

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Appellate Jurisdiction)

Civil Appeal
Case No. 20/2219 CVLA

BETWEEN: Adam Tarivatu and Family
Appellant

AND: Tony Augustin, Antoinette
Augustin, Pierre Chanel Augustin,
Loic Augustin and Francois
Ramuel
Respondents

Date: 1 October 2020
Before: Justice G.A. Andrée Wiltens
Counsel: Mr S.T. Joel for the Appellant
Mr P. Fiuka for the Respondents

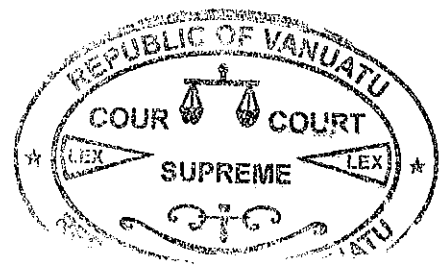
JUDGMENT

A. Introduction

1. This is appeal from a decision by a Magistrate to strike out a Claim.

B. Background

2. This case concerned land. The case had proceeded to the point where the Appellant had applied for Summary Judgment, and the Respondent had responded to that application and counter-applied to strike out the Claim for want of prosecution.
3. The Notice advising counsel of the next hearing when those two applications were to be dealt with unfortunately did not reach counsel for the Appellant in time for him to appear at that next scheduled event.



C. The Decision

4. In the absence of the Appellant's counsel, the application to strike out was advanced on the basis that the Appellant had no rights in relation to the land and accordingly had no standing to bring his Claim; and further, that no reasonable cause of action was disclosed in the Claim.
5. The learned Magistrate published a written decision striking out the Claim in its entirety.
6. The decision commences by stating that the decision is made pursuant to the Court's powers under Rule 9.10(1)(a) and (b) and (3)(a)(b) of the Civil Procedure Rules No 49 of 2002.
7. Later in the decision it is recorded:

"NOW THEREFORE PURSUANT TO ITS POWERS under Rule 9.10(2)(d)
IT IS HEREBY ORDERED THAT-

1. The **Civil Case No. 560 of 2020** be hereby struck out in its entirety".

D. Discussion

8. Mr Fiuka fairly conceded the learned Magistrate has erred.
9. The Rules referred to have no application in this particular instance. Accordingly, the decision must be reversed.

E. Result

10. The appeal is allowed.
11. Civil Case No. 560 of 2020 is re-instated and is to be heard by a different Magistrate.
12. The urgent ex parte interlocutory orders that were revoked by the learned Magistrate's decision are also re-instated with immediate effect.
13. Given the concession by Mr Fiuka, it is not appropriate to order costs in favour of the appellant. Mr Joel accepted that.

Dated at Port Vila this 1st day of October 2020
BY THE COURT

G.A. André Wiltens
Justice G.A. André Wiltens

