

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU  
(Civil Jurisdiction)

Civil  
Case No. 21/680 SC/CIVL

**BETWEEN:** National Bank of Vanuatu  
Limited  
Applicant

**AND:** Simeon Malachi Athy  
Respondent

*Date:* 8 June 2023  
*Before:* Justice V.M. Trief  
*Counsel:* Applicant – Mr G. Blake  
Respondent – in person

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**DECISION AS TO APPLICATION FOR LEAVE TO APPEAL INTERLOCUTORY  
DECISION DATED 28 MARCH 2023**

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A. Introduction

1. On 28 March 2023, I dismissed the Respondent Simeon Malachi Athy's Application to have the Applicant National Bank of Vanuatu Limited's ('NBV') counsel Mr Blake and his law firm Ridgway Blake Lawyers ('RBL') cease acting for the NBV in this matter ('Counsel recusal Application').
2. Mr Athy now seeks leave to appeal that interlocutory decision.

B. Discussion

3. The authorities applicable to an application for leave to appeal an interlocutory decision include:

- *Hudson & Co v Greater Pacific Computers Ltd* [1997] VUCA 2: The Judge exercises a wide discretion in the formulation of procedural directions therefore leave to appeal an interlocutory decision is not granted lightly;



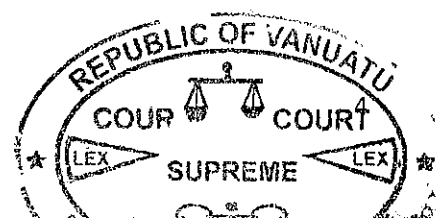
- *Ebbage v Ebbage* [2001] VUCA 7: "In the absence of any important issue of law that requires the consideration of the Court of Appeal, to obtain a grant of leave the applicant must at least show that there is a reasonable prospect that the appeal would succeed if leave were granted."
  - *Atel v Massing* [2001] VUCA 20: The Court would need to be satisfied that there was a real issue that needed to be resolved which had a prospect of succeeding; and
  - *Toara v Erakor Island Resort Ltd* [2008] VUCA 14: "Even if a question of law had been identified, the Court would normally grant leave to appeal only if the proposed appeal raised a question of law that was capable of serious argument and that involved a public or private interest of sufficient importance to outweigh the cost and delay of a further appeal."
4. The Court of Appeal stated in *Family Boetara v Molsakel* [2018] VUCA 28 at [9] as follows:
9. *This Court in Molvato v Molsakel* [2015] VUCA 22 relevantly commented that the principles that guide an appellate Court reviewing an exercise of discretion are well-established as previously considered in *Fisher v. Fisher* [1991] VUCA 2 and *Dumdum v East Malo Island Land Tribunal* [2010] VUCA 32. The Court said:
- "...a discretionary order, will not be lightly overturned or set aside on appeal unless it is clearly established that the decision was wrong in that the judge took into account irrelevant matters which he ought not to have done or failed to take into account relevant matters or misdirected himself with regard to the relevant principles applicable to the exercise of the discretion. In other words, it will only be set aside if it is shown that the discretion miscarried or there was a miscarriage of justice."*
10. My reasons for dismissing and declining the Counsel recusal application included the following at [14]-[21]:
14. *As set out in para. 5 of the Court's Minute dated 7 December 2012, the information as to Mr Athy's indebtedness to NBV was obtained through a leasehold titles search of the Land Leases Register. RBL conducted the search and forwarded the information to the Court in the discharge of its duty as counsel. Mr Botleng's submissions that Mr Blake and RBL had inside knowledge of that indebtedness to obtain orders against Mr Athy are utterly devoid of merit.*
15. *It was also alleged in the Application that orders were obtained against Mr Athy rather than pursuing enforcement. Justice Spear recorded in para. 4 of the Court's Minute dated 7 December 2012 that counsel and the parties were there for an enforcement conference. Accordingly, the submission on Mr Athy's behalf that enforcement was not pursued is also utterly devoid of merit and flies in the face of the Respondent's own evidence.*
16. *With the leasehold titles search information before him and considering that information, Justice Spear opted for garnisheeing the debt rather than enforcing against the leasehold titles. Garnisheeing a debt by making a redirection order is part of the enforcement procedures in the Civil Procedure Rules. Mr Botleng's submission that there was bad faith or oppressive intention involved in pursuing such lawful enforcement processes is devoid of merit. Counsel should be checking whether an*

*application being pursued has a legal basis and is substantiated by the evidence rather than making such unsubstantiated application to the Court.*

