

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

Civil
Case No. 24/184 SC/CIVL

**BETWEEN: Joseph Toa, Huiehi Matarave & Ishmael
Matarave**
Claimants

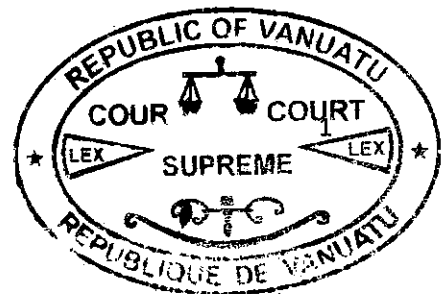
**AND: Mata Liu, John Liu, Rovo Liu, Moli Liu,
Shem Liu & Vira Liu & Family Liu Ding**
Defendants

Date of Trial: 10 April 2025
Before: Justice V.M. Trief
In Attendance: Claimants – Mr L. Tevi, via video link from Luganville Court House
Defendants – Mr R. Willie, via video link from Luganville Court House
Date of Decision: 20 October 2025

JUDGMENT

A. Introduction

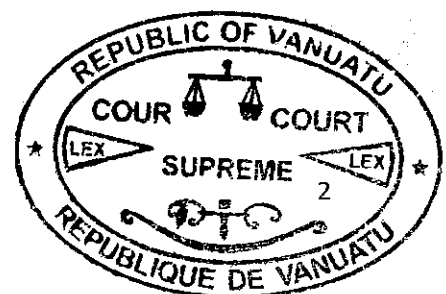
1. The Claimants Joseph Toa and his two sons Huiehi Matarave and Ishmael Matarave filed the Claim on 30 January 2024 seeking an order for the eviction of the Defendants Mata Liu, John Liu, Rovo Liu, Moli Liu, Shem Liu and Vira Liu and Family Liu Ding from the parcel of land on which Joseph Toa had planted coconuts on at Malo island. It is also alleged that on 10 January 2024, the Defendants assaulted Huiehi Matarave and Ishmael Matarave hence damages for personal injuries are also sought as well as general damages and special damages.
2. This is the judgment following trial.
3. At the end of the trial, counsel requested and were granted leave to file and serve closing submissions – the Claimants by 3pm on 5 May 2025, the Defendants by 4pm



on 23 May 2025 and any submissions in reply by 4pm on 30 May 2025. On 11 August 2025, the Claimants filed closing submissions. None have been filed for the Defendants.

B. The Pleadings and Issues

4. It is alleged in the Claim that in 2013, the Defendants' mother asked Mr Toa for permission to enter onto and plant food on a parcel of land that Mr Toa had planted coconuts on. Mr Toa agreed and they did so. However, that in 2019, the Defendants' mother died and after that, the Defendants started to claim that the coconut plantation belongs to them and threatened the Claimants not to enter the land. It is also alleged that on 9 January 2024, the Defendants burnt down the traditional house that the Claimant Ishmael Matarave was building on the land and damaged his garden crops and trees. Then the following day, the Defendants assaulted the Claimants Huiehi Matarave and Ishmael Matarave by cutting them with bush knives and throwing stones and wood at them causing injuries on their bodies. It is alleged that Mr Matarave and Mr Matarave were admitted to the hospital in Luganville for over a week and continue to suffer from the pain and injuries caused by the Defendants.
5. The relief sought includes an eviction order from Mr Toa's coconut plantation, orders in Huiehi Matarave and Ishmael Matarave's favour for VT1,500,000 damages for personal injuries caused, VT500,000 general damages for pain and suffering and VT500,000 special damages, costs and any further Order that the Court deems just.
6. On 31 May 2024, the Defendants filed the Defence denying asking Mr Toa's permission to work on his land and alleging that they are working on land which they are the declared custom owners of pursuant to the Malo Island Land Tribunal declaration dated 28 December 2005. They denied burning down Ishmael Matarave's house and damaging his crops and trees. They partly admitted assaulting Huiehi Matarave and Ishmael Matarave but allege that they have already been punished for this offence and were ordered by the Magistrates' Court to pay them restitution. They denied that the Claimants are entitled to the relief sought and claimed indemnity costs.
7. I will determine the issues between the parties under the following headings:
 - a) **Issue 1:** Whether or not the Claimants have proved that the Defendants are trespassing onto Mr Toa's coconut plantation land?



- b) **Issue 2:** Whether or not the Claimants have proved that the Defendants burned down Ishmael Matarave's traditional house and damaged his garden crops and trees?
- c) **Issue 3:** Whether or not Huiehi Matarave and Ishmael Matarave are entitled to damages in relation to the assault and personal injuries that the Defendants caused to their bodies?

