

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

Civil  
Case No. 23/2051 SC/CIVL

**BETWEEN:** Family Ham Karkar Kalvur  
represented by Isaie Nevur Kalvur

Claimant

**AND:** Tiwok Saul, Simon T. Saul, Roro Saul  
and Analyn Saul

First Defendants

**AND:** Kenneth Saul, Warsal Saul and Sael  
Naru

Second Defendants

**AND:** Fred Asea and Florence Vira

Third Defendants

**AND:** Joachin Takataviti, Simon Taru Ratal,  
Joana Gordin and Narwin Well

Fourth Defendants

**AND:** Chief Willie Saul, Hocka Junior  
Kalwas Saul, Kalisto Saul and Fabrice  
Pikioune

Fifth Defendants

**AND:** Rodolpo Pipite

Sixth Defendant

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**JUDGMENT**

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**AND: John William Army**

Seventh Defendant

**AND: Tom Avock, Savan William and Tari William**

Eighth Defendants

*Date of Trial:* 26 February 2025  
*Before:* Justice V.M. Trief  
*In Attendance:* Claimant – Mr P. Fiuka  
1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> & 8<sup>th</sup> Defendants – Mrs M. Manuariki  
Third Defendants – in person  
Sixth Defendant – no appearance (in person)  
Seventh Defendant – Mr H. Vira, excused  
*Date of Decision:* 3 March 2025

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## JUDGMENT

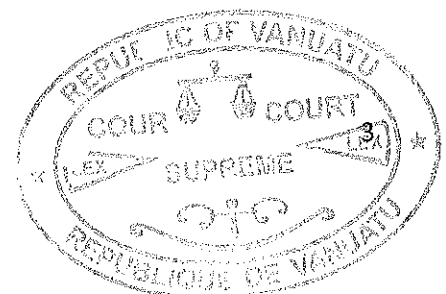
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A. Introduction

1. The Claimant Family Ham Karkar Kalvur represented by Isaie Nevur Kalvur filed the Claim on 3 August 2023 seeking an order for the eviction of the Defendants from Luiakor custom land located at Leklek area at North East Santo. Damages, a permanent restraining order, interest and costs are also sought. Isaie Nevur Kalvur filed sworn statements for the Claimant on 8 August 2023 [**Exhibit C1**] and 10 December 2024 [**Exhibit C2**].
2. Family Kalvur is alleging that based on the following, it is the declared custom owner of Luiakor custom land, which land is covered by an unregistered survey plan and title 04/1834/004:



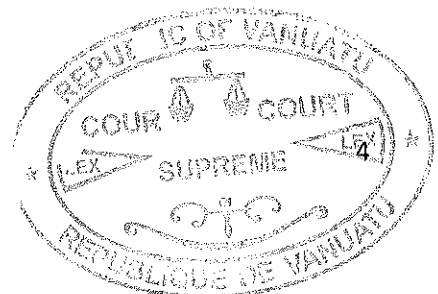
- a) a decision of the East Santo Council of Chiefs and Land Committee dated 18 March 1994 in favour of Ham Karkar in respect of Luiakor custom land set out in a Kastom Ona blong Graon form of the Ministry of Lands [**Exhibit C1 – Attachment “INK2”**]; and
  - b) on an alleged ‘declaration and endorsement’ of the 18 March 1994 decision by the Supe Natavuitano Council of Chiefs dated 10 March 2005 [**Exhibit C1 – Attachment “INK3”**].
3. Family Kalvur also alleged that all the Defendants are residing, gardening and farming on Luiakor custom land without their consent and that despite demand, the Defendants have not vacated the land. They are seeking damages for the Defendants’ logging, milling, and quarry activities on the land.
4. The First, Second, Fourth, Fifth and Eighth Defendants each filed a Defence disputing the Claim. The First Defendants denied that Family Kalvur is the declared custom owner of Luiakor custom land. They alleged that they occupy and have carried out their activities on a different custom land known as L’Vath Thac Smoc (‘LTS’) custom land, not Luiakor custom land, therefore have not trespassed. Tiwok Saul filed a sworn statement for the First Defendants [**Exhibit D1**].
5. The Second, Fourth, Fifth and Eighth Defendants alleged that they occupy LTS land with the First Defendants’ consent and all their activities have been on LTS land, not Luiakor custom land therefore have not trespassed. They denied that Family Kalvur is the declared custom owner of Luiakor custom land. The following filed sworn statements for these Defendants: Kenneth Saul [**Exhibit D2**], Narvin Wells [**Exhibit D3**], Willie D. Saul [**Exhibit D4**] and Savan William [**Exhibit D5**].
6. The Third Defendant Florence Vira filed a defence alleging that she carried out sawmilling on the other Third Defendant Fred Asea’s custom land and with his consent. They stopped their sawmilling and left the land for safety reasons before receiving Family Kalvur’s letter of demand. Ms Vira filed a sworn statement in which she stated that VT32,583 royalty payment has been paid to Abraham Ham [**Exhibit D6**].
7. Despite opportunity given, no defence has been filed for the Third Defendant Fred Asea or the Sixth Defendant Rodolpo Pipite. However, Mr Asea attended the trial. Mr Pipite did not.
8. The Claim was discontinued against the Seventh Defendant John William Army by notice filed at the commencement of the trial. I therefore excused Mr Vira.
9. I will deal with the following issues between the parties:



