

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

Land Appeal Case No.  
17/2159 (old ref LAC 1996/13) SC/LNDA

IN THE MATTER OF LAND KNOWN AS PRV  
APPEAL FROM THE MALEKULA ISLAND COURT

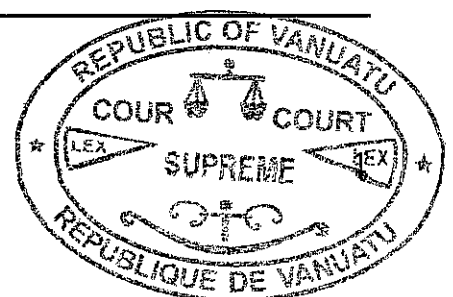
<b>BETWEEN:</b> <u>David Apia William</u> First Appellant	<b>AND:</b> <u>Kalosak Massing</u> First Respondent
<b>AND:</b> <u>Gaspart Tommy</u> Second Appellant	<b>AND:</b> <u>Collen Taur</u> Second Respondent
<b>AND:</b> <u>Robert Toame</u> Third Appellant	<b>AND:</b> <u>Yosef Peter</u> Third Respondent
<b>AND:</b> <u>Pierre Wersets</u> Fourth Appellant	<b>AND:</b> <u>Liemal Namalapane</u> Fourth Respondent
<b>AND:</b> <u>Klan Dona</u> Fifth Appellant	<b>AND:</b> <u>Otel Soksok</u> Fifth Respondent
<b>AND:</b> <u>Jack Klates</u> Sixth Appellant	
<b>AND:</b> <u>Edward Gorden</u> Seventh Appellant	

*Date:* 28 October 2024  
*Before:* Justice V.M. Trief  
*Counsel:* First Appellant – Mrs M.G. Nari  
Second Appellant – Mr S.T. Joel  
Third & Sixth Appellants – Mr S. Kalsakau  
Fifth Appellant – Mr K.T. Tari  
Other Appellants – in person  
Second Respondent – Mr B. Bani  
Third Respondent – Mr D. Yawha  
Fourth Respondent – Mr P. Fiuka  
Mrs T. Harrison for applicant to be joined as a party Family Ati Bobo  
Mr B. Livo for applicant to be joined as a party J. William

