

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

Civil  
Case No. 15/139 SC/CIVL

**BETWEEN: JACK KELIU representing CHIEF PARSIO  
TUKUL; BAI TAUN representing CHIEF TOM  
GEORGE PARMELE; WILLIE ABEL  
representing PARTAMAOTE and WILLIE  
MESEK representing CHIEF PARTAMAOTE**

Claimants

**AND: PHILIP BILLY, ROLLAND BILLY, REMO  
BILLY, JOEL BILLY, SAKSAK BILLY, JOHN  
BILLY, ANDREW JACK, KORAH JACOB,  
KOMOA JACOB, SAMUEL JACOB, PATIS  
JACOB, SAM JACOB, JOHN JACOB, SIMON  
JACOB, KALO JACOB, STEVEN JACOB,  
KALO JACOB, DANY JACOB, JONAH JACOB,  
KILALA YOSHUA, MICHEL YOSHUA,  
GEORGE YOSHUA, KALO YOSHUA, TOM  
YOSHUA PHILIMON YOSHUA, SANO MARK,  
WEL MARK, ROBIN MARK, KAMA MARK,  
MAWA SALKON, REMY SALKON, SAM  
HARRY, LEN FRED, FRED LEN, ROBERT  
FRED, ALILI HARRY, ABONG HARRY, SALES  
HARRY, JOEL HARRY, JOHN HARRY, DAVID  
HARRY, MAWA TOM, MISEL TOM, TANGAT  
MAI, KAMY MAI AND DOUGLAS MAI of  
Bonkovio Area, West Epi, Shefa Province**

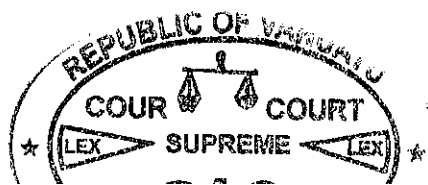
Defendants

*Date:* 1 June 2022  
*Before:* Justice V.M. Trief  
*Counsel:* Claimants – Mr P. Fiuka  
Defendants – Mr R. Tevi  
– Mr G. Takau

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**DECISION AS TO APPLICATION TO STAY PROCEEDING**

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A. Introduction

1. This was an Application to Stay Proceeding by the Defendants (the 'Application') seeking orders that the eviction order by Judgment dated 25 October 2021 (the 'Judgment') be stayed, any other orders deemed fit by the Court and that costs be reserved.
2. By the Judgment, judgment was entered for the Claimants on the Claim in trespass and the eviction order made for the Defendants to vacate Bonkovio, Puluyu, Kapliu and Yeva customary lands on North West Epi within 3 months from the date of service of the Judgment.
3. Having considered the Application and written submissions filed, I now determine the Application on the papers.

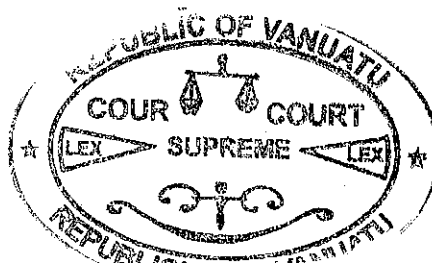
B. The Application and Opposition

4. The Application is made on grounds as follows:
  - a) That the Defendants have secondary and/or usufructuary rights and have resided on the land for 7 generations; and
  - b) That the Defendants' families have not been named as parties to this proceeding nor been served with the Claim seeking eviction order therefore cannot be evicted: *Iaum v Noam* [2017] VUCA 40 at [12] and *Iapatu v Noam* [2018] VUCA 50 at [22].
5. The Claimants filed the sworn statements of John Billy, Rolland Billy, Mawa Salkon, Remy Salkon and Sam Jacob in support of the Application. Each one deposed that they are custom owners of Bonkovio, Kapliu, Yeva and Puluya according to the Epi Island Tribunal decision dated 13 November 2013 [**annexure "AK3" to "Exhibit C1"**]. The Claimants too had relied on this decision for their custom ownership of these lands.
6. Mr Rolland Billy pointed to the 'decision' section at p. 6 of the Epi Island Tribunal decision where for each area, it was stated which Claimant chief the area belonged to, "under the governing system of Chief Saksak Billy" ('*anda long Kavaning system blong Jif Saksak Billy*'). They stated that they are custom owners of the land through Chief Saksak Billy therefore how is it that they are to now be evicted from those lands:

**DECISION**

**1. KAPLIU**

*Epi Island Land Tribunal I stap jajem mo mekem decision se Jif Parsio Tukul (Jack Keliu) nao I onem graon ya Kapliu mo hem nao I Jif blong graon ya folem presentation blong hem long Kot, anda long Kavaning system blong Jif Saksak Billy.*



2. **IEVA**

*Kot I wantem advaesem Jif Partamaote se bae hemi andelem gud Kastom graon ya leva mo kivim long ol stret man blong hem. Hemi folem decision blong Vermaul/Vermali Joint Area Land Tribunal. Kastom graon va hemi still anda long Kavaning system blong Jif Saksak Billy.*

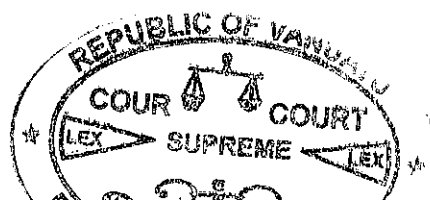
3. **BONKOVIO**

*Kastom graon blong **Bonkovio** hemi stap long Jif Tom George Parmele we Jif Bai Taun nao hemi Jif blong hem anda long Kavaning system blong Jif Saksak Billy.*

