

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

Civil Case No's 19/2053 &  
22/1131 (Consolidated) SC/CIVL

**BETWEEN:** Simeon Poilapa representing Family Mariki  
Langa Ni-Vatelapa

Claimant

**AND: Mele Trustees Limited**

Defendant

*Date of Trial:* 26 November 2024  
*Before:* Justice V.M. Trief  
*In Attendance:* Claimant – Mr P. Fiuka  
Defendant – no appearance (in person)  
*Date of Decision:* 17 October 2025

---

## JUDGMENT

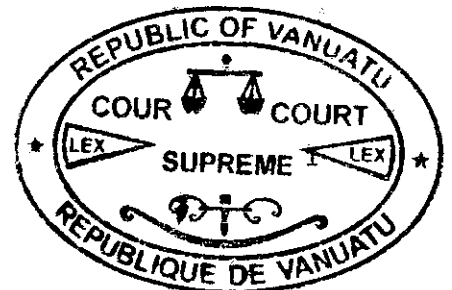
---

A. Introduction

1. By the Claim in each proceeding CC 19/2053 and CC 22/1131, the Claimant Simeon Poilapa representing Family Mariki Langa Ni-Vatelapa (the 'Claimant Family') is seeking payment from the Defendant Mele Trustees Limited ('MTL') of trust monies allegedly held on its behalf. The monies are alleged to include consent fees and land rents received in respect of a number of leases that the Claimant Family is the registered lessor of.
2. This is the judgment following trial.

B. The Trial

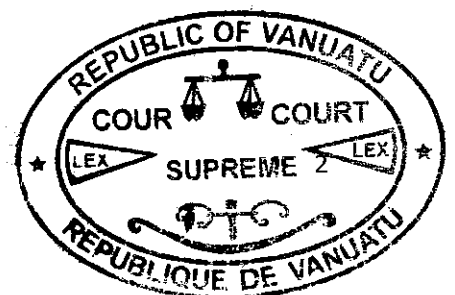
3. On 3 November 2023, MTL's counsel filed Notice of Ceasing to Act. MTL has not subsequently retained a new lawyer.



4. On 22 August 2024, the Claimant Family filed proof of service of the Court's Orders dated 14 August 2024 on five of MTL's directors giving notice of the trial listed on 26 November 2024.
5. However, there was no appearance for MTL at the trial. Having heard the Claimant's case, I directed the filing and service of closing submissions.
6. On 2 December 2024, the Claimant Family filed closing submissions.
7. On 5 December 2024, the Claimant Family filed proof of service on four of MTL's directors of the Court's Minute and Orders dated 26 November 2024 and its closing submissions.
8. No closing submissions were filed for MTL.

C. Background

9. Family Mariki Langa Ni-Vatelapa is a declared custom owner of Malawora custom land at Mele village at South Efate: Efate Island Court decision dated 28 June 2011 in Chilia v Nikara [2011] VUIC 6; Land Case No. 03 of 1993 and Supreme Court judgment dated 13 August 2015 in Uritalo v Chilia [2015] VUSC 108; Land Case No. 02 of 2011.
10. On 6 July 2016, the Claimant Family's custom ownership was put beyond doubt by the Court of Appeal striking out Civil Appeal Case No. 486 of 2016 for non-compliance with the Court's Orders and for want of prosecution.
11. On 28 February 2012, the Claimant Family was registered as the lessor of leases within Malawora land pursuant to its custom ownership declaration.
12. Accordingly, 28 February 2012 is the date on which the Claimant Family became entitled to any payments and fees received in respect of registered leasehold dealings for the subject leases: Poilapa v Mele Trustees Ltd [2023] VUSC 291.
13. MTL is a company limited by shares appointed by the Minister of Lands under s. 8 of the *Land Reform Act* [CAP. 123] to represent the disputing custom owners from Mele village.
14. By its own admission, MTL is a trustee for disputing custom owners including the Claimant.
15. As the registered lessor of the subject leases, MTL collected monies paid in relation to registered leasehold dealings and held them in trust for the disputing custom owners.



16. The Claimant Family's lawyer has written letters of demand to MTL for the release of trust monies held on its behalf.

D. The Pleadings and Issues

17. On 9 August 2019, the Claim was filed in CC 19/2053. It is alleged that as the lessor for the leases subject to that Claim, MTL received payments for premiums, consent fees and land rents on the Claimant Family's behalf in respect of lease title numbers 12/0822/262 and 12/0822/266 which were divided into 14 lease titles. By the Claim, the Claimant Family is seeking the payment of monies from those registered leasehold dealings that MTL is holding in trust on its behalf. It alleged that in response to its letters of demand dated 23 October 2018 and 31 October 2018, MTL released only VT200,000 of the trust monies, which was paid in November 2018 to the Claimant Family. The Claimant Family also alleged that it has suffered damage as a result of MTL's failure to release the trust monies. The relief sought is payment of VT4,049,455 trust monies, damages, interest, costs and any other Order that the Court deems fit.

