

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

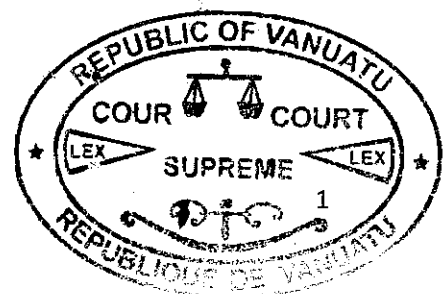
Civil
Case No. 24/3101 SC/CIVL

BETWEEN: Claymore Limited
Claimant
AND: Daniel Kalulu Kalsrap
First Defendant
AND: George Taleo
Second Defendant
AND: Director of Lands
Interested Party

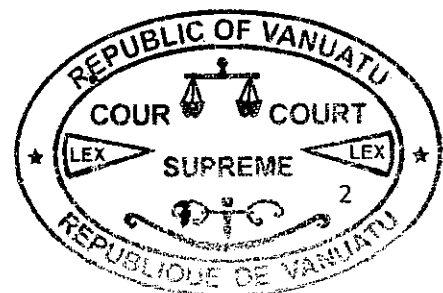
Date of Hearing: 17 October 2025
Before: Justice V.M. Trief
In Attendance: Claimant – Ms V. Muluane
Defendants – Mr S. Kalsakau
Interested Party – no appearance (Mr F. Bong)
Date of Decision: 20 October 2025

**DECISION AS TO DEFENDANTS' URGENT APPLICATION FOR THE COUNTER CLAIM
TO BE DECLARED EFFECTUAL**

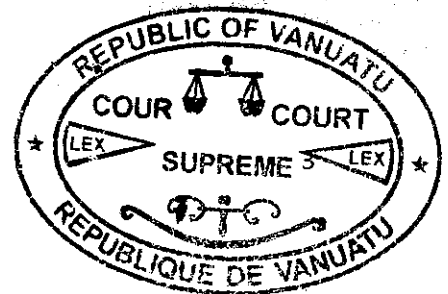
1. On 1 October 2024, the Claimant Claymore Limited filed the Claim seeking a declaration that lease title no. 12/0844/238 located at Honeymoon Beach at Pango on Efate island ('lease 238') is outside the disputed custom area of Eleu-Eraukot, the subject of EIC 03/92 and LAC 1/2009, and permanent restraining orders against the First Defendant Daniel Kalulu Kalsrap and the Second Defendant George Taleo entering onto lease 238 and threatening or intimidating the Claimant and its workers, agents and associates in their conduct as lessee of the lease.



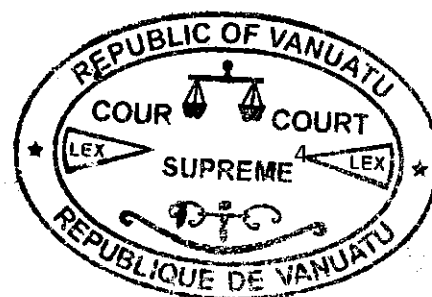
2. The Claim is disputed: the Second Defendant's Defence filed on 14 February 2025, Interested Party's Defence filed on 26 March 2025 and First Defendant's Defence filed on 11 April 2025.
3. The Defendants did not comply with the Court's Orders to file a counter claim. Eventually, on 17 July 2025, they filed a Counter Claim followed on 23 July 2025 by their Urgent Application for the Counter Claim to be declared effectual (the 'Application') and the Sworn statement of counsel Mr Kalsakau in support. The Application is made pursuant to rules 6.5(2)(b)-(d) and 18.11 of the *Civil Procedure Rules* ('CPR').
4. On 29 July 2025, the Claimant Claymore Limited ('Claymore') filed submissions in response opposing the Application. On 17 October 2025, Claymore filed additional submissions in response.
5. Having considered the Application and supporting sworn statement and Claymore's submissions, and having heard counsel, the Application is **granted** for the following reasons:
 - a) The grounds for the Application include that the Defendants were given only one opportunity to file a counterclaim and that there was no warning or notice that the court would be closing the pleadings. That is incorrect – the Court directed the Defendants to file a counter claim in the Orders dated 13 November 2024, 17 April 2025 and 25 April 2025. The Court extended many opportunities to the Defendants by repeating its orders to file their counter claim, in accordance with rules 6.5(2)(b)-(d) of the CPR;
 - b) Mr Kalsakau also referred to rule 4.14 of the CPR which provides for the late filing of documents, including that the Court may decide whether the document is effective for the proceeding. In deciding this, the Court may have regard to the reasons why the document was filed late, any additional expense incurred by the other parties to the proceeding, and the disadvantage to the first party if the late filing is not allowed;
 - c) Rule 18.11 of the CPR is relied on as that permits an order declaring a document to be effectual, thus correcting a procedural irregularity;
 - d) Another ground of the Application is that granting leave to file the counter claim and declaring it to be effectual would be just and fair, and would save the time and expense of having the counter claim brought by separate action and avoid delaying the determination of all substantive issues between the parties;



