

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

Enforcement
Case No. 23/2349 SC/CIVL

BETWEEN: Family Kaukare

Judgment Creditor

AND: Willie Lop and Family

Judgment Debtor

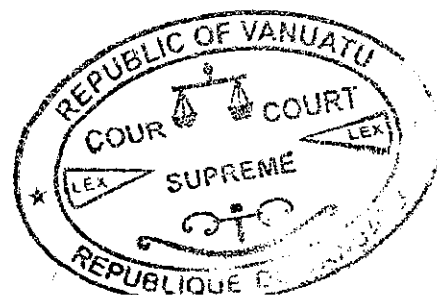
Before: Justice Oliver A. Saksak

Counsel: Mr Eric Molbaleh for the Respondents as Applicants
Mr Garry Blake for the Claimants as Respondents

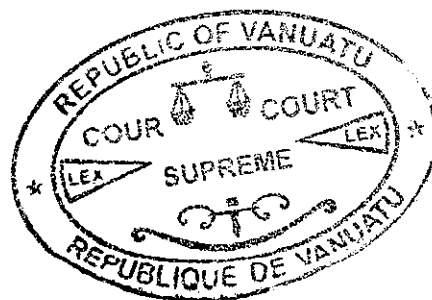
Date of Hearing: 25th November 2024
Date of Oral Decision: 25th November 2024
Date of Written Decision: 25th November 2024

REASONS FOR ORAL DECISION

1. I heard Mr Molbaleh and Mr Blake in relation to an application by Willie Lop & Family (respondents) that the Enforcement Warrant issued on 4th March 2024 be stayed pending the outcome of the respondent's appeal by the Court of Appeal.
2. The application was filed on an urgent basis on 21st August 2024 together with the sworn statement of Willie Lop in support dated the same date.
3. Mr Blake opposed the application on grounds that there have been a great delay of 14 years from the original tribunal's decision and the omission of the applicant not taking any steps to challenge the decision, and further that any appeal is out of time and the applicant has not sought leave prior to the appeal being filed.
4. I gave an oral decision declining the application and dismissing it. I now provide my reasons.




5. In oral submissions Mr Molbaleh said the applicant has filed an appeal as Civil Appeal Case 24/3694 to the Court of Appeal which he submitted would be heard in February 2025 and as such there is no prejudice to the claimants, now respondents.
6. Despite those submissions, there is no evidence of any Minute or Court Orders showing the appeal has been listed for the February 2025 session. Mr Lop's sworn statement has no mention of any appeal.
7. Even if there was an appeal filed and on foot, an appeal cannot operate as a stay. See section 26 of the Court of Appeal Rules.
8. Next the respondents have an unchallenged judgment dated 19th November 2021. And the certificate of registered interest in land issued on 21st May 2018 was and has not been challenged at anytime by the applicants. And the eviction order issued on 19th November 2021 was and has not been challenged by the applicant.
9. Mr Lop has tried to shift the blame on his previous lawyer Ms C Thyna for the delays and his not being made aware. That is his personal matter with the lawyer which should not be used as an excuse or reason for delays to seek a stay. It appears to me the applicant was well aware of all that was happening but did not take any serious note or steps to do the appropriate things, he simply slept on his rights and to use that to deny the claimants/respondents from enjoying the fruit of their judgment. That is an abuse of process. It tantamounts to coming to Court to seek justice with unclean hands.
10. It is for the reasons the application by the respondents could not succeed. It was accordingly dismissed.



11. Mr Blake informed the Court that costs should follow the event but upon receiving further instructions from Clients, the costs request was withdrawn.

DATED at Port Vila this 25th day of November 2024

BY THE COURT


Hon. Oliver A Saksak
Judge

