

**BETWEEN: KALMANU BAKOKOTO, THOMAS TAURA  
& MUANA FEANDRE**  
Claimants

**AND: RICHARD KALTONGGA**  
First Defendant

**AND: LAMI SOPE**  
Second Defendant

**AND: RUTAU KALTONGGA**  
Third Defendant

**AND: DAVID BONTY**  
Fourth Defendant

**AND NIAU KAPARA**  
Fifth Defendant

**AND JOTHAM NAPAT**  
Sixth Defendant

*Date of Hearing and Decision:* 13 March 2026 at 2pm.  
*Before:* Hon. Chief Justice V. Lunabek  
*Counsel:* Mr. S. Kalsakau for the First, Second and Third Claimants  
Mr. R. Tevi for the First Defendant  
Second, Third, Fourth, Fifth and Sixth Defendants- not represented

*Date of reasons* 24 March 2026

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## REASONS FOR INTERLOCUTORY ORDERS ISSUED ON 13 MARCH 2026

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### Introduction

1. This is an urgent application for interlocutory orders pursuant to Rules 7.1 (2) and 7.7 of Civil Procedure Rules (CPR) of 2002 filed on 26 February 2026. The urgent application was filed before the proceeding is started. The Court, therefore, informed Counsel that the relevant Rule is Rule 7.5 but not Rules 7.1 (2) and 7.7. The Court heard and issued the interlocutory orders sought on the basis of Rule 7.5 of CPR 2002. The reasons are set out below.

### Application and sworn statement in support

2. The urgent application is seeking an order immediately restraining and prohibiting the defendants, their agents, associates, friends and family from carrying out any further clearing, building, constructing, erecting and developing the road running from Master Bourgeois at Blacksands up to Biritano and Matantopua land until further orders of the Court; and such other orders as may be necessary to maintain the status quo and keep the peace.

3. The application is supported by the following sworn statements filed on 26 February 2026:
  - Kalmanu Bakokoto;
  - Muana Feandre; and
  - Jean Louis Taura
4. A sworn statement of urgency was filed by Counsel for the claimants on 26 February 2026 and an undertaking as to damages was also filed by the claimants on the same date.
5. The application, the sworn statements filed in support and the related documents filed in Court were served on the defendants (see proof of service of Sakiusa Kalsakau filed 4 March 2026).
6. The First defendant, Richard Kaltongga, filed a sworn statement to challenge the interlocutory orders sought by the claimants on 6 March 2026.

#### **Hearing of 6 March 2026**

7. I listed the urgent application for hearing on 6 March 2026. The First defendant, Richard Kaltongga, appeared in person and requested an adjournment for him and other defendants to instruct Counsel. I adjourned the hearing of the urgent application. I directed that the defendants to instruct Counsel by 11 March 2026 and to file and serve any response and sworn statements in support before 13 March 2026. I directed that the hearing of the urgent application and any response be heard on 13 March 2026 at 2:00 pm in the afternoon.

#### **Hearing of 13 March 2026**

8. The First defendant, Richard Kaltonga, filed another sworn statement opposing the interlocutory orders sought in the urgent application 12 March 2026.
9. On 13 March 2026, Mr. Roger Tevi filed a Notice of beginning to act for the First defendant and a response to the urgent application opposing the urgent application for restraining orders. The second, Third, Fourth, Fifth and Sixth defendants were not legally represented and did not file a defence to the urgent application of the claimants.
10. The hearing of the urgent application resumed on 13 March 2026 at 2:00pm. I noted that the urgent application for interlocutory orders was filed pursuant to Rules 7.1 (2) and 7.7 of CPR of 2002. I informed and indicated to Mr. Kasakau and Mr. Tevi that I will deal with the application pursuant to Rule 7.5 of the CPR instead of Rules 7.1 and 7.7 because the urgent application was filed before a Supreme Court claim is filed, thus, before the proceeding is started. Rule 7.5 of the CPR provides: -

***"Application for interlocutory order before a proceeding is started***

7.5 (1) *A person may apply for an interlocutory order before a proceeding has started if:*

