SOME RECENT INTERESTING CASES RELATING TO LAND IN VANUATU

DON PATERSON*

INTRODUCTION

The purpose of this Article is to draw attention to a number of cases relating in various ways to land which were decided or reported in 2018 and 2019. They are all of interest, and one would like to be able to say that there is a thematic linking that connects them all.

Regrettably it is very difficult to find any common thread that links these cases. It is not even possible to say that they all relate to custom land. The one thing that they do seem to have in common is that they all seem to have arisen out of lengthy litigation.

They begin with the decision of the Supreme Court dismissing a constitutional petition claiming compensation for custom land owners whose land within the Port Vila boundary was declared by the Minister of Lands to be public land in 1981. An appeal from this decision has been filed and is due to be heard in the February 2020 session of the Court of Appeal, but whether it will proceed is, at the time of writing, uncertain, because an application by the appellants for leave to adduce at this appeal further unheard evidence was dismissed by the Court of Appeal in the closing days of 2019.

Then there are two sets of cases which relate to the cancellation of leases which had been registered. The first set of cases relates to a large number of leases of State land which a Minister of Lands had in 2012 instructed should be granted on especially favourable terms to staff of the Department of Lands. The second set of cases relate to leases which had been granted by the same Minister in circumstances which indicated that they had been obtained by mistake and/or fraud. These cases indicate that, at least for the people of

*Emeritus Professor, School of Law, University of the South Pacific.

Vanuatu, the Torrens system of land registration which has been adopted does not have the dire consequences that have been remarked in other South Pacific countries.

The last sets of cases all draw attention to the distinction between the rights of custom owners of land and the rights of people who hold permanent rights of occupation and user to the same land. The first group of cases describe and illustrate the difference between custom owners and custom occupiers. The second group of cases discuss the authoritative effect of the certifications of custom ownership which the National Coordinator of Land Management is authorised to issue, and the third set of cases relate to the bitter conflict that developed between the custom owner and the permanent occupiers of land in Tanna.

All of these events demonstrate aspects which it is hoped that the reader will consider of interest with regard to land in Vanuatu. The points of interest are not narrow "practitioner points" which appeal only to the specialist land conveyancer. They are points of wider social implications, and it is hoped that the reader will find them of interest.

UNSUCCESSFUL CLAIMS FOR COMPENSATION BY OWNERS OF CUSTOM LAND THAT WAS DECLARED TO BE PUBLIC LAND IN 1981

When the Land Reform Act[1] was first enacted in 1980, shortly before independence, it contained a section, section 12, which authorized the Minister of Lands to declare that land owned by custom owners was thenceforth Public Land owned by the Government. That section, which is now repealed, read as follows: "The Minister may at any time on the advice of the Council of Ministers and after consultation with the custom owners declare any land to be Public Land."

Early in 1981 the Minister of Lands made a declaration that all the land within the boundary of Port Vila was public land (Land Reform (Declaration of Public Land) Order No26 of 1981). Section 11 of the Land Reform Act stated that the Government shall agree

[1] *Land Reform Act* 1980 CAP 123.

compensation with the custom owners, but in fact no compensation was paid in 1981 for the land of Port Vila. This land was claimed by villages of Erakor, Ifira and Pango, and, not surprisingly, the Opposition UMP Party, one of the main leaders of which lived in Erakor, made it a feature of their election campaign in 1991. When the UMP party secured victory at the elections in 1991, and the leader, Mr. Carlot Korman, who lived in Erakor, became the Prime Minister, it was to be expected that serious steps would be found to find money to compensate the custom owners from the three villages. The sum of VT275 million became available to the Government and was paid out to the three villages.[2] An agreement was made with representatives of each village, each agreement dated 17 July 1992, providing payments of compensation of VT110,000,000 each to Erakor and Ifira, and VT55,000,000 to Pango.

No exact valuation of the Port Vila land was made at the time of these payments, and at the time that the Minister made the declaration in 1981 figures in the region of VT2billion had been talked about. Not surprisingly then, it was not long after the compensation payments were made and accepted in 1992, grumblings started to be heard by members of the three villages that the compensation that had been paid was not enough.