- a) **Issue 1:** Is Luiakor custom land part of the estate of Ham Karkar Kalvur (deceased)?
- b) **Issue 2:** Is Family Kalvur a declared custom owner of Luiakor custom land based on the decision of the East Santo Council of Chiefs and Land Committee dated 18 March 1994 in favour of Ham Karkar in respect of Luiakor custom land set out in a Kastom Ona blong Graon form of the Ministry of Lands?
- c) **Issue 3:** Is Family Kalvur a declared custom owner of Luiakor custom land based on the 'declaration and endorsement' of the 18 March 1994 decision by the Supe Natavuitano Council of Chiefs dated 10 March 2005?
- d) **Issue 4:** Has Family Kalvur proved that it is in possession of the land on which the Third Defendants have allegedly trespassed?
- e) **Issue 5:** Has Family Kalvur proved that it is in possession of the land on which the First, Second, Fourth, Fifth and Eighth Defendants have allegedly trespassed?

B. **Issue 1: Is Luiakor custom land part of the estate of Ham Karkar Kalvur (deceased)?**

10. It was not pleaded in the Claim that Luiakor custom is part of the estate of Ham Karkar Kalvur (deceased), but this arose from the evidence.
11. Mr Isaie N. Kalvur deposed that he is a son of Ham Karkar Kalvur, is authorised to give evidence in support of their family claim and that he had been granted letters of administration in respect of his late father's estate [copy of the letters of administration in **Exhibit C1 – Attachment "INK1"**].
12. In cross-examination by Mrs Manuariki, Mr Isaie N. Kalvur agreed that he had been appointed as administrator of his father Ham Karkar Kalvur's estate. He asserted that his father's property included Luiakor custom land as depicted in unregistered survey plan bearing title no. 04/1834/004.
13. Mr Isaie N. Kalvur also agreed that there was no registered leasehold title no. 04/1834/004 and added that they at least had a survey plan bearing that title number. Finally, Mr Isaie N. Kalvur agreed that Family Kalvur did not have a certificate of recorded interest in land (colloquially known as a 'green certificate') for Luiakor custom land.
14. A registered leasehold title is part of the personal property of the deceased hence its ultimate ownership can be determined by will or under a grant of administration: *In re Estate of Molivono* [2007] VUCA 22 at p. 2.