C. Evidence

8. The Claimants relied on the sworn statements of Joseph Toa filed on 30 January 2024 [**Exhibit C1**] and 14 March 2025 [**Exhibit C2**], Ishmael Matarave filed on 14 March 2025 [**Exhibit C3**] and Chief Dejhi Matarave filed on 5 November 2024 [**Exhibit C4**]. All three Claimants' witnesses were cross-examined.

9. The Defendants relied on the sworn statement of Vira Liu Dingi filed on 26 February 2025 [**Exhibit D1**]. He was cross-examined.

D. **Issue 1:** Whether or not the Claimants have proved that the Defendants are trespassing onto Mr Toa's coconut plantation land?

10. Trespass is not about ownership but about possession: see Warput v Santo Veneers Ltd [2004] VUCA 18 at p. 3 per the Court of Appeal:

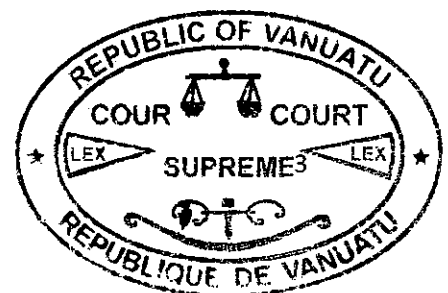
The only evidence as to the place where the trees were cut down and as to the tenure of the land was from the appellant and his brother who said that they were in possession of the land and were using it. The question of trespass is not about ownership but is about possession. It was undisputed that the appellant was in possession.

[emphasis added]

11. Have the Claimants proved that Mr Toa was in possession of the land that the Defendants entered onto?

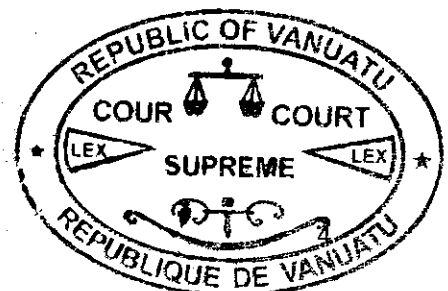
12. Mr Toa's evidence was that in September 2013, the Defendants' mother Vomboe Liu approached him and his wife at Natanowagwa village on Malo island and asked him to allow her and her children onto land to plant their food. He stated that he told them they could come onto one of his parcels of land on which he had planted year-old coconut trees and plant their food there whilst cleaning his coconut plantation. He stated that the Defendants' mother agreed and they started planting their food at that parcel of land until today [**Exhibit C1**].

13. His evidence was also that in 2019, Mrs Liu died and the Defendants started to settle onto the land and threatened him and his family not to enter the land anymore. They

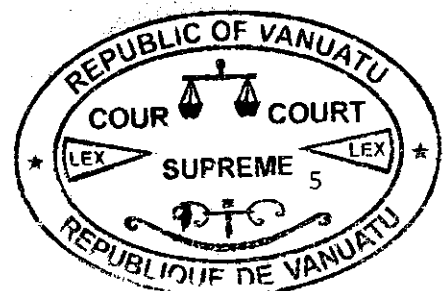


also claimed that the land belonged to them. He stated that on 9 January 2024, the Defendants destroyed one of his son's houses on the same parcel of land, food crops and trees, and on 10 January 2024, badly injured his sons Huiehi Matarave and Ishmael Matarave with knives, stones and wood. He believed that he and his family's safety is now at risk as he gave the Defendants permission to plant their food on his coconut plantation land but now they are threatening he and his children on that land [Exhibit C1].

