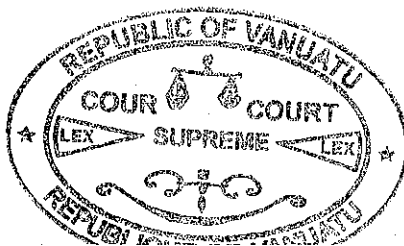
Counsel: Mr. M. J. Hurley for the claimants
Mr. B. T. Bani for the First Defendants
Mr. F. S. Loughman for the Second Defendant

Date of Judgment: 6 September 2013

INTERIM JUDGMENT

1. **Ifira Trustees Limited ("ITL")** is a private company limited by shares originally incorporated on **18 May 1978** in accordance with the provisions of the then companies legislation. On the same date ITL was also granted a licence under the relevant trust companies legislations to operate as a trust company. Of such a company it has been written:

"... its corporate governance threshold is greater than that of an ordinary local company owning property or doing business"



(**see also**: Schedule 3 of the Companies Act and the provisions of the Trust Companies Act esp Section 4).

2. Principal amongst the objects for which ITL was established are:

"(a) To accept and execute the office of trustee and to take receive hold and deal with all property whether real or personal and all sums of money that may be granted conveyed transferred or given to the company upon any trust or trusts for the benefit of the people of Ifira Island in the New Hebrides (being the members from time to time of the Blakniu, Blakuita, Blakmalu and Blaknui clans) not contrary to law at any time by a person group of person corporation or by any court of competent jurisdiction.

(b) To declare in favour of the said people of Ifira Island any trust in respect of any property whether real or personal held by or vested in the company from time to time.

(c) To act as Attorney or Agent of the said people of Ifira Island for the purpose of the carrying on of any lawful business including the management of estate and property of all kinds and the collections of rents lease interests debts and other securities and income."

3. The original subscribers and shareholders of ITL were: **Teriki Graham Kalsakau** (the then paramount chief of Ifira), **Barak Tame Sope** and **Kalpokor Kalsakau** (the first and second named First Defendants) who each held (1) ordinary share.

4. By Deed dated 26 June 1978 ITL was appointed "trustee" of an express trust created for the benefit of the indigenous people of Ifira Island ("*the Ifira Trust*"). The object of the Ifira Trust is set out in **Clause 2 (a)** of the Deed as follows:

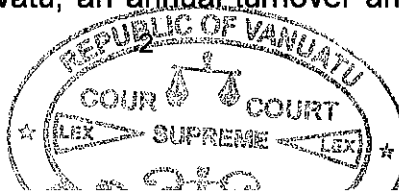
"... to promote the economic and social welfare and the health education and general well-being of the beneficiaries both collectively and individually ..."

and **Clause 1 (b)** defines the "beneficiaries" of the trust as:

"... the indigenous people or any of them declared by the Council of Ifira Island as being members of the four clans the members of which clans comprise the class of people known as Ifira Islanders."

5. Before continuing with the agreed facts and chronology in this case I make some general observations. ITL is a very significant corporation with sizeable land and business holdings in Port Vila. In figurative terms ITL is "*the goose that lays the golden egg*" for the people of Ifira Island.

6. It controls several subsidiary companies and entities within its commercial portfolio including **Ifira Wharf and Stevedoring 1994 Ltd. (IWS)**; **Ifira General Services 2000 Ltd. (IGS)**; **Ifira Land Management Board (ILMB)**; **Ifira Ports Development and Services Limited (IPDS)**; and **Ifira Shipping Agency (ISA)**. From there various commercial arms and entities ITL has accumulated assets of almost a billion vatu, an annual turnover and profit estimated in the



hundreds of millions of vatu and employs a permanent work force at its several business premises.

7. By any measure **ITL** is a substantial commercial enterprise in terms of turnover, material assets, and accumulated funds. Such an enterprise needs constant and prudent management of its affairs if it is to continue to grow and meet the aspirations of the present and future generations of the indigenous people of Ifira Island. Doubtless control of **ITL** has its personal rewards and cudos but it behoves those in control of **ITL** never to forget the sacred trusteeship owed to the people of Ifira and the onerous duties imposed on a trustee.
8. It is convenient at this point to set out broadly the relevant legal principles that guide the Court in this case with particular reference to the well-established duties of a trustee having regard to the completely discretionary nature of the express trust that **ITL** is charged with performing in terms of the Ifira Trust Deed and the recorded nature of the shareholdings in the **ITL** Annual Returns ie. as “*nominees*” of the indigenous people of Ifira Island. I am also mindful of the several claims and assertions of the shareholder/defendants, **Barak Sope**, and, to a lesser extent, **Kalpokor Kalsakau**.
9. In law the primary duty of any trustee who accepts a trust is to acquaint himself with the terms of the trust and to ascertain the beneficiaries for whose benefit the trust was established. Accordingly a trustee having accepted a trust is not permitted thereafter to impeach the validity of the trust or the title of the beneficiaries of the trust.
10. A trustee as a fiduciary, is required to use the utmost diligence in discharging his duties and as regards the exercise of any discretion, the trustee must act honestly and use as much diligence as a prudent man of business would exercise in dealing with his own affairs. The trustee must have regard not only to the interests of those who are entitled to the income, but to the interest of those who will take in future. In other words the trustee is bound to preserve the trust properly and not allow his personal interests to conflict with the interests of the beneficiaries which he is bound to protect and to whom he must account for any benefits acquired.
11. Speaking of a trustee’s duty to maintain and provide accounts in **Re Watson** (1904) 49 Sol. Jo 54 **Kekewich J.** said:

“The duty of a trustee is three-fold: there is the duty to keep accounts, the duty to deliver accounts, and the duty to vouch accounts ... the duty to keep accounts is an essential duty, he must keep such accounts so as to be able to deliver a proper account within a reasonable time showing what he has received and paid.”
12. Finally **Scott J** in describing the equitable jurisdiction of the Court in overseeing the administration of trusts said in **Chellaram v. Chellaram** (1985) 1 Ch D 409 at p. 428:

“The jurisdiction of the court to administer trust to which the jurisdiction to remove trustees and appoint new ones in ancillary, is an in personam



jurisdiction. In the exercise of it, the court will inquire what personal obligations are binding upon the trustee and will enforce those obligations ... the trustee can be ordered to pay, to sell, to buy, to invest, (and to divest and transfer) whatever may be necessary to give effect to the right (and collective decisions) of the beneficiaries, which are binding on them. If the court is satisfied that in order to give effect to or protect the rights of the beneficiaries, trustees ought to be replaced I can see no reason in principle why the court should not make in personam orders against the trustees requiring them to resign and to vest the trust assets (in this case, ITL shares) in the new trustees."