- (a) the applicant has a serious question to be tried; and*
- (b) the applicant would be seriously disadvantaged if the order is not granted.*

*(2) The application must:*

- (a) set out the substance of the applicant's claim; and*
- (b) have brief statement of the evidence on which the applicant will rely; and*
- (c) set out the reasons why the applicant would be disadvantaged if the order is not made; and*
- (d) have with it a sworn statement in support of the application.*

*(3) The Court may the order if it is satisfied that:*

- (a) the applicant has a serious question to be tried and, if the evidence brought by the applicant remains as it is, the applicant is likely to succeed; and*
- (b) the applicant would be seriously disadvantaged if the order is not made.*

*(4) When making the order, the court may also order that the applicant file a claim by the time stated in the order"*

**Response to the urgent application for interlocutory orders and sworn statement in support.**

11. In response to the urgent application, the First Defendant opposes the order sought and says as follows: -

- a) The road development is of public interest within the surrounding communities and this is evident from the emails attached to the sworn statement of the First Defendant, Richard Kaltongga in exhibit "RK1a" and exhibit "RK1b" filed on 12 March 2026.
- b) The First claimant lives a long way from the road and his custom ownership claim is yet to be determined by the nakamal pursuant to the Customary Land Management Act No.33 of 2013. The First claimant is actually the original claimant.
- c) The second and third claimants possess registered titles and both of their titles have registered easements for road access. The First defendant says that any damages claimed by these two claimants would mean that they have encroached onto the easements outside the pegs of their registered titles, which was intended for road access. As to that, they cannot.

- d) The First defendant says that he is not the main person behind the construction of this road. Being a community demand, various correspondents have taken place way back in 2024, and 2025 before the actual construction which began early this year.
- e) The sworn statement of the First defendant depicts the fact that the road construction from Black sands up to Matantopua is a government funded project which has nothing to do with the current Prime Minister.
- f) The claimants had no standing to pursue this application as it is misconceived, lacks merit and should be dismissed with costs.

### **Consideration**

12. I have read, perused and considered the urgent application for interlocutory orders, the sworn statements filed in support, the urgent circumstance in the present case, the response; and relevantly, the following findings are made: -

- A. The works of the clearing and widening of the road running from Master Bourgeois at Blacksands up to Biritano and Matantopua land are the subject of this application. These works were undertaken in January 2026.
- B. The works of the cleaning and widening of the road are made on different custom lands in the subject area referred to above and also on leasehold properties of individuals and families including the claimants and the First defendants.
- C. The First claimant, Kalmanu Bakokoto, lives and resides at Biritano, Tanvasoko land which is the custom land of his father. He asserted custom right ownership on the custom land of his father by lodging an application with the Customary Land Management Office signed by the Paramount Chief of Ifira to formalize his position as custom landowner (KB6). He considered that for the time being, his rights as a custom landowner pursuant to Article 73 of the Constitution need to be protected by stopping the work immediately because no prior consultation or consent had been obtained from him. At no time did any of the defendants asked his consent or permission to clear and widen the road into his custom land which means that his land has now reduced in size. The road widening has encroached into his custom land and it was done without his consent, and no compensation has been paid to him for the encroachment.
- D. The Second claimant, Thomas Taura (based on the sworn statement of Jean Louis Taura) resides with his family on the custom land of his wife Tousuru Saurei of Ifira at Matantopua which has been occupied since time immemorial. In 2002, that land was registered as lease title 12/0633/959 to Marcel Nasep

Taura and Jean Louis Taura (JLT1). The defendants have cleared and widened the road by 10 meters and in doing so, they have encroached into their land without their consent causing damage to their property. The defendants (save the sixth defendant) bulldozed down their kitchen, damaged their water pipes. Fruits threes such as mango and banana were removed. Their house is now exposed to the public as their right to privacy has diminished. The defendants placed survey pegs in their family land (JLT2). They told the defendants to stop, the defendants did not stop but they continued with the works under the direction of the First defendant. They went to the police to lodge a complaint. The police told them they could not do anything unless they have a restraining order (JLT3). His family's right as property owners has been infringed by the collective actions of the Defendants. He asked this Court to preserve their rights and to stop the works immediately.

