

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

Civil  
Case No. 24/1184 SC/CIVL

**BETWEEN:** Thele Toto representing Family Crero  
Claimant

**AND:** Bill War Obed Toto as Administratrix of  
the Estate of Obed Toto (deceased)  
First Defendant

**AND:** Bill War Obed and Family, Peter Obed  
and Family, William Serec and Family  
Second Defendants

Date of Trial: 12 March 2026  
Before: Justice V.M. Trief  
In Attendance: Claimant – Mr L. Tevi  
Defendants – Mr R. Willie  
Date of Decision: 18 March 2026

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**JUDGMENT**

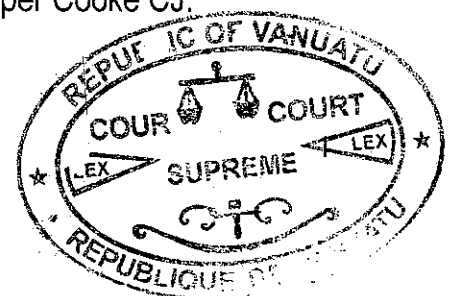
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A. Introduction

1. By this Claim, the Claimant Thele Toto representing Family Crero filed the Claim alleging that he and Family Crero are being prevented from using the family land at Champagne Beach on the eastern coast of Santo island.

B. Background

2. In 1987, the Supreme Court in Land Appeal Case No. L6/85 determined the custom ownership of the land described by pre-Independence titles 553 and 632, within which Champagne Beach at East Santo is located, in favour of the parties to that appeal Obed Toto and Philip Pasvu: *Toto v Pasvu* [1987] VUSC 12 per Cooke CJ.



3. In 1995, the Supreme Court per Kent J summarised his findings in *Noel v Toto* [1995] VUSC 3, relevantly, as follows:

SUMMARY

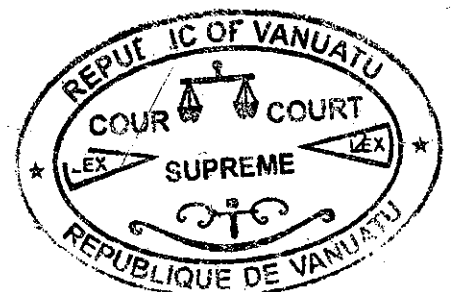
1. *The effect of the decision of Cooke CJ in Land Appeal Case L6/85 is that Obed Toto is the named custom owner of the land described at pages 8 and 9 of the judgment in that case, as representative of the descendants of the late Crero Toto.*
  2. *All of the children of the late Crero Toto have equal rights as joint custom owners of the land referred to.*
  3. *All of the children of the late Crero Toto are entitled to share equally in the profits derived from payments made on behalf of cruise ships being granted rights to visit the land known as Champagne Beach. (Nothing in this judgment affects the entitlements of Philip Pasvu with respect to the land declared by Cooke CJ to be owned by him.)*
4. Justice Kent made the following declarations in relation to Champagne Beach in *Noel v Toto* [1995] VUSC 3:

1. *I declare that Obed Toto is custom owner of the land found in Land Case L6/85 to be his, as representative of the descendants of Crero Toto deceased.*
2. *The Applicant, John Noel and those who he represents, are by reason of the decision in Land Appeal Case L6/85, custom owners of the land.*
3. *The children of the late Crero Toto are entitled to share equally in the "unearned income" from the land.*
4. *The applicant is entitled to an account as to the profits from the land since the date of the decision in Land Appeal Case L6/85.*

5. In the last paragraph of his judgment, Kent J said:

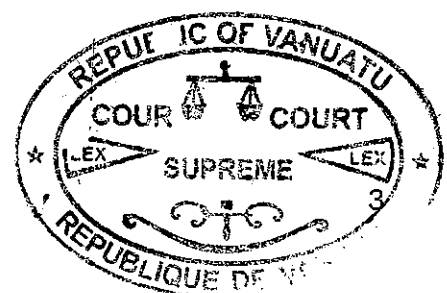
*As to the management of the land, I think that the parties should quickly make their peace with one another. It may be that that will involve some custom arrangement between them. I think that all parties should act reasonably with respect to this matter, so that any problems as to future management can be avoided. The parties have indicated that they have some proposals for the future and I trust that they can reach agreement. By them all working together in a spirit of co-operation, they will all benefit and derive full satisfaction from their custom land.*