(my insertions in bold)

13. I also record the Court's regret and concern that despite the best efforts of two judges of this Court the parties were unable to amicably settle their differences amongst themselves and in a traditional customary manner. Indeed, relations have degenerated to the extent that it has not been possible to satisfactorily conclude any meetings between the disputing factions. This is doubly unfortunate as the parties are all close relatives albeit belonging to different clans and families who claim a common connection to the one island, Ifira.
14. It also needs to be firmly stated that although ITL is the named "*trustee*" in the Ifira trust Deed and the original three (3) subscribers of ITL hold one (1) "*ordinary*" share each, there is not the slightest doubt in the Court's mind that the shares are impressed with the same trusteeship and are held by the nominee shareholders "*in trust*" for the benefit of the beneficiaries of the Ifira trust and not as the personal or beneficial property of the individual shareholders. Accordingly, any exercise of the powers and duties of the shareholders must always be in the interest of and in accordance with the collective wishes of the beneficiaries however ill-advised and wrong the shareholder(s) may consider such wishes to be. Needless to say I reject the submission that seeks to draw a distinction between the trusteeship of ITL and of its shareholders *vis-a-vis* the beneficiaries of the Ifira trust.
15. Any other view would be incongruous and unacceptable. The trusteeship of ITL necessarily means that everything it does and owns and all persons directly associated with it are bound by that trusteeship to act always in the best interests of the beneficiaries of the trust namely, the indigenous people of Ifira Island and in accordance with their collective will.
16. Were the position otherwise, one could find a fraught situation where ITL as "*trustee*" was obliged to act in obedience of the beneficiaries declared will but the nominee shareholders of ITL, would not be equally obliged to act. That would be a recipe for disaster given that ITL is a corporation that can only act through its human agents and representatives.
17. In this regard *Romer LJ* relevantly observed in **Butt v. Kelson** [1952] Ch. D 197 at pp. 204/205:

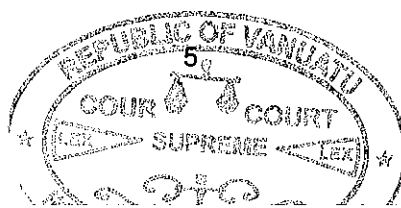
"... the beneficiaries are entitled to be treated as though they were the registered shareholders in respect of trust shares, with the advantages and disadvantages (for example, restrictions imposed by the articles) which are involved in that position, and that they can compel the trustee directors (in



this case read shareholders) if necessary to use their votes as the beneficiaries, ..., think proper, even to the extent of altering the articles of association if the trust shares carry votes sufficient for that purpose."

(my insertion in bold)

18. In so far as it may be necessary to do so and to avoid any misunderstandings in the matter and assist the second defendant (VFSC) I **DECLARE** that the ordinary shares held by **Teriki Mantoï Kalsakau III, Barak Tame Sope and Kalpokor Kalsakau** in ITL are held "*in trust*" for and on behalf of the beneficiaries of the Ifira Trust namely, the "*indigenous people of Ifira Island*".
19. Whatsmore this Court will neither countenance nor assist a trustee who asserts a statutory right in an effort to thwart and frustrate the unanimous collective decisions of the beneficiaries of a trust that the trustee is charged with administering in their interests and for their benefit.
20. In the present context what all this means is that although the shareholders may not personally agree with the adopted resolutions to change from "*matarau*" to "*warakali*" or to increase the number of directors on the ITL Board, as trustees of the shares for the benefit of the people of Ifira Island, they are obliged to do whatever is within their powers to fully implement the unanimous collective decisions and resolutions of the beneficiaries to whom they are accountable and, to effect such necessary changes in ITL's Memorandum and Articles of Association as may be required by the resolutions.
21. Having said that there is much to commend the change from the narrower "*matarau*" (clan) system to the wider "*warakali*" (family) basis. The paramount chief saw it as an opportunity to address his people's growing complaints and with its adoption each family now had a seat and a say in the running of ITL. It provides a focal point of contact through which a beneficiary family's concerns and requests could be directly placed before the Board of Directors and a conduit for Board decisions to be channeled back to the beneficiaries. It reflects a clearer sense of ownership and participation and is a more reliable gauge and monitor of beneficiaries satisfaction or disquiet. Overall, it was a more transparent, representative, and responsive system of administering the trust for and on behalf of the people of Ifira Island.
22. I accept that some doubts were raised as to how some "*warakali*" representatives came to be appointed onto the ITL Board of Directors but that is more a reflection of a temporary disunity and disorganization within a particular "*warakali*" than a criticism of the system. This might be a matter that could be addressed in a further fine-tuning of the ITL's Articles of Association in future.
23. Needless to say I prefer and accept the contemporary Minutes of the beneficiaries meeting of 4 December 1999 and I completely reject the denials and evidence of **Barak Tame Sope** to the contrary effect. I was unimpressed with his evidence in court which was evasive, argumentative and insincere. He had conveniently selective memory lapses and was given to lengthy irrelevant discourses under cross-examination. His evidence about his understanding of the procedural and regulatory requirements of the Companies Act and ITL's



Articles of Association and his rights and duties as a nominee shareholder of ITL was marked by defiance and obstinacy.

24. In not dissimilar circumstances **Sim J.** said of the trustee in **McGregor v. McGregor** (No. 2) (1919) NZLR 286 at p. 287:

"... mere obstinacy may amount to misconduct on the part of a trustee. In the present case the trustee was guilty of much more than mere obstinacy. He denied altogether the existence of the trust and claimed as his own the whole of the trust estate (cf. the assertions of Barak Sope in his cross-examination). It is impossible for a trustee to be guilty of more serious misconduct than that in relation to a trust, and the fact that the trustee may have honestly believed that his claim was justified does not make his action, in my opinion, any the less misconduct on his part".

(my insertion in bold)

25. In similar vein the **Privy Council** said in **Letterstedt v. Broers** (1884) 9 AC 371 at p. 387:

*"... if it appears clear that the continuance of the trustee would be detrimental to the execution of the trust, even if for no other reason than that human infirmity would prevent those beneficially interested, or those who act for them (**eg the warakali representatives**) from working in harmony with the trustee ... the trustee is always advised by his counsel to resign and does so.*

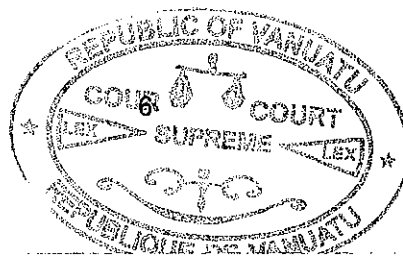
*In exercising so delicate a jurisdiction as that of removing trustees, their lordships do not venture to lay down any general rule beyond the very broad principle above enunciated, that their main guide must be the welfare (**and wishes**) of the beneficiaries."*

(my insertions in bold)

26. It might be that at the original creation of the trust and incorporation of ITL in the 1970s before independence, traditional wisdom dictated that the number of shareholders should be limited. The growth of ITL over the past 30 years however, has seen a rising clamour by the beneficiaries for greater participation and a voice in the management of the affairs of ITL. By late 1999 the time had well and truly arrived for a change to be made in democratizing the running of the affairs of ITL to address the demands of the people of Ifira Island.

