

BETWEEN: DAVID APIA WILLIAM represented by Willion
Apia
Appellant

AND: JEFFERY WILLIAM
Respondent

Date of Hearing: 6 February 2026

Before: Hon. Chief Justice Vincent Lunabek
Hon. Justice Michael Wigney
Hon. Justice Oliver Saksak
Hon. Justice Dudley Aru
Hon. Justice Maree MacKenzie
Hon. Justice Josaia Naigulevu

Counsel: Mrs M G Nari for the Appellant
Mr B Livo for the Respondent

Date of Judgment: 13 February 2026

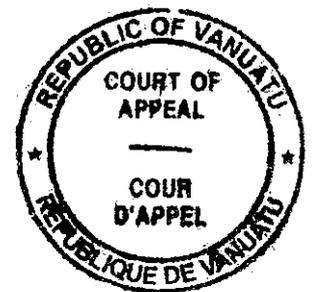
JUDGMENT OF THE COURT

Introduction

1. Under the Constitution of the Republic of Vanuatu ("the Constitution"), all land in Vanuatu belongs to the indigenous custom owners and their descendants in perpetuity.¹ Custom land is not individually owned. This fundamental principle appears to have been lost sight of in the last 40 years since the Malekula Island Court made declarations of custom ownership in relation to the PRV land on 13 May 1985.²
2. Family William filed a claim in the Malekula Island Court ("the Island Court") for custom ownership of certain areas of land within the PRV custom land. Their claim related to areas of land known as Lombal and Danev–Naur and was based on the William family history. At the time of the Island Court hearing there were 3 brothers in the William family; David, Kenery and Jeffrey. David was the eldest. The Island Court records show Jeffery William was the family spokesperson at the Island Court hearing.

¹ Articles 73 and 75 of the Constitution.

² *William v Tommy* [1985] VUIC 1.



3. The Island Court made the following declarations in relation to the Lombal and Danev-Naur lands:

- a) *Ownership of the Lombal land was declared to claimant 13, Otel Soksok.*
- b) *Ownership of Danev-Naur land was declared to David Apia William.*
- c) *Claimant 3, Collin Taur, was recognised as the small chief to Apia and as small chief of Danev-Naur. He was to respect Apia William as his big chief in time to come, as it is the custom of Malekula.*

4. Family William filed an appeal against the Island Court's decision in relation to the Danve-Naur land. There is no dispute that the appeal was filed within the timeframe provided by section 22(1) of the Island Courts Act. The primary judge had evidence that the decision to appeal was made by the 3 brothers, who contributed to the appeal fee. The handwritten notice of appeal was prepared by Kenery William and signed by David William, who filed it in the Island Court at Malekula.

5. There were no issues until David William passed away in 1994. After that, internal family fractures developed and remain. These issues led to orders being made by the Court in 2009 and 2011, which addressed who the parties to the appeal were.

6. On 4 November 2009, Justice Dawson made the following orders:

- “3. *The first appellant is to make application to the Court to clarify his legal status by the 26th November 2009 as the Court understands there is no living David Apia William.*
- 4. *The application of Jeffery Williams to be joined as a party as a representative of the Williams Family is granted”*

7. On 25 March 2011, Justice Spear recorded that the appeal from the Malekula Island Court involved six separate appeals.³ On 26 July 2011, the six appeals were divided into sub appeals. The appeal relating to the Danev-Naur land is Sub Appeal 13A.⁴

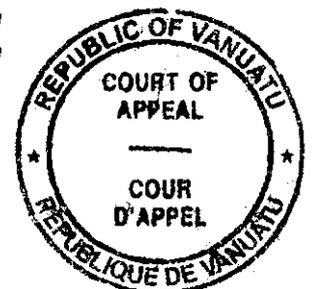
8. At a conference on 3 October 2011, Justice Spear made further orders in relation to representation. We set out the orders made:

“Sub Appeal 13A

- 3. *On 4 November 2009, this Court Ordered that Jeffery Williams be included as a party as representative of the Williams Family. Some attention is required in respect of that Order. Mr Loughman acts for Mr Jeffery Williams.*
- 4. *The first appellant David Apia William has since died. There is a dispute as to the succession to his chiefly title which is currently being addressed at a hearing before the Island Court at Lakatoro - both last week and this week. The*

³ See conference notes / directions of 25 March 2011.

