

BETWEEN: JOSEPH LIVO
Appellant

AND: THE REPUBLIC OF VANUATU
First Respondent

AND: PHILIMON LOY
Second Respondent

AND: FAMILY LOY
Third Respondent

Date of Hearing: 4 February 2026

Coram: Hon. Chief Justice V. Lunabek
Hon. Justice M. O'Regan
Hon. Justice M. Wigney
Hon. Justice D. Aru
Hon. Justice V. M. Trief
Hon. Justice J. Naigulevu
Hon. Justice B. Kanas Joshua

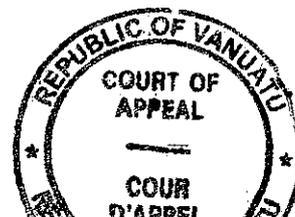
Counsel: Mr C. Leo for the Appellant
Ms. T. Tari for the First Respondents
Mr. T.J. Botleng for the Second Respondent
Mr. J. Ngwele for the Third Respondent

Date of Judgment: 13 February 2026

JUDGMENT OF THE COURT

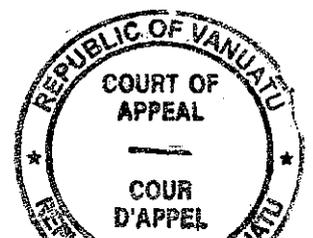
Introduction

1. This appeal is from a decision of the Supreme Court striking out the Appellant's claim: *Livo v Republic of Vanuatu* [2025] VUSC 333.
2. The Appellant filed an application for leave to appeal the strike out decision of 27 November 2025 as an interlocutory decision but as the effect of the striking out put an end to the Appellant's claim in the Supreme Court, leave to appeal is not required.



Background

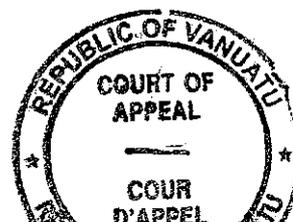
3. The starting point is a judgment of the Supreme Court of 28 July 1986. The Supreme Court, hearing an appeal from the Island Court concerning disputed land identified as "*part of the Title number 479 called Sarautu and its custom ownership.*" The Supreme Court quashed the decision of the Island Court and found: "*that Paul Livo is the true custom owner of the Land at Sarautu given to him by the Island Court.*" The Supreme Court also found: "*that Daniel Loy, being the adopted son of Molsakel and by the record of his family as I have stated, then He is the true custom owner of "Sarautu" plantation with the exception of that portion which in my opinion belongs to Paul Livo "* .
4. The portion of the land at Sarautu that belongs to Paul Livo is not clear in terms of its areas and boundaries. It is noted that it is not possible from the Supreme Court judgment to ascertain whether or not its boundaries include the subject unregistered lease title 04/2641/019, which lies at the heart of the claim the subject of the appeal.
5. On 18 October 2016, the National Coordinator of the Customary Land Management Office issued a Certificate of Recorded Interest in that land to Paul Livo and his family. It is noted that the Certificate of Recorded Interest issued to Paul Livo and his family on 18 October 2016 did not specifically provide for the boundaries of land that is owned by Paul Livo and his family pursuant to the judgment of 28 July 1986.
6. On 10 June 2025, the Appellant filed an urgent claim in the Supreme Court. On 12 September 2025, the Appellant filed an amendment to his claim in the Supreme Court alleging errors in the survey and boundaries of the Vanuatu Agriculture Research Training and Centre (Training Centre) ("VARTC")
7. On 1 July 2025, the Supreme Court issued orders restraining the First Respondent from effecting any payment of monies either for compensation or through any other form of payment directly to the Second and the Third Respondents concerning Leasehold Title No. 04/2641/019, which is where VARTC is located, until further order.
8. On the same date of 1 July 2025, the Supreme Court transferred the proceeding to Justice Saksak to be consolidated with two other cases, *Loy v Republic of Vanuatu* [2025] VUSC 89 and *Loy v Republic of Vanuatu* [2025] VUSC 48, which were pending before Justice Saksak. These proceedings concerned, among other matters, the compensation of money arising from unregistered lease title 04/2641/019.
9. On 13 October 2025, the Third Respondent applied to strike out the Appellant's amended claim in the Supreme Court and on the same date the primary Judge made directions for the parties including the Appellant to file submissions on the strike out application.



