

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

Civil Appeal
Case Nos. 24/3694 and 24/3789 COA/CIVA

[2025] VUCA 10

BETWEEN: WILLIE LOP and Family
Appellant

AND: FAMILY KAUKARE
Respondent

Before: *Hon. Chief Justice V Lunabek*
Hon. Justice M O'Regan
Hon. Justice R White
Hon. Justice D Aru
Hon. Justice V Molisa Trief
Hon. Justice E Goldsbrough
Hon. Justice M A MacKenzie

Counsel: *Mr E Nalyal on instructions from Mr E Molbaleh for the Appellant*
Mr G Blake for the Respondent

Date of Hearing: *6th February 2025*
Date of Judgment: *14th February 2025*

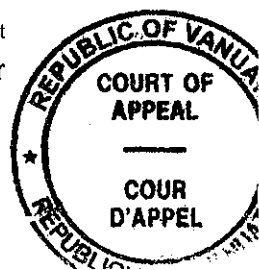
JUDGMENT OF THE COURT

Introduction

1. This judgment concerns two purported appeals involving the same parties and concerning the same land. They have the remarkable feature that the only document on each of the Court files which has been filed by the appellants in the notice of appeal itself. Each notice of appeal was filed on the appellant's behalf by Eric Molbaleh, who described himself as "Counsel for the Appellant".
2. At the hearing of the appeal on 6th February, Mr E Nalyal appeared for the appellants. Mr Nalyal informed the Court that he was appearing on the instructions of Mr Molbaleh, that he had not been provided with any papers concerning the appeals and that he had just met the appellant Willie Lop. He asked the Court to adjourn the hearing of the appeals. It was plain that Mr Nalyal was not in any position to argue the appeals.
3. As will become apparent, save for one matter, the application for the adjournment had little to commend itself. However, despite the objection of Mr Blake, counsel for the respondents in each appeal, the Court did decide to adjourn the hearing. Our reasons for that unusual course follow.

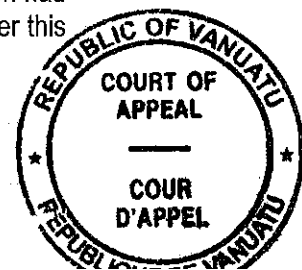
Background

4. Family Kaukare commenced proceedings in the Supreme Court in the Supreme Court on 31st May 2021 seeking an order for the eviction of "Willie Lop and Families" from land on Tanna for



which Family Kaukare held a Certificate of Recorded Interest issued under the Custom Land Management Act. Cornerstone Lawyers by Ms Thyna filed a Notice of Beginning to Act on 2nd June 2021 in which she indicated that the Defendant disputed the claim and intended to make a counterclaim.

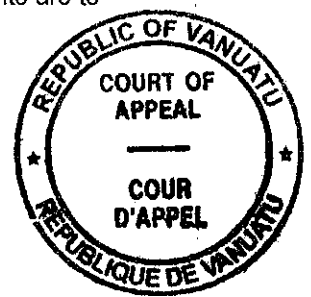
5. However, neither the Defendants nor Ms Thyna complied with the Supreme Court timetabling orders for the filing of a defence, a counterclaim and sworn statements, and Ms Thyna did not appear at any of the management conferences or at the trial on 19th November 2021. Being satisfied by the evidence of Family Kaukare, Andr e Wiltens J made an order for the eviction of Willie Lop and Family: *Kaukare v Lop* [2021] VUSC 368.
6. An Eviction Order directed to "Willie Lop and Family" was issued on 19th November 2021.
7. On 4th March 2024, Saksak J, on the application of Family Kaukare, issued an Enforcement Warrant addressed to "Willie Lop and Family". That seems to have prompted Willie Lop and Family, now represented by Mr Molbaleh, to file on 21st August 2024 an urgent application in the Supreme Court seeking the stay of the Enforcement Warrant. Despite stating in that application that its basis was a foreshadowed appeal against the Eviction Order, Willie Lop and Family did not file a notice of appeal until 19th November 2024, i.e., three months later. Mr Molbaleh was named in the Notice as Counsel for the Appellants. Despite the appeal being nearly three years out of time, the appellants did not file any application for an extension of time.
8. Justice Saksak heard the application for the stay on 25 November 2024 and dismissed it: *Family Kaukare v Lop* [2024] VUSC 351. Mr Molbaleh was counsel for the applicants on that application. Two days later, Mr Molbaleh filed on behalf of Willie Lop and Family a notice of appeal against the order of Saksak J. Despite Saksak J's order of 25th November 2024 plainly being interlocutory in nature, the appellants did not seek leave to bring the appeal.
9. At the Appeal Case Management Conference on 4th December 2024, Mr Molbaleh represented Willie Lop and Family. When the requirement for leave to bring both appeals was brought to his attention, Mr Molbaleh said that the necessary applications would be filed by close of business on 6th December 2024. Justice Goldsbrough made an order to that effect. However, no such applications have been filed.
10. Justice Goldsbrough also made timetabling orders which, amongst other things, required the appellant to file and serve Appeal Book A and the appellants submissions by 16th December 2024 and Appeal Book B by 20th January 2025. Mr Molbaleh has not complied with those orders. As we indicated at the commencement of these reasons, the only document on each file which was filed by the appellant is the notice of appeal itself.
11. At the conference on 4th December 2024, Thursday 6th February 2025 was fixed as the date for hearing of the appeals. Mr Molbaleh was present when that order was made.
12. Mr Molbaleh did not appear on 6th February 2025 for the hearing of the appeals. Mr Nalyal said that he had been instructed by Mr Molbaleh to appear to request that the hearing be adjourned to a later date. Mr Blake, for Family Kaukare, opposed the adjournment.
13. We mention two further matters. In the week commencing 27th January 2025, Mr Molbaleh had made an administrative request for the adjournment of the hearing of the appeal until later this