6. In 2006, the Court of Appeal determined an appeal against a decision striking out a claim in relation to access to and use of Champagne Beach: *Noel v Champagne Beach Working Committee* [2006] VUCA 18.



C. The Pleadings

7. In the Claim filed on 15 April 2024, the Claimant alleges that the Defendants are preventing him and Family Crero from using the family land at Champagne Beach.
8. He is seeking orders permanently restraining the First Defendant Bill War Obed as administrator of the estate of the late Obed Toto and the Second Defendants Bill War Obed and Family, Peter Obed and Family, and William Serec and Family from preventing the Claimant from also benefiting from the family land at Champagne Beach. Also sought are orders that the Claimant may enter at any time on the family land and undertake developments there, permanent restraint on damaging the Claimant's developments, and VT3,000,000 damages.
9. The Claim is disputed: Defence and Counter Claim filed on 23 August 2024, and Memorandum filed on 4 March 2026.
10. By the Counter Claim, the Defendants are in turn seeking a permanent injunction against the Claimant, damages, an order for equitable contribution of VT49,710,856, costs and further Orders the Court deems just.
11. The Defendants admit that in 1987, the Supreme Court determined the custom ownership of the family land but deny that Obed Toto was at that time representing Family Crero. They also deny that they now occupy the custom land belonging to Family Crero Toto and that they have prevented the Claimant's attempts to enter the land, occupy it and work on the land. They deny that they alone are benefiting from the land because the Claimant also received cruise ship income, which was shared by South Sea Shipping Limited ('SSSL') to all parties hence the Claimant has benefited from the family land.
12. The Defendants also allege in the Counter Claim that they are the biological sons of the late Obed Toto who is the declared custom owner of title 553 and 632, whilst the Claimant is their half-brother. They allege that the Claimant has continued to unlawfully interfere with their enjoyment of the land given to them by their late father Obed Toto including bringing frivolous Court proceedings such as the present matter and continuously disturbing day visitors and tourists to Champagne Beach. They pleaded that their losses include the loss of income from day visitors, loss of enjoyment of the land, and the cost of engaging legal counsel.



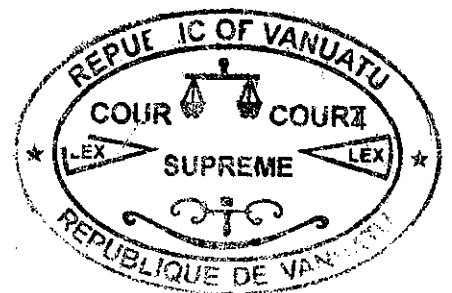
13. In the Reply to Defence and Counter Claim filed on 16 April 2025, the Claimant alleges that Crero Toto and his descendants are the land owners, not Obed Toto, and that Obed Toto was the representative of Crero Toto Family and so the Claimant has legal rights as custom land owners to enter the land whenever they want and to develop the land. He alleges that he is a biological son of Crero Toto, unlike Obed Toto who was not a biological son of Crero Toto.
14. The issues between the parties include the following:
- a) Whether or not the Claimant has the right to enter on, use, work, develop or benefit from the family land which includes Champagne Beach?
  - b) Whether or not the Defendants occupy the family land and have prevented the Claimant from entering on, working or benefiting from the family land?
  - c) Whether or not the Claimant is entitled to VT3,000,000 damages?
  - d) Whether or not the Claimant has interfered with the Defendants' use of the family land?