---

**DECISION AS TO APPLICATIONS BY FAMILY ATI BOBO AND JEFFREY WILLIAMS**

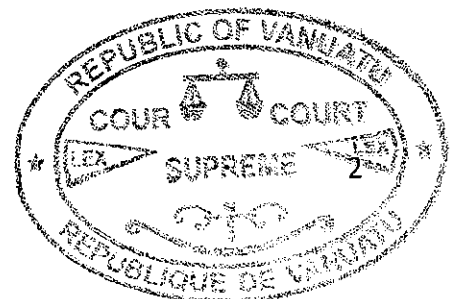
---



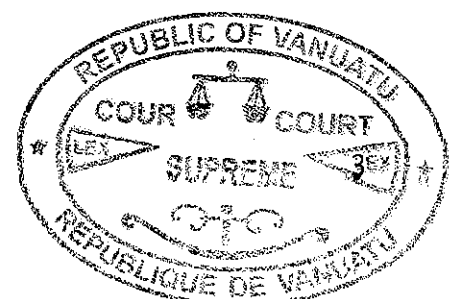
A. Applications by Family Ati Bobo

1. On 1 August 2024, Mrs Harrison's client Family Ati Bobo of Norsup island, Malekula filed Application to be joined as a party (the 'Application') with Sworn statement of Reginald Holi in support. Further sworn statements also filed. The sole ground of this application is that Family Ati Bobo have an interest in this case as custom owner of the land.
2. On 1 October 2024, Family Ati Bobo filed: (i) Application for Leave to Amend Application to Join/Reinstated as a Party; and (ii) Amended Application for the Applicant Family Ati Bobo to be Joined/Reinstated as a Party.
3. The grounds for the Application for Leave include that the Applicant seeks to include every party in the application, that it was party with the Fifth Appellant (Klan Dona) in the Malekula Island Court in 1985, that the Applicant was the Fifth Appellant's witness and that the Applicant would be prejudiced if leave was not granted. Sworn statements of Jean Palo Lino and Timothy Maltok were filed in support.
4. The grounds of the Amended Application are that Family Ati Bobo have an interest in this case as custom owner of the land, that they were party to the proceedings in the Malekula Island Court in 1985 with the Fifth Appellant, that they are related, that Family Ati Bobo gave evidence in support of the Fifth Appellant, that the Fifth Appellant alone has received financial benefits from the Government and that Family Ati Bobo successfully sued the Fifth Appellant in CC 20/305 and CC 20/2843 over the true bloodline of Bobo. Supporting sworn statements of Jean Palo Lino and Timothy Maltok.
5. The First Appellant, Third and Sixth Appellants, Fourth Respondent and Mr Livo's client filed submissions opposing the Application. Mr Yawha made oral submissions on 10 September 2024 that his client joined the opposition to the Application.
6. I now determine the applications.
7. Section 22 of the *Island Courts Act* [CAP. 167] (the 'Act') provides as follows:

22. (1) *Any person aggrieved by an order or decision of an island court may within 30 days from the date of such order or decision appeal from it to the Magistrates' Court.*
- (2) *The court hearing an appeal against the decision of an island court shall appoint two or more assessors knowledgeable in custom to sit with the court.*



- (3) *The court hearing the appeal shall consider the records (if any) relevant to the decision and receive such evidence (if any) and make such inquiries (if any) as it thinks fit.*
  - (4) *An appeal to the Supreme Court under subsection (1)(a) shall be final and no appeal shall lie therefrom to the Court of Appeal.*
  - (5) *Notwithstanding the 30 day period specified in subsection (1) the Supreme Court or the Magistrates' Court, as the case may be, may on application by an appellant grant an extension of such period provided the application therefor is made within 60 days from the date of the order or decision appealed against.*
8. Family Ati Bobo assert in these applications that they have an interest in this case as custom owner of the land hence their wish to be joined as a party, but more accurately as an appellant. Further, their allegation that they 'were party' with the Fifth Appellant in the Malekula Island Court in 1985 but have since been excluded by the Fifth Appellant underlines that they are seeking to be joined as an appellant in their own right.
  9. However, it is well settled law that the time limits of 30 and 60 days set out in subss 22(1) and (5) of the Act in relation to an appeal against a decision of an island court and in relation to an application seeking an extension of time for an appeal must be strictly complied with. If no application for leave to join as a party was filed within those timeframes, the person is out of time and this must be strictly complied with: Kalsakau v Jong Kook Hong [2004] VUCA 2, James v Regenmal [2014] VUCA 35 and Numania v Numanien [2019] VUCA 59.
  10. Accordingly, Family Ati Bobo cannot be joined as a party. This would be to achieve by a back door what is prohibited by s. 22 of the Act.
  11. If Family Ati Bobo's assertion is correct that the Fifth Appellant has excluded them on this appeal when they were 'party' together in the Malekula Island Court, it is unclear on what basis Family Ati Bobo could not be an appellant in its own stead separate from the Fifth Appellant. That Family Ati Bobo were a witness for the Fifth Appellant in the Island Court does not give any legal right for Family Ati Bobo to now be an appellant separate from the Fifth Appellant.
  12. As to the assertions that they are related, this Court cannot in the present matter being a land appeal case determine family bloodlines or relationship between any parties.
  13. There was also an assertion that leave was required so that the other parties could be included in the entitling of the Application. That is trivial and a waste of time and costs.
  14. In conclusion, Family Ati Bobo cannot be joined as a party pursuant to s. 22 of the Act. No legal basis has been shown to allow the Family Ati Bobo to be joined in another



capacity. There is no merit to any of the applications. All 3 applications must be declined and dismissed.