⁴ See conference notes / directions of 26 July 2011.



“contest” is between Mr Jeffery William and Mr William Willion Apia – they are cousins.

5. *In respect of these land appeal, however it is appropriate to substitute Mr Willion Apia, the older son of the late David Apia William, as the first appellant. That order is made accordingly. Mr Willion Apia is also represented by Mr Saling Stephens.*
6. *Mr Jeffery Williams is added as 8th appellant but in his his own right and not representing the Williams Family. Mr Jeffery William’s interest’ is in respect of sub appeal 13A and he is now noted as being involved as an appellant with that sub appeal.*
7. *Mr Bani, for the Respondent in sub appeal 13A, reminds the Court that he has filed a cross Appeal in this respect”*

9. The orders made in 2009 and 2011 have never been appealed.

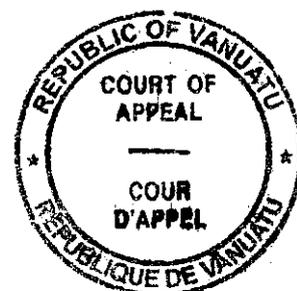
Progress with the Appeal

10. The appeal has taken an extraordinary amount of time to progress in the Supreme Court. Two of the 3 brothers who were part of the William family claim in the Island Court have passed away. However, since 2024, the primary judge now seized of the appeal, has been actively managing the appeal towards a hearing. On 29 October 2024, the primary judge tentatively listed the appeal for hearing in Malekula in September 2025.
11. The application to remove Jeffrey William as a party was filed after the tentative hearing date was given. The crux of the application was that Jeffrey William did not file an appeal within the time frames provided in s 22 of the Island Courts Act, so could not be a party to the appeal.
12. The primary judge heard the application and refused to remove Jeffrey William as a party.⁵ The applicant filed an application for leave to appeal on 3 June 2025. Leave to appeal is required, as the decision is interlocutory in nature. The applicant then delayed prosecuting the leave application for 8 months. This has further delayed the land appeal being heard by the Supreme Court.

The approach to applications for leave to appeal

13. Whether or not to grant leave to appeal is a matter of discretion. As this Court said in *Stage Four Ltd (as Trustee for the Montreal Trust) v 100% Pur Fun Ltd* [2024] VUCA 3:
 26. *“Generally, when considering whether an applicant should be granted leave to appeal, this Court considers whether there is sufficient reason to doubt the correctness of the decision of the primary judge so as to warrant the matter being reconsidered by this Court and whether, assuming the judgment in question to be wrong, the applicant will suffer substantial injustice if the decision stands”.*

⁵ *William v Massing* [2025] VUSC 113.

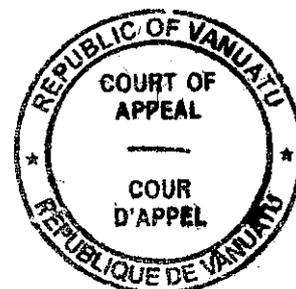


The decision refusing to remove Jeffrey William as a party

14. The primary judge's reasons to refuse the application to remove Jeffrey Williams as a party are set out at paragraphs 11(a)–(g) of the judgment. We set out the reasons:

11. *"Having considered the First Appellant's Application and other documents filed, the Eighth Appellant's sworn statements, and having heard counsel, the Application is declined and dismissed for the following reasons:*