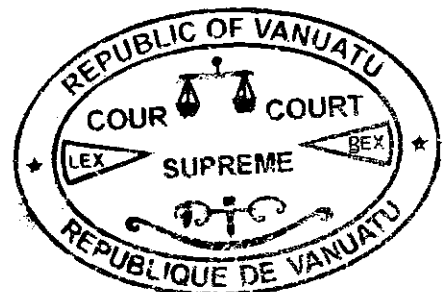
18. On 2 September 2020, MTL filed its Defence and Set-Off Claim in CC 19/2053. It denied that it received execution fees, consent fees and land rents for lease titles 12/0822/262 and 12/0822/266 and the 14 derivative lease titles. It admitted receiving VT1,050,000 management fees for the 14 derivative leases.

19. By way of the Set-Off Claim, MTL alleged that in 1994, it repaid Mr Poilapa's loan from the ANZ Bank of VT900,000 with interest, and that in the period 2015-2018, it has already paid VT1,050,000 to the Claimant Family (including the VT200,000 paid to the Claimant Family in November 2018) therefore these amounts should be set-off against any amount ordered in the Claimant's favour. It also alleged that a percentage for value added tax ('VAT') (12.5% or 15%) be deducted from any land income. Finally, MTL alleged that it had also advanced other monies for funerals and marriages (to be assessed).

20. On 30 September 2020, the Claimant filed Reply to Defence and Set-Off Claim. It admitted that consent fees and land rents should have 12.5% VAT deducted. It also admitted that MTL has already paid VT1,050,000 to the Claimant Family. It alleged that the VT900,000 loan was not for the Claimant Family, but for the Mele Village Farea's loan.

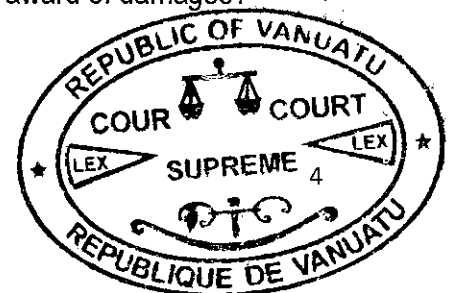
21. On 30 May 2022, the Claim in CC 22/1131 was filed. It is pleaded that as the registered lessor, MTL received payments of consent fees and land rents on the Claimant Family's behalf for the following lease titles which are subject to the Claims in both the present matters CC 19/2053 and 22/1131 (the 'subject leases'):

1.	12/0822/263	12.	12/0822/282	23.	12/0822/308
2.	12/0822/264	13.	12/0822/283	24.	12/0822/309
3.	12/0822/265	14.	12/0822/284	25.	12/0822/310



4.	12/0822/267	15.	12/0822/285	26.	12/0822/311
5.	12/0822/268	16.	12/0822/286	27.	12/0822/312
6.	12/0822/275	17.	12/0822/302	28.	12/0822/314
7.	12/0822/276	18.	12/0822/303	29.	12/0822/315
8.	12/0822/277	19.	12/0822/304	30.	12/022/259
9.	12/0822/278	20.	12/0822/305	31.	Pre-Independence title 65 (Melek tree)
10.	12/0822/279	21.	12/0822/306	32.	12/0631/001
11.	12/0822/280	22.	12/0822/307		

22. By the Claim, the Claimant Family is seeking payment of those monies that MTL held in trust on its behalf. The relief sought includes an order for payment of VT14,922,400 trust monies, damages, interest, costs and any other Order the Court deems fit.
23. On 9 June 2022, MTL conceded to the Claimant Family's application that the two present matters CC 19/2053 and 22/1131 be consolidated. Accordingly, the Court granted the application and consolidated the two proceedings.
24. On 28 July 2023, the Defence in CC 22/1131 was filed. MTL denied that it received payments for premiums, consent fees and land rents for all leases within Malawora land declared in favour of the Claimant. It also alleged that in early June 2021, Mr Poilapa and his agents illegally removed and kept its records and files until 16 November 2022 (though not sure whether all were returned, or some were missing). Therefore, MTL would have to rely on the lessors' receipts presented by the Claimant Family. It denied that the Claimant Family was entitled to the relief sought.
25. On 15 September 2023, the Claimant filed the Reply to Defence. It alleged that MTL failed its duty as a trustee by not keeping proper records of trust monies that it received. It stated that it had incorporated the 14 lease titles subject to CC 19/2053 into its Claim in CC 22/1131 and that it would rely on the amounts claimed in CC 22/1131 as the true and correct amounts and not the amounts set out in CC 19/2053.
26. I will determine the issues between the parties under the following headings:
- a. **Issue 1:** What subject leases is the Claimant Family the registered lessor of?
  - b. **Issue 2:** What monies has MTL received in respect of registered leasehold dealings for the subject leases that it is holding in trust for the Claimant Family?
  - c. **Issue 3:** Whether or not MTL repaid the ANZ Bank loan of VT900,000 on behalf of the Claimant Family?
  - d. **Issue 4:** What is the amount to be set off or deducted for VAT, if any?
  - e. **Issue 5:** Whether or not the Claimant is entitled to an award of damages?

