

IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU
(Civil Appellate Jurisdiction)

Civil Appeal
Case No. CIVL 24/3286

[2025] VUCA 3

BETWEEN: FAMILY SANGARY
Applicants

AND: FAMILY VEMOL
Frist Respondents

AND: REPUBLIC OF VANUATU
Second Respondent

Before: Hon. Justice O. Saksak
Hon. Justice M. O'Regan
Hon. Justice R. White
Hon. Justice D.Aru
Hon. Justice E.P.Goldsbrough
Hon. Justice M. Mackenzie

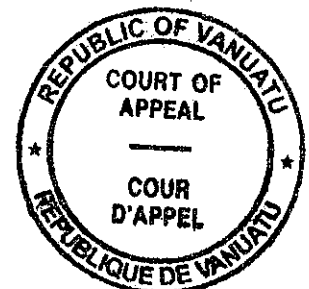
Counsel: Mr Edward Nalyal for the Applicants
Mr Lent Tevi for the First Respondents
Mrs J.T.Tari for the Second Respondents

Date of Hearing: 7th February 2025
Date of Judgment: 14th February 2025

JUDGMENT

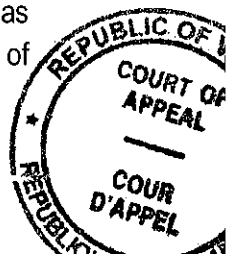
Introduction

1. The applicants, Family Sangary, apply for an extension of time to appeal to this Court against a judgment of the Supreme Court, *Vemol v Sangary* [2024] VUSC 380. That judgment was delivered on 3 May 2024. The application for extension of time to appeal was filed on 16 October 2024, more than five months later, and more than four months after the expiry of the 30-day period within which an appeal must be filed under r 20 of the Court of Appeal Rules 1973 (the Rules). The application is opposed by the first respondents, Family Vemol and the second respondent, the Republic of Vanuatu.



Supreme Court judgment

2. In the Supreme Court judgment, the primary Judge dealt with a dispute between Family Sangary and Family Vemol, who are disputing claimants for Buoro custom land on Aore Island. Family Vemol alleged that Family Sangary had leased areas of the Buoro custom land despite its custom ownership being in dispute and had received and retained rent from the lessees. Family Sangary argued the leases were created before the Buoro custom land dispute commenced, that Family Vemol had no standing to challenge the creation of leases and that Family Vemol were trespassers on the Buoro custom land.
3. The case was set down for trial on 3 May 2024. The matter had previously been set down for trial on 29 August 2023, but that hearing was vacated after counsel for Family Sangary informed the Court on 28 August 2023 that Family Sangary were not ready for trial and had failed to file and serve sworn statements supporting their defence and counterclaim. The Judge vacated the fixture over the objection of Family Vemol, made timetable orders and rescheduled the hearing for 3 May 2024.
4. On 29 April 2024 (that is, four days before the new fixture date), counsel for Family Vemol Mr R. Tevi, filed a notice of ceasing to act. In an affidavit before this Court, Mr R. Tevi deposed that he had been instructed to act for Family Sangary in the Supreme Court by a consultant engaged by Family Sangary, Mr Stephen Johnny. His communications with Family Sangary were through Mr Johnny. He said he told Mr Johnny of his intention to file a notice of ceasing to act "because of continuous delay and wilful disobedience of the Court direction orders". In the absence of any response to this, Mr R. Tevi then filed the notice of ceasing to act. However, he did not serve this on Family Sangary. He gave no explanation for the submission which was a serious dereliction of his duty to his clients.
5. On 3 May 2024 at 9 am, when the Supreme Court trial was due to begin, no representative of Family Sangary appeared. Mr R. Tevi did appear, but only to obtain leave to cease acting, which was granted. Nobody else representing Family Sangary was present and no sworn statements or submissions in support of their defence and counterclaim had been filed and served.
6. The Judge proceeded to consider and resolve the claim and counterclaim on the material before the Court.
7. The primary Judge found that Family Vemol's claim was made out on their uncontradicted evidence. As there was no evidence to support the counterclaim, the Judge dismissed this.
8. The primary Judge entered judgment for Family Vemol and made orders that:
 - a. Family Sangary was to give an account for all moneys received on behalf of the custom owners from 2 June 1982 to date;
 - b. The second respondent, through the Director of Lands, was to register a change of name of lessor removing the parties associated with Family Sangary as lessor and substituting as lessor the Minister of Lands on behalf of the disputing custom owners pursuant to s 6Z of



the Land Reform Act [CAP. 123] in respect of all of the lease titles over the Buoro custom land, including 183 leases specified in the judgment;

