

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

Land Appeal  
Case No. 17/2142 SC/LNDA  
Old Ref: 95/01

**BETWEEN:** Naru Kalbeau Kalsakau  
*First Appellant*

**AND:** Chief Manarewo Family  
*Second Appellant*

**AND:** James Kalua Lauru  
*First Respondent*

**AND:** Family Bakokoto  
*Second Respondent*

**AND:** Family Kalpram  
*Third Respondent*

**Date of Hearing:** 2<sup>nd</sup> September 2024

**Coram:** Justice Dudley Aru

**Assessors:** Mr. Thomas Felix  
Mrs. Diana Kalsong

**Counsel:** Mr. S. Kalsakau for the First Appellant (Naru Kalbeau Kalsakau) no-appearance  
Mr. G. Avock for the Second Appellant (Chief Manarewo Family) no-appearance  
Mr. D. Yawha for the First Respondent (James Kalua Lauru)  
Mr. J. Mesao for the Second and Third Respondents (Family Bakokoto) and (Family Kalpram)

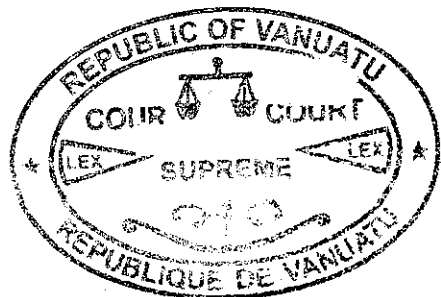
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## JUDGMENT

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### Introduction

1. This land appeal was re-listed for a two days hearing starting today. When the matter was called, there was no appearance from the two appellants' Counsel and the hearing did not proceed. We allowed a short adjournment before resuming but neither Counsel appeared.
2. Given this unsatisfactory state of affairs, the appeal was struck out for want of prosecution. The respondents were awarded costs of VT40,000 each to be shared equally by the appellants.
3. We now provide our reasons.



## Background

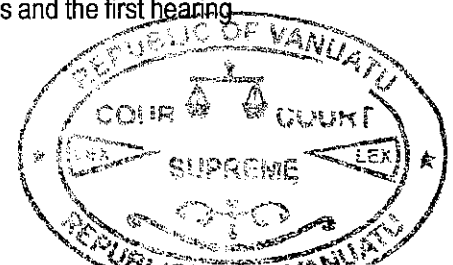
4. This appeal arises from a decision of the Efate Island Court dated **13 March 1995** concerning **Tamau Land** on Efate. The land is located at Tagabe in Port Vila. Following the hearing, the Island Court issued a 59-page judgment declaring James Kalua Luru, Family Bakokoto and Family Kalpram custom owners of the land each claimed.
5. Naru Kalbeau Kalsakau (Mr Kalbeau) and Chief Manarewo Family (Chief Manarewo) then appealed.

### *Notices of Appeal*

6. Mr Kalbeau filed his notice of appeal on **29 June 2004**, some 9 years after the decision was made. Similarly, Chief Manarewo filed his appeal on **29 June 2011**, some 16 years after the decision.
7. On 12 December 2000, the Chief Justice granted Mr Kalbeau's application to appeal out of time. And on 6 June 2014 Fatiaki J ordered that Chief Manarewo be made the second appellant and to serve his notice of appeal.
8. These orders were not appealed and management of the appeal proceeded with Mr Kalbeau as the first appellant and Chief Manarewo as the second appellant.

## Discussions

9. At this morning's hearing there was no appearance from Mr Kalsakau and Mr Avock. As a matter of courtesy to the Court and the respondents who were in attendance, no advance notice was given of their absence and no evidence was provided to justify their non attendance. A representative of the first appellant said Mr Kalsakau was attending to a personal matter whilst Mr Mesao told the Court he spoke briefly to Mr Avock before attending Court and tried contacting him again to no avail as his mobile phone was turned off. They were both aware of today's hearing as they were in attendance for the hearing previously scheduled for **17 June 2024**.
10. At that hearing, Mr Kalsakau appeared for the first appellant and requested an adjournment on the basis that he had only recently taken over the matter from Philip Fiuka and needed time to familiarise himself with the file. Mr Fiuka filed a notice of ceasing to act on 8 March 2024. There is nothing in the File to show that Mr Kalsakau filed a notice of beginning although he had two full months to do so and to familiarise himself with the File. Aside from what Mr Mesao told the Court, no evidence was produced for Mr Avock's absence.
11. The 17 June hearing was rescheduled from **7 March 2024** when the hearing could not proceed on that date due to Mr Avock taking medical leave. A copy of his sick leave was provided to the Chief Registrar. Mr Fiuka was still on record for the first appellant but did not appear on that occasion as well and no reasons were provided for his non attendance.
12. Since the declaration of custom ownership by the Island Court in 1995, the declared custom owners could not fully enjoy the fruits of the judgment due to these appeals and the delays by the appellants in progressing their appeals.
13. On **8 April 2015** orders were issued by Fatiaki J for the filing of appeal books and the first hearing date of 28 and 29 April 2015 were vacated by agreement.



14. Further orders were issued on **8 July 2015** for the filing of a joint appeal book by the appellants and tentative hearing dates were given for 26 to 30 October 2015. These orders were not complied with and on **27 October 2015** the appellants were ordered to comply with the 8 July orders.
15. On **6 October 2017** following the enactment of the Custom Land Management Act No. 33 of 2013 by Parliament, the parties informed the Court at a conference in chambers that they wanted the matter dealt with by the Court rather than a Nakamal under the new legislation. Thereafter the File was reviewed a number of times with orders issued to progress the matter for hearing.
16. At the next call over on 7 June 2023 with the appellants in attendance, the appeal hearing was listed for **28 August 2023**. The hearing was again adjourned with all the parties present and relisted for **6 October 2023**. With all the parties in attendance, that hearing was again adjourned to **1 November 2023** for the parties to confirm the replacement of one of the earlier named assessors who can sit with the Court. Before the adjournment, Mr Fiuka on behalf of the first appellant informed the Court that he had not filed any records of evidence from Island Court as they were destroyed by fire.
17. On **18 October 2023** the Court issued a Minute informing the parties that the records had not been destroyed by fire as asserted by Counsel but had always been available in the Island Court File for inspection. Orders were then issued for the appellants to inspect the Island Court File and obtain copies of the records of evidence and file and serve a supplementary appeal book with these records by **25 October 2023**.
18. When the matter was called for the hearing on 1 November 2023, Mr Fiuka sought a further adjournment of the hearing as he had not complied with the orders of 18 October 2023. The appeal hearing was then adjourned to 7 March 2024 as referred to above and proceeded somewhat unsatisfactorily from there.
19. Since 12 December 2000 when Mr Kalbeau was given leave to appeal out of time to date, 24 years have now lapsed without the appeal being heard. Similarly, with regards to Chief Manarewo's appeal, 10 years have now lapsed since he was ordered to join the proceedings as an appellant.

#### **Result**

20. Upon considering these lengthy delays, the appeal was therefore struck out. The respondents are each entitled to costs of VT40,000 to be paid equally by the two appellants.

**DATED at Port Vila this 2<sup>nd</sup> day of September, 2024  
BY THE COURT**

  
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**Dudley Aru  
Judge**