

**BETWEEN: FAMILY FOMULE GARAE**  
Appellant

**AND: BILL STEPHEN**  
First Respondent

**AND: SANTO/MALO JOINT AREA LAND TRIBUNAL**  
Second Respondent

**AND: FAMILY ANTAS**  
Third Respondent

**AND: FAMILY BEBELAU**  
Fourth Respondent

**AND: FAMILY BULRAVE**  
Fifth Respondent

**AND: FAMILY SAWA**  
Sixth Respondent

**AND: FAMILY NOEL VARI**  
Seventh Respondent

**Date of Hearing:** 10 November 2025

**Coram:** *Hon. Justice Ronald Young*  
*Hon. Justice Richard White*  
*Hon. Justice Dudley Aru*  
*Hon. Justice M Mackenzie*

**Counsel:** *Bill T. Bani for the Appellant*  
*Silas C. Hakwa for the First Respondent*  
*Lenon Huri for the Second and Third Respondents*

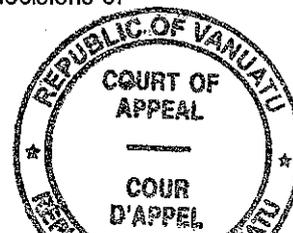
**Date of Decision:** 14 November 2025

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## JUDGMENT OF THE COURT

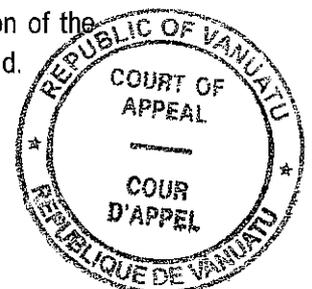
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1. The Appellants, on the 19<sup>th</sup> of December 2023, filed an application for leave to extend time to appeal a decision of the Supreme Court of 6<sup>th</sup> March 2015 which set aside appeal decisions of



the Santo/Malo Joint Area Land Tribunal (SMJALT) and Santo/Malo Island Land Tribunal (SMILT).

2. On 12<sup>th</sup> of April 2024 counsel for the First Respondent filed an application to strike out the application to extend time for leave to appeal. Counsel for Mr Stephen accepted that at the hearing of this appeal the strike out application was unnecessary given counsel would have the opportunity to challenge the application for leave to extend time to appeal at the substantive hearing. With consent the application to strike out is dismissed.
3. There is a long and complex history of litigation involving this land known as the Artacha land. Mr Stephen, the first respondent is the representative of Family Salathiel Stephen Dule who are currently the custom owners of the land. In this judgment we do not include a record of all litigation involving this land.
4. On the 9<sup>th</sup> September 2008 the Vaturani Malo/Santo Joint Village Land Tribunal (VSJVL) considered claims of custom ownership to the Artacha land. The Tribunal concluded that the family of the Salathiel Stephen Dule were the custom owners.
5. Subsequently an appeal by Family Garae against this decision was filed and heard by the Santo/Malo Joint Area Land Tribunal (SMJALT). They declared that the Artacha land was owned by Family Garae. A subsequent appeal was made to the Santo/Malo Land Tribunal (SMLT) in 2010 which also declared the Family Garae the owner of the Artacha land.
6. On 26 May 2011 the Stephens Family filed proceedings in the Supreme Court challenging the decisions by the Joint Area Land Tribunal and the Land Tribunal. Fatiaki J heard the appeal on the 3<sup>rd</sup> March 2015 and concluded that neither of the Tribunals had complied with the relevant procedural rules in Sections 5, 6 and 7 of the Custom Land Tribunal Act. He concluded the Tribunals had breached the requirements of Section 39 of that Act. As a result the judge quashed their orders. The effect of that decision by the Supreme Court, quashing the two appellate Tribunal's decisions meant that the decision, of the VSJVL was the only "live" decision affecting the Artacha Land and the Stephens Family were the custom owners of the land.
7. Subsequent litigation followed involving proceedings by the Stephens Family to have their declared interest in land recorded and trespass orders relating to the Family Garae. Eventually, the Stephens Family were able to have their customary interest in the Artacha land recorded.
8. In 2021, it came to the notice of Family Garae that the Chairman of the VSJVL who had heard the contested application relating to the Artacha land now said that that decision had been obtained by fraud in that he had been bribed to make the decision in favour of the Stephens Family.
9. On 28 July 2022 the Family Garae filed an application in the Santo/Malo Island Land Court under s.45 of the Customary Land Management Act. They sought a review of the decision of the VSJVL which recognized Family Stephens as the custom owner over the Artacha Land.