17. *Further, no ulterior motive can be attached to a lawyer acting for a client who is owed money, especially when the debt was not denied but had nevertheless not been paid.*
18. *Mr Botleng's submissions as to unfair advantage and that Mr Blake took advantage of inside knowledge to gain financially are roundly rejected.*
19. *It is common ground that when RBL acted for Wilco in CC 11/244, the NBV had not commenced any enforcement process in relation to the mortgages granted by Mr Athy. In fact, NBV did not commence such court enforcement processes until the present proceedings which were filed in 2021.*
20. *I agree with Mr Blake's submission that there was simply no abuse of the court's process in him acting in two different sets of proceedings against Mr Athy which are entirely unrelated except in the sense that Mr Athy owed money in each case, and which have been filed 10 years apart.*
21. *In addition, there is simply no evidence of unprofessional conduct by Mr Blake and RBL in pursuing lawful enforcement process to recover a debt admittedly owed by Mr Athy to a client of RBL. The debt owed to Wilco was paid in accordance with the Court's Orders in CC 11/244. That had nothing to do with NBV.*
22. Mr Athy's proposed grounds of appeal are set out in the Application for leave and in the draft notice and grounds of appeal attached to Mr Athy's supporting sworn statement filed on 28 April 2023.
23. I now discuss each proposed ground of appeal.
24. The first proposed ground of appeal is that the Judge erred as there was clear evidence based on the record of the proceedings in CC 11/244 that Mr Blake had knowledge of Mr Athy's mortgage with the NBV and used that inside knowledge to gain an unfair advantage and benefitted financially as they exerted unbearable pressure on Mr Athy by their conduct of CC 11/244 and Mr Athy's mortgaged properties referred to in CC 11/244 and now the subject of this matter (CC 21/680) were prepared and executed by Mr Blake and RBL in 2007.
25. Mr Athy in his Sworn statement filed on 3 February 2023 referred to paras 3 and 4 of Justice Spear's Court Minute dated 7 December 2012 in CC 11/244. I noted at [12] of the 28 March 2023 Decision that Mr Athy had omitted para. 5 which set out that the information as to Mr Athy's mortgaged properties was explained in the Memorandum of Counsel dated 6 December 2012. Counsel attached to that Memorandum the information that had been obtained by a leasehold title search conducted at the Lands Records Office over one title but not of the other title as Mr Athy had refused and/or failed to produce the leasehold title reference to his home at Belle View, Port Vila. That was the evidence before me.
26. The allegation that Mr Blake used inside knowledge to gain an unfair advantage and benefitted financially, and exerted unbearable pressure on Mr Athy, as Mr Athy's mortgaged properties referred to in CC 11/244 and now the subject of this matter

(CC 21/680) were prepared and executed by Mr Blake and RBL in 2007 was not expressed in those terms in the Counsel recusal Application and evidence.

27. Even if it had been, the evidence before me referred to Justice Spear's Minute dated 7 December 2012. In that Minute, he made clear that he was dealing with enforcement process and where the information as to Mr Athy's indebtedness had come from. On that evidence, I did not agree with the submission that Mr Blake (and RBL) had inside knowledge of that indebtedness to obtain (enforcement) orders against Mr Athy in CC 11/244.
28. I consider this proposed ground is without merit and has no prospects of success.
29. The second proposed ground of appeal is that the Judge erred by finding that Mr Blake only came to know about Mr Athy's mortgage lease titles with NBV on doing searches of the lease titles however the evidence is clear that Mr Blake had in 2007 prepared Mr Athy's mortgage with NBV and had inside knowledge of Mr Athy's relationship with NBV to prosecute CC 11/244 and the present matter CC 21/680.
30. With respect, I did not make any finding that Mr Blake only came to know about Mr Athy's mortgage lease titles with NBV on doing searches of the lease titles. As set out at [14] of the 28 March 2023 Decision, Justice Spear's Minute dated 7 December 2012 set out that the information as to Mr Athy's indebtedness was explained in the memorandum of counsel, which information was obtained through a search of the Land Leases Register.
31. In addition and as set out above, it was not clear to me from the Counsel recusal Application and on the evidence that Mr Blake had in 2007 prepared Mr Athy's mortgage with NBV.
32. Even if it had been, for the same reasons given as to the first proposed ground of appeal, I consider that this proposed ground also lacks merit and prospects of success.
33. The third proposed ground of appeal is that Mr Blake and RBL's conduct raises the concern about the administration of justice dispensed by the Courts and undermines confidence and trust in the justice system.
34. This proposed ground of appeal is a legal submission rather than a ground of appeal.
35. In the circumstances, none of the proposed grounds of the Application for Leave to Appeal show that a question of law is raised that was capable of serious argument and involves a public or private interest of sufficient importance to outweigh the cost and delay of an appeal. Further, I consider that Mr Athy has not shown that there is a reasonable prospect that the appeal would succeed if leave were granted. The Application will be dismissed.



C. Result and Decision

36. The Respondent's Application for Leave to Appeal the Court's Interlocutory Decision of 28 March 2023 is **declined and dismissed**.
37. The Respondent is to pay the Applicant's costs of the Application as agreed or taxed by the Master. Once settled, the costs are to be paid within 21 days.
38. The Applicant is to serve a copy of this decision on the Respondent and file proof of service **by 4pm on 21 June 2023**.

DATED at Port Vila this 9<sup>th</sup> day of June 2023  
BY THE COURT

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Justice Viran Molisa Trief