15. However, there is no registered leasehold title over Luiakor custom land, as Mr Isaie N. Kalvur accepted in cross-examination.
16. The Court went on to state in *In re Estate of Molivono* at p. 2 that neither a will nor a grant of administration determine the question as to who will succeed to custom land:

*But the fundamental point is that either under a will, or under a grant of administration, what will be affected will only be property which belonged to the deceased person in his own right. It does not and never will deal with custom ownership of land. Articles 73 to 75 of the Constitution could not be more clear and unequivocal. Questions of succession to land in custom on the death of a custom owner will be determined in accordance with custom and in the appropriate place which will be an Island Court or a Land Tribunal. Neither a will nor a grant of administration determine the question as to who will succeed to custom land.*

*(my emphasis)*

17. Accordingly, a grant of administration cannot determine who will succeed to the custom ownership of Luiakor custom land and Mr Isaie N. Kalvur was incorrect in his assertion that his father's property includes Luiakor custom land. On the contrary, custom land is not part of the estate of a deceased person. It therefore does not assist Family Kalvur's case that Mr Isaie N. Kalvur has been granted the administration of his father's estate.
18. I therefore answer **Issue 1**, "No".

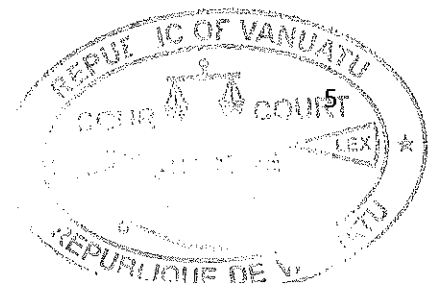
C. **Issue 2:** Is Family Kalvur a declared custom owner of Luiakor custom land based on the decision of the East Santo Council of Chiefs and Land Committee in favour of Ham Karkar in respect of Luiakor custom land dated 18 March 1994 set out in a Kastom Ona blong Graon form of the Ministry of Lands?

19. The Court of Appeal held in *Valele Family v Touru* [2002] VUCA 3 at p. 10 that neither a land committee nor a council of chiefs had any jurisdiction or authority to make a determination of custom ownership which bound claimants who disagreed with their ruling:

*Where a dispute over custom ownership of land arises it is to be expected that those involved will do their best to reach an agreement to settle the dispute, with such assistance as is possible from customary procedures and meetings of chiefs. However, it is clear from the Constitution and from the Island Courts Act that unless everyone who at any time claims an interest in the land is prepared to accept a settlement, the only bodies that have lawful jurisdiction and power to make a determination that binds everyone are the Courts, in the first instance the local Island Court, and if there is an appeal, the Supreme Court.*

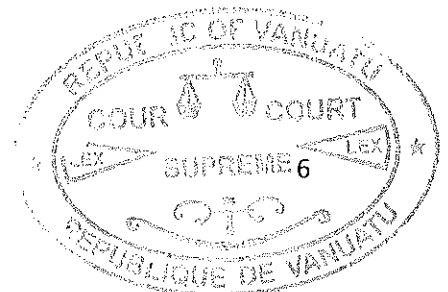
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*It follows that neither the Utalamba Committee and its associated "Area Land Court" or Committee (which was in no sense a court established under the Constitution) nor the council of*



chiefs that sat at Deproma had any jurisdiction or authority to make a determination of custom ownership which bound claimants who disagreed with their ruling.

