

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

Civil Appeal
Case No. 24/3140 COA/CIVA

[2025] VUCA 4

BETWEEN: FAMILY VUTINASUPE ROPO & ORS.
First Applicants

AND: FAMILY LIVONACOPA ROPO & ORS.
Second Applicants

AND: FAMILY JOHN SAKSAK & ORS.
Third Applicants

AND: PRESBYTERIAN CHURCH OF NEW
HEBRIDES ASSOCIATION
First Respondent

AND: FAMILY VIJINAKARAI VUTILOLO & ORS.
Second Respondents

AND: FAMILY JAMES VUTI & ORS.
Third Respondents

AND: EMILE HOE MELE TRADING AS EMILE HOE
ASSOCIATES
Fourth Respondent

AND: FAMILY SOCEPOJIJI & ORS.
Fifth Respondents

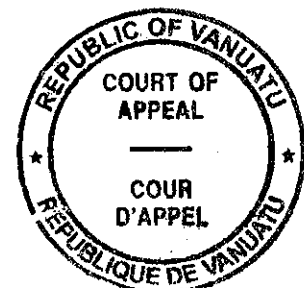
AND: FAMILY SOCEPOJIJI
Sixth Respondents

Coram: Hon. Chief Justice V. Lunabek
Hon. Justice M. O'Regan
Hon. Justice R. White
Hon. Justice OA Saksak
Hon. Justice E Goldsbrough
Hon. Justice M A MacKenzie

Counsel: F Loughman for the First, Second and Third Applicants
T Harrison for the First Respondent
No appearance for the Second, Third, Fourth, Fifth and Sixth Respondents

Date of Decision: 14 February 2024

Date of Hearing: 5th February 2025
Date of Judgment: 14th February 2025



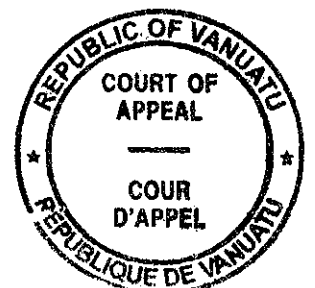
JUDGMENT OF THE COURT

INTRODUCTION

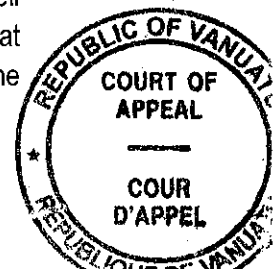
1. On August 6, 2024, the Supreme Court entered judgment against the present Applicants. The Judge ordered that the defendants (some of whom are the present Applicants) cease trespassing or occupying the land the subject of the First Respondent's lease and declared the First Respondent was entitled to retain and remain in possession of the land. The Applicants now seek an extension of time to file a Notice of Appeal against that decision. The Applicants have styled this application as an application for leave to appeal out of time. The application was filed on 11 October 2024, following the filing of a Notice of Appeal on October 4, 2024.
2. Counsel for the Applicants from Pacific Law sought an adjournment of the hearing to the May 2025 sitting of this Court. That application was opposed by counsel for the 1st Respondent, who sought an order that this application be struck out for want of prosecution.
3. At the close of the hearing and after a short adjournment, we made an order striking out the application and said that our reasons would be given later. These are our reasons.

DISCUSSION

4. A directions hearing took place on 11 October 2024, at which Mr Julian Wells appeared as a family member for the applicants. At that hearing, Mr Wells requested that the application be listed for hearing by this Court in February 2025 as the applicants would not be ready for a hearing in the November 2024 sitting of the Court of Appeal. Unopposed, that application was granted, and directions were made with a view to a hearing during the February 2025 sitting. Those directions included the filing and service of Appeal Book A on or before 12 December 2024, the applicant's submissions on or before 19 December 2024, and the listing of the application for hearing on 5 February 2025.
5. Neither of the first two directions were complied with, and no application for an extension of time was made in which to comply with those directions. The Applicants have still not filed any Appeal Books or submissions. No explanation for that failure has been given to the Court. On 21 January 2025, counsel for the 1st Respondent filed a memorandum explaining that the respondent had been unable to file any responsive submissions given the applicant's failure to file anything. That was served on Mr Wells who had appeared at the Directions hearing and present counsel's firm of Pacific Law.



6. Mr Loughman sought the adjournment of the hearing to the May session because he had been instructed only on 4 February 2025, had not seen any file in the matter, lacked instructions sufficient to permit him to present the application during this sitting, and had no alternative but to seek the adjournment. He submitted that the Applicants, including Mr Wells, were based in Santo. He accepted however that Mr Wells was an employee of Pacific Law.
7. Counsel for the 1st Respondent submitted that rather than adjourn the matter to another sitting, the Court might consider bringing the proceedings to an early end by striking out the application for want of prosecution. She further submitted that her client would suffer prejudice by an adjournment. This was so because the Applicants continued interfering with its occupation of the leased land by repeated intrusions.
8. Counsel for the Applicants could not assist further, taking into account his lack of instructions, save to say that there was nothing he could do to enable a hearing of the application to take place in this Court of Appeal session.
9. The underlying claim was filed in the Supreme Court in April 2021, and the present Applicants filed a defence on May 21, 2021. The land in question is in South Santo. The Applicants assert that they are custom owners who planted the land prior to the grant of the lease and only garden there. They slaughter cattle only when that cattle enters their gardens and destroys crops. The Applicants' counsel in the Supreme Court (not counsel from Pacific Law) did not attend the trial at the listed time on 6 August 2024, which resulted in the summary judgment being entered against them.
10. The Applicants state in the Application for an Extension of Time in which to appeal that they only became aware of the judgment when it was served on them for enforcement purposes on 10 September 2024 (following an order made by the trial judge for personal service of the order by the Assistant Sheriff). However, the Applicants have not filed any sworn statements supporting that claim, nor any statements from the former counsel who must have been aware of the judgment. We note in this respect that in the Supreme Court, the Applicants had not filed any statements in support of their defence, even though they had been ordered to do so.
11. There is a consistent pattern apparent in these proceedings of a failure on the part of the Applicants to file material in support of their case. This began with the failure to file sworn material supporting the defence. It continued with the failure without further explanation to file the Appeal Book and submissions in support of the application for an enlargement of time. It culminated in sending counsel to appear before this Court, having only been instructed the previous day.
12. Whilst Courts are reluctant to determine a case without allowing a party to put forward his or her case, when opportunities are not taken, there is a point at which a court will say – no more.
13. This is a case in which that point has been reached. The family member, Julian Wells, is well aware of the ways of the Supreme Court and of matters of practice and procedure. He knew what was required of the Applicants. Moreover, this Court had acceded to his request to have the



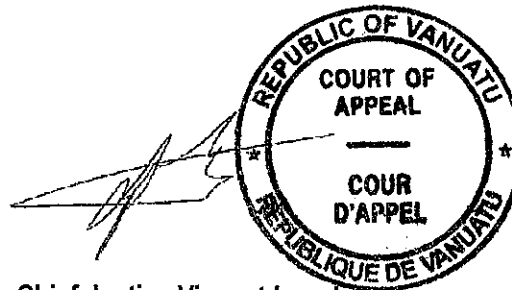
application listed for hearing in the February 2025 session and yet he does not seem to have done anything to allow the appeal to proceed in a timely way. The first Respondent will be prejudiced if the hearing is adjourned to the May session.

DECISION

14. In the circumstances, the application for enlargement of time is struck out. Costs of VT 30,000 are ordered to be paid by the Applicants to the 1st Respondent.

DATED this 14th day of February, 2025.

BY THE COURT



Hon. Chief Justice Vincent Lunabe