- c. All rental and income in respect of the specified lease titles were to be paid to the Custom Owner Trust Account;
- d. No funds were to be paid from the Custom Owner Trust Account until further Order of the Court;
- e. Family Sangary were restrained from entering any agreement and any other sale or other leasehold dealing in respect of the Buoro custom land or any leasehold title over that land until further Order of the Court; and
- f. Family Sangary were restrained from issuing or otherwise being party to any Forestry Licence in respect of the Buoro custom land or any leasehold title over that land until further Order of the Court.

9. The Judge awarded costs to Family Vemol.

Criteria to be applied

10. The application for extension of time invoked r 9 of the Rules, which empowers this Court or a Judge of this Court to enlarge the time prescribed by the Rules for doing anything to which the Rules apply. This Court outlined the matters to be taken into account in determining whether an extension of time should be granted to file an appeal in *Laho Ltd v QBE Insurance (Vanuatu) Ltd* [2003] VUCA 26. The factors to be considered include:

- a. The length of the delay;
- b. The reasons for the delay;
- c. The chances of the appeal being successful if time were extended; and
- d. The degree of prejudice to the potential respondent if the application were granted (and, we would add, the degree of prejudice to the potential appellant if the application were refused).

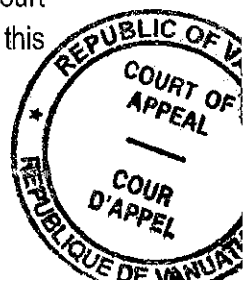
11. We will apply those criteria in considering the application

Length of delay

12. As mentioned earlier, the delay is more than four months from the date of the Supreme Court judgment.

Reasons for delay

13. In a sworn statement adduced in this Court, Mr Nelson Sangary deposed that Family Sangary were not aware of the hearing in the Supreme Court on 3 May 2024. He said that the Supreme Court judgment of 3 May 2024 was not served on Family Sangary until July or August 2024, and that this



was the first time they had become aware of the judgment. That provides a reason for not filing an appeal in the period prior to the judgment being served on them.

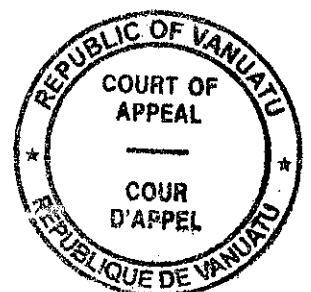
14. However, the sworn statement of Mr Sangary did not give any explanation as to why Family Sangary did not apply to this Court for an extension of time to appeal until 16 October 2024, that is, between two and three months after the Supreme Court judgment was served on them. It is fundamental that any application for an extension of time needs to be accompanied by an explanation as to why the failure to file the relevant document on time occurred. Unfortunately, this has not happened in this case, and the delay between July/August and 16 October remains unexplained.

Chance of success

15. Counsel for Family Sangary, Mr Nalyal, that the primary Judge was in error in proceeding with the resolution of the Supreme Court claim without Family Sangary being represented at the hearing. We do not have any basis for accepting that submission. It is notable that we have not received any evidence from Mr Johnny, who could have been expected to provide some explanation of the circumstances that led to the failures by Family Sangary that led to the hearing on 3 May 2024 proceeding without their being represented.
16. Mr Nalyal also argued that the Judge was also in error in making Orders that the leases be transferred into the name of the Minister and that rents be payable to the Custom Owner Trust Account. He argued that these were seriously arguable points.
17. The application for an extension of time to appeal was not accompanied by a draft Notice of Appeal, as it should have been, so our evaluation of the merits of the proposed appeal is limited to the information provided to us in oral submissions. It is clear from the chronology of events in the Supreme Court that there was repeated failure on the part of Family Sangary to comply with Court Orders which not only inconvenienced the Court but was also unfair to Family Vemol. The decision of the Judge to proceed with the resolution of the claim on 3 May 2024 must be seen in that context.
18. On the information available to us, we assess the chances of an appeal being successful if an extension of time is given as low.