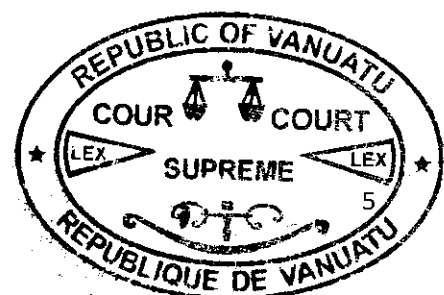


E. Evidence

27. The Claimant Family relied on the sworn statements of Chief Simeon Poilapa filed on 21 August 2019 [**Exhibit C1**] and 31 August 2022 [**Exhibit C2**].
28. There was no cross-examination.
29. MTL has not filed any evidence.

F. Issue 1: What subject leases is the Claimant Family the registered lessor of?

30. It is common ground that MTL was the registered lessor of leases on behalf of the disputing custom owners from Mele village.
31. MTL as a trustee has a legal duty to account for the monies held in trust for the trust's beneficiaries and to remit the trust monies to the beneficiaries.
32. Mr Poilapa attached copies of the leases for lease title numbers 12/822/265, -267, -268, -275, -276, -277, -278, -279, -280, -282, -283, -284, -285, -286, -302, -303, -304, -305, -306, -307, -308, -209, -310, -311, -312, -315 and -259 [**Exhibit C2 – Attachments “SP2”-“SP26”, “SP28” and “SP29”**] showing MTL as the registered lessor of those leases.
33. Mr Poilapa also attached MTL's Consent to the transfer of lease title 12/0822/313 [**Exhibit C2 – Attachment “SP27”**].
34. Accordingly, it is proved that MTL was the registered lessor of those lease titles.
35. However, what evidence is there to show that the registered lessor of those particular lease titles has changed from MTL to the Claimant Family?
36. Mr Poilapa asserted that on 28 February 2012, the leases within Malawora land were rectified into the Claimant Family's name pursuant to its custom ownership declaration: **Exhibit C1**, para. 17 and **Exhibit C2** – para. 40.
37. However, there is no evidence to show the change of registered lessor from MTL to the Claimant Family for the particular lease title numbers 12/822/265, -267, -268, -275, -276, -277, -278, -279, -280, -282, -283, -284, -285, -286, -302, -303, -304, -305, -306, -307, -308, -209, -310, -311, -312, -313, -315 and -259.
38. I accept and find that the Claimant Family's lawyer sent MTL letters of demand dated 24 October 2019 [**Exhibit C1 – Attachment “SP8”**] and 2 November 2018 [**Exhibit C1 – Attachment “SP9”**].



39. There was also evidence in **Exhibit C1 – Attachment “SP7”** of a number of payments received by MTL in relation to some of the subject leases.
40. However, there is no evidence that the Claimant Family is the registered lessor of any of the subject leases. Accordingly, it has failed to prove its Claim on the balance of probabilities, that is, that it is more likely than not that the matters it alleged in the Claim occurred.
- G. **Issue 2: What monies has MTL received in respect of registered leasehold dealings for the subject leases that it is holding in trust for the Claimant Family?**
41. Given my answer to **Issue 1**, I need not consider this issue.
- H. **Issue 3: Whether or not MTL repaid the ANZ Bank loan of VT900,000 on behalf of the Claimant Family?**
42. There is no evidence as to MTL’s repayment of this loan nor as to whether it was repaid on behalf of the Claimant Family or that it was for the Mele Village Farea’s loan.
- I. **Issue 4: What is the amount to be set off or deducted for VAT, if any?**
43. Given my answer to **Issue 1**, I need not consider this issue.
- J. **Issue 5: Whether or not the Claimant is entitled to an award of damages?**
44. There is no cause of action pleaded which could sound in an award of damages.
45. Accordingly, the Claimant is **not** entitled to an award of damages.
- K. **Result and Decision**
46. The Claim is **dismissed**.
47. Costs must follow the event. The Claimant is to pay the Defendant’s costs of the proceeding as agreed or taxed by the Master. Once set, the costs are to be paid within 28 days.

DATED at Port Vila this 17<sup>th</sup> day of October, 2025  
BY THE COURT

  
Justice Viran Molisa Trief