10. The review application was struck out by the Island Court under s.58 of the Customary Land Management Act. Section 58(1) provides as follows:

***"Existing decisions of Customary Land Tribunal***

(1) *Decisions of:*

- (a) *A single or joint village Customary Land Tribunal and sing joint sub-area; or*  
(b) *A single or joint sub-area Customary Land Tribunal;*

*which determined the ownership of custom land and which were made before the commencement of this Act and have not been challenged within 12 months after the commencement of this Act, are deemed to create a recorded interest in land in respect of the person or persons determined by such tribunal to be a custom owner".*

11. The decision of a VSJVL was made in 2008 before the commencement of the Custom Land Management Act in February 2014. Therefore in terms of s.58 any challenge to the decision of the VSJVL had to be made within 12 months of February 2014. The challenge was filed in July 2022 some 8 years out of time and therefore struck by the Island Court (Land).
12. This appeal now challenges the decision of Fatiaki J of March 2015. As a first step the appellants must obtain leave from this Court to extend time for filing the appeal given Fatiaki J's decision was in 2015 and these proceedings were filed in 2023.
13. In such cases the proposed appellant must ordinarily establish the reason for the delay, the merits of the appeal and whether there is any prejudice to the other party. In particular the Court will consider whether there are reasonable grounds for the delay rather than neglect or oversight. As to the merits the Court will consider whether there is a reasonably arguable case. And whether there is any unfair prejudice to the responding party. Finally the overall justice of the case will be considered.
14. The appellant has filed three sworn statements in support of the leave application.
15. Mr Livo Tamata has filed a sworn statement in support of the application for leave to extend time. He says that he was the chairman of the VSJVL at the 9<sup>th</sup> September 2008 hearing when they determined that the land was owned by Salathiel (the Stephens Family). Mr Tamata said that some money was paid by Salathiel Stephen to the Tribunal to procure a judgment in his favour instead of Fomule Garae. He says he manipulated the decision of the Tribunal by instructing the Tribunal to find in favour of Salathiel rather than Family Garae which they preferred.
16. Sam Vula was the Secretary of the Vaturani Island Council of Chiefs in the South Santo Area II. He said that on 27 September 2021 Levus Tamata asked him to write a statement relating to the Artacha Land. The statement from Levus Tamata was that he had accepted a bribe in awarding the Artacha Land to Salathiel Stephens rather than Family Garae.
17. Finally Pedro Tangata's sworn statement said he was the spokesperson for Family Garae. He said that he became aware in 2021 that the Chairman of the VSJVL had signed a statement saying the decision of September 2008 had been obtained by fraud. The Family then filed proceedings in the Island Court challenging the VSJVL decision but they were out of time.



18. As we have noted Fatiaki J's decision was focused on the procedural failures by the two appeal Tribunals. He allowed the appeal by Mr Stephens on the basis that the statutory procedures had not been followed. He quashed the two Tribunal decisions. And so any application to extend time to appeal from the judgment will need to show an arguable case as to why the Judge was wrong to reach the conclusions he did on the procedural failures by the Tribunals.
19. The appellants have made no attempt to show that Fatiaki J's judgment is wrong. In seeking leave they have focused on the allegation that the decision of the VSJVL T was obtained by fraud. That issue was not before Fatiaki J for consideration in his 2015 judgment
20. As we have noted one of the factors the Court will take into account in an application for leave is whether on an ultimate appeal the appellant will have an arguable case. The appellant has made no attempt to argue the merits of any appeal against Fatiaki J's decision. The grounds of appeal all focus on the allegation of fraud. In those circumstances the proposed appeal has no prospect of success.
21. As to delay the appellants have had since 2015 to challenge the decision of Fatiaki J. They have not provided any reason for the delay in appealing. The appellants focus has been on the fraud allegation and the fact it only came to light in 2021 and that since that time they have acted with some speed. For reasons we have given the circumstances of the fraud claim and any reason for delay related to that allegation are irrelevant to any appeal from Fatiaki J's judgment.
22. Given there is no merit in the proposed appeal and no reason for the delay we refused leave to extend time to file the proposed appeal.
23. The appellant will pay costs to the first respondent of VT 50,000 and costs in favour of the second and third respondent in total VT 20,000.

**DATED AT Port Vila, this 14<sup>th</sup> day of November 2025.**

**BY THE COURT**

  
Hon. Justice Ronald Young