20. The only bodies who can finally determine custom ownership of land are an island court, or a customary land tribunal, or on appeal by the Supreme Court: Valele Family v Touru; Cevuard v Samsen [2003] VUCA 10; and Colmar v Rose Vanuatu Ltd [2009] VUCA 40 at [51] and Molbarav v Wells [2014] VUCA 13 at [11]-[12].
21. In addition, since art. 78 of the Constitution was amended by the *Constitution (Sixth) (Amendment) Act* No. 27 of 2013 and the *Custom Land Management Act* No. 33 of 2013 came into force on 20 February 2014, land ownership or any disputes over custom land may also be resolved by the customary institutions or procedures set out in the *Custom Land Management Act*: Kunuan v Tamata [2020] VUCA 3 at [10] and [13].
22. Accordingly, the decision of the East Santo Council of Chiefs and Land Committee in favour of Ham Karkar in respect of Luiakor custom land dated 18 March 1994, which is set out in a Kastom Ona blong Graon form of the Ministry of Lands, is not a binding determination of custom ownership therefore Family Kalvur is not a declared custom owner of Luiakor custom land.
23. I therefore answer **Issue 2**, "No".
- D. **Issue 3**: Is Family Kalvur a declared custom owner of Luiakor custom land based on the 'declaration and endorsement' of the 18 March 1994 decision by the Supe Natavuitano Council of Chiefs dated 10 March 2005?
24. Given the East Santo Council of Chiefs and Land Committee decision dated 18 March 1994 was not a binding determination of custom ownership, there was no valid decision for endorsement or so-called declaration by the Supe Natavuitano Council of Chiefs.
25. There are two other matters to deal with.
26. First, Mr Fiuka submitted that the Supe Natavuitano Council of Chiefs, which is the Santo island council of chiefs, made its decision as the highest-level of customary land tribunal for Santo.
27. The Supe Natavuitano Council of Chiefs' decision dated 10 March 2005 was made after the *Customary Land Tribunal Act* [CAP. 271] came into force on 10 December 2001.
28. For the following reasons, I reject Mr Fiuka's submission:



- a) the decision purportedly endorsed by the Supe Natavuitano Council of Chiefs was not a decision by a customary land tribunal but a decision made in 1994 (before the *Customary Land Tribunal Act* came into force ) of a council of chiefs for the purposes of a Ministry of Lands Kastom Ona blong Graon form; and
  - b) the decision of the Supe Natavuitano Council of Chiefs is set out in a letter dated 10 March 2005 purporting to endorse the 1994 decision of the Santo East Council of Chiefs and Land Committee as there has not been a dispute over Luiakor custom land since 1994. It is not a decision made after a hearing of all parties claiming custom ownership of the land.
29. Secondly, as the Supe Natavuitano Council of Chiefs' decision dated 10 March 2005 was not a decision of a customary land tribunal, it was misconceived to bring the Claim under rule 16.25 of the *Civil Procedure Rules* which provides for enforcement of customary land tribunal decisions.
30. For the foregoing reasons, I answer **Issue 3**, "No".

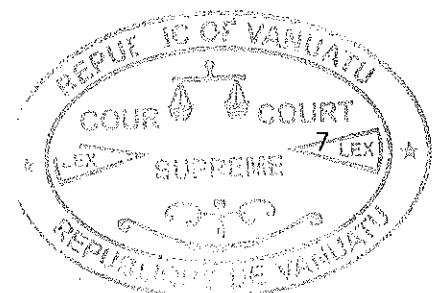
E. **Issue 4:** Has Family Kalvur proved that it is in possession of the land on which the Third Defendants have allegedly trespassed?

31. Although Family Kalvur based its claim on its alleged custom ownership of Luiakor custom land, 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:

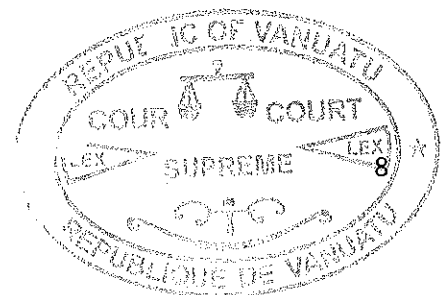
*The only evidence as to the place where the trees were cut down and as to the tenure of the land was from the appellant and his brother who said that they were in possession of the land and were using it. The question of trespass is not about ownership but is about possession. It was undisputed that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

*(my emphasis)*

32. Family Kalvur's case is that the Defendants are living and carrying out the activities complained off on Luiakor custom land. Mr Isaie N. Kalvur agreed in cross-examination that he had the unregistered survey plan bearing title no. 04/1834/004 in **Exhibit C1 – Attachment "INK6"** drawn up based on the description of the land boundaries set out in the East Santo Council of Chiefs and Land Committee decision dated 18 March 1994. He then marked onto the first map in **Exhibit C1 – Attachment "INK6"** the locations of the Defendants' alleged activities, all of which were within the boundaries of Luiakor custom land as shown in the unregistered survey plan title no. 04/1834/004.
33. On the other hand, the Third Defendant Fred Asea stated that he lives on his own land, the boundary of which was shown to him by Mr Isaie N. Kalvur's own father Ham. He stated that his own land is not part of Luiakor custom land but is next door to Luiakor custom land. He was unshaken in cross-examination.



