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

Civil Appeal
Case No. 24/1636 COA/CIVA

BETWEEN: **RORO POILAPA, LORRY KALTABANGA BANGALULU, TILU BEMA CHARLEY**
First Appellants

AND: **VAKUTONO IONE COMMITTEE**
Second Appellant

AND: **SAMSON MAHE AS ADMINISTRATOR OF THE ESTATE OF EMILE MAHE**
First Respondent

AND: **MELE TRUSTEES LIMITED**
Second Respondent

AND: **BLUESPRING EVERGREEN FARM & PLANTATION LIMITED**
Third Respondent

AND:
THE REPUBLIC OF VANUATU
Fourth Respondent

Date of Hearing	*8 August, 2024*
Coram:	*Hon. Chief Justice V. Lunabek* *Hon. Justice J. Mansfield* *Hon. Justice R. Young* *Hon. Justice D. Aru* *Hon. Justice E. Goldsbrough*
In Attendance:	*Nalyal, E for the First and Second Applicants* *Raikatalau, L & Muluane, V for the First and Second Respondents* *Hamer, C for the Third Respondent* *Huri, L for the Fourth Respondent*
Date of Decision:	*16 August 2024*

JUDGMENT OF THE COURT

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1. An unsuccessful application to strike out a claim is the basis for this application for leave to appeal. Roro Poilapa, Lorry Kaltabang Bangalulu and Tilu Bema Charley, together with the Vakutono Ione Committee, the Applicants, were defendants in the Supreme Court defending a claim brought by Samson Mahe, as Administrator of the estate of Emile Mahe and Mele Trustees, the 1st and 2nd Respondents to this application. Bluespring Evergreen Farm and Plantation Limited and the Republic of Vanuatu are the 3rd and 4th Respondents to this application, having been the 3rd and 4th defendants in the court below.

The Supreme Court decision

2. The claim in the Supreme Court sought orders about a lease of land. There had been a lease between the 1st and 2nd Respondents, which had been changed. It had come to the end of its term in 2011, but not before, by order of the Minister of Lands, the parties to the lease had been altered. That alteration is the subject of a challenge, as is the question as to whether the lease was renewed before expiry in 2011 and why registration of that event never took place. All of these issues brought by the claimant are denied.

3. The application to strike out was based on the notion that the 1st and 2nd Respondents, as claimants, lacked standing to bring the claim. Given that it is the Applicant's position that the lease between the 1st and 2nd respondents had expired, it was submitted that they consequently lacked any sufficient interest in the land to allow them to make their claim. The application to strike out was supported by the Republic and by the 3rd Respondent, which, by now, had become the replacement leaseholder.

4. Once that background is set out, it becomes clear that the strikeout application was destined to fail. It is the essence of the claim, in which the facts asserted by the Applicants are attacked. Brought by the claim, there is a challenge to the variation by the Minister of the original lessee. There is an assertion that the lease was renewed prior to its expiry, a further assertion that the registration of that renewal was applied for, and a subsequent challenge to the grant of a lease to the 3rd Respondent.

5. The order made in the Court below not to strike out the claim is an interlocutory order, hence the need for leave. On an application for leave, the applicant must show that the judge erred in determining the application and that there are reasonable prospects of success on appeal should leave be granted.

Discussion

6. On an application to strike out a claim such as this, the applicant must show that a trial of the claim is unnecessary because, *inter alia*, it is so obviously untenable that it cannot possibly succeed. This

will involve examining the pleadings and the evidence, not for the purpose of making findings of fact, but only to determine whether a triable issue is disclosed.

7. In determining an application to strike out, any court must begin its deliberations based on the assumption that the claimants can show through evidence that what they assert in the claim is correct. That is not to say that the claimants will ultimately succeed in that task, simply that the basis for the strike out determination will be the assumption that the claimants can prove their case at trial. As the strikeout is heard and determined before any facts are found based on evidence, this assumption route is the only possible way to fairly decide the application.

8. The 1st and 2nd Respondents, in their claim, assert that the alteration to the lease made by the Minister of Lands was improper and based on bad faith and without notice, that an application to register the renewal of the lease was deposited with the Registrar of Lands prior to the expiration of the first lease, and that subsequent dealings with the land were improper. Whether they will be successful at trial or not will remain a matter for trial, but those are their assertions. At this stage, they must be taken as capable of being properly supported by evidence.

9. No amount of assertion that the 1st and 2nd respondents are wrong in their claim coming from the Applicants at this stage will displace the notion that the claim needs to proceed to trial for the disputed facts to be determined. Only where there are no relevant and undisputed facts going to show that there is no basis for a claim at all and no issues of credit, will an application to strike out ever succeed.

10. Here, there are any number of disputed facts that require a determination during a trial. They are set out in great detail by the trial judge in her careful and considered decision of 29 April 2024, beginning in paragraph 11 of her decision. Little is achieved by repeating those disputed facts here.

11. It is, though, worthy of note that the first category of disputed facts concerns the conduct of the Minister of Lands and the Registrar of Lands. Those two are challenged because of the change of the parties to the lease and the alleged failure to register the renewal of the lease. The fact that the 4th Respondent can make a submission supporting the strike out when it is its own conduct at the start of the dispute is quite remarkable.

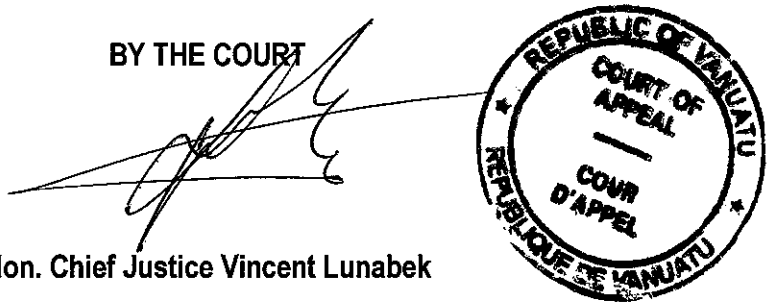
12. On this application for leave, it appears that counsel had not appreciated the proper approach necessary for the determination of the strikeout in the Court below. Once that approach had been put to him in the course of his submissions, it was readily agreed that the complaint made of the decision of the trial judge was not a valid complaint and thereafter ceased to press the application for leave. Counsel for the third Respondent, which supported the initial strikeout application said on appeal that her client agreed that the matter should go to a hearing.

Decision

13. The application for leave to appeal is refused. The first and second Applicants are ordered to pay the costs of the application in the sum of VT 75,000 to the first and second Respondents. There is no order for costs in relation to the third and fourth Respondents.

DATED at Port Vila, this 16th day of August, 2024.

BY THE COURT



Hon. Chief Justice Vincent Lunabek