Eventually proceedings were launched by landowners of Erakor, which made their way to the Court of Appeal, but they were unsuccessful*: Kalomtak Wiwi Family v Minister of Lands*.[3] A similar fate befell the proceedings that were launched about 10 years later by a landowning family on Ifira Island: *Michel Kalnawi Kalourai v Republic of Vanuatu*.[4] In both cases one of the critical defenses was that the proceedings were barred by lapse of time under the Limitation Act[5].

Petitions for breaches of Constitutional rights are not stated to be subject to the time bars imposed by the Limitation Act, and a constitutional petition was launched in 2017 by members of each village claiming that there had been a breach of the Constitution, by way

[2] See the judgment of the case *Kalourai v Republic of Vanuatu* [2015] VUCA 4, which refers to the said agreement (Para 11).
[3] *Kalomtak Wiwi Family v Minister of Lands* [2005] VUCA 29.
[4] *Kalourai v Republic of Vanuatu*, above n2.
[5] *Limitation Act* 1991 CAP 212

of an "unjust deprivation of property" which is prohibited by Article 5 (1) (j) of the Constitution.[6]

This claim was supported by Mr. Korman who gave evidence that the payments that were made in 1992, were not intended to be full payments of compensation but only the first part of the compensation.[7] He said that he had made it clear at the time that the Government would revisit the question of compensation for Port Vila land, and that more was to come.

On 14 September 2018 the Supreme Court gave judgment, dismissing the petition, and held that there had been no breach of the Constitution: *Kalsaf Tangraro. & ors v The Republic of Vanuatu* [2018] VUSC 198. The Constitution required that compensation be paid for the land, and compensation had been paid. The judge, Wiltens J, summarised his views thus:

> *"The clear evidence which I accept is that the chiefs and representatives of all 3 claimant villages signed the 1992 Agreements – they agreed on behalf of their communities to accept, some 11-12 years after the event, the comparatively small amount the Government could afford to pay by way of compensation. The sums involved were reached after negotiations, and by agreement. Mr. Kapapa submitted that the payments related to the loss of enjoyment of the land between 1981-1992, due to a strained interpretation of the words of the 1992 Agreement. I do not accept that interpretation. The wording of the Agreement mainly followed the wording of section 11. I am satisfied the payments were for loss of land- compensation for the compulsory acquisition. It follows that the constitutional application must fail. There is no breach by means of unjust deprivation of property, as compensation was required by law to be paid, and was actually paid".*[8]

[6] Article 5(1) of the *Constitution of Vanuatu*
[7] See para 55 of the judgment of *Kalsaf Tangraro. & ors v The Republic of Vanuatu* [2018] VUSC 198.
[8] *Idem*, paras 120-122.

Costs

In the course of his judgment, the judge observed that there had been two separate previous claims brought by other members of the villages, and both of these proceedings had been dismissed, but this time the proceedings took the form of an application for breach of the Constitution. Since this was the third attempt to re-litigate basically the same issue; that the compensation paid for Port Vila was inadequate, the judge considered that, in relation to costs, "a deterrent aspect needs to be considered so as to discourage further such claims"[9], and counsel were invited to suggest an appropriate order for costs, within 10 working days.

Appeal and Application to Adduce Further Evidence

Undeterred by the above decision of the Supreme Court, the claimants lodged an appeal to the Court of Appeal, which was originally set down for hearing on 11 November 2019. The appellants then lodged an application for leave to adduce further evidence at that appeal. Counsel for the appellants, who was different from counsel in the Supreme Court, applied for leave to call three persons who had not been called in the Supreme Court: Mr. Katlabang, Mr. Kalwatmau and Mr. Sope. The Court of Appeal declined to give leave:

> "*The evidence being sought to be called is evidence of events which occurred prior to the trial and was available. When put to Mr. Boar he conceded the point. He submitted that the reason for applying was that the appellants' former counsel refused to present more evidence at the trial. The appellants are bound by decisions taken by their counsel on how the case is to be run. In our view there are no special grounds why the evidence should be admitted at this stage. Mr. Katlabang, Mr. Kalwatmau and Mr. Sope were available to be called to give evidence at the trial but counsel opted not to call them*".[10]

[9] *Idem*, para 134.
[10] *Kalsaf Tangraro. & ors v The Republic of Vanuatu* [2019] VUCA 73, para 9.