year. That request was refused. A second request for adjournment made by Mr Molbaleh early in the week of 3rd February 2025 was also refused.

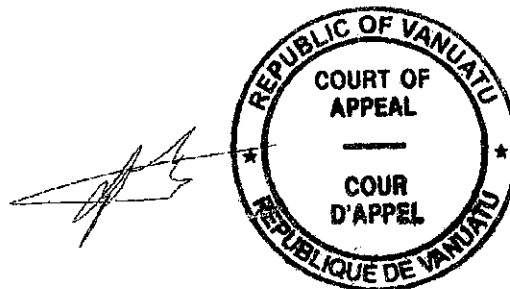
Consideration

14. The circumstances outlined above, together with the fact that Family Lop continue to be present on the land of Family Kaukare, indicate that this was not a promising case for an adjournment, even if it be the case that Willie Lop and Family have been let down by their lawyer Mr Molbaleh.
15. However, there is another important consideration. This Court has said on several occasions that in applications for orders of eviction, all adults, male and female, alleged to be occupying the land unlawfully should be named as defendants and served with the proceeding: *laus v Noam* [2017] VUCA 40 at [12]; *lapatu v laus* [2018] VUCA 50 at [22]; and *Willie v Bule* [2024] VUCA at [43]. Likewise, all adults to be evicted must be served with the eviction order. A description of the defendants sought to be evicted as a named individual “and family” does not satisfy these requirements.
16. In this case, the proceeding in the Supreme Court identified the defendants only as “Willie Lop and Family”. This Court has no specific information as to the composition of the Family of Willie Lop but the sworn statement of Daniel Yawha Kaukare made on 2nd June 2021 in support of the application for the Eviction Order suggests that it includes several adults.
17. In these circumstances, it appears that the only person against whom the Enforcement Warrant may be lawfully executed is Willie Lop himself – see *Willie v Bule* at [44], [47]. That being so, the Enforcement Warrant should be amended to make the position clear. Court orders should not be ambiguous. Further, the present respondents may wish to consider, before the Warrant is executed, whether orders should also be sought against other members of the Willie Lop Family so that the relief they obtain will be complete. We also note that the execution of eviction orders, especially when they involve disturbance of living arrangements, can be disruptive and the cause of consternation. It is in the public interest, and in the interests of justice (the Sheriff of the Supreme Court will be involved at least to some extent in the execution of the order) that any issues as to the validity of the Enforcement Order are addressed before it is executed. Adjournment of the appeal hearing will give the opportunity for these matters to be addressed.
18. For these reasons, we adjourned the hearing of the appeals to the May 2025 session of the Court of Appeal.
19. We add the following orders.
 - a. If the Appellants wish to make an application for an extension of time in which to appeal or for leave to appeal, each application must be filed and served by 28th February 2025. In both cases, the application should be accompanied by a draft notice of appeal, setting out the grounds of appeal that will be pursued if the extension of time and/or leave to appeal is granted.
 - b. Appeal Book A and the submissions to be made on behalf of the applicants are to be filed and served by 21st March 2025.



- c. The appeals are listed for a further Directions hearing before the managing Judge on Monday, 24th March 2025 at 09:00hrs.
 - d. Mr Molbaleh, counsel for the Applicants, is to file and serve by 21 February 2025 any submission he wishes to make as to why he should not be ordered to pay the costs incurred by the Respondents of and incidental to this hearing.
 - e. Any submissions by the Respondent concerning the question of costs are to be filed and served by 7 March 2025.
20. The Court will then determine the issue of costs on the papers.
21. We are conscious that we have not heard from Mr Molbaleh with respect to his conduct and omissions outlined in these Reasons. We refrain, therefore, from expressing any concluded views. We do, however, consider that these reasons should be referred to the Law Council so that it can consider whether Mr Molbaleh has discharged his professional responsibilities to the Court and to the Appellants. We will refer the matter to the Chief Registrar so that he can make the referral to the Law Council.

**DATED this 14th day of February 2025
BY THE COURT**



Hon. Chief Justice V. Lunabek,