27. Having said that, this is not a case about the mis-management of the Ifira trust or ITL pre-October 1999 nor, is it a case of "young turks" vs. the "old guard". It is not a case seeking removal of a trustee for negligence or mis-behaviour nor is the Court called upon to determine the wisdom of changing the objects and management of ITL or, for that matter, the traditional grouping of the beneficiaries from the "Matarau" (clan) system to the "Warakali" (family) system.

28. The chronology of relevant events is not in serious dispute and is contained in the Agreed Facts as follows (with my observations interspersed):



- 1978 to 1999 – The affairs of ITL were largely administered and managed out of the offices of **Kalpokor Kalsakau** at **Cabinet d’Affaire du Pacifique**;
- Aug. 1989 - The then paramount chief of Ifira, **Teriki Graham Kalsakau** died and his share in ITL became vested in his son and successor **Teriki Paunimanu Mantoï Kalsakau III**;
- 1999 to 2009 - ITL **Annual Returns** filed with the second defendant (**VFSC**) confirms that there are 3 shareholders of ITL namely: Estate of Teriki G. Kalsakau; Barak T. Sope; and Kalpokor Kalsakau who hold their shares as “*Nominees*” for and on behalf of “*the Indigenous People of Ifira Island*”. Additionally, the **Annual Returns** includes a list of 31 named individuals as Directors of ITL.
- 9 Oct. 1999 - **Teriki Mantoï Kalsakau III** (“*the paramount chief*”) gave a **Power of Attorney** to 31 named donees;

29. It is convenient at this point, to deal with **issue (1)** raised by the parties namely, the validity of the paramount chief’s **Power of Attorney** (“*POA*”). The defendants simple submission is that the POA is ultra vires the **Ifira Trust Deed** and also beyond the powers of an ordinary shareholder of ITL in so far as it purports indirectly to authorize the donees to effect changes in ITL’s **Memorandum and Articles of Association** and in the Board of Directors.

30. The claimants contrary submission is equally simple and disavows any reliance on the provisions of the **Ifira Trust Deed**. Instead, it relies on the personal and customary powers possessed by the donor of the **POA** as paramount chief of Ifira Tenuku.

31. I accept at once the claimant’s very proper disavowment of the reference to **Clause 17 (a)** of the **Ifira Trust Deed**. I also accept defence counsel’s analysis of Clause 17 (a) of the **Ifira Trust Deed** and the relevant provisions of the Companies Act. Neither however, is a complete answer to the issue.

32. The answer lies in a consideration of the general nature of a “*Power of Attorney*” and the particular “*powers*” granted by the paramount chief under his **POA**. In this regard in the absence of a statutory definition of the term **Osborn’s Concise Law Dictionary** (11th edn) defines a **POA** as being:

“A deed by which one person empowers another to represent him or act in his stead either generally or for specified purposes. The donor of the power is called the principal or constituent; the donee is called the attorney”.

Furthermore, the law recognizes that a **POA** may be granted to more than one person either jointly or severally. In the paramount chief’s **POA** he had clearly stated that his attorneys are “*the persons named acting only in collectivity*”.

33. In my considered opinion despite references in the **POA** to the **Ifira Trust Deed** and to the removal of “*the current constituents of ITL*” (which counsel has



disavowed) such references are necessarily constrained by the general limitation in the appointing words "... which I myself could lawfully do". Such references do not make the POA either invalid or unlawful. Needless to say nowhere in the POA is there any specific reference to the chief's shareholding or chairmanship of ITL instead, the constant reference throughout the POA is to his "*capacity as Chief of Ifira Tenuku*".

34. For instance, in the calling of a meeting of the people of Ifira Tenuku in the POA [delegation (2)] there is no reference to the Trust Deed or to the ITL Articles of Association or his shareholding in ITL and delegation (3) concerning the preparation of resolutions and a revised constitution of ITL, is given in "... *my capacities as Chief of Ifira Tenuku*". In this regard it cannot be doubted that the paramount chief of Ifira is entitled by virtue of his chiefly status and traditional obligations, to call or summon his people to a community meeting at his chiefly meeting house or *Farea*. Indeed if a paramount chief cannot call a meeting of his people it is difficult to imagine who else might be entitled to call such a meeting.
35. In his evidence under persistent cross-examination **Teriki Paunimanu Manto** **Kalsakau III** consistently and confidently maintained that he had the power as chief of all the people of Ifira and as paramount chief to give the Power of Attorney. To the question:

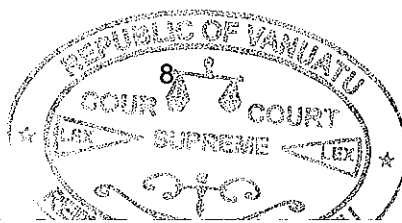
"Q: Do you agree that this POA is not under Article 17 (a) of the Ifira Trust Deed?"

He answered:

***A:** A chief looks to the welfare of his people and has power to do things."*

36. In the Court's view there was nothing unusual, invalid, or unlawful in the paramount chief's POA neither in the selection of his attorneys or in the specific matters that they were directed to attend to in the exercise of the POA "*collectively*". Even delegation (1) concerning the "*removal of all current constituents of ITL*" was lawfully effected by the attorneys obtaining the voluntarily signed resignations of the incumbent directors of ITL on or before the beneficiaries meeting.
37. In my view defence submissions are based on a misreading of the particular delegations given under the paramount chief's POA. For instance there is a persistent suggestion that the paramount chief has no power to alter or amend the ITL Memorandum and Articles of Association which is a statutory right vested in the shareholders of a company and likewise the beneficiaries of ITL have no right in law to resolve amongst themselves to remove the shareholders of ITL.
38. In this latter regard the POA at delegation (2) merely authorizes and requires the attorney's to:

"... call a meeting of the people of Ifira at Ifira Tenuku within thirty (30) days ... to ..."



- (1) announce such reconstitution (of the Ifira Trust and ITL) providing reasons therefore;
- (2) present nominations for replacement of trustees to be voted upon by the benefits of the people of my farea of Ifira Tenuku ..."

(my underlining)

39. Nowhere in that delegation is there any suggestion that the paramount chief unilaterally claimed a power to change ITL's Memorandum and Articles of Association or to remove and replace the trustee of the Ifira Trust. In short, this delegation sought the calling of a beneficiaries meeting to discuss matters affecting their vital interests.

40. The third delegation in terms, required the attorneys:

"... to prepare and present for discussion and resolution before the scheduled meeting a revised deed and/or constitution of ITL providing for *inter alia*":

(my underlining)

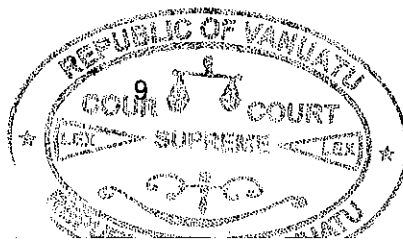
thereafter the **POA** outlines details of subject matters that should be included in the discussions. Again, nowhere in the delegation is there any claim to a power to effect changes to either the Ifira Trust Deed or the constitution of ITL. In short, this delegation seeks the preparation of a discussion paper, meeting agenda and draft resolutions for discussion.