The Court of Appeal noted that "the substantive appeal has been adjourned to the February session in 2010."[11] Whether the substantive appeal will in fact proceed at that time in the light of the inability to adduce further evidence, will hopefully be recorded in a future issue of this Journal.

CANCELLATIONS OF LEASES OF STATE LAND GRANTED ILLEGALLY TO STAFF OF DEPARTMENT OF LANDS

On 3 August 2012, the then Minister of Lands, Mr. Steven Kalsakau, gave instructions to the Acting Director of Lands to find available pieces of State land and allocate them to staff of the Department of Lands at half the usual premium and with other very advantageous terms. Once this became public knowledge, there was an outcry, and eventually proceedings were brought by the local committee of Transparency International challenging the actions of the Minister and seeking the cancellation of the leases granted to staff. Some five years later, after some procedural skirmishes, the Court of Appeal held that the actions by the Minister were unauthorized.[12]

Proceedings were then taken over by the Attorney- General to cancel the leases of the staff involved, and an order was made by the Supreme Court on 6 February 2019 stating that "*the leases granted following that instruction [of the Minister on 3 August 2012] are cancelled; and/or removed from the Department of Land's records; and all are to revert back to the State, pursuant to section 99 of the Land Leases Act [Cap 163]*".[13]

Accordingly, some 82 leases were cancelled from some 66 members of the staff of the Department of Lands, both at Port Vila and in Luganville, and returned to State land. The judgment does not indicate to what extent, if at all, the staff members had actually entered into possession of the leases, and incurred expense in respect of them, but it seems unlikely that many, if any, had done so, because knowledge of what the Minister had done,

[11] *Idem*, para 1.
[12] *Department of Lands Staff v Transparency Vanuatu Committee* [2017] VUCA 4.
[13] *Attorney-General v Minister of Lands* [2019] VUSC 5.

soon became known, resulting in a public outcry that would no doubt have caused many of the recipients to become very cautious until the matter had been tested in the courts.

Thus ended a very sorry chapter in the history of the public service of Vanuatu, in which public servants had been seriously led astray by their Minister. Fortunately, the Minister responsible was replaced by a Minister who brought about some very significant reforms of the land leasing system in Vanuatu.

CANCELLATIONS OF REGISTERED LEASES OF CUSTOM LAND ON GROUNDS OF MISTAKE AND FRAUD

Concern is sometimes expressed that the system of registration of instruments relating to land known as the Torrens system provides too much protection for the people who acquire interests in custom land and not sufficient protection for the indigenous owners of such land. It is true that s15 of the Land Leases Act of Vanuatu does provide that "The rights of a registered proprietor...shall be not liable to be defeated except as provided by this Act".[14] The Act does, however, provide a number of exceptions.

One exception is provided by section 100 of the Act which states: "(1) Subject to subsection (2) the Court may order rectification of the register…where it is satisfied that any registration has been obtained, made or omitted by fraud or mistake. (2) The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the interest for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default".[15]

It was this exception which provided protection for some owners of custom land in North Efate who discovered that two large areas of their land had been leased by the

[14] Section 15 of *Land Leases Act* 1983 CAP 163.
[15] *Idem*, section 100.

Minister of Lands to a ni-Vanuatu lessee who was in the process of transferring those leases to two investors.

In 2010 some owners of a large area of custom land on North Efate started discussions with members of the Department of Lands about a land use project whereby they intended to acquire leases over the land so that it could be preserved and protected for community use. During the next two years the custom owners had discussions with the staff of the Lands Department updating them on the progress on the project, and then on 9 July 2012 they submitted their first application for lease of that land to the Land Management and Planning Committee of the Lands Department for approval.