Prejudice

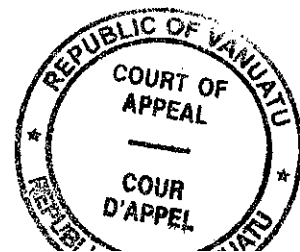
19. Family Sangary have given no indication of the prejudice they might suffer in the event that an extension of time is refused. We infer from the material before us that the prejudice is the fact Family Sangary will no longer receive rents and other income under the leases. Family Vemol have adduced in this Court a sworn statement by their representative, Frank Molvatol, to the effect that the dispute in respect of the Buoro custom land has now been considered by the Undu Boe Area Land Tribunal. The Tribunal has declared that Family Vemol are the landowners of the Buoro custom land. However, we understand from Mr Nalyal that Family Sangary have appealed against this decision to Island Court (Land).



20. The fact that Family Vemol have been found to be the landowners of the Buoro custom land adds additional support to the outcome of the Supreme Court judgment, making it more important than ever that steps are in place to protect Family Vemol's interest in the land. We see this as indicating that the prejudice to Family Vemol of an extension being granted is greater than the prejudice to Family Sangary of its being refused.
21. The failures by Family Sangary in the Supreme Court have, unfortunately, continued in this Court. Family Sangary were directed to file their Appeal Book A and submissions by 12 December 2024 (that is, before the recent earthquake in Port Vila) but none of this material had been filed by the commencement of this Court's session on 3 February 2025. The Court convened a conference at 1.30 pm on 3 February, the time at which the application for an extension of time to appeal was meant to be heard. Mr Nalyal appeared 25 minutes late. He sought an adjournment of the fixture which was refused, and arrangements were made to reschedule the hearing in this Court on Friday 7 February 2025, with a timetable set for the necessary steps prior to that hearing to be taken in the intervening period. This was hardly an auspicious start to a proceeding in which the Court's indulgence was being sought.

Summary

22. In summary:
 - a. The delay is over four months after the expiry of the appeal period and only about two months of that can be attributed to the delay in serving the Supreme Court judgment on Family Sangary.
 - b. We have not been given an adequate (or any) explanation for the delay in filing the present application after the Supreme Court judgment was served on Family Sangary. Nor have we been given any explanation of why the continuous delays occurred in the Supreme Court;
 - c. As no draft Notice of Appeal was filed with the application for an extension of time, we have only sketchy information about the proposed appeal. Given the repeated failures of Family Sangary in complying with the timetable orders made in the Supreme Court, it is not apparent to us what arguments could be made to suggest the Supreme Court judge erred in conducting the 3 May 2024 as she did. And while Mr Nalyal was adamant that the Order made by the Supreme Court Judge under s 6Z of the Land Reform Act was inappropriate, we do not have any detail about that submission and it seems to us that arrangements protecting Family Vemol's position were necessary at the time of the Supreme Court hearing and possibly more necessary now, given the Tribunal's ruling that Family Vemol are the owners of the Buoro custom land;
 - d. Family Sangary have not told us what the prejudice to them would be if the appeal is not allowed to proceed. Given their position as unsuccessful claimants for the land, it seems unlikely to us that there is any valid basis for complaint that the leases are to be held in the



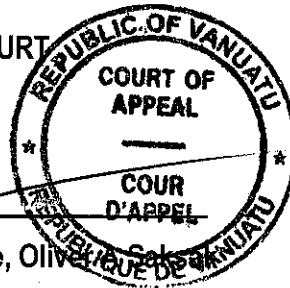
name of the Minister and the proceeds held in the Custom Owner Trust Account in order to protect the position of Family Vemol.

Result and costs

23. The application for an extension of time to appeal is dismissed. Family Sangary must pay costs of VT20,000 to both respondents.

DATED this 14th day of February 2025

BY THE COURT



Hon. Acting Chief Justice, Oliver Saksak