

BETWEEN: JOHN RIHAI
Appellant

AND: JOHNNY SUR, BRITAIN SUR, ANDYSEN SUR, YVONNE
TARI, FLORIAN SUR & NICKSON FANAI
Respondents

Date of Hearing: 4 February 2026

Before: Hon. Chief Justice Vincent Lunabek
Hon. Justice Mark O'Regan
Hon. Justice Oliver A Saksak
Hon. Justice Micheal Wigney
Hon. Justice Dudley Aru
Hon. Justice Josaia Naigulevu

Counsel: Mr. Roger Tevi for the Appellant
Mr. Rollanson Willie for the Respondents

Date of Judgment: 13 February 2026

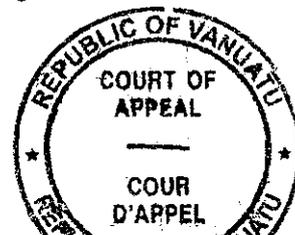
JUDGMENT OF THE COURT

Introduction

1. This is an appeal against an Order of the Supreme Court dated the 11th November 2025, striking out the appellant's Claim pursuant to Rule 9.10(1)(b) of the Civil Procedure Rules No. 49 of 2002.

Background

2. The appellant had filed an amended Claim in the Supreme Court on the 2nd July 2024, claiming that he was the registered proprietor of Lease Title No. 03/0192/008 which the respondent occupied without the appellant's approval since 2009. He sought an order for their eviction from the property and damages for trespass.
3. On the 4th July 2025, two days after the filing of the amended claim, the primary judge convened a conference. The conference was attended by counsel.



4. Judge's minute in respect of the conference noted that Counsel for the defendant sought 21 days to file a defence. The primary judge then made the following orders:

- (a) 21 days to file defence to amended claim.*
- (b) 7 days thereafter to file a response if any.*
- (c) Sworn statement in support of claim to be filed and served.*
- (d) Sworn statement in support of defence to be filed and served.*
- (e) Matter adjourned to 1/08/2025 at 2pm for further pre-trial conference."*

5. The respondent filed a Defence to the amended claim and a counterclaim on 1st August 2025. The primary judge convened a pre-trial conference on the 1st of August 2025 in accordance with the orders made on the 4th of July. The conference was attended by Ms. Muluane on behalf of the respondent (defendant). The appellant's (claimant's) counsel failed to attend. The primary judge noted the party's noncompliance with directions, however he did not record what directions had not been complied with. The primary Judge adjourned the proceeding sine die and recorded in his minute that "*Counsel can ask for a further hearing when they are ready.*"

The Decision

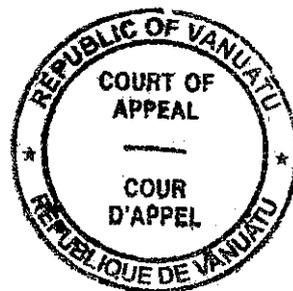
6. On the 11th November 2025, the primary judge issued a minute in which he recorded that the appellant's counsel had not complied with his Order to file a sworn statement in support of the Claim. It should be noted that the order made by the primary judge in respect of the filing of a sworn statement did not specify a date before which the statement must be filed. Nevertheless, the appellant did not dispute that it had not complied with the orders in respect of the filing of a sworn statement. The primary judge ordered that the Claim be struck out under Rule 9.10(1)(b) of the Civil Procedure Rules, apparently on the basis of the appellant's non-compliance.

The Appeal

7. The Notice and Grounds of Appeal filed on the 26th November 2025 set out three grounds as the basis of the appeal. When counsel appeared before us at the hearing, he indicated his wish to withdraw the first ground, and that he would only proceed with grounds (2) and (3).

8. The remaining grounds were set out as follows:

- (2) The learned Judge erred when he struck out the claim without giving notice to the appellant in accordance with Rule 9.10 (d).*
- (3) The learned Judge erred when he failed to apply Rule 9:10 (3), as the more appropriate course in the instant case."*



9. Counsel did not expressly indicate in the Notice whether these grounds were to be treated as alternatives. Whilst we have considered them separately, we recognise a common basis exists between them, in the form of the absence of a notice to the appellant by the Court.
10. The respondent opposed the appeal, asserting that the primary judge had acted correctly when he struck out the claim pursuant to Rule 9.10 (1) (b) of the Civil Procedure Rules.