Within two weeks, on 22 July 2012, the Minister of Lands had granted a lease (032) of part of the land to Kalorib Poilapa (032), and within another week, on 29 August 2012, the Minister leased the remainder of the land in another lease to the same Kalorib Poilapa (001). Within 3 months Kalorib Poilapa had registered a transfer of lease (032) to two investors, Michel Monvoisin and Ludovic Boillet.

On 6 July 2018, the Supreme Court made an order cancelling both leases (001) and (032), and also the transfer of lease (032) to Monvoisin and Boillet on the ground that the registrations had been obtained by fraud and/or mistake.[16]

The judge, Dudley Aru J said:

> *"Concerning mistake, the first defendant [Republic of Vanuatu] admits and concedes that proper administrative procedures and processes of the Department of Lands were not followed in obtaining registration of the 001 and 032 leases and as a result the leases were not properly registered. The evidence of Peter Pata and Joe Ligo confirms that the two leases did not satisfy the usual Department of Lands checklist requirements and no certificate of registered negotiators was issued before ministerial approval was given… Secondly the premium stated on the two lease documents at the time of registration were as follows: For the 032 lease covering 485 hectares of land VT500,000. For the 001 lease covering 1,805 hectares of land VT2,000,000. The evidence of Jimmy Sano of the Valuer General's*

[16] *Mormor v Republic of Vanuatu* [218] VUSC 123.

> *Office is that a realistic assessment of premium for the 001 lease would be VT171,4000,000, and likewise for the 032 lease would be VT80,200,000. I accept his evidence…shows that there was a serious undervalue of the two leases… Fraud… In view of Jimmy Sano's evidence, the Government was defrauded of the proper fees that would been paid on the correct premium, including stamp duties….*
> *46. Regarding the transfer of the 032 lease, the Government was also defrauded of the registration fees and stamp duty… The third defendants [Monvoisin and Boillet] were therefore not bona fide purchasers for value as they contributed to the fraud and had knowledge that the land covered by the 032 lease was in dispute… I am satisfied that the two leases were obtained by fraud and/or mistake and must therefore be set aside".*[17]

The third defendants appealed from this decision of the Supreme Court. But in its decision on 22 February 2019, not only did the Court of Appeal uphold the decision of the Supreme Court on the grounds adopted by Dudley Aru J, but it introduced a new and quite separate ground of its own.[18] The Court of Appeal stated:

> *"This Court raised an issue that was not canvassed at trial which arises from the evidence about the misstatement of the consideration, especially the Minister's consent which was essential for the registration of the transfer of the 032 lease. The document that was taken to the Minister for his consent to the transfer was a typewritten document that stated the consideration for the transfer to be VT20,000,000. That document now shows an alteration to the stated consideration. The figure of 20,000,000 has been struck out in pen and the figure 2,000,000 written in…. The transfer itself that was submitted for assessment of stamp duty and the registration twice shows in type face the consideration to be VT2,000,000. The inevitable inference from these documents and Mr. Monvoisin's evidence is that his agent …altered the Consent after it was signed by the Minister so that the consideration stated in the Consent matched the stated consideration on which the stamp duty and registration fees were assessed. …The alteration of the Consent after it had been signed by the Minister was a material alteration to the document which…renders the document void... Simply stated the Consent ceased to have legal effect upon the alteration being made. In consequence, there was no Ministerial consent, and on that*

[17] *Idem*, paras 40-48.
[18] *Monvoisin v Mormor* [2019] VUCA.

> *ground the registration was mistakenly made. That in our opinion is the short and complete answer to the appellant's case. There was no consent and without the Minister's consent there could be no transfer. No question of the appellants being bona fide purchasers for value can arise. There simply was no transaction capable of being registered".*[19]

As a footnote, the astute reader of this article will observe that the registration of these leases by the Minister of Lands occurred in the same year as did the instruction by the Minister of Lands to provide grants of leases of State land illegally to members of the staff of the Department of Lands, the cancellation of which was described in the preceding section of this article.