34. Mr Asea cross-examined Mr Isaie N. Kalvur who agreed that the boundary that his father Ham showed Mr Asea was true. Mr Isaie N. Kalvur also agreed that his father Ham showed Mr Asea the boundary when he (Isaie) was only 4 years old.
35. The other Third Defendant Florence Vira also cross-examined Mr Isaie N. Kalvur. He agreed that Mr Asea authorised her to enter the land for sawmilling.
36. There is no evidence contradicting Mr Asea and Ms Vira's accounts. Mr Isaie N. Kalvur himself agreed that the boundary that his father Ham showed Mr Asea is true. He therefore accepted that Mr Asea lives on his own land, which is not part of Luiakor custom land but is next door to Luiakor custom land. Mr Kalvur also accepted that Ms Vira sawmilled on land which Mr Asea authorised her to enter.
37. I therefore answer **Issue 4**, "No". Family Kalvur has not proved that it is in possession of the land on which the Third Defendants have allegedly trespassed.
- F. **Issue 5: Has Family Kalvur proved that it is in possession of the land on which the First, Second, Fourth, Fifth and Eighth Defendants have allegedly trespassed?**
38. Trespass is not about ownership but about possession: *Warput v Santo Veneers Ltd* [2004] VUCA 18 at p. 3.
39. The First, Second, Fourth, Fifth and Eighth Defendants' case is that they live and work on the First Defendants' ancestral land, namely, LTS land, but not on Luiakor custom land.
40. Mr Tiwok Saul was the only witness for those Defendants to be cross-examined. He was unshaken that he lives on LTS custom land, not Luiakor custom land. He stated that there is no custom ownership declaration for LTS custom land as the people of East Santo know that LTS land belongs to Family Saul. He stated that there is no 'green certificate' for LTS custom land because it has never been to court.
41. Mr Saul agreed that the first map in **Exhibit C1 – Attachment "INK6"** shows the area where he and Simon Tiwok logged trees but that he planted the trees that they logged, which were on LTS custom land, which shares a boundary with Luiakor custom land. It was put to him that he logged trees on Luiakor land. He replied that no, it was on LTS custom land and he planted the trees that they logged. He repeated that LTS custom land is next door to Luiakor custom land and added that they and Mr Isaie N. Kalvur's father Ham marked the boundary between the LTS and Luiakor custom lands.





42. Finally, Mr Saul agreed that the Second, Fourth, Fifth and Eighth Defendants live and work on LTS custom land, which is different from Luiakor custom land. He stated that he has lived and worked on LTS custom land since 1973. In re-examination, Mr Saul stated the trees that they logged were trees that he had planted back in 1994.
43. There is no evidence contradicting Mr Saul's account that the First, Second, Fourth, Fifth and Eighth Defendants live on and are in possession of LTS custom land, which is different from, but shares a boundary with, Luiakor custom land.
44. I find therefore that Family Kalvur have not proved that they are in possession of the land on which the Defendants have allegedly trespassed.
45. I therefore answer **Issue 5**, "No".
46. For the reasons given, Family Kalvur has failed to prove the Claim on the balance of probabilities and the Claim must be dismissed.

G. Result and Decision

47. The Claim is dismissed.
48. Costs must follow the event. The Claimant is to pay the costs of the First, Second, Fourth, Fifth and Eighth Defendants as agreed or taxed by the Master.
49. There is no order as to costs in respect of the other Defendants.

DATED at Luganville this 3<sup>rd</sup> day of March 2025  
BY THE COURT

  
.....  
Justice Viran Molisa Trief