41. In simple terms, defence counsel's submissions fails to distinguish between actually altering something and preparing documents and having a meeting to talk about it. The difference I suggest, is self-evident.

42. Accordingly, I have no hesitation in **DECLARING** that the Power of Attorney granted by the Paramount Chief of Ifira Tenuku dated 9 October 1999 was a valid document with a lawful purpose issued pursuant to the donor's chiefly status and in furtherance of his customary chiefly powers and obligations to lead and care for his people who comprised the beneficiaries of the Ifira Trust Deed. The first issue is determined in favour of the claimants.

- 10 Nov. 1999 – Notice of a meeting of the beneficiaries of the Ifira Trust was called for 3 December 1999;
- 25 Nov. 1999 – **Kalpokor Kalsakau** resigned as chairman and director of ITL;
- 3 Dec. 1999 - **Barak Tame Sope** resigned from ITL;

43. At this juncture I propose to deal with agreed **issue (2)** which raises the question of whether or not **Barak Tame Sope** resigned as a shareholder of ITL. The claimants' say he did resign both capacities, and Barak Sope asserts he only resigned as a director.



44. The relevant resignation letter is dated **3 December 1999** and reads as follows:

*"The Chairman
IFIRA TRUSTEE LTD
P. O. Box 68
PORT VILA*

Dear Sir,

Letter of Resignation

By this letter, I hereby tender my resignation as Member and Director of Ifira Trustees Ltd. and in whatever subsidiaries of the said Ifira Trustees Ltd. that I do hold office, effective this third day of December, 1999.

*Yours Most Sincerely,
(signed)
Barak Tame Sope
MP for Efate Rural Constituency."*

(my underlining)

45. Of the letter, claimants counsel in his final submissions writes:

"The claimants submit that the Court will have due regard to the reference in Mr Sope's letter to the words "as Member and Director" [emphasis added];

The claimants submit that if Mr Sope had only intended to resign as a Director of ITL then there was no need for him to also expressly refer to his resignation "as Member";

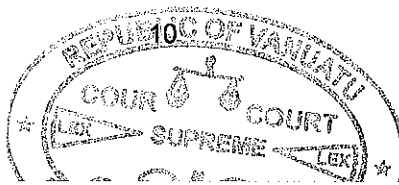
During his cross-examination Mr Sope suggested that he had intended by the reference in his resignation letter to "as Member" to refer to his membership of the Board of Directors of the Ifira Group of Companies. Of course, if that was his intention, his use of the word "Director" would have sufficed.

The claimants submit that the Court will accept that by the actual words used by Mr Sope in his letter of resignation it is clear that he intended and did resign not only as a Director of ITL but also as a Member of ITL "and in whatever subsidiaries of the said Ifira Trustees Ltd. that I do hold office ...".

46. Defence submissions on this issue is equally brief and reads as follows:

"By his own testimony in court, Barak stated maintained that he had only resigned as a director but not as a shareholder.

If Your Lordship finds instead that Barak's resignation letter as director also amounted to his resignation as shareholder, we say it does not end there as there is no evidence that Barak has transferred that share to anyone – the share remains with Barak until such time that appropriate steps have been

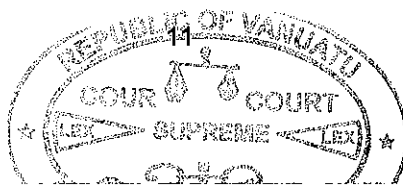


taken to register a specific transfer from Barak as transferor to a transferee in accordance with the Act and Articles of Association."

Counsel also relies on the absence of any minuted resolution of the beneficiaries meeting of **4 December 1999** directing the transfer of **Barak Sope's** share to anyone and the provisions of **Sections 83 and 85** of the **Companies Act** and **Clause 23** of the **ITL Articles of Association** in support of his submission.

47. I accept at once that **Barak Sope** has maintained throughout his evidence that he had not resigned as a shareholder of ITL and that his use of the term "*Member*" in his resignation letter was meant to refer to his membership of the subsidiaries of ITL. I also accept that there is no evidence of any ITL or beneficiaries resolutions either accepting or recognizing Barak Sope's resignation as a shareholder and/or nominating someone to accept a transfer of his share. I do not ignore either the Annual Returns filed by ITL from 1999 to 2010 which continued to record Barak Sope's shareholding in ITL and which is confirmed in the **VFSC** letter of 30 September 2010.
48. Having noted the above however, I confess that I was unimpressed with **Barak Sope's** explanation for including the term "*Member*" in his resignation letter. At the time he was **Prime Minister** of Vanuatu with all that that entails especially with regards the time that he might have had to devote to the affairs of ITL and his knowledge and understanding of the requirements of the Companies Act, although imperfect, was reasonably comprehensive.
49. I do not believe or accept that he was unaware of the difference between a subscriber member (shareholder) and a director of a limited liability company, much less, of ITL where he served in both capacities since its incorporation. Indeed, his insistence upon his continued shareholding in ITL (despite his resignation letter) was at the forefront of his claims and is undoubtedly based on his understanding of company law.
50. In those circumstances with the affairs of the nation occupying all of his waking-time it seems more probable that **Barak Sope** was not mistaken when he wrote what he fully intended which was to resign altogether as a director and member of ITL and its subsidiaries and I so find.
51. If I may say so this rather belated assertion made 11 years after his resignation letter and after his attendance at the beneficiaries meeting of 4 December 1999 ought to be viewed in light of the principle enunciated by **Lord Campbell LC** in **Cairncross v. Lorimer** (1860) 3 Macq 827 H. L. Sc 829 – 30 when he said:

"The doctrine ... which is to be found ... in the laws of all civilized nations, that if a man either by words or by conduct had intimated that he consents to an act which has been done, and that he will offer no opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that from which they otherwise might have abstained – he cannot question the legality of the act he had so sanctioned to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct ... Generally speaking if a party having an interest to prevent an act been done, has full notice of it having been done and acquiesces in it, so as to induce a reasonable belief that he

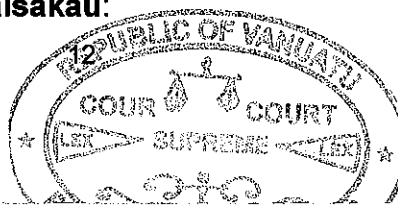


consents to it, and the position of others is altered by their giving credit to his sincerity, he has no more right to challenge the act, to their prejudice, than he would have had if it had been done by his previous licence."

52. In the circumstances I find and hold that as from 3 December 1999, **Barak Sope** resigned as a member and shareholder of ITL and in exercise of the court's power under **Section 120** of the **Companies Act** the Court **ORDERS** rectification of the Register of Members of ITL by deletion of the name of **Barak Sope** as a member of ITL and **DIRECTS** that notice of such rectification be given to the registrar and to the second defendant **VFSC** forthwith. This second issue is also determined in the claimant's favour.