- a) *The grounds for the Application are that the Eighth Appellant has not filed a notice of appeal within the mandatory time limits set out in subss 22(1) and (5) of the Act, that the declaration in the Malekula Island Court judgment is in the name of the late Mr Apia and not Family Williams as purported by the Eighth Appellant, that the First Appellant has filed an Amended Notice and Grounds of Appeal therefore the original notice of appeal has been made redundant, that the parties to a land appeal case are required by subss 22(1) and (5) of the Act to file notice of appeal within 30 days or apply for leave to join as a party within 60 days, and that the Eighth Appellant has been joined as a separate appellant contrary to s. 22 of the Act: Kalsakau v Hong [2004] VUCA 2 and James v Regenmal [2014] VUCA 35;*
- b) *As to the first ground of the Application, it is common ground that the Eighth Appellant has not filed a notice of appeal within the mandatory time limits set out in subss 22(1) and (5) of the Act. However, he is intending to rely on the First Appellant's notice of appeal which was filed within the 30-day period prescribed in subs. 22(1)(a) of the Act;*
- c) *As to the second ground of the Application, it is correct that the declaration in the Malekula Island Court judgment is in the name of the late Mr Apia and not Family Williams. However, any aggrieved person may appeal a land decision of an island court, hence the Eighth Appellant may style his entitling to include Family William;*
- d) *As to the third ground of the Application, namely that the First Appellant has filed an Amended Notice and Grounds of Appeal therefore the original notice of appeal has been made redundant, I consider that by filing that amended notice, the First Appellant has chosen to no longer rely on the original notice of appeal which he filed. However, this does not stop the Eighth Appellant from relying on the original notice of appeal which was filed within the time prescribed in s. 22 of the Act. Accordingly, I reject this ground which asserts that the original notice of appeal has been made redundant in relation to the Eighth Appellant;*
- e) *As to the balance of the grounds of the Application, it is correct that parties to a land appeal case are required by subss 22(1) and (5) of the Act to file notice of appeal within 30 days or apply for leave to join as a party within 60 days;*
- f) *The Eighth Appellant's case – and as set out in the sworn statements filed by the Eighth Appellant – is that he was part of*



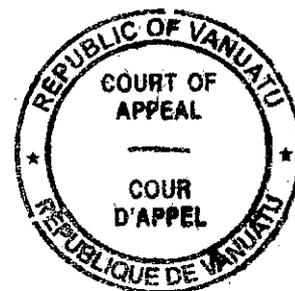
and supported the First Appellant's claim in the Malekula Island Court land case. In fact, he was the spokesperson for the First Appellant. However, after the First Appellant David Apia William passed away on 30 December 1994, a dispute arose between the late David Apia's sons and the Eighth Appellant Jeffrey William. Consequently, Jeffrey William applied to be joined as a party as a representative of William family, which application was granted on 4 November 2009. The Eighth Appellant is seeking to rely on the notice of appeal filed by the First Appellant in 1985 when they were still one party;

- g) I consider that given that the Eighth Appellant was one party with the First Appellant in the Malekula Island Court land case (he was the First Appellant's spokesperson) and that they were one party on the filing of the First Appellant's notice of appeal, that the Eighth Appellant may rely on that notice of appeal as on the date that it was filed, it was filed also on his behalf as part of the First Appellant;
- h) I also consider that given that the First Appellant has subsequently chosen to amend the notice of appeal, that this affects only the First Appellant in terms of setting out his new notice and grounds of appeal thus superseding his original notice of appeal. However, this does not make the original notice of appeal 'redundant' vis-à-vis the Eighth Appellant, as the Eighth Appellant may rely on it in its original terms as the Eighth Appellant's notice of appeal for the reasons already given;
- i) Accordingly, I reject the grounds of the Application to the effect that the Eighth Appellant has been joined as a separate appellant contrary to s. 22 of the Act for the foregoing reasons including that he was 'one party' with the First Appellant when the First Appellant filed the notice of appeal and it was only after 30 December 1994 that a dispute arose with the First Appellant's sons resulting in the Eighth Appellant seeking to be joined as a party as a representative of the William family. Therefore, I consider that in the specific circumstances of this particular case, that the Eighth Appellant has not been joined as a separate appellant contrary to s. 22 of the Act;
- j) The Court of Appeal judgments in *Kalsakau v Jong Kook Hong* [2004] VUCA 2 and *James v Regenmal* [2014] VUCA 35 are distinguishable on their facts thus do not apply; and
- k) For the reasons given, the First Appellant's Application is declined and dismissed".