4. **PULUYU**

*Kastom graon blong **Puluyu** hemi stap anda long Jif Partamaote folem Kavaning sistem blong Jif Saksak Billy.*  
*(my emphasis)*

7. Mr John Billy also deposed that his wife Ellen Billy is not named as a party to the proceeding and has never been served with the eviction proceedings. They have 3 children. The Defendants' families have lived on the land for over 400 years.
8. Mr Rolland Billy deposed that his wife Elena Billy is not named as a party to the proceeding and has never been served with the eviction proceedings. They have 4 children. The Defendants' families have lived on the land for over 400 years.
9. Mr Mawa Salkon deposed that his wife Agnes Salkon is not named as a party to the proceeding and has never been served with the eviction proceedings. They have 3 children. The Defendants' families have lived on the land for over 400 years.
10. Mr Remy Salkon deposed that his wife Jenny Salkon is not named as a party to the proceeding and has never been served with the eviction proceedings. They have 5 children. The Defendants' families have lived on the land for over 400 years.
11. Mr Jacob deposed that his wife Primila Jacob is not named as a party to the proceeding and has never been served with the eviction proceedings. They have 2 children. The Defendants' families have lived on the land for over 400 years.
12. The Claimants opposed the Application and filed supporting sworn statement of Api Kekei. Mr Kekei deposed that the Defendants remain on the land, cutting trees and harvesting sea resources. They have filed a stay application without even appealing the Judgment.
13. Mr Fiuka submitted that the Defendants do not have any secondary or usufructuary rights over the subject lands. Further, their claims for ownership through Saksak Billy were dismissed at all levels of Land Tribunal. Any allegation or dispute as to the nature and extent of the Defendants' secondary rights or usufructuary rights are a new dispute to be dealt with in the appropriate court under the *Island Courts Act* or *Custom Land Management Act*. Finally, he submitted that the Application seeking stay of the proceeding is an abuse of process as there has not been any appeal of the Judgment.



14. In reply, Mr Tevi submitted that the Defendants are also custom owners of the subject lands, relying on p. 6 of the Epi Island Land Tribunal decision. Further, that none of the Defendants' spouses or children were named as parties nor served with eviction proceedings. Their families have long resided on the lands in exercise of long standing customary rights, relying on Lunabek CJ's decision in *Family Kaltapang Malastapu v Family Kaltonga Marapong*; Land Appeal Case No. 58 of 2004. He submitted that the Defendants intend to challenge the 'green certificates' given to the Claimants as the Defendants have not been included in the certificates pursuant to the Epi Island Land Tribunal decision.

C. Discussion

15. Without evidence to the contrary, I accept that the declaration of custom ownership made in favour of the Claimants in the Epi Island Land Tribunal decision was qualified in each instance as, '*anda long Kavaning system blong Jif Saksak Billy*' or words to similar effect which I translate as, "under the governing system of Chief Saksak Billy" and that the Defendants therefore are also custom owners of the subject lands through Chief Saksak Billy. I note "Saksak Billy" is a named-Defendant to this proceeding.

16. It makes sense therefore that the Defendants intend to challenge the 'green certificates' (Certificates of a Recorded Interest in Land from the National Coordinator, Custom Land Management Office) issued to the Claimants for their omission from those certificates.

17. I also accept that the Defendants' families are long-time residents of the subject lands.

18. I accept the evidence of each of John Billy, Rolland Billy, Mawa Salkon, Remy Salkon and Sam Jacob that their wives were not named as parties nor served with eviction proceedings. Indeed, the Claimants do not dispute that. I must therefore assume that the wives of other married Defendants were also not named as parties nor served with the eviction proceedings nor other adult members of the Defendants' families.

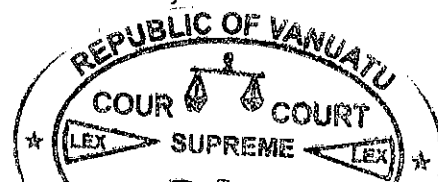
19. The law is clear that service only on the male members of a family in eviction proceedings is fundamentally flawed; all adults allegedly wrongfully occupying the land should have been named as parties and served as stated by the Court of Appeal in its judgment in *Iaus v Noam* [2017] VUCA 40 at para. 12:

12. *What is also clear is that the claimant seemingly ignored the fact that many of the named defendants would have had families and that given the nature of the proceedings all adults allegedly wrongfully occupying the land should have been named as parties and served. The claimant has presumably proceeded on the basis that service of the proceedings upon the male occupants constituted service upon the female occupants. Such an approach is fundamentally flawed.*

*(my emphasis)*

20. In *Iapatu v Noam* [2018] VUCA 50, the Court of Appeal stated as follows at para. 22:

22. ... The Court of Appeal when overturning the previous eviction order stressed that people could not be evicted by a court order from land unless they were named and served with



*the application seeking eviction order. The Court pointed out that the requirement extended to any women who it was intended to evict...*

21. In conclusion, the Defendant's grounds are made out. That is, that they have rights of custom ownership in the lands pursuant to the Epi Island Land Tribunal decision dated 13 November 2013, which decision the Claimants also rely on for their custom ownership. Further, that the Defendants' families have not been named as parties to this proceeding nor been served with the Claim seeking eviction order. In the circumstances, they cannot be evicted: *laum v Noam* [2017] VUCA 40 at [12] and *Iapatu v Noam* [2018] VUCA 50 at [22].

D. Result and Decision

22. For the reasons given, the Defendants' Application to Stay Proceeding is **granted**.

23. The eviction order dated 25 October 2021 is stayed until further Order of the Court.

24. Costs are reserved.

DATED at Port Vila this 1<sup>st</sup> day of June 2022  
BY THE COURT

*VM Tref*  
.....  
Justice Viran Molisa Tref