- 4 Dec. 1999 - A beneficiaries meeting was held at the Farea on Ifira Island attended by over 500 beneficiaries of the Ifira Trust including the three (3) shareholders of ITL;
 - The meeting was chaired by a Management Committee comprised of Ephraim Kalsakau (chairperson), Seru Korikalo (vice chairperson), Michael Mangawai (secretary) and Mahit Kalworai (scrutineer).
 - It had an approved Agenda which included the termination of the existing chairman and directors of ITL and the election of their replacements; a change from the "matarau" to "warakali" system and for the nomination and election of new ITL directors; Under any other business (AOB) compensation for former directors of ITL;
 - The meeting Minutes records that 31 new directors representing 31 Warakalis were elected onto the ITL Board of Directors during the course of the meeting which lasted for just under 3 hours;
 - A number of motions were also passed or adopted unanimously including the change from "Matarau" to "Warakali" in the ITL Articles of Association and the removal of any directors who had not resigned, while others, were referred to the new ITL Board of Directors to consider such as compensation for past directors;
 - The Minutes also records concern was raised as to process of voting new directors and the speed at which it was being conducted;

53. There is no doubt in my mind that the election of the new ITL directors at the beneficiaries meeting on 4 December 1999, was undertaken and completed within a fairly short space of time without calling for competing nominations or any discussions and gave every appearance of having been pre-planned and rehearsed. That has been made to appear "suspicious" and "sinister" and in the colourful words of **Kalpokor Kalsakau**:



"... the meeting of 4 December 1999 was kind of a coup whereby a different procedure was used to circumvent the clear legal requirement that only the shareholders can resolve to amend the Articles (of Association) and nobody else"

I cannot agree.

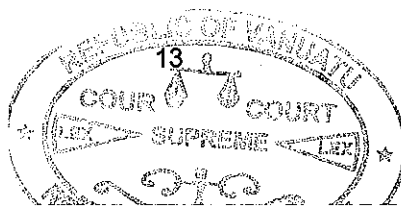
54. Firstly, this was a beneficiaries meeting of the Ifira trust not a meeting of directors or shareholders of ITL and was therefore not bound by company Articles or procedures. The meeting had its own Standing Orders and Agenda which were unanimously adopted at the commencement of the meeting. The mere fact that ITL shareholders and directors were present at the beneficiaries meeting does not transform it into an ITL meeting nor do the resolutions unanimously passed at the meeting necessarily obviate the need for ITL to follow the requirements of the Companies Act and its registered Articles of Association.
55. Having said that, in my view the **Companies Act** and a company's Articles of Association are facilitative in nature and not intended to be used as instruments to obstruct and prevent the attainment of the lawful purposes and unanimous decisions of a trustee company's ultimate owners and beneficiaries.
56. In this regard the learned author of **Gowers Principles of Modern Company Law** (4th Edn) has this to say at p. 133 under the heading "Ratification of Corporate Acts":

"The law normally insists that a company will be bound only by resolution of its organs, the board of directors or the members in general meeting ... Nevertheless in a number of cases the question has arisen whether something less formal than a resolution passed at a properly convened meeting of its members can be regarded as equivalent to the resolution of the members in general meeting ... the courts have come to realize that "individual assent given separately" by all the members entitled to vote are "equivalent to the assent of a meeting" and that the assent may be no more than passive acquiescence in the result." [see: In re Express Engineering Works Limited (1920) ChD 466].

And later, after identifying the cases that progressively relaxed the "*normal*" requirement the learned authors state:

"In these later cases reliance was placed on the words of Lord Davey in Salomon's case itself that "the company is bound in a matter intra vires by the unanimous agreement of its members". What now seems clear is that there does not have to be unanimous agreement of all members but merely agreement or tacit acquiescence of all members entitled to vote on the matter. But it appears that nothing less will suffice."

57. Secondly, I know of no law prohibiting persons attending a private meeting from holding pre-meeting discussions and working out a strategy or plan to effect or implement any lawful purpose prior to the actual meeting taking place. Indeed, given the novelty, magnitude, and importance of the proposed changes in the

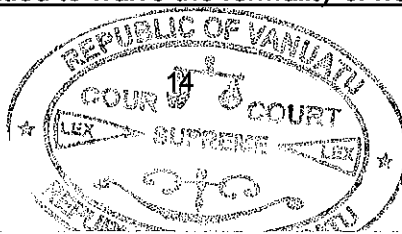


directorships of ITL, and in the Ifira Trust beneficiary groupings from four (4) *matarau* to thirty one (31) *warakali*, it would have been naïve to leave such significant changes purely to chance and the vagries of uninformed beneficiaries and potentially hostile dissenters without some prior explanation, organization and canvassing of support.

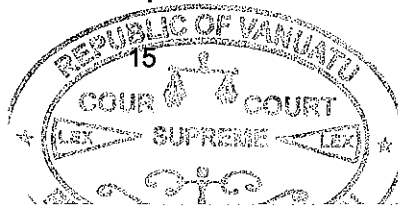
58. Finally, despite the colourful description in his sworn statement deposed 13 years after the event, I prefer and accept the accuracy of the contemporaneous Minutes of the beneficiary's meeting, in recording **Kalpokor Kalsakau's** "... full support to the restructure of ITL and that it was being planned by the current Directors for year 2000" (at p.5), secondly, his recorded clarification concerning the necessary amendment of the ITL Articles of Association from "*matarau*" to "*warakali*" (at p.7) and, finally his congratulating of "*the new ITL Directors*" (at p.14).
59. Needless to say **Kalpokor Kalsakau** voluntarily tendered his resignation as Chairman and Director of ITL effective from Thursday 25 November 1999 at 4.30 p.m. ie. a week prior to the beneficiaries meeting and whatsmore, he was compliant in getting the written resignations of the other seven (7) directors of ITL which he forwarded under copy of his letter to the ITL solicitors dated **3 December 1999**. With those resignations the ITL **Board of Directors** largely became vacant and needed to be urgently filled to ensure the proper management of ITL's affairs was not left in a vacuum.
60. If I may say so, the recorded changes of the Directors, and much later, in the shareholdings in the Annual Returns of ITL in the 11 years between 1999 and October 2010 although not formally regularized through the relevant procedures of the **Companies Act** and the ITL Articles of Association were, nevertheless, entirely consistent with the sentiments expressed and the unanimous resolutions adopted at the beneficiaries meeting of 4 December 1999 at which all shareholders of ITL including **Barak Sope** and **Kalpokor Kalsakau**, were present and voted without abstention or protest. Certainly none is recorded in the Minutes which I accept. This was the unchallenged "*defacto*" position of ITL since then.
61. In rejecting an argument not dissimilar to that advanced by defence counsel based upon the statutory requirements of a notice of a special resolution in **In re Oxted Motor Co. Limited** (1921) 3KB 32 **Lush J.** said (at p. 37):

"It is contended that unless the notice contemplated by that section has been given a resolution is invalid as an extra-ordinary resolution, and it is said that notwithstanding that all the shareholders in the company were present and were dealing with a matter which was intra vires, and notwithstanding that there was no fraud, still the resolution was invalid on that account. In my opinion that contention is not well founded. It would be an extra ordinary result if all the shareholders of a company have been present at a meeting and passed a resolution to wind up the company, afterwards anyone else could impeach that resolution on the ground that the shareholders had not had notice of an intention to propose the resolution as an extraordinary resolution and that therefore the requirements of (the section) has not been complied with. In my opinion the shareholders are entitled to waive the formality of notice."

