

**BETWEEN: KALKOT KALTATAK, KALTAPAS KALTATAK,
JACK KALMET AND NORRIS JACK KALMET
AS MEMBERS OF AND REPRESENTATIVES OF
KALTATAK FAMILY AND KALMET FAMILY ,
ERATAP VILLAGE, South Efate**
Claimants

AND: ANDREW BAKOA KALPOILEP
First Defendant

AND: JACK KALON
Second Defendant

AND: THE REPUBLIC OF VANUATU
Third Defendant

Coram: Mr. Justice Oliver A. Saksak

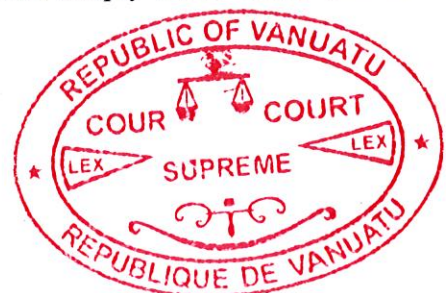
Counsel: Felix Laumae for Claimants
Gordon Avock for First and Second Defendants
Sammy Aaron for Third Defendant

Date of Hearing: 23rd March 2016

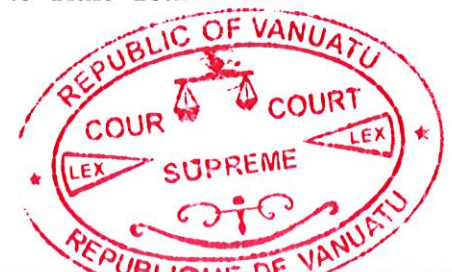
Date of Decision: 31st March 2016

DECISION

1. The Claimants apply pursuant to **Rule 18.11 of the Civil Procedure Rules** seeking judgment against the First and Second Defendants in this proceeding. The Claimants allege that the First and Second Defendants have failed to comply with Court Orders that directed them to file defences to their claims first issued on 16th October 2015 and extended on 20th November 2015 and on 26th January 2016. The default has been for a period of seven months.
2. The Republic (Third Defendant) has filed a defence but at the hearing of the Claimant's application Counsel indicated the State would simply abide Court Orders except as to costs.

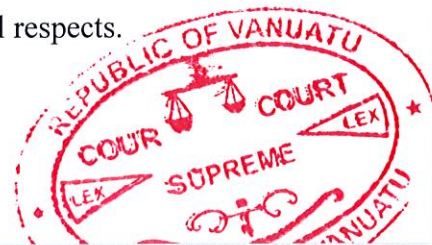


3. Mr Avock apologised for not attending at previous conferences called by the Court due to oversight on his part. Counsel indicated that steps have been taken to settle issues existing between the claimants and the Second Defendant but not with the first Defendant as this requires a little more time. Counsel requested for further time of say 2-3 weeks. Further Counsel indicated to the Court that the first defendant has filed an appeal to the Magistrate's Court which is pending a hearing.
4. On the question of settlement of issues between the Claimants and the second defendant, I find no documentary evidence in support of this contention. Second, I find no evidence by the first defendant about any pending appeal. All statements made over the Bar table cannot be evidence unless and until they are contained in properly sworn statements or made orally but on oath. These cannot be valid reasons for not filing defences in compliance with Court Orders issued more than seven months ago in October 2015.
5. **Rule 18.11** cannot be any clearer. The first and second defendants failed to comply with the Court orders issued on 16th October 2015. On this date the Court specifically ordered the defendants to file and serve their defences and sworn statements within 14 days. Only the Republic complied. And the orders were extended by the same period on 20th November 2015 returnable on 26th January 2016. On this date Mr Takau appeared as agent for Mr Ngwele for the first and second defendants and sought extensions. The Court granted extensions by another 28 days to 18th March 2016.
6. On 18th March 2016 no Counsel appeared on behalf of the first and second defendants. Mr Laumae alluded the Court to his application but as the defendants had not been served, the Court directed service and adjourned the hearing to 23rd March 2016.
7. I am satisfied the first and second defendants have failed to comply with the Court orders of 16th October 2015 as extended on 20th November 2015 and further extended on 26th January 2016 without any reasonable cause or excuses. The application by the claimant for judgment is therefore properly made pursuant to **Rule 18.11. and**



pursuant to **Rule 18.11 (4)** the only remaining option is to exercise my discretion to give judgment against the first and second defendants herein.

8. The First and Second Defendants have no defences in existence. Even if the Court were to extend time further or give other directions or order to do so, such an extension would be a futile exercise.
9. From the documentary evidence already before the Court (sworn statement of Jack Norris dated 26th August 2015) the Deed of Release (“ NJK 6”) signed by the Family Maseimermerman represented by Chief Jack Kalon and Chief Andrew Bakoa Kalpoilep and the Government, is a clear misrepresentation by Chief Kalpoilep (First Defendant) and is inconsistent with the findings of the Efate Island Court dated 29th August 2014 and previous representations that Chief Andrew Bakoa Kalpoilep is representative of the Family Kalmet. The Judgment of the Efate Island Court is annexure “ NJK 4” to the sworn statement of Jack Norris in **Civil Appeal Case No. 33 of 2013** shows that Chief Kalpoilep is recognised as representative of the Family Kalmet. The Court of Appeal also confirmed the Land Tribunal decision in **Land Case 71 of 2006** as final and binding.
10. As regards a purported appeal, even if there is an appeal in existence, it may be a late appeal. The Court of Appeal has given a strict interpretation to the appeal periods in **Section 22(5) of the Island Court Act**. Therefore an appeal cannot be sufficient cause or reason for the defendants to oppose the claimants’ application.
11. It is therefore highly unlikely that the first and second defendants have any defence which is arguable and on which they have any prospect of success.
12. For the foregoing reasons the claimants’ application must be allowed and judgment is hereby entered in favour of the claimants as applicants. The Claimants are entitled to the following orders-
 - a) That the decision of the Eratap Land Tribunal dated 18th May 2004 as confirmed by the Court of Appeal be hereby enforced as final and binding, and that the defendants be hereby required to comply with the decision in all respects.



- b) That the First and Second Defendants be hereby required to account and pay up VT 17.823.077 held in trust by the Government and released to the First Defendant pursuant to the Deed of Release dated 18th December 2014 to a nominated account by the Claimant for sharing between members of Kalmet family, Kaltatak family and Maseimermerman Family.
- c) That the Government be hereby restrained from releasing any further funds held in trust in respect of Eseltuan, Naisraper, Etas, Teouma Bridge, Montmarte and Eseltumam, South Efate to the First and Second Defendants without the prior written consent and authorisation of the claimants.
- d) The Third Defendant through the Customary Land Management Office to cancel the certificate of registered interest in land registered dated 4th August 2004 and to issue a new certificate in the following names:
- I. Jack Kalmet and Andrew Bakoa Kalpoilep members of and authorised representatives of Kalmet Family of Eratap.
 - II. Kalkot Kaltatak member of and authorised representative of Kaltatak Family of Eratap, and
 - III. Jack Kalon for and on behalf of Maseimermerman Family of Erakor.
- e) The Frist and Second Defendants be required to pay the Claimant's costs of and incidental to this proceeding on the standard basis as agreed or taxed by the Master.

DATED at Port Vila this 31st day of March 2016

BY THE COURT


OLIVER.A.SAKSAK

Judge