RIGHTS OF OWNERS OF CUSTOM LAND AND RIGHTS OF PERPETUAL OCCUPIERS AND USERS OF CUSTOM LAND

Often rights of ownership of customary land held by one family or group may in custom be subject to secondary rights of occupation and/or use held by other families. These secondary rights are often based upon marriage (for instance the wife of a male owner, or the husband of a female owner); or are based upon gender (the sister of a male owner, or brother of a female owner). But not infrequently secondary rights may be based upon lengthy periods of co-operation and mutual assistance between a land-owning family and a non land-owning family, who are in no way related by blood or marriage.

Until recently, probably the best description and discussion of the rights of ownership and the rights of perpetual occupation and user were contained in a judgment of the Chief Justice in a case which was not recorded in any written reports or in that invaluable aid to those who require access to judicial decisions in countries of the USP region, the Pacific Law Information Institute, known usually as PacLII.[20]

Until very recently the only recorded source of the judgment of the Chief Justice in this case was a decision of the Court of Appeal that referred to, and contained substantial

[19] *Idem*, paras 32-35.
[20] *Family Kaltapang Malastapu v Family Kaltongo Marapongi* [2004] Land Appeal Case no.58.

extracts from this judgement of the Chief Justice: Iaus v Noam.[21] Fortunately, the judgment of the Chief Justice has now been recorded in PacLII.[22]

Another very good example of custom ownership rights being held to belong to one family or group, and perpetual rights of occupation and use being held to belong to other families or groups, is the decision of the Efate Island Court in Land Case No 1 of 1993, recorded as *Family Sope Imere v Mala*.[23]This case was fully discussed and approved by both the Supreme Court[24] and the Court of Appeal[25] in 2019. It is therefore well worth setting out the exact words of the Island Court.

The Efate Island Court began by stating some general principles that apply to custom land on Efate Island:

> "*According to Efate custom, particularly the Marope land area, land ownership passes to males. Custom land ownership follows the Patrilineal system. The custom land owner is normally a chief, sometimes there are exceptions when the custom owner is not a chief. The custom chief owns land on behalf of his people who live and work on the land. The custom chief acquires land on behalf of his people who occupy the land. Custom ownership is based on representation. The custom chief represents the custom boundary of the land he and his people work on. The custom land belongs to the chief and his people. Custom land ownership is different from individual ownership. The individual land owner may dispose of/sell land in whatever way he wishes. On the other hand, a custom chief cannot dispose of or sell custom land at his own free will. Every person under the authority of the custom chief has an interest or custom right, which is a perpetual right of occupying and using land which is owned by the custom chief. According to the system of customary land tenure, the chief is the custom owner of the whole boundary, and like his people, he owns a small portion of land within the whole boundary*".[26]

[21] *Iaus v Noam* [2017] VUCA 40.
[22] *Malastapu v Marapongi* [2009] VUSC 176.
[23] *Family Sope Imere v Mala* [1994] VUIC 2.
[24] *Kalsakau v Tamata* [2019] VUSC 116
[25] *Kalsakau v Director of Lands* [2019 VUCA 70
[26] *Family Sope Imere v Mala*, paras 1-4, above n23.

The Efate Island Court then went on to apply these principles to the claims before it:

> "*The court is satisfied and thus declares that Pastor George Kano is the owner of the land marked in blue… The court is satisfied and declares that (a) Naflak Teufi Ifira and their descendants;(b) Chief Nunu Naperik Mala and his family together with their descendants;(c) Family Sope of Mele Village and their descendants; according to custom laws, have perpetual rights to occupy, use and enjoy the area marked in blue These areas cover the land titles of Narrowby Land Title…, Malapoa Land Title…, Ebooka Land Title… This customary right includes the right to grow crops, make gardens, build houses, and live on the land subject to any government restrictions. This right also includes the right to receive rents or any other form of profit. The court is satisfied and declares that Kalsakau Family and their descendants have the same perpetual rights to occupy use or enjoy the Narrowby Land Title with the Naflak Teufi Ifira and their descendants, Chief Nunu Naperik Mala and his descendants and the Sope Family of Mele Village and their descendants. This customary rights which the Kalsakau family have obtain includes the right to grow crops, make gardens, build houses, and live on the land subject to any government restrictions. This right also includes right to receive rents or any other form of profit*".[27]