- E. The Third claimant, Muana Feandre, resides at Mantantopua, Tanvasoko, the custom land of his father. His family is the custom landowner of part Matantapua Custom Land. Part of his family land was registered as lease title 12/0633/ 1214 (MF1). The other part of their land is unregistered which the First defendant has built his house. The road in dispute runs across their entire custom land. A sketch map created from google map showed roughly their land. The blue line shows the unregistered part of their land where the First defendant has built his house, and the red line shows a rough idea of their registered lease (MF2). He has taken steps to lodge a claim with the Customary Land Management Office (CMLO) to deal with their custom land dispute. He joined the claimants to complain about the collective actions of the defendants. In January 2026, the defendants started clearing a dirt road that runs through their custom land. This dirt road was the center of a dispute between his late father and the first defendant back in 1970's. The First defendant is the main man behind this recent development of the road. But the first defendant has done so without any of their consent. The defendants have widened the road from 4 metres to 10 meters. The defendants have cleared some of his gardens and placed iron rods in his property as markers for the new road. He has taken photographs of the road when the first to fifth defendants were clearing the road on 19th February 2026 (MF3). He spoke with the fifth defendant who was put in charge of the clearing and told him that they were trespassing and causing damage to his property. He asked the fifth defendant to stop the clearing. The defendants did not stop but they continued with the works. The defendants informed him that the funds to do the works on the road came from the sixth defendant who is the Prime Minister. They got information from the PWD that the Government of the Republic of Vanuatu was not responsible for the road works. He was therefore concerned that a Prime Minister is allowing development to take place on custom land without first consulting the custom owners. He posed the question:

who is responsible for the damage that they sustained? There has been no notice given to them that their land will be taken from them to build this road and no compensation has been received. He is reliably informed that the defendants are now calling on the Government of Vanuatu to make this road permanent by paving it. He said until such time as they have consulted and obtained his consent, he requested that the Court grant them the restraining order.

- F. The First defendant, Richard Kaltongga, was in total support of the construction of a proper road, for the public interest and that there were registered leases which included a registered easement provided for the road. He only came on the road construction works scene when the clearing works had reached an area where he had two leases (RK5). He has recruited the services of CTF Surveyors to come to the road construction site and mark out the boundary of his lease titles 12/03/33/1036 and 12/0633/1037 (RK6). The boundary points of leases 12/0633/1036 and 12/0633/1037 have been pegged and marked and the construction of the road has infringed on his two titles because Thomas Taura and Muana Feandre and their relatives and agents have made gardens, and built kitchens and temporary toilets on the area designated and registered as easement for road access (KR6c).
- G. The statements of the claimants (Kalmanu Bakokoto and Muana Feandre) and that of the first defendant (Richard Kaltongga) showed that these two claimants had confronted the first defendant on the works on the clearing and widening of the road on their custom land and/or leased land. There were heated arguments between them about the road construction. Whether or not the first defendant is the main man behind the construction of the road, the fact is that the First defendant played a substantive role in the project of the construction of that road. The exchanges of emails ("RK1a") "RK1b"; "RK1c" "RK2" illustrated his role with one loane Simon Omawa.
- H. The evidence from the claimants is that the sixth defendant advanced the funds for the works on the clearing and widening of the said road on January 2026. The first defendant seemed to support that evidence when he stated that the role of the sixth defendant as the Prime Minister and leader of the Government is to approve applications for funding for approved projects under the community development fund under which this road qualifies.
- I. Whether this clearing and widening of the road project carried out in January 2026, was a government project, the material evidence suggested otherwise.
- 1/ The first material evidence is the letter of Mr Kalsakau of 21st January 2026 to the Director Public Works, Department of Public Works (MIPU) (MB2) enquiring to the

following effect, as contained in that letter which is now reproduced for ease of reference:

Our Ref: General  
Director of Public Works  
Department of Public Works  
MIPU  
Port Vila  
21 January 2026

Dear Sirs,

**CLEARANCE OF ROAD AT BIRITANO**

I act for Kalmanu Bakokoto (my client).