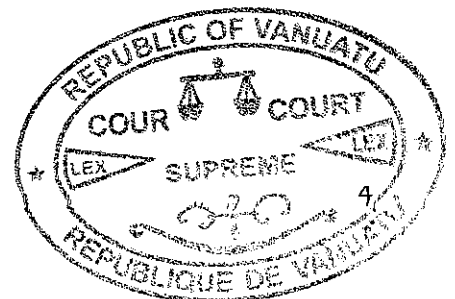
15. There was no prospect of success of any of the applications and a reasonably competent lawyer would have advised the client not to bring such applications – see rule 15.26(1) of the *Civil Procedure Rules* which provides as follows:

15.26 (1) *The court may order that the costs of the whole or part of a proceeding be paid by a party's lawyer personally if the party brings a proceeding that:*

(a) *has no prospect of success, is vexatious or mischievous or is otherwise lacking in legal merit; and*

(b) *a reasonably competent lawyer would have advised the party not to bring the proceeding.*

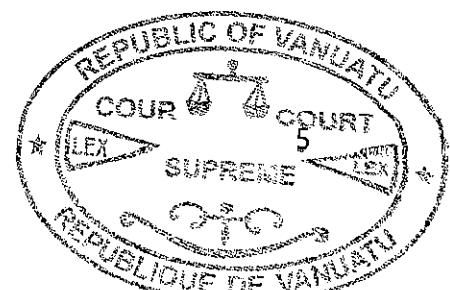
16. Accordingly, as set out in the Minute and Orders dated 10 September 2024, I put to Mrs Harrison why she as counsel should not personally bear the whole or part of the costs of the Application incurred by the parties to the proceeding who have been put to cost as a result of the Application.
17. I granted Mrs Harrison time to obtain instructions as to the Application and to respond to the Court as to why she should not personally bear part or the whole of the costs of the Application incurred by the parties to the proceeding.
18. Subsequently, on 1 October 2024, the two further applications were filed: (i) Application for Leave to Amend Application to Join/Reinstated as a Party; and (ii) Amended Application for the Applicant Family Ati Bobo to be Joined/Reinstated as a Party.
19. On 29 September 2024, Mrs Harrison filed Memorandum in which she stated that she accepted instructions at short notice and, “with limited information into the case acted in best interest of the Client” by filing the Application on 1 August 2024.
20. With respect, it was not and could not be in the best interest of the client to file an application for the sake of filing an application, in circumstances of limited information and without any regard to the applicable law. At the very least, Mrs Harrison needed to turn her mind to the provisions of the Act and relevant caselaw. Any reasonably competent lawyer would have done so. By Mrs Harrison's own admission, she did not do any of this – she simply filed the Application on 1 August 2024 in order to have an application filed before the conference scheduled on that day. This is underscored by the fact that there is no citation of the law in any of the 3 applications or the sworn statements in support.



21. Family Ati Bobo have been woefully misled that they had a prospect of being joined as a party.
22. For the reasons given, Mrs Harrison is to personally bear the whole of the costs of the applications which I now summarily fix as follows:
  - a) Mrs Harrison is to personally pay the First Appellant the costs of the 3 applications fixed summarily at VT40,000 **by 4pm on 28 November 2024;**
  - b) Mrs Harrison is to personally pay the Third and Sixth Appellants the costs of the 3 applications fixed summarily at VT40,000 **by 4pm on 28 November 2024;**
  - c) Mrs Harrison is to personally pay the Fourth Respondent the costs of the 3 applications fixed summarily at VT40,000 **by 4pm on 28 November 2024;** and
  - d) Costs in respect of Mr Livo's client are reserved.

B. Applications by Jeffrey Williams

- C. On 10 September 2024, Mr Livo's client filed Application for Jeffrey Williams as Representative of Williams Family to [be] Added as an Appellant in this Proceeding. The Sworn statement of Darvol Kenery William was filed in support.
- D. Attachment "DKW01" of Mr William's sworn statement is a copy of the Court's Orders in the present matter dated 4 November 2009. At para. 4 of those Orders, the Court granted the Application of Jeffery Williams, "to be joined as a Party as a representative of the Williams family."
- E. On the same day, the First Appellant filed Objection to Participation of Eighth Appellant Jeffrey William.
- F. As set out in the Minute and Orders dated 10 September 2024, I put to Mr Livo how the strict time limits in s. 22 of the *Island Courts Act* also did not apply to his client's Application? Mr Kalsakau submitted that there had been an earlier Order by this Court for joinder of Eighth Appellant. Mr Livo was not aware of this Order. I granted him time to file an Amended Application or Memorandum if no such application is required (and if this Court has already made a previous Order for joinder of Eighth Appellant, that should be attached to the Memorandum).
- G. On 27 September 2024, Mr Livo's client filed Amended Application for Jeffery Williams as Representative of Williams Family to be Added as a Respondent in this proceeding. One of the grounds of the Amended Application is that on 4 November 2009, the Court