This decision of the Efate Island Court was appealed to the Supreme Court, but the appeal was dismissed on 23 December 2003.[28]

"GREEN CERTIFICATES" OF CUSTOM OWNERSHIP - HOW CONCLUSIVE ARE THEY?

How authoritative is a certification of a recorded interest in land ("green certificate") issued by the National Coordinator of the Custom Land Management Office? Section 19 of the Custom Land Management Act authorizes the National Coordinator of Custom Land Management to issue a certification of the names of the custom owners: "19 (1) Where the custom owners are determined by a nakamal, the custom land officer must

[27] *Family Sope Imere v Mala*, paras 4-6, above n23.
[28] *Family Sope Imere v Family Nikara* [2003] VUSC 70.

ensure that the written record of the determination is filed with the office of the National Coordinator. (2) When a determination is filed with the office of the National Coordinator, the written record of the custom owner determination and the area that is owned...will become a recorded interest in land that may not be challenged except on the grounds of improper process or fraud. (3) The National Coordinator …where requested by a custom owner will provide a certification of the names of the custom owners and the representatives of the custom owners".[29]

These certifications which the National Coordinator is authorized to issue, are nowadays usually referred to as "green certificates," because they were initially issued on green paper, and the practice has continued.

In *Kwirinivanua v Toumata Tetrau Family*[30] the Court of Appeal made two things clear about certifications of ownership issued by the National Coordinator:

(1) They are not conclusive as to the question of ownership. The Court said:

> "*A certificate of a recorded interest is a document of limited importance in the scheme of the Custom Land Management Act. It is a document that has an evidential function… The actual event that determines the title of a custom owner is not the recording of an interest, but the decision of the relevant customary institution or Court. If there is a dispute about who is the custom owner, that will be determined by going to the decision of the customary tribunal or Court, not to a certificate issued by the Coordinator*".[31]

(2) They can be amended or cancelled by the National Coordinator. The Court affirmed this power when it stated that:

> "*It would be astonishing if the Coordinator did not have the power to correct errors if they occur in the content of a certificate... We have no doubt that the coordinator has power to cancel a certificate if he discovers the information in it is not correct, or that it is for any other wrongly issued*".[32]

[29] Section 19 of *Custom Land Management Act* n.33 of 2013.
[30] *Kwirinivanua v Toumata Tetrau Family* [2018] VUCA 15.
[31] *Idem*, paras 22-24.
[32] *Idem*, paras 29-30.

CONFLICT BETWEEN CUSTOM OWNERS AND PERPETUAL OCCUPIERS

Clearly the possibility of confusion and misunderstanding developing between different families, each of which has overlapping, but different, rights to the same land, is very high. A good example of the kind of conflict that can develop between the rights of a land-owning family and two families which had secondary rights of occupation and use is *Iapatu v Noam*.[33]

This case had its origin in a decision of the Tanna Island Court on 27 November 2014. In this decision, the Tanna Island Court announced that an area of land known as Lapangnapeuk belonged to the Family Iouniwan, that an adjoining piece of land known as Launuanu was owned by the Family Iamanik, and that another adjoining piece of land known as Lautalico was owned by Family Kuau. The Court went on to hold that two other families, Family Ioukoupa and Family Nauanapkai "be given the right to use the land areas of Lapangnapeuk. These family units will have to seek permission from the head of family Iouniwan should they wish to further develop the land for all purposes".[34]

It was not long before Tom Noam, as the head of the Family Iouniwan, was complaining that the two families with occupation and user rights were expanding beyond their 2014 limits without his permission, as required by the Tanna Island Land Court in its decision of 27 November 2014.