(my underlining)

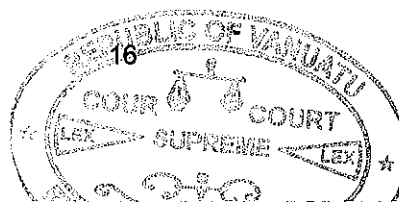


62. In the present case although not notified as a company or shareholders meeting, nevertheless, several directors and all three (3) shareholders of ITL were actively present at the beneficiaries meeting on 4 December 1999 and unanimously agreed to all resolutions affecting ITL and, in the absence of fraud (which is not alleged), I can see no reason why the shareholders and ITL should not be held bound by the resolutions unanimously passed at the meeting [see also: the ameliorating effect of **section 198** of the **Companies Act**].
63. In similar vein is the case of **Parker and Cooper Limited v. Reading** (1926) 1 Ch D 975 the head note of which reads:
- "A company is bound in a matter intra vires the company by the unanimous agreement of all its corporators.*
- If all the individual corporators in fact assent to a transaction that is intra vires the company, though ultra vires the board, it is not necessary that they should hold a meeting in one room, or one place to express their assent simultaneously."*
64. Furthermore I reject as baseless any suggestion that ITL's Annual Returns since 1999 were somehow "illegal" as a result of such non-compliance. **Section 127** of the **Companies Act** is the relevant provision which imposes the statutory duty on a company to file an Annual Return. Nowhere in the section is there to be found any offence created for a failure to file an Annual Return which contains false or misleading information in it (see for example sections 186 and 187).
65. I accept that the general provisions of **section 398** are applicable to the contents of Annual Returns, but, given the limitation in **section 15 (b)** of the **Penal Code**, even assuming that an offence had been committed in the filing of ITL's Annual Returns since 1999 (which I seriously doubt) and further, assuming that no relief was possible in terms of **section 404** of the **Companies Act** (which is highly likely), still, no prosecution would be possible after the expiry of 5 years from the filing of the offending Annual Return(s).
66. I also note from the agreed bundle of documents that a meeting of the new ITL Board of Directors took place on the same day after the beneficiaries meeting on **4 December 1999** where a 3 member committee was appointed "... *on a temporary basis until further notice, to finalise the restructuring process of the Ifira Group of Companies*". Plainly, there was an awareness and an acceptance that the unanimous decisions of the beneficiaries meeting required "*the restructuring*" of ITL and it is highly regrettable that the necessary formalities were not attended to expeditiously at the time as they should have been. If I may say so however, that is not the behavior of a Board of Directors that is intent on breaking the law, indeed, quite the reverse.
- 28 Dec. 1999 – ITL Board meeting formally resolved that the Minutes of the beneficiaries meeting of 4 December 1999 "*be adopted*". Likewise the minutes of the Board meeting of "10 (sic) December he accepted as it is". Significantly the meeting



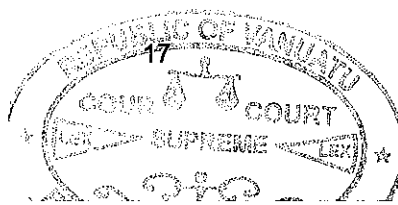
resolved to reward the persons who chaired the beneficiaries meeting of 4 December 1999 with "two extra xmas vouchers each" (item 6.4).

67. In this regard **Article 92** of the ITL's Articles of Association permits the Company to increase the number of directors "*by ordinary resolution*" and see also the deeming provisions of **section 146 (3)** of the **Companies Act**.
- 4 August 2000 – A custom reconciliation ceremony was held at Ifira Wharf attended by the new directors of ITL and members of the Ifira Island community.
68. In this instance both **Barak Sope** and **Kalpokor Kalsakau** sought to distance themselves from the ceremony and even played it down. In so far as it is necessary to resolve this factual dispute again, I accept the claimants contrary evidence and find that they freely attended the ceremony and willingly participated in it. The legal and binding effect of such a ceremony remains unclear but no specific pleadings have been made raising it and nothing more needs to be said about it.
- 1 March 2003 – ITL wrote to **International Finance Trust Company Limited** (the company that had been lodging ITL's Annual Returns at the time) informing it of the termination of the directorships of "*Messrs. Kalpokor Kalsakau and Barak Sope*" at a general meeting held on 28 December 1999 and their replacement by 29 enumerated directors.
69. Returning then to the chronology of events immediately preceding the institution of court proceedings (again with the court's observations interspersed):
- 6 Sept. 2010 – Notice of a meeting of the beneficiaries not unlike the Notice of 10 November 1999 was issued under the hand of the paramount chief of Ifira;
 - 15 Sept. 2010 – A beneficiaries meeting took place at Ifira Tenuku chaired by the paramount chief and attended by 30 odd executive directors of ITL and a large number of beneficiaries;
 - The meeting resolved *inter alia* that a committee called the "*Farea Committee*" be set up to look at and report back on a new draft of the ITL Articles of Association. Barak Sope and Kalpokor Kalsakau were appointed members of the Committee;
 - The Committee was to report back to the beneficiaries with its findings and a draft ITL Articles of Association;
70. The meeting of **15 September 2010** is described by **Kalpokor Kalsakau** in his enigmatic style: "... (as) *in shambles with swearing and scuffles and it was eventually decided that a committee be set up and to be called "Farea Committee".*"