10. On 27 November 2025, the Court below issued its decision which is now under appeal striking out the Appellant's claim.
11. On 1 December 2025, the Appellant filed a notice of appeal without any ground. The notice of appeal should have included the grounds relied upon. That notice of appeal was then amended and filed with grounds on 2 February 2025.
12. On 4 December 2025, the Appellant filed an urgent application to stay the execution of the decision, with sworn statements in support.
13. On 8 December 2025, consent orders were issued for the release of funds held in the Chief Registrar's Trust Account to the Administrator of the estate of Daniel Loy, who is Philimon Loy. We are informed that the outstanding payment in the sum of around VT 149,000,000 is the final and complete settlement which will be paid to the Chief Registrar's Trust Account on or by 30 April 2026.
14. The claimant sought to stay execution of the payment of VT 45,960,000 to the administrator of the estate of Daniel Loy. The First Respondent (The Republic of Vanuatu) has already paid that amount to the estate of Daniel Loy in 2025.

The Decision by the Supreme Court

15. On 27 November 2025, the primary Judge struck out the Amended Supreme Court claim on the basis that the pleadings were deficient.
16. The thrust of the primary Judge's decision can be seen at paragraphs 7,8,9,10 and 11 when he stated:
 - "7. *The claimant does not specify in what capacity he acts as the claimant. From paragraph 5, if he acting as representative of the families of the claimant, he should specify that he does.*
 8. *The reliefs he seeks in paragraph 14 is about the deed of release and the payment of VT 45,960,000 paid by the Republic allegedly made in bad faith.*
 9. *To be entitled to any reliefs sought, the claimant must establish he was a party to the deed. Land Case L2 of 1986 was a case between Daniel Loy (as appellant) and Timothy Molbarav, Paul Livo and Tangis as respondents. He must establish he is acting as the representative of Paul Livo and /or administrator of his estate. As things stand, he is acting as an individual litigant. It appears to me that his standing is questionable. As such his cause of action against the defendants is also questionable.*
 10. *These are adequate to accept the submissions by Mr. Botleng and Mr. Ngwele that the amended claim should be struck out at this stage.*
 11. *Accordingly, I allow the application by Mr. Botleng and Mr. Ngwele. The proceeding is hereby struck out "*

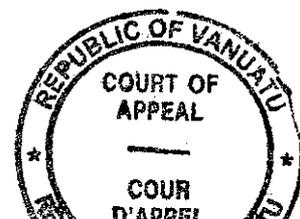


The Appeal

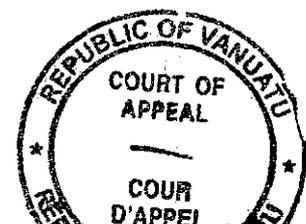
17. The Appellant appealed against the strike out decision on the following grounds:
- a) The primary judge erred in law in exercising his discretion wrongfully in the manner in which his Lordship struck out the appellant's claim.
 - b) The primary judge erred in fact and law in refusing to facilitate a proper hearing in an open court at the request of the Appellant's counsel so as to hear parties properly, on the strike out application.
 - c) The primary judge erred in law in deciding on the release of funds from the Chief Registrar's Trust Account and in predetermining the stay application when his Lordship was well aware of the application for stay of the proceedings.

Discussion

17. We will consider jointly the first and second grounds of appeal as they are about the same point, which is wrongful exercise of the discretion by the primary Judge to strike out the Appellant's claim which put an end to the proceeding.
18. Mr. Leo recognised that the primary judge has discretion to strike out the claim, but the discretion must be exercised sparingly, as the Court of Appeal has cautioned: see, *Noel v Champagne Beach Working Committee* (2006) VUCA 15 and *Kalses v Manganeses De Vaté Ltd* (2004) VUCA 8.
19. Mr. Leo submitted the issue of standing was a dead issue. The primary judge could not have placed too much weight on it given that restraining orders were issued with the consent of all the parties, based on the claim. He said the Appellant has also standing based on the Certificate of Recorded Interest issued in the name of his father (Paul Livo) and his family on 18 October 2016. He further submitted that even if the Court below may have not been satisfied with the material evidence (Certificate of Recorded Interest), then it would have been proper for the primary Judge to have determined that issue in a trial proper but not through strike out.
20. During the hearing, we asked Mr. Leo, apart from the material evidence, to show us where in the pleadings, the Appellant pleaded that he is the representative of his father, Paul Livo and his family or the administrator of Paul Livo's estate. Mr Leo was unable to show us in the pleadings.
21. Mr. Leo added that he sent an email to the primary judge's secretary to have a hearing in open Court. That was not a substitute for a formal application to the Court. Mr Leo said that if the primary judge had given him an opportunity, he would have applied for leave to amend the claim to clarify the Appellant's position.