Discussion

11. Rule 9.10 of the Civil Procedure Rules, involves two specific situations in which a claim may be struck out. They help undergird the court's duty to actively manage cases under Rule 1.4 (1) of the same Rules.
12. These narrow provisions do not limit the Court's Jurisdiction to make similar orders in broader situations under section 28 (1) b and 65 (1) of the Judicial Service and Courts Act [CAP 270] and its inherent powers, where it is necessary to carry out its functions according to substantial justice: Paul Hocten v Jin Ming Wong, Civil Appeal Case No 21/3431, CoA, CIVA.
13. Whilst noting that Rule 9.10 (1) provides for two specific situations that apply alternatively of each other, we recognise that an overlap can also occur, depending on the circumstances.
14. Rule 9.10 (1) is set out in the following manner:

"Striking Out

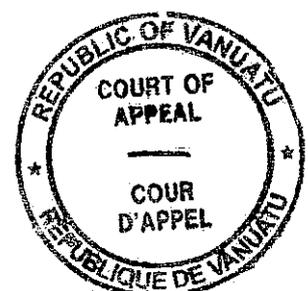
9.10 (1) this rule applies if the claimant does not:

- (a) take the steps in a proceeding that a required by these rules to ensure the proceeding continues, or
- (b) comply with an order of the court made during the proceeding."

[Our Underlining]

15. The specific situation expressed in Rule 9.10 (1) (b) clearly applied in the present case where the Order given by the primary judge on the 11th November 2025 to strike out the claim was made as the result of a party's failure to comply with an Order of the Court given on the 4th July 2025, some four months before the decision was made.
16. This appeal turns on the question whether the Order now being impugned was made correctly in accordance with Rule.9.10 (2). That Rule sets out the times when a court can strike out a proceeding. The rule is set out in the following manner:

"(2) The court may strike out a proceeding:



- (a) *At a conference, in the supreme court; or*
- (b) *At a hearing; or*
- (c) *As set out in sub rule (3); or*
- (d) *Without notice, if there has been no step taken in the proceeding for 6 months."*

17. It is apparent on the face of the minute dated the 11th November 2025 that the order to strike out the proceeding was neither made at a conference nor a hearing. In addition, there is no material that suggests that a notice of any kind was given before the order was made.
18. Turning then to the first of the grounds noted above, at [8] a ground that seeks to apply subrule 2 (d), we are satisfied that no steps had been taken in four months by the appellant (but not six months as required by r 9.10 (2(d)) and that the court did not give a notice about its intention to strike out the claim to the appellant. Accordingly, we accept the appellant's submission that it was not open to the Judge to invoke r 9.10 2 (d).
19. The second ground set out above at [8] deals with the consideration of sub rule (2) (c) when applied together with subrule (3).
20. Subrule (3) provides as follows:

"3) If no steps have been taken in a proceeding for 3 months, the court may:

- (a) give the claimant notice to appear on the date in the notice to show cause why the proceeding should not be struck out; and*
- (b) if the claimant does not appear, or does not show cause, strike out the proceeding."*

Subrule (3) can only apply where no steps have been taken for three months. The expression "*no steps have been taken*" reflects the language of the alternate situation in Rule 9.10(1)(a), and may suggest that subrule (2)(c) does not apply to situations envisaged in subrule (1)(b), as is the instant case. However, it is not necessary to decide the point in this case and, as we heard no argument in relation to it, we do not do so.

21. If subrule 3 does not apply to the situations envisaged in subrule(1)(b), then the only available options available to the primary Judge were to invoke subrule 2(a) or (b); that is, to strike out the case at a hearing or a conference (at which the non-compliance party would have a chance to make submissions in opposition to a strike out order).
22. If subrule (3) did not apply, the primary judge would need to have given the appellant notice to appear before him and show cause why the proceeding should not be struck out. He did not do so.
23. Accordingly, whether subrule 2(c) applies to the situations addressed in subrule 1 (b) or not, the



decision to strike out the Supreme Court claim cannot stand.

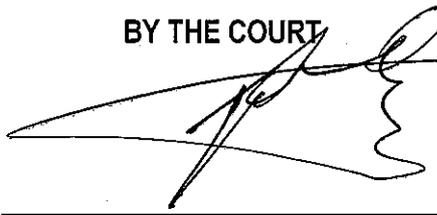
24. Whilst our decision in this appeal will favour the appellants, we express our concern about counsel's non observance of the orders of the court over a relatively substantial period of four months. Such omissions demonstrate a level of disrespect towards the Court's authority and the failure to perform one's professional responsibility. Counsel must be reminded of their duty to assist the Court expressed in Rule 1.5 of the Civil Procedure Rules, and the sanctions that the Court may impose under these rules.

Conclusion

25. For the reasons we have given, the appellant's appeal succeeds on both grounds. The appeal is therefore allowed and the primary Judge's decision to strike out the Claim made on the 11th November 2025 is accordingly set aside.
26. The matter is remitted to the Supreme Court, to be relisted before a judge.
27. We decline to award costs, in view of the appellant's failure to respond to the primary judge's minute of the 1st August 2025, and confer with the other party concerning the circumstances preventing it from complying immediately with the Court's orders.

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

BY THE COURT



Honourable Chief Justice Vincent Lunabek