- e) Finally, that there is still time to manage the matter before trial (at 9am on 11 March 2026) and the Defendants are willing to pay wasted costs of VT10,000;
- f) In his sworn statement in support, Mr Kalskau apologized for his non-attendance at the conference on 27 June 2025, the Minute and Orders of which noted that despite opportunity given, no counter claim had been filed and that further documents to be filed in accordance with those Minute and Orders would close the pleadings. Following this, the Defendants filed the Counter Claim and then, the Application;
- g) Claymore's opposition to the Application includes grounds that no leave was granted to file the Counter Claim, that the pleadings had closed, that there is no undertaking as to damages, no statement of urgency has been filed, and that declaring the Counter Claim effectual would delay the assessment of whether the Defendants have a legal right to occupy the land of Claymore's lease. Wasted costs of VT40,000 were sought if the Application is granted;
- h) Counsel is correct that no leave was granted to file the Counter Claim. However, the Defendants have sought to remedy that by filing the Application, seeking leave to file the Counter Claim and explaining their non-compliance with the Court's Orders. Mr Kalskau's evidence includes his inability to meet both clients on time to finalize the Counter Claim and that it took time to retrace events in 2007-2010, including at the Department of Lands, and verifying them for the purposes of pleading them in the Counter Claim;
- i) Ms Muluane submitted that the explanation for the delay given was unreasonable. However, I consider the explanation in the context of the December 2024 earthquakes in Port Vila and the subsequent after-shocks, and the ensuing closure and relocation of Government offices including the Department of Lands. I have no doubt that it was more difficult to obtain information and documents, including from the Department;
- j) Mr Kalskau has accepted that he failed to attend conferences to assist the Court. He should also have sought extension of time to file the Counter Claim but failed to do so. However, I accept his apology to the Court;
- k) The balance of Claymore's grounds opposing the Application include that the pleadings had closed, that there is no undertaking as to damages, and no statement of urgency has been filed. I consider that in the circumstances of the present matter, that these are matters of form which should not be used to prevent the filing of a Counter Claim in order to put all substantive issues between the parties before the Court in order to ensure finality of litigation and to minimize the use of the Court's resources and the time and expense for the parties;