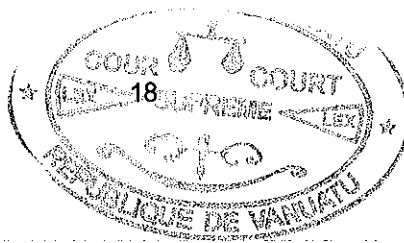
- 16 Sept. 2010 – Given the above description of the 15 September meeting it is surprising that the “*Farea Committee*” issued a letter to the chairman of ITL setting out a list of outcomes decided at the meeting. In brief, the letter sought to freeze all activities of the Board of Directors of ITL including holding Board meetings, overseas travel, payment of directors allowances and no new warakali appointments;
 - Notice of a beneficiaries meeting was issued by the “*Farea Committee*” for 16 October 2010 at the Farea Malarua, Tenuku Ifira;
71. In essence, what was being sought through these various Notices and so-called “*outcomes*” at the beneficiaries meetings and the “*Farea Committee*” letter was the unraveling of the appointments and resolutions that were unanimously passed 11 years earlier at the beneficiaries meeting of 4 December 1999 with particular regard to the consequential alterations to the traditional grouping of the beneficiaries of the Ifira Trust and to the ITL Memorandum and Articles of Association. The “*Farea Committee*” also sought a fresh mandate from the beneficiaries.
- 21 Sept. 2010 – ITL’s Board of Directors met under the chairmanship of the paramount chief of Ifira and passed several resolutions denouncing the meeting of 15 September 2010 and rejecting the decisions reached concerning ITL. The Board also resolved to convene a company **AGM** for the beneficiaries of ITL on 6 November 2010;
 - The resolutions were further reinforced by a personal letter from the paramount chief announcing his impending absence in Japan on 16 October 2010 and a Statement dated 8 October 2010 issued by the ITL Board of Directors shifting the beneficiaries meeting planned for 16 October 2010 to coincide with the planned ITL AGM called for 6 November 2010;
 - 28 Sept. 2010 – **Vanuatu Financial Services Commission (VFSC)** the second defendant wrote to ITL returning copies of “... *what seemed to be a revised edition of the Memorandum and Articles of Association (of ITL) without covering note to explain the intention of the company ...*” and calling on ITL “...*to (re) submit the amended version with the supporting special resolution*”;
 - 30 Sept. 2010 – ITL’s Board of Directors passed a special resolution as follows:

“1. That the Memorandum and Articles of Association appended hereto constitute the alterations of the beneficial shareholders of the Ifira Island Trust on 4 December 1999 in accordance with the minutes of that meeting which are hereto appended;



2. That this Memorandum and Articles of Association be forthwith filed with the Registrar of Companies."

- **VFSC** wrote to **Barak Tame Sope** confirming his continuing shareholding in ITL and expressing the view "... *that the shareholders must have a say in any decision with regards to the affairs of the Company unless the Articles of Association says otherwise.*"
72. Whether or not the special resolution has been filed is unclear but given the Court's earlier analysis and determinations, **VFSC's** "view" was both unfortunate and wrong. Silence in this instance was the better part of valour.
- 8 Oct. 2010 – Barak Sope and Kalpokor Kalsakau wrote to **VFSC** endorsing its "view" about a shareholders necessary involvement in the amendment and/or substitution of a company's Memorandum and Articles of Association;
 - 11 Oct. 2010 – The chairman of the "*Farea Committee*" wrote to the paramount chief denying any "*mandate*" to cancel the planned 16 October 2010 beneficiaries meeting and confirming that the meeting would "*gohed*" in accordance with the ITL Articles of Association;
73. The differences between the disputing parties and the polarization of the beneficiaries was clearly coming to an ugly head with the **VFSC** also unfortunately becoming embroiled in the dispute.
- 16 Oct. 2010 – The planned beneficiaries meeting went ahead with about 300 beneficiaries in attendance. Resolutions were passed which included the termination of all 31 warakali directors on ITL and replacing them with seven (7) new directors including Barak T. Sope Maautamate and Kalpokor Kalsakau.
 - A further beneficiaries meeting was planned for 29 November 2010;
 - 18 Oct. 2010 – **Barak Sope** and **Kalpokor Kalsakau** wrote to **VFSC** advising of the change of ITL directors presumably, from the 31 warakli directors to 7 new directors;
 - They also wrote to the General Manager, **National Bank of Vanuatu** advising of the change of directors of ITL and directing the suspension of the signatories to all IGS bank accounts;



- On the same day they and other defendants entered the business premises of ITL at Wharf Road and occupied the Board room;
- Some external door locks at the ITL business premises were also changed by the defendants and police were called to intervene;
- 19 Oct. 2010 – ITL's **Annual Return** filed with VFSC reveals the following significant changes:
 - **Nominal Share Capital**
AUD\$200,000 divided into 200,000 ordinary shares of AUD\$1.00 each was changed into VT27,800,000 divided into 278,000 ordinary shares of VT100 each;
 - **Issued Share Capital**
The original 3 issued shares was replaced by 278,000 ordinary shares issued and jointly held by 31 named *Warakali* representatives of Ifira Island;
 - **The Return** was also accompanied by a **Certificate** signed by Teriki Manto Kalsakau III and Kalpovi Mangawai advising inter alia;

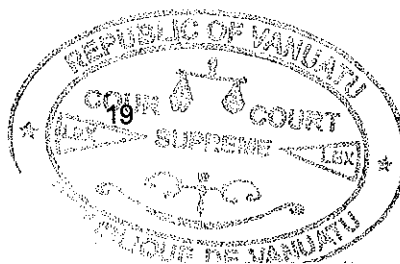
"(3) The annual general meeting of the company covering the date of this annual return will be held on or before November 2010. The next AGM is yet to be held.

(4) The excess of the numbers of members of the company over fifty consists wholly of persons who, under s. 38 (1) (b) of the Companies Act [CAP. 191], are not to be included in reckoning the number of fifty."

- 19 Oct. 2010 – This Court granted the claimants an *ex parte* urgent injunction in the following relevant terms:

"1. The Defendants, their servants or agents or otherwise howsoever, be restrained from:-

- (a) Entering or remaining on the business premises of Ifira Trustees Limited, Wharf Road, Port Vila (the business premises);*
- (b) In any way interfering or removing documents, letterheads or company seals or damaging the business premises; and*
- (c) Approaching the second claimants and/or their residences;*



2. *The Defendants, their servants or agents or otherwise howsoever be restrained from in any way holding themselves out to be directors or authorized officers of Ifira Trustees Limited.*"

74. Although not seriously disputed except as to quantum upon which there was some cross-examination by defence counsel, I have no hesitation in accepting the evidence of the claimants witnesses and find that the defendants their servants and agents did unlawfully and forcefully trespass onto the ITL's business premises on 18 October 2010 and by their belligerent presence and actions in changing door locks and posting guards in and around the ITL business premises they effectively and unlawfully disrupted ITL's normal business operations thereby causing it to suffer losses and damages. I am also satisfied that in the then tense situation created and perpetuated by the defendants employees of ITL were unable and justifiably fearful of returning to work on 19 October 2010.

- 26 Oct. 2010 – The injunction was varied to allow **Barak Sope** and **Kalpokor Kalskau** to have unrestricted access to ITL's business premises. The Court refused however a variation which would have pre-empted the claimants' challenge to their status as shareholders of ITL;

- On that occasion the Court:

"... urged all parties to use every effort to attend and ensure that the AGM on 6 November 2010 proceeds without acrimony and in an orderly manner reflective of the kindship groupings that constitute the members directors and beneficiaries of ITL."

75. There is not the slightest doubt in my mind that the several purported meetings of the Ifira Trust beneficiaries and ITL called and chaired by Barak Sope and held in September, October and November 2010 were done with an ulterior motive, cynical and unlawful and such illegality taints any resolutions passed at such purported meetings. They can have no bearing on this case despite defence counsel's submissions to the contrary.