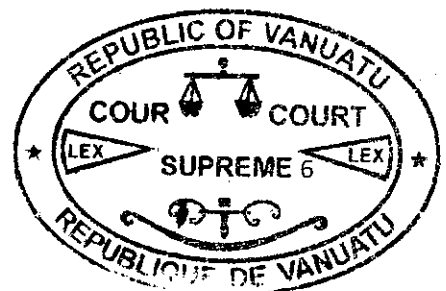
14. Mr Toa's evidence also was that he occupies Navusi custom land and he permitted the Defendants to enter onto his plantation on Navusi custom land, but not Namorumoru custom land as they are alleging. He stated that Namorumoru custom land is far away from Navusi custom land. He attached a copy of the letter dated 1 October 2019 to the Defendants giving them notice to vacate his land at Navusitawera at North Malo island [Exhibit C2 – Attachment "JT6"]. He also stated that the Santo Malo Island Court determined the land claim for Asuleka/Malo Pass and Nadiutu custom land but that this decision was quashed on appeal. He stated that the custom ownership of that land has not been determined again since [Exhibit C2].
15. In cross-examination, Mr Toa agreed that the custom ownership of the land that he wants the Defendants evicted from has not yet been determined. He agreed that he permitted the Defendants to work on land that he had planted year-old coconut trees on. He stated that he agreed with the Defendants' mother for them to work on the land where he planted coconut trees on. He denied that the Defendants are living on Namorumoru custom land – he said that they are living on his land. He stated that they are living on the land that they asked him for permission to work on. In addition, he transported their market crops in his truck. He gave permission for a new road to their gardens that trucks can use. He stated that every year, they brought food to him as the land owner as is the custom on Malo island.
16. In re-examination, Mr Toa said that the Defendants are living on the land where he planted his coconuts, which is at Navusi custom land. He said he does not agree anymore because the Defendants destroyed his son's house and assaulted his sons.
17. Chief Dejhi Matarave's evidence was that the Defendants say that they are living on Namorumoru custom land but that that is not true as they are living on Asukela/Malo Pass land. He stated that the Defendants are living inside Mr Toa's coconut plantation land that Mr Toa agreed to at the beginning but no longer wants them living there [Exhibit C4].



18. Vira Liu Dingi's evidence was that he and the rest of the Defendants are part of Family Moliwari who are one of the declared custom owners of Namorumoru custom land whereas the Claimants are not [**Exhibit D1**].
 19. In cross-examination, Mr Dingi denied that the Defendants have left Namorumoru custom land after their houses were burned down by arsonists. However, he then agreed that they have left Namorumoru custom land and are now living in a different location. He agreed that Mr Toa lives at Navearu area. He denied that Navearu area is on Navusi custom land. He agreed that the Defendants live in the bush behind Mr Toa and that when they started living there, there was no access road for trucks. But after some time, a road was put in and that Mr Toa's statement is that that was when Mr Dingi and his parents asked for Mr Toa's permission. He also agreed that Mr Toa drove their market produce in his truck. He denied giving food each year to Mr Toa as the landowner but agreed that he did not know if his parents did that. In the last question in cross-examination, he stated that when the Defendants moved onto the land, Mr Toa had planted coconut trees there.
 20. By his own admission, Mr Dingi stated that he and the Defendants live on the land where Mr Toa planted coconut trees. Mr Dingi also agreed that he and his parents asked permission from Mr Toa for an access road to be made to the place they live at. Accordingly, the Claimants have proved that Mr Toa was in possession of the land that the Defendants entered onto. I accept and find on Mr Toa's evidence that that parcel of land is on Navusi custom land.
 21. I also accept and find that the Claimants have given the Defendants notice to vacate the land by way of the letter from their lawyer dated 1 October 2019 [**Exhibit C2 – Attachment "JT6"**].
 22. However, despite the notice given, the Defendants have not vacated the land.
 23. For the reasons given, the Claimants has proved their trespass claim and are entitled to an order for the eviction of the Defendants from the parcel of land which Mr Toa had planted coconuts on at Navusi custom land on Malo island.
- E. **Issue 2: Whether or not the Claimants have proved that the Defendants burned down Ishmael Matarave's traditional house and damaged his garden crops and trees?**
24. There is no eye-witness evidence that the Defendants, or which of the Defendants, burned down Ishmael Matarave's traditional house and damaged his garden crops and trees.