My client has instructed me that there is currently road being undertaken by your department at Biritano, South Efate and that the works include road widening. He asserts that he was not consulted on this work and that the widening of the road is encroaching on his land at Biritano.

We therefore request that prior to any road work you consult the custom landowner. Note also that my client is in the process of formalizing his custom ownership rights with the nakamal of Ifira.

Moreover, we would like to know whether my client will be compensated for damage to his land including the removal of his land without compensation. As you will appreciate, the Constitution provides that all land is owned by the custom landowners and their descendants. The State cannot deprive the custom landowners of their land unjustly. We consider that your actions, of failing to consult and obtain consent, including the lack of just compensation, are a breach of my client's Constitutional rights.

Until my client's queries are answered, we request that the works be halted and stopped immediately.

Accordingly, we put you on notice that if the work continues without you first obtaining my client's permission, then we hold instructions to sue.

By copy of this letter, the Attorney General is notified of the intention to sue pursuant to the *State proceeding Act*.

Do let us know if you require any further information or assistance by emailing me at [sakzlawfirm@gmail.com](mailto:sakzlawfirm@gmail.com)

Yours faithfully

**SAKZ LAW FIRM**

**SAKIUSAK KALSAKAU (JSP-BAL/LLB)**

Principle Manager

**CC Attorney General**

- 2/ The second material evidence is the response letter from the Director of the Public Works, Mr. Andre Iatipu dated 23 January 2026 which is self-explanatory (KB3). That letter is reproduced here for ease of reference:

Date: 23<sup>rd</sup> January 2026  
Mr. Sakiusa K. Kalsakau  
Principal Manager  
Sakz Law Firm  
Port Vila, VANUATU  
21 January 2026

Dear Sirs,

**CLEARANCE OF ROAD AT BIRITANO**

We acknowledge receipt of your letter dated 21 January 2026, reference: General, concerning the captioned matter. The Public Works Department (PWD) categorically denies any knowledge of or involvement in the engagement of the works contractor for undertaking clearance and road-widening works at Biritano.

PWD was not, and has never been, a party to the works in question. Any activities currently being undertaken at the location are the result of a private contracting engagement arrangement entirely outside the mandate, authority, or participation of PWD.

Yours sincerely,

ANDRE IATIPU

DIRECTOR

Public works Department

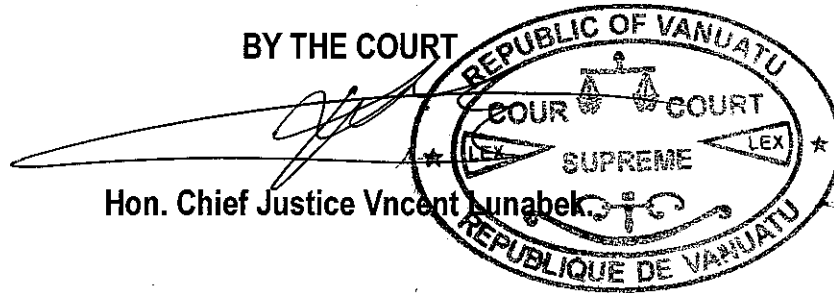
Cc: Mr. Henry Worek – Director General MIPU  
Attorney General, Port Vila

13. Based on the above considerations, applying Rule 7.5 (3) (a) (b), the Court granted the interlocutory orders sought on 13 March 2026 by the claimants because the Court is satisfied that under Rule 7.5 (3) (a) the applicants (claimants) have a serious question to be tried and, if the evidence brought by the applicants remains as it is, the applicants are likely to succeed; and under Rule 7.5 (3) (b) the applicants would be seriously disadvantaged if the order is not made. I also directed the applicants (claimants) to file their Supreme Court claim on 27 March 2026 and set a return date for conference on Thursday 2 April 2026 at 9: am.

14. The suggestions by the First defendant and in response to the claim that the claimants do not have standing, is rejected. The claimants have a serious question to be tried, and they have standing based on the material evidence filed.
15. The costs are reserved.
16. These are the reasons of the decision the Court made on 13 March 2026.

**Dated at Port Vila, this 24 March 2026.**

**BY THE COURT**



**Hon. Chief Justice Vincent Lunabek**