D. Evidence

15. The Claimant relied on his Sworn statement filed on 15 April 2024 [**Exhibit C1**] and 26 July 2024 [**Exhibit C2**].
16. The Defendants relied on the Sworn statement of Mr Bill War Toto filed on 12 July 2024 [**Exhibit D1**] and 23 August 2024 [**Exhibit D2**].
17. Both witnesses were cross-examined.

E. Issue 1: Whether or not the Claimant has the right to enter on, use, work, develop or benefit from the family land which includes Champagne Beach?

18. Mr Willie submitted that this a family matter and should be sorted out within the family itself. However, the Claim has been filed. The Court needs to determine the Claim.
19. The Defendants admit that in 1987, the Supreme Court determined the custom ownership of the family land but deny that Obed Toto was at that time representing Family Crero.
20. In reply, the Claimant alleged that Crero Toto and his descendants are the land owners, not Obed Toto, and that Obed Toto was the representative of Crero Toto



Family and so the Claimant has legal rights as custom land owners to enter the land whenever they want and to develop the land.

21. What custom ownership declaration has been made?
22. In the 1987 judgment in Toto v Pasvu, Cooke CJ declared as follows:

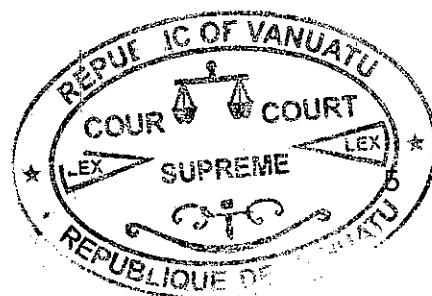
*I therefore declare that the Appellants are **the true custom owners of title 553 and 632 as edged in black on the attached survey plan** marked A and that portion of title 632 to which the Appellant is entitled as custom owner is edged in red on the plan marked B together with that portion of land G to H and the land edged in black with blue stripes.*

*I further consider that the Respondent has some rights in the area through his grandfather Andrew and declare that he is the true custom owner of the area edged in green on the same survey plan marked A. That portion of Champagne Beach west of the Nabanga tree belongs to the Respondent. The remainder to the east as marked in black to the Appellants. The portion edged in green and striped in blue is not to scale. This will be completed by the Survey Department.*

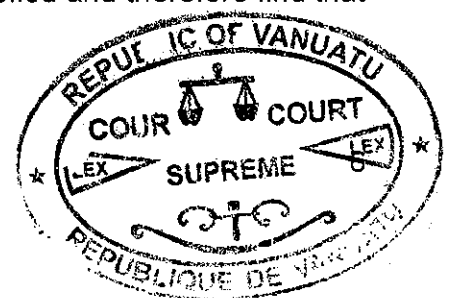
*Schedule A is the description of Obed Toto land and Schedule B is the description of Philip Pasvu land.*

23. The first of the 1995 Supreme Court declarations in Noel v Toto is that Obed Toto was the custom owner of the land found in Land Case L6/85, "as representative of the descendants of Crero Toto deceased". Accordingly, I reject the Defendants' case to the contrary.
24. Another of the 1995 Supreme Court declarations in Noel v Toto is that the children of the late Crero Toto are entitled to share equally in the "unearned income" from the land.
25. Then in 2006, the Court of Appeal in its reasons for judgment in Noel v Champagne Beach Working Committee held as follows:

*Finally, we once more commend to the parties the sentiments expressed by Kent J about future co-operation with regard to the Beach. Obed Toto needs to recognise that he does not have sole ownership and control of the Beach but as eldest son he is the **representative** of the custom owners who include **all** Crero Toto's descendants, male or female. They all need to accord to him the respect that that position entitles him to. Otherwise all parties may find that the goose stops laying its golden eggs and cruise ships will find new and different destinations.*