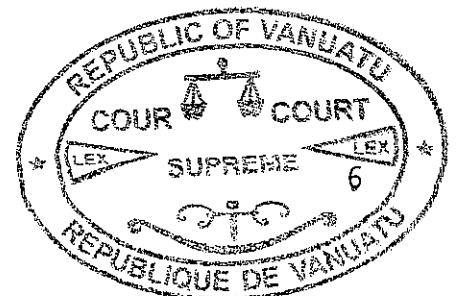


per Dawson J ordered that Jeffery Williams be joined as a party in this proceeding as representative of William Family.

23. On 2 October 2024, the First Appellant filed submissions opposing the application.
24. The Court ordered on 4 November 2009 that, "Jeffery Williams be joined as a party in this proceeding as representative of William Family" however in the Court Minutes dated 10 July 2012 and 9 November 2012, the entitling of the parties includes "Jeffrey Williams, Eighth Appellant" (as well as, incidentally, "Pierre Titus Moulol, Ninth Appellant" and "Rene Denis Iona, Tenth Appellant").
25. Accordingly, it appears that Jeffrey Williams has been joined by the Order of the Court dated 4 November 2009 as representative of William Family.
26. In the circumstances, there is no cause to join Jeffrey Williams also as a respondent as sought in the Amended Application. For that reason, the Application and the Amended Application filed for Jeffrey Williams are **declined and dismissed**.
27. I will hear counsel at the next conference as to any notice of appeal for Jeffrey Williams as representative of William Family.


H. Result and Decision

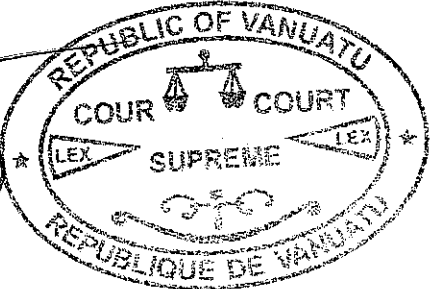
28. The Application by Mrs Harrison's client Family Ati Bobo of Norsup island, Malekula filed on 1 August 2024 and the two applications filed on 1 October 2024 are **declined and dismissed**.
29. Mrs Harrison is to personally bear the whole of the costs of the 3 applications by Family Ati Bobo which I now summarily fix as follows:
  - a) Mrs Harrison is to personally pay the First Appellant the costs of the 3 applications fixed summarily at VT40,000 **by 4pm on 28 November 2024**;
  - b) Mrs Harrison is to personally pay the Third and Sixth Appellants the costs of the 3 applications fixed summarily at VT40,000 **by 4pm on 28 November 2024**;
  - c) Mrs Harrison is to personally pay the Fourth Respondent the costs of the 3 applications fixed summarily at VT40,000 **by 4pm on 28 November 2024**;
  - d) Costs in respect of Mr Livo's client are reserved; and
  - e) The other parties are to bear their own costs of the applications by Family Ati Bobo.



30. The Application for Jeffrey Williams as Representative of Williams Family to [be] Added as an Appellant in this Proceeding, filed on 10 September 2024, and the Amended Application filed on 27 September 2024 seeking that he be added as a respondent are **declined and dismissed**.
31. The Eighth Appellant is to pay the First Appellant the costs of the applications summarily fixed at VT30,000 **by 4pm on 28 November 2024**.
32. The other parties are to bear their own costs of the applications by Jeffrey Williams.

**DATED at Port Vila this 28<sup>th</sup> day of October 2024  
BY THE COURT**

  
.....  
Justice V.M. Trief



The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The text 'REPUBLIC OF VANUATU' is written along the top inner edge, and 'REPUBLIQUE DE VANUATU' along the bottom inner edge. The words 'COUR' and 'COURT' are positioned on either side of the scale, with 'SUPREME' centered below it. Two small triangles containing the word 'LEX' are located on the left and right sides of the seal.