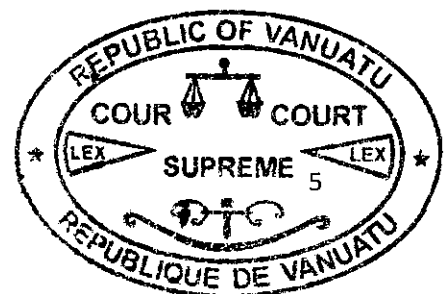


- l) Finally, it was submitted for Claymore that declaring the Counter Claim effectual would delay the assessment of whether the Defendants have a legal right to occupy Claymore's leased land. Ms Muluane also submitted that the Defendants would only have standing to bring the Counter Claim under s. 100 of the *Land Leases Act* [CAP. 163] (the 'Act') if they first establish a legal right under s. 17(g) of the Act, citing *Guan Kai v Tom*, CC 16/3478, thus the Court should first determine whether or not they have such right and only if found to have such right, should their Counter Claim be heard in a separate action;
- m) I do not understand the reasoning in the judgment in *Guan Kai v Tom*, CC 16/3478 to support Ms Muluane's submission in the preceding paragraph;
- n) I do not agree that having the Counter Claim heard in the present matter would delay the assessment of whether the Defendants have a legal right to occupy Claymore's leased land as the Defendants have pleaded their alleged rights of occupation under s. 17(g) of the Act in both their Defence and the Counter Claim;
- o) On the contrary, Claymore is seeking to enforce its right to exclusive possession of its leased land. On the other hand, the Defendants wish to allege that they have an overriding right of occupation pursuant to s. 17(g) of the Act, as well as challenging the obtaining of the registration of lease 238 for fraud or mistake contrary to s. 100 of the Act. It therefore makes sense for the Defendants' challenge to be brought by way of Counter Claim in the present matter, than in a separate action, as this will directly affect whether Claymore continues to have its registered lease;
- p) In addition, having this heard by way of Counter Claim in the present matter ensures that all substantive issues between the parties are before the Court in the one proceeding. This will save time and expense for the parties;
- q) I consider that the disadvantage or prejudice to the Defendants if the late filing of the Counter Claim is not allowed is greater than the prejudice to the Claimant and the State, which reiterates that the Counter Claim be allowed in the present matter;
- r) Ms Muluane submitted that the Defendants do not have standing to bring the Counter Claim under s. 100 of the Act. I disagree. The Court of Appeal in *Naflak Teufi Ltd v Kalsakau* [2005] VUCA 15, cited in *Ashem v Malingy* [2022] VUCA 11 at [42]-[47], took a broad view of the nature of the interest which may be sufficient. That it is not necessary for the party bringing the action to establish that they have a *right* to be registered on the lease;
- s) Accordingly, in the particular circumstances of the present matter, I consider that the Defendants have standing under s. 100 of the Act given their occupation of



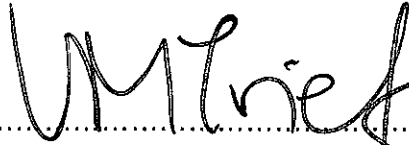
a portion of the leased land, their alleged rights under s. 17(g) of the Act and their seeking the cancellation of Claymore's lease 238 on the basis that the proper procedures for the entry into a lease had not been followed, and in particular, that the important requirement for identification of the custom owners of the land in question had not been satisfied: see *Ashem v Malingy* at [49];

- t) I agree with Mr Kalsakau that his clients pay wasted costs for the delay caused to Claymore – I will so order; and
 - u) For the foregoing reasons, the Application is **granted**, and it is ordered as follows:
 - i. Leave is **granted** for the filing of the Counter Claim; and
 - ii. The Counter Claim filed on 17 July 2025 is **declared** effectual.
6. During submissions, counsel agreed that the Director of Lands should not be named as an interested party but as a defendant. I agree. In addition, the Director should not be named as a party, but the Republic of Vanuatu should be named as the defendant in his place, in accordance with the *State Proceedings Act*.
7. In addition, the registered lessors of the subject lease should also be named as a party. According to the Memorandum filed by the Interested Party on 27 June 2025, the registered lessor of the lease is no longer Lewi Kalpoi but Patrick Kalotan Haines, representing Family Shem Kalotiti and Derrick Narsong Taleo, representing Family Kalko Kai as the lessors. Accordingly, they should also be named as defendants.
8. Accordingly, it is ordered as follows:
- a) The Defendants are to file and serve Amended Counter Claim naming the Republic of Vanuatu as Third Defendant, and the present registered lessors as Fourth Defendants, **by 4pm on 27 October 2025**;
 - b) The "Director of Lands" as Interested Party is **removed** as a party to the proceeding;
 - c) This change in the parties and their entitling will be reflected in future Orders of the Court;
 - d) The Claimant is to file and serve Reply to Defence, if any, and Defence to Counter Claim and sworn statements **by 4pm on 17 November 2025**;
 - e) The Defendants are to file and serve sworn statements **by 4pm on 8 December 2025**; and



- f) Any Claimant's sworn statements in reply to be filed and served **by 4pm on 22 December 2025.**
9. The Defendants must bear the wasted costs caused by their non-compliance with the Court's Orders and late filing of the Counter Claim. They jointly and severally are to pay a total of VT40,000 wasted costs to the Claimant **by 4pm on 20 November 2025.**
10. There is no order for costs for the State.
11. Liberty granted to request Pre-Trial Conference.
12. The parties are to pay trial fees and provide receipt to my secretary Ms Vinabit **by 4pm on 26 February 2026.**
13. As previously ordered, listing for Trial at **9am on 11 March 2026.**
14. I record my appreciation to counsel for their helpful submissions.

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


Justice Viran Molisa Trief