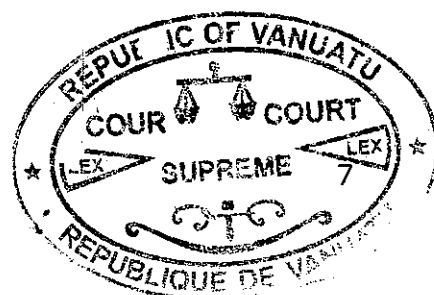


26. There is no evidence contradicting Mr Thele Toto's evidence that he has brought the Claim on behalf of Family Crero [**Exhibit C1**]. Mr Thele Toto deposed that he and Mr Obed War Toto are both biological sons of Crero Toto: Obed Toto from Crero Toto's first wife and himself from Crero Toto's second wife [**Exhibit C1**]. Mr Obed War Toto accepted in cross-examination that he and the Claimant are related. I accept and find that Mr Thele Toto has brought the Claim on behalf of the rest of Crero Toto's descendants against the Defendants who are three sons of Obed Toto (deceased) and their families.
27. The Court of Appeal stated in its reasons for judgment that the custom owners include all Crero Toto's descendants, male or female.
28. It is not for the Court in the present matter to decide whether certain persons are biological children or half-siblings etc. The Court of Appeal has already confirmed that the custom owners include all Crero Toto's descendants, male or female.
29. I therefore conclude and find that Mr Thele Toto and Family Crero are descendants of Crero Toto therefore are custom owners of the family land in the same manner that the Defendants are. Accordingly, Mr Thele Toto and Family Crero have the right to enter on, use, work, develop or benefit from the family land which includes Champagne Beach. My answer to **Issue 1** is, "Yes."
- F. **Issue 2: Whether or not the Defendants occupy the family land and have prevented the Claimant from entering on, working or benefiting from the family land?**
30. The Defendants denied that they now occupy the custom land belonging to Family Crero Toto.
31. Mr Thele Toto confirmed in cross-examination that the Claimant used to live on the family land. He rejected the proposition that they left following an assault of Obed Toto. However, whether an assault occurred in the past is not an issue for determination in the present matter.
32. Mr Thele Toto also deposed that only the Defendants live on the family land. He stated that Obed Toto and his family have not allowed anyone in the rest of the family to live on, work and develop the family land as well [**Exhibit C1**]. He said that the Court of Appeal judgment is clear but the reality is that only Defendants are enjoying and benefiting from the Family Crero custom land [**Exhibit C2**]. Mr Bill War Obed confirmed in cross-examination that Obed Toto's children are the only ones to live on the family land whilst the Claimant lives at Kole. I am satisfied and therefore find that

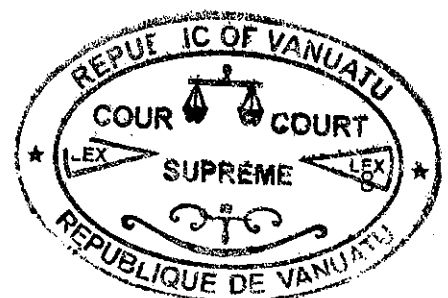


the Defendants live on and occupy the custom land belonging to Family Crero Toto, of which the Claimant is a part.

33. Have the Defendants prevented the Claimant from entering on, working or benefiting from the family land?
34. The Defendants denied that they have prevented the Claimant's attempts to enter the land, occupy it and work on the land. Mr Thele Toto deposed that Obed Toto and his family have not allowed anyone in the rest of the family to live on, work and develop the family land as well [Exhibit C1]. Mr Bill War Obed deposed that Thele Toto and his brothers already have their land at Kole village under the agreement that Crero Toto had with the uncle of his third wife, from Kole village. He stated that his father Obed Toto has divided the Champagne Beach part of their land amongst his 4 sons whereas the Claimant and family are only entitled to cruise ship income as set out in Kent J's judgment [Exhibits D1 & D2]. He stated that following the judgments in Land Appeal Case L6/85, the custom land title 553 and 632 belong only to Obed Toto and family [Exhibits D1 & D2].
35. The Defendants denied that they alone are benefiting from land because the Claimant also received cruise ship income from SSSL. Mr Thele Toto accepted in cross-examination that the Claimant has received a share in the cruise ship income that SSSL distributed to the parties. However, the present matter is not concerned with the sharing of cruise ship income. The issue raised is whether the Defendants are preventing the Claimant from entering on and benefiting from the family land.
36. In cross-examination, Mr Bill War Toto stated repeatedly that any family member who wished to take up occupation of the family land should have approached Obed Toto (deceased) for approval during his lifetime. Mr Obed War Toto's evidence is that now that his father, Obed Toto, has passed away, that he or the Defendants cannot make a decision. I understood him to mean that he and his brothers (the Defendants) cannot share or allocate any of the family land to the Claimant nor allow the Claimant to enter onto the land.
37. However, art. 73 of the Constitution provides that, "*All land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants.*"
38. The Court does not have jurisdiction to vary or adjust existing customary ownership rights, as the Court of Appeal held in *Tura v Taftumol Family* [2024] VUCA 20 at [29], a matter concerning secondary rights, but the same principle applies also to primary rights.



