

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

Civil  
Case No. 21/2057 SC/CIVL

**BETWEEN: Dunstan Tula representative of Simeon Roy  
Tula and Family**  
Claimant

**AND: John Godwin and Family  
Colton Harry and Family  
Hilary Wetak and Family  
Maxime Pierre and Family  
Philip Tula and Family  
Willington Jonas and Family  
Charles Norman and Family  
John Beret  
Lulum Noel  
Colton Marry**  
First Defendants

**AND: Jeffrey Wenel & Frazer Wemanar**  
Second Defendants

*Date:* 27 February 2023  
*Before:* Justice V.M. Trief  
*Counsel:* Claimant – Mr R. Sugden  
Defendants – Mr P. Fiuka

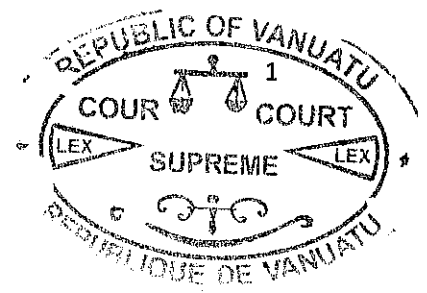
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**DECISION AS TO APPLICATIONS TO STRIKE OUT CLAIM AND  
FOR LEAVE TO AMEND CLAIM**

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A. Introduction

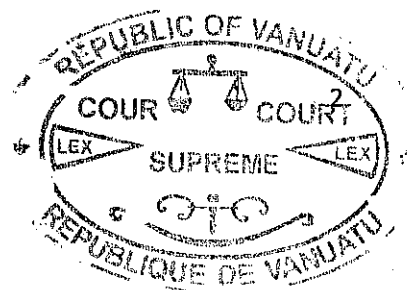
1. The Claimant Dunstan Tula representing Simeon Roy Tula and Family's ('Tula') Claim filed on 25 June 2021 is in trespass in relation to Lembal custom land at south Gaua island in Torba province. By the Claim, Tula is seeking the eviction of the First Defendants from Lembal land.
2. This was an application by the Second Defendants Jeffrey Wenel and Frazer Wemanar Families to strike out the Claim, and an application by Tula that in lieu of striking out the Claim that Tula have leave to amend the Claim.



3. Tula's appeal in *Tula v Weul*; Civil Appeal Case No. 2626 of 2022 ('CAC 22/2626') against the Supreme Court judgment dated 10 October 2018 in Civil Case No. 624 of 2017 ('CC 17/624') has been determined by the Court of Appeal by judgment dated 17 February 2023. Accordingly, I now determine the applications. Discussion
4. The Strike-Out Application is made on the ground that Tula does not have any standing to file the Claim as it does not have any ownership rights over Lembal custom land but only rights to use the land.
5. In response, Tula filed its application seeking leave to amend the Claim.
6. Mr Sugden concedes that the current Claim is defective in claiming that Tula is the custom owner of the land in question in this matter. He also accepts that it follows that Tula cannot obtain eviction orders as custom owners.
7. Mr Sugden also submitted that Tula have rights in custom to be on and to work the land in question as a result of the Banks/Torres Island Court decision dated 24 November 2005. He submitted that those are rights which the law will protect and therefore Tula is not prevented by anything that has occurred from seeking this Court's assistance to protect those rights which is what the proposed amended Claim seeks.
8. Finally, Mr Sugden submitted that in these circumstances, nothing is to be gained by striking out the Claim forcing Tula to file the proposed amended Claim as a fresh proceeding. The overriding objective of saving expense, speed and the Court's duty to save costs consider the likely benefit of allowing the amendment instead of striking out the Claim. He also referred to the established position in the Court's inherent jurisdiction that a pleading should not be struck out if its faults can be cured by amendment.
9. I agree with Mr Sugden's submissions. As stated in the Application for leave to amend the Claim, the Court is always reluctant to strike out a Claim and if the faults in a Claim can be cured by amendment, the Court will almost always give leave to amend rather than strike out the Claim.
10. Further, Tula do not have to be custom owners of the land to enforce the rights declared by the Banks/Torres Island Court in their favour, as the draft Amended Claim seeks to do.
11. Accordingly, and for the reasons given, I will decline to strike out the Claim and Tula will be granted leave to amend the Claim.

C. Result and Decision

12. The Second Defendants' Application to Strike out the Claim filed on 7 September 2022 is **declined and dismissed**.
13. The Claimant's Application filed on 14 October 2022 for leave to amend the Claim in lieu of striking out the Claim is **granted**.



14. I will hear counsel as to the costs of the Applications at the Pre-Trial Conference.
15. The Claimant is to file and serve Amended Claim in the terms of the proposed Draft Amended Supreme Court Claim **by 4pm on 20 March 2023.**
16. The Defendants are to file and serve Defence to Amended Claim **by 4pm on 17 April 2023.**
17. The Claimant is to file and serve sworn statements **by 4pm on 8 May 2023.**
18. The Defendants are to file and serve sworn statements **by 4pm on 29 May 2023.**
19. This matter is listed for Pre-Trial Conference **at 1pm on 6 June 2023.** Trial date will be set then.

**DATED at Port Vila this 27<sup>th</sup> day of February 2023  
BY THE COURT**

*VM*  
Justice Viran Molisa Trier