Discussion

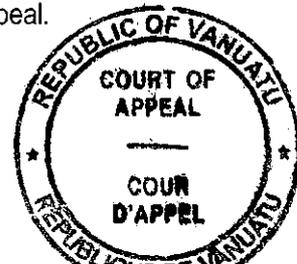
15. During the hearing, Mrs Nari contended that the primary judge made two errors in refusing the application to remove Jeffrey William as a party:

- a) Accepting that the respondent could rely on the handwritten notice of appeal filed by the applicant within the statutory timeframe (paragraph 11(b)); and



b) *By finding that the respondent was entitled to rely on the original notice of appeal, even though the applicant filed an amended notice and grounds of appeal. The primary judge said the fact that the applicant has chosen not to rely on the original notice of appeal did not preclude the respondent from doing so (paragraph 11(d)).*

16. The claim in the Island Court was made by Family William. The primary judge had evidence that it was Family William who filed the appeal, rather than David William as an individual. That must be so given how custom land is owned in Vanuatu. The primary judge recorded that the respondent was part of and supported the applicant's claim in the Island Court case. She noted that in fact he was the family spokesperson. The primary judge found that the respondent was one party with the applicant in the Island Court and that they were one party when the original notice of appeal was filed, and so he could rely on that notice of appeal. As the primary judge said, it was only after David Apia William passed away, that a dispute arose which led the respondent to seek to be joined as a party as a representative of the William family.
17. The Family William notice of appeal was filed within the timeframe prescribed by s 22 of the Island Court Act. It is a competent appeal. The issue of the parties to an appeal is a different matter, and is discretionary. Underpinning the applications to remove Jeffrey William as an appellant, and for leave to appeal, is an internal family dispute, which is irrelevant to the land appeal.
18. We see no error in the primary judge's finding that the respondent was one party with the applicant during the island Court hearing and when the appeal was filed. That finding was open to the primary judge given the evidence available to her. Thus, the respondent is entitled to rely on the original notice of appeal, filed within the prescribed timeframe.
19. The primary judge made the point that the respondent had not been joined as a separate appellant contrary to s 22 of the Island Courts Act, as contended, in the specific circumstances of this particular land appeal. We concur. We make the following points.
20. The orders made for the respondent to be the William family representative in 2009 and then to be an appellant in his own right in 2011, were never appealed. That remains the case.
21. The respondent was part of the William family claim in the Island Court. He was, as found by the primary judge, one party with the applicant in the Island Court and they were one party when the notice of appeal was filed in 1985. The respondent is an aggrieved party. He has a legitimate interest in the land appeal.
22. During the hearing, Mr Livo confirmed that the respondent's position remains that he will rely on the original notice of appeal filed in 1985. The effect of that is the respondent is supporting the applicant's case in the land appeal, even if the applicant now relies on amended grounds of appeal. There is no prejudice at all to the applicant in such circumstances, and Mrs Nari could not point to any prejudice to the applicant if the respondent remains an appellant. There is no merit then to the contention that the appeal cannot advance because the respondent did not file a notice of appeal.



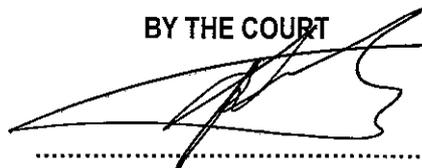
23. Given the matters set out above, there is no sufficient reason to doubt the correctness of the primary judge's decision. We consider the primary judge was correct to refuse to remove Jeffrey William as a party in the particular circumstances of this case. There is no prejudice to the applicant arising from the respondent remaining an appellant in his own right, given that he will be supporting the applicant's appeal. Thus, there is no substantial injustice caused by the primary judge's refusal to remove the respondent as a party to the appeal.
24. The application for leave was misconceived and destined to fail. Leave to appeal is declined for the reasons given.
25. We do observe that the application for leave to appeal has exacerbated the already extraordinary delay in this land appeal being heard, particularly the 8-month delay in prosecuting the application, which meant that the tentative hearing could not proceed. For that reason alone, the leave application was at best ill considered.

Outcome

26. Leave to appeal is declined.
27. There is a costs award of VT 50,000 in favour of the respondent.

DATED at Port Vila, this 13th day of February 2026

BY THE COURT



Hon. Chief Justice Vincent Lunabek