22. Mr. Botleng submitted to the following effect. He raised the issues of the boundaries of the portion of the land that Paul Livo owned at Sarautu Land and that there is no proof of the boundaries of the land owned by Paul Livo at Sarautu established by the Custom Court.
23. Mr. Botleng submitted that the primary judge struck out the claim because the pleading did not show that the Appellant is the representative of Paul Livo and his family or is the administrator of the estate of Paul Livo. He accepted that if the pleadings said so, then, the claim should not have been struck out.
24. Mr. Ngwele submitted that the Appellant did not show that he is the representative of Paul Livo and family and did not tender letters of administration to demonstrate his appointment as Administrator of the estate of Paul Livo, which led the primary Judge to strike out the Appellant's claim.
25. He further submitted that even if the Appellant was given an ability to amend his claim by showing that he is the Paul Livo family representative or the administrator of the estate of Paul Livo, the matters raised in the amended claim were matters that has already been dealt with in the earlier proceedings.
26. As we observed during the hearing, that was not the basis of the decision to strike out the claim. The Judge did not strike out the pleadings on the additional or alternative grounds contained in Mr Ngwele's submissions entitled "*Additional reasons: RES JUDICATA, ISSUE ESTOPPEL, AND ABUSE OF PROCESS*".
27. Mr Botleng raised boundaries of the land where 1986, the Court said Paul Livo had a portion of land at Sarautu but there is no evidence of which portion of the land at Sarautu and there is no evidence filed in this case showing what the Appellant says is Livo land. Further, we indicated to Mr Ngwele that he could not refer to his alternative submissions (Additional Reasons) as he did not file notice to support these other grounds. We noted further that in the proceeding started in 2011 to 2024, the Appellant was not a party to these proceedings.
28. We consider that, in the circumstances of the present case, the primary judge ought to have given the Appellant the opportunity to amend his claim so that it set out in what capacity the Appellant was acting. If the amendment recited that the Appellant was a family representative or administrator of Paul Livo's estate, that would have resolved the standing issue identified by the primary judge. If there is any dispute as to whether the Appellant is in fact the representative of the Livo family or the administrator of Paul Livo's estate, that dispute will need to be resolved at a hearing. We therefore conclude the Judge erred in striking out the claim.
29. On the other grounds of appeal relating to the stay application, we were advised that the money was released and paid to the administrator of Daniel Loy's estate, despite the restraining orders. The stay application is now academic. We were informed by counsel that the release of the compensation funds was only part of the release, and that the final part of the settlement was yet to be paid.



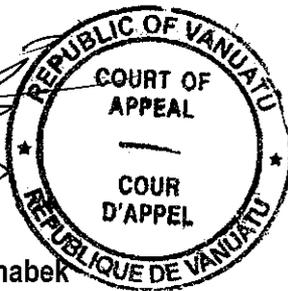
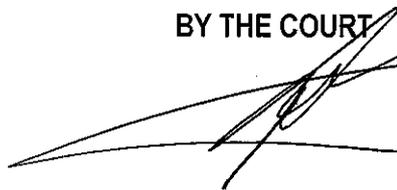
30. As the appeal will be successful, the restraining orders issued by the primary judge on 1 July 2025 will be revived. The parties are to comply with them and in particular the First Respondent in the final part settlement of the release of funds related to the unregistered Lease Title 04/2641/019.

Disposition of the appeal

31. In the circumstances, for the reasons we have given, we allow the appeal and set aside the strike out decision of the Court below.
32. We revive the restraining orders made by the Supreme Court on 1 July 2025 in this case between the parties. We urge on all the parties to comply with them.
33. The file is remitted back to the Supreme Court for case management and a hearing. The Appellant should promptly seek to amend the claim.
34. We reserve this issue of costs in the Supreme Court to consider when the proceedings are determined.
35. We make no order for costs in the Court of Appeal.

Dated at Port Vila, this 13th February 2026.

BY THE COURT



Hon. Chief Justice Vincent Lunabek