Tom Noam eventually took proceedings in the Supreme Court against the two families with occupation/user rights, and after some considerable procedural manoeuvering, Tom Noam eventually obtained an order from the Supreme Court to evict the two families with occupation/user rights. On 19th September 2018, the Supreme Court made the following restraining order: "The Vanuatu Police are authorized to destroy any

[33] *Iapatu v Noam* [2018] VUCA 50.
[34] *Idem*, para 4.

gardens, farming, fences, houses and trees planted or erected since the Island Court order that was issued on 27th November 2014 without the lawful authorization of the claimant".[35]

On 28 September 2018 this order was executed by local Tanna police who had been strengthened by another 14 police officers sent down from Port Vila, and it was reported in the local newspaper that "at least 13 houses have been destroyed and over 50 men forced to relocate with their families after police enforced a court order at Letekren village, Tanna." Unfortunately, this police action was taken before the time for appeal from the court order had elapsed, and without allowing the families reasonable notice of the intention to enforce the order, and also without obtaining from the claimant, Tom Noam, any undertaking to pay for any damages that might be caused. In fact, the order was appealed and was set aside by the Court of Appeal in *Iapatu v Noam*.[36]

The Court of Appeal held that there were two fatal flaws in the order of the Supreme Court made on 19 September 2018: it had been made without service of the application on the many named defendants, some 60 in all; and it had been made without an undertaking by the applicant as to damages, which should be filed whenever an application is made to enforce an order of the Court.

In addition, the Court of Appeal held that the execution of the order was defective inasmuch as it did not allow a reasonable time for the defendants to comply and evacuate the premises voluntarily, which the Court indicated would be 3 weeks, before force was used. Further, the wording of the order was not sufficiently precise to make quite clear what gardens, houses, farming etc was in breach of the order.

Unfortunately, this was not the end of the saga, and in May 2019 it was reported that application had been made to the Supreme Court for an order restraining Tom Noam and his agents and relatives from threatening the claimants and their family members, and a restraining order was issued against them. It was also noted that: "The claimants are now pursuing a civil claim against the defendants for burning down 14 houses and a truck. There

[35] *Idem*, para 1.
[36] *Idem.*

will be claims for animals, sandalwood trees, gardens and houses destroyed by fire after the defendants torched them down over a long-time land dispute in the area".[37]

As at the time of writing this article the outcome of those civil proceedings is not known, but clearly this has been a very sorry saga, and some lessons could be learned from it:

1. Where some people are held to have rights to occupy or use the land which is owned by others, there is a very strong likelihood of conflict and confusion between the competing rights unless there is very clear definition and recording of the competing rights. Preferably these different rights should be expressed in writing and also marked out physically on the ground.
2. When application is made to a court for an order against a person, the person(s) against whom the order is sought must always be notified of the application so that he or she or they can defend themselves before the order is made.
3. When an order is made by a court against a person, the terms of that order must be precise and clear so that the person who has to execute the order knows exactly what to do, and what not to do. The same caveat should also apply to an order made by any public official.
4. When an order is made by a court against a person, it should not be enforced or executed, until the time for appeal has passed, unless there is some very great urgency. Again, the same caveat should also apply to an order made by any public official.
5. When an order is sought from a court that is likely to cause injury or damage, an undertaking should always be obtained from the claimant to reimburse any payment of damages for liability that may arise from execution of the order.

[37] *Vanuatu Daily Post*, 4 May 2019, 2.

CONCLUSION

This brings us to the end of this article on recent decisions relating to land in Vanuatu. It is hoped that this has been sufficient to introduce the reader to some of the interesting social implications that cases relating to land in Vanuatu can have, and that the reader will be encouraged to read more of these cases by turning to the reports of the cases described in this article which now can all be easily accessed in Pacific Islands Legal Information Institute (PacLII).