39. Mr Willie submitted that the Claimant has failed to prove any threats or intimidation – only that some mothers were threatened, although no mothers have given evidence hence that portion of Mr Thele Toto's evidence is hearsay. I understood that part of Mr Thele Toto's evidence in cross-examination as him giving an example of how the Defendants have simply not allowed the Claimant onto the family land [what he deposed to in **Exhibit C1**]. They have not allowed mothers from outside the Defendants and immediate families to make stalls and/or sell to visitors and tourists at Champagne Beach. I consider that Mr Thele Toto, as representative of the wider family in the present proceeding, can give that evidence; I reject the submission it is hearsay. I accept Mr Thele Toto's evidence.
40. For the foregoing reasons, I am satisfied on the evidence and find that the Defendants have prevented the Claimant from entering on, working or benefiting from the custom land belonging to Family Crero Toto. I answer **Issue 2**, "Yes."
41. It follows that the Claimant is entitled to restraining orders against the Defendants to prevent their hindering or blocking the Claimant's entry on, use, work and benefiting from the family land as well as a permanent restraint on damage to the Claimant's property.
- G. **Issue 3: Whether or not the Claimant is entitled to VT3,000,000 damages?**
42. The Claimant has not adduced any evidence to justify a damages award of VT3,000,000. I decline to order damages in the Claimant's favour.
- H. **Issue 4: Whether or not the Claimant has interfered with the Defendants' use of the family land?**
43. The Defendants allege that the Claimant has continued to unlawfully interfere with their enjoyment of the land given to them by their late father Obed Toto including bringing frivolous Court proceedings such as the present matter and continuously disturbing day visitors and tourists to Champagne Beach. They pleaded that their losses include the loss of income from day visitors, loss of enjoyment of the land, and the cost of engaging legal counsel.
44. The present matter is not frivolous. It concerns the enforcement of Court decisions as to custom ownership of land. As I have found, the subject custom land was not owned by Obed Toto in his own right. It is custom land belonging to Family Crero Toto.



Accordingly, there is no basis to the Counter Claim. It must be dismissed. My answer to **Issue 4** is, "No."

I. Result and Decision

45. Judgment is **entered** for the Claimant and it is **ordered** as follows:

- a) The Defendants are hereby **restrained** from hindering or blocking the Claimant's entry on, use, work and benefiting from the custom land described by pre-Independence titles 553 and 632 in Land Appeal Case L6/85 in the Supreme Court, within which Champagne Beach on the east coast of Santo island is located; and
- b) The Defendants are **restrained** from damaging the Claimant's property or developments erected, built or constructed on the custom land described by pre-Independence titles 553 and 632 in Land Appeal Case L6/85 in the Supreme Court, within which Champagne Beach on the east coast of Santo island is located.

46. The Counter Claim is **dismissed**.

47. Costs must follow the event. The Defendants are to pay the Claimant's costs fixed summarily in the sum of VT300,000 **by 4pm on 16 April 2026**.

**DATED at Luganville this 18<sup>th</sup> day of March, 2026  
BY THE COURT**

  
Justice Viran Molisa Trief

