

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

Civil Case No. 24/3852 SC/CIVL

Between: Pita Maltornem
Vertina Maltornem
Erbert Maltornem
Malbert Maltornem
Joseph Asao
Gustine Maltornem
Roman Maltornem
Santo

Applicants

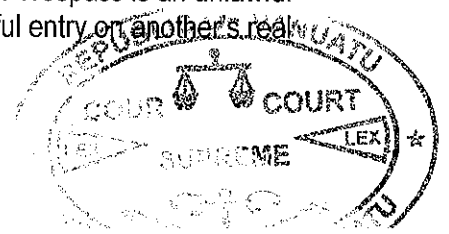
And: Urbano Meltelili and family
Santo

Respondent

Date of Decision: 27 August 2025
Before: Justice B. Kanas Joshua
Appearance: Mr Lent Tevi, for the claimants
Ms Anna Sarisets, for the defendant

**DECISION ON THE
APPLICATION TO STRIKE OUT**

1. The Meltelili family (“**the respondents**”) had been working, developing and occupying the lower part of Lemel/Laone custom land for four generations. Around 1987, the Maltornem family (“**the applicants**”) moved to a small part of the land and settled there. The applicants are developing the land without seeking permission from the respondents, who claim to be the lawful occupiers as they (respondents) were the first to settle on the land. There is no declaration on custom landownership so neither party have been declared as landowners.
2. The applicants state that the claim is futile because the respondents are not custom landowners of Lemel or Laone or have a certificate of recorded interest (“**green certificate**”) for the said land. Due to this, the applicants state they do not need to seek permission from the respondents to occupy part of the land.
3. To decide this application, I must decide the following issues:
 - a. Whether the respondent are lawful occupiers of Lemel/Laone custom land; and
 - b. Whether the applicant have trespassed on the land.
4. On the first issue, I consider that Lemel/Laone custom land is yet to be decided by a custom land tribunal under the Custom Land Management Act. The respondents argue that the claim is not for ownership of land but is a claim for trespass into the claimants’ possession. Trespass is an unlawful act committed against the person or property of another; especially wrongful entry on another’s real



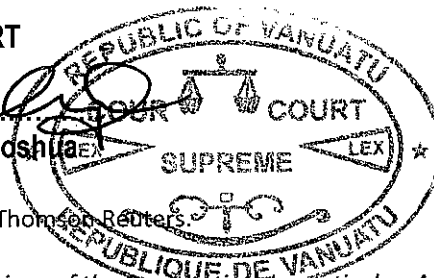
property.¹ Applying this meaning, the respondent is saying that the applicant has unlawfully entered the respondents' land. In the same breath, the respondents state that they are not claiming ownership of the land.

5. The respondents acknowledge that the custom landownership is yet to be determined. He then referred to the case of *The Valele Family v. James Touru*² where the court held that decisions that are made in forums not recognized by law, are not lawful.³ The respondents stated that because the Lemel/Laone custom land has not been determined yet, it is the same as if it is determined by a forum that is not recognized by law. In that sense, the respondent claims to have lawful occupier rights for living on the land the longest. I do not accept this interpretation, for the sole reason that the Lemel/Laone custom land has not been determined by any forum. The *Valele* case is not relevant.
6. Equally, the cases submitted by the applicants were of no assistance to the court. The case of *Eli Misev and Ors v. Steve Elsiem Representing Family Tolsie Awop*⁴ addressed an irregularity in the procedure that the Supreme court had taken to issue an eviction order. The court held that the irregularity was not a nullity, so the eviction was not a nullity. In the case of *Family Kaukare v. Willie Lop & family*⁵, the court issued an eviction order against Willie Lop and his family. This was appealed in *Willie Lop & family v. Family Kaukare*⁶, which the court adjourned the appeal hearing to a later date.
7. On the second issue, I consider that the respondent accepted that Lemel/Laone land is custom land and custom landownership has not been determined. There must be a determination from a lawful forum in favor of the respondents so a green certificate is issued to them. The respondents do not have a green certificate and, without this certificate, they cannot claim for trespass.
8. The claim is misconceived.
9. The application to strike out the claim against the defendant is granted.
10. Costs are ordered, in favour of the defendant, as either agreed or taxed.

Dated at Port Vila on this 27th day of August, 2025

BY THE COURT


Justice B. Kanas Joshi



¹ Garner, Bryan A. (2014), *Black's Law Dictionary*, Tenth Edition, Thomson Reuters.

² Civil Appeal Case No. 01 of 2002.

³ "Article 78 must be read as a whole, and in light of all the provisions of the Constitution. In particular, Article 78(2) must be read subject to Article 78(1). Article 78(1) expressly limits the operation of Article 78 to disputes concerning the ownership of alienated land. In such a case the land is held by the Government until the dispute is resolved, and Article 78(2) spells out what the Government is to do whilst it holds the land. The Government must arrange to have the dispute resolved by 'the appropriate customary institution or procedures'".

⁴ Civil Appeal Case No. 18/2618 CoA/CIVA.

⁵ Civil Case No. 21/1737 SC/CIVL.

⁶ Civil Appeal Case No. 24/3694 and 24/3789 CoA/CIVA.