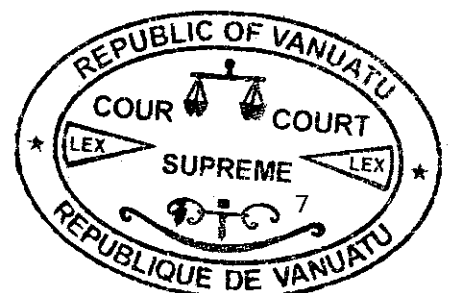
25. Accordingly, I find this aspect of the Claim not proved.
- F. Issue 3: Whether or not Huiehi Matarave and Ishmael Matarave are entitled to damages in relation to the assault and personal injuries that the Defendants caused to their bodies?
26. The defence case consists of an admission that they assaulted Huiehi Matarave and Ishmael Matarave but alleged that they have already been punished for this offence and were ordered by the Magistrates' Court to pay them restitution.
27. Mr Dingi's evidence was that the Defendants caused the injuries to Huiehi Matarave and Ishmael Matarave after they themselves were attacked and had to defend themselves. He attached a copy of the restitution order dated 20 February 2024 in the Magistrates' Court Criminal Case No. 24/69 in which the John Ding, Shem Boe, Moli Liu and Mata Boe were each ordered to pay VT4,000 restitution hence each victim would receive VT8,000 each from those defendants] **Exhibit D1 – Attachment "VL01"]**
28. However, there is no law barring civil action for damages against someone who has been convicted and ordered in a criminal case to pay restitution. The criminal case is brought for the offence against the criminal law of the country. However, civil action may also be brought for an award of damages against the wrong-doers.
29. Part of the relief sought is an order for VT500,000 special damages. However, no receipts have been adduced into evidence to prove the actual expenditure that the Claimants incurred as a result of the injuries caused to Huiehi Matarave and Ishmael Matarave. Accordingly, I decline to order special damages.
30. The balance of the relief sought are orders for VT1,500,000 damages for personal injuries caused and VT500,000 general damages for pain and suffering.
31. Mr Toa adduced into evidence medical reports at the Police's request, both dated 10 January 2024, for his sons Huiehi Matarave and Ishmael Matarave [**Exhibit C1 – Attachment "JT2"]**. Huiehi Matarave's injuries are described as an open wound near his right elbow measuring 10cm x 5cm caused by a knife, bleeding profusely, a bone fragment cut and hanging loose, and swollen arm. Ishmael Matarave's injuries are described as an 8cm laceration on his left shoulder caused by a bush knife and another 2-3mm wound. I accept and find that these were the injuries that the Defendants caused to the Claimants as a result of assaulting them with knives, stones and wood thrown at them.



32. Mr Toa also attached a page of graphic photographs of his sons' injuries [**Exhibit C1 – Attachment “JT2”**]. Ishmael Matarave attached a copy of the same page of graphic photographs of his and Huiehi Matarave's injuries [**Exhibit C3 – Attachment “IM1”**].
33. The Claimants' closing submissions did not contain any submissions as to the VT1,500,000 damages for personal injuries sought. Accordingly, I decline to make such award.
34. However, I accept and find that the Claimants Huiehi Matarave and Ishmael Matarave have suffered pain and suffering as a result of their assault by the Defendants and the personal injuries caused to their bodies.
35. Accordingly, I find that the Claimants Huiehi Matarave and Ishmael Matarave are entitled to VT500,000 general damages for pain and suffering (VT250,000 each). I will so order.

G. Result and Decision


36. Judgment is **entered** for the Claimants, and it is ordered as follows:
- a) That the Defendants Mata Liu, John Liu, Rovo Liu, Moli Liu, Shem Liu and Vira Liu (including Vira Liu Dingi) are to vacate Joseph Toa's coconut plantation land at Navusi custom land on North Malo island, including removing their houses, buildings and fencing that they have erected on the land as well as their livestock, personal properties and garden crops leaving the land vacant, **within 3 months from the date of service of this Judgment**;
 - b) That the Defendants, their families and/or agents are to cease coming onto Mr Toa's coconut plantation land at Navusi custom land on North Malo island, save with his permission;
 - c) That the Defendants jointly and severally are to pay VT500,000 general damages to the Claimants Huiehi Matarave and Ishmael Matarave (VT250,000 to each Claimant) **by 4pm on 20 November 2025**; and
 - d) That costs shall follow the event. The Defendants jointly and severally are to pay the Claimants' costs as agreed or taxed by the Master. Once settled, the costs are to be paid within 28 days.

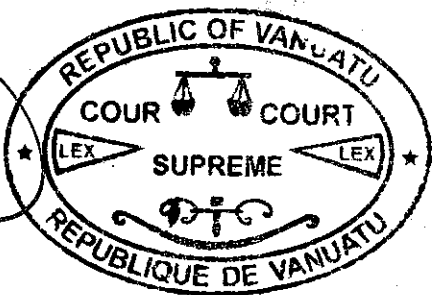


H. Enforcement

37. Pursuant to rule 14.37(3) of the *Civil Procedure Rules* ('CPR'), I now schedule an Enforcement Conference **at 1.10pm on 30 January 2026**, including by video link to the Luganville Court House, to ensure the judgment has been executed or for the Defendants to explain how it is intended to comply with this judgment. For that purpose, this judgment and a summons in Form 27 of the CPR must be personally served on each Defendant and proof of service filed.

**DATED at Port Vila this 20th day of October, 2025
BY THE COURT**


.....
Justice Viran Molisa Trief



The seal of the Supreme Court of Vanuatu is circular. The outer ring contains the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom, separated by two stars. Inside the ring, the words "COUR" and "COURT" are positioned on either side of a central scale of justice. Below the scales, the word "SUPREME" is written in a larger font. Two smaller scales of justice are positioned above and below the word "SUPREME".