- 2 Nov. 2010 – The claimants filed their substantive claim in the Supreme Court seeking a declaration and various orders directed at the second defendant;

- The ITL **Board of Directors** passed an unanimous resolution extending the appointments of the current directors pending determination of the substantive case filed against the defendants;

- 3 Nov. 2010 – The court rejected a further variation application by **Barak Sope** and **Kalpokor Kalskau** for access to ITL "books of accounts" on the basis of their claimed shareholding in ITL;

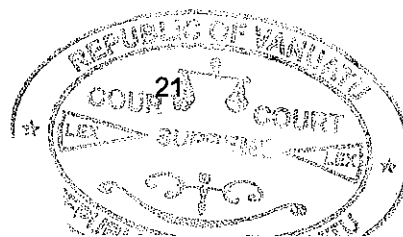


- The Court again "(pleaded) *with the parties to ensure that the ITL's AGM to be held on 6 November 2010 takes place without incident and in a harmonious and orderly manner.*"
- 6 Nov. 2010 – ITL **AGM** commenced at Farea Malarua on Ifira Island and continued until 7.00 p.m. when it was stood over to continue on 13 November 2010;
 - In the words of claimants' counsel: "*... there were disruptive acts by some defendants during the meeting and included acts of intimidation, waving tent poles and assaults.*"
- 20 Nov. 2010 – The ITL **AGM** continued for about 2 hours and the Minutes records it ended abruptly with attendees "*... exchanging words; swearing; punching; scuffling; shoving; threatening and taunting each other.*" In the words of the paramount chief who chaired the meeting:

"I am deeply saddened by the chaotic outcome of events despite repeated calls for respect, peace, goodwill towards each other and a universal spirit of cooperation. Today's meeting was not good ... I have said all I could say and done all I could! I therefore declare the meeting closed!"

76. After that chaotic aborted ITL **AGM**, the Christmas season intervened and hostilities were temporarily suspended until **February 2012** when the **AGM** was due to be continued at the ITL business premises on 19 February 2012. The meeting was delayed however owing to urgent court orders being sought by the defendants which effectively confined the **AGM** agenda to the removal and replacement of the current directors of ITL.

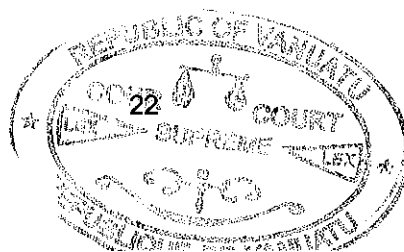
- 19 Feb. 2011 – **11.20 a.m.** The ITL **AGM** resumed and after an announcement was made to adjourn the meeting to allow the directors and ITL to seek legal advice on the urgent court orders issued only that morning, the meeting descended into chaos for 20 minutes before a measure of calm could be restored. By then a large number of ITL's directors and some beneficiaries had left the meeting;
 - The meeting eventually recommenced at about **4.20 p.m.** after the paramount chief opened it and left;
 - The "*recommenced*" meeting under the chairmanship of Barak Sope then purported to pass resolutions removing all current directors of ITL and replacing them with eight (8) new directors including **Barak Sope** and **Kalpokor Kalsakau**.
- 26 Feb. 2011 – The Supreme Court (**Spear J.**) at the claimants' urgent application "(ordered) *the defendants, their servants and agents:*



- (a) *remove themselves from the business premises of ITL forthwith and not to return until and unless invited by the management of ITL;*
 - (b) *not remove any company property from the premises of ITL;*
 - (c) *return by 12 midday tomorrow any company property taken since 19 February 2011 from ITL's business premises."*
- The judge's Conference Notes include the following observations about the 'recommenced' meeting of **19 February 2011** which was chaired by Barak Sope as follows:
 - "(para. 4) ... there is no dispute that an attempt was made by the defendants to reconvene the general meeting that afternoon, remove existing directors and appoint new directors. Clearly, that attempt was illegitimate and no decision reached by the body of people that afternoon can be taken as decision impacting on the company."
 - (para. 7) "... the attempt was purportedly made by on behalf of the defendants to take control of the management of the company following the resumed meeting on Saturday afternoon. Without question, this had left the company commercially exposed and vulnerable. Urgent relief as sought by the claimants is clearly required."
 - (para. 8) "... it was emphasized that the court could not possibly countenance the assumption of management control that appears to have taken place last Saturday."
- (my underlinings)

77. The mandatory orders were plainly necessitated because the defendants had, again, taken over and occupied the ITL business premises thereby disrupting and preventing the normal operations of ITL and its subsidiaries.


78. This Court is keenly aware that whichever way this case is decided hostilities are likely to remain unresolved. In this case involving closely related family members, the adversarial process is ill-suited and of limited assistance in finding a lasting solution, and some may even say, there are no winners, only losers. Experience shows that such hostilities in a small closely knit community are best resolved through mediation utilising tried and tested traditional means of customary reconciliation processes undertaken in good faith with wisdom and magnanimity and an understanding that sometimes narrow individual agendas must give way to the wider longer term interests of the community as a whole – *"A household divided against itself will not stand"* (Luke 11:17; Mark 3:23; Matt. 12:25).

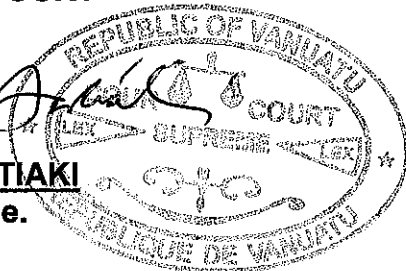


79. In the circumstances this Court, in my humble view, has an opportunity, again, to attempt to promote, if at all possible, a genuine and lasting reconciliation between the parties and within the people of Ifira Island who comprise the beneficiaries of the Ifira Trust.
80. Accordingly, I do not propose at this stage to make any final orders and risk aggravating existing hostilities, instead, by way of an indulgence, I give the parties and their respective advisors the opportunity to carefully consider the contents of this somewhat lengthy interim judgment, and thereafter meet together and decide by themselves and for themselves in the traditional and customary manner, the final orders that the Court should make in disposing of this case.
81. The order of the Court is that this matter shall stand adjourned for one (1) week until **13 September 2013** and the parties are **DIRECTED** to meet and agree (with the assistance of their legal advisors) the final orders and failing this, the Court will proceed to final judgment. I also **DIRECT** the parties to maintain minutes of any meeting so held and provide a report to the Court of the outcome and resolutions (if any) adopted at the meeting by 12 September 2013.

DATED at Port Vila, this 6th day of September, 2013.

BY THE COURT


D. V. FATIAKI
Judge.

The seal of the Republic of Vanuatu Supreme Court is circular. It features the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom. In the center, it says "SUPREME COURT" and "LEI SUPREME LEI". There is a star on the right side of the seal.