



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

Civil
Case No. 24/2658 SC/Civil

BETWEEN: FAMILY NUMLESU represented by JOHN EZRA
Claimant

**AND: TONY IASU, LAVA SUEPIS, TES IAFIL, IAUS KALANU,
KUAIH IENOUAM, PIRI NOKLAM & DANIEL TES of
Family lapit**
Defendants

Before: *Justice Oliver A. Saksak*

Counsel: *Mr Willie Kapalu for the Claimants/ Respondent
Mr Edwin Macreveth for the Defendants/ Applicants*

Date of Hearing: *18th February 2026*

Date of Judgment: *19th February 2026*

JUDGMENT

Decision

1. The application by the defendants dated 6th January 2026 for an order to strike out or dismiss its claim together with costs is hereby dismissed.

Background Facts

2. The application is supported by the sworn statement of Samuel Kwai filed on 17th February 2026.
3. The grounds are:-
 - a) That the claim is vexatious and is an abuse of the Court's process because the claimant filed the same claim in 2023 as Civil Case 23/783 which was struck out on 24th August 2024.
 - b) That the decision has not been appealed which is the appropriate course to take, instead they have filed the same case and claim again now as this proceeding.
 - c) That the claimant has not paid the costs of VT 30,000 as ordered by the Court on 24th August 2024.



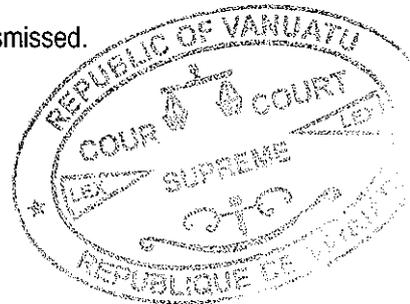
4. Mr Kapalu opposed the application relying on what the Judge recorded in the Minute dated 23rd August 2024 which relevantly states:
*"Mr Kapalu on irregular issue of claim. I have spoken with Mr Yawha and agree I was not entitled to initiate the claim.
If it is struck out, Mr Yawha will file a new claim."*
5. In relation to costs, Mr Kapalu submitted that the proper process should be followed implying that a Bill of costs should be submitted and if not agreed, should be a matter for taxation.
6. Mr Kapalu explained that the only reason the claim he filed was irregular was that he had signed the claim as Counsel instead of his principal partner Mr Yawha. That is the only difference between the claim he filed on 30th May 2023 in CC 23/783 and that filed by Mr Yawha on 26th August 2024 as CC 24/2658.

Discussion

7. Both claims have the same pleadings in 8 paragraphs and with 4 reliefs sought at the end.
8. The decision taken by the judge to strike the claim out was for reason of irregularity which is a matter of process only. The substance of the matter and the issues raised in pleadings have not yet been heard or determined. It is the law that substance must prevail over process.
9. It appears from the record that Mr Kapalu conceded he was not entitled to endorse the claim and that was an irregularity. He agreed to have it struck out and with costs. In my view it was open to him to have opted to withdraw the claim but he agreed to it being struck out and indicated Mr Yawha would file a new claim, which he did.
10. I think there is a difference between a case or claim struck out and a case or claim dismissed. The former occurs as a result of some irregularity or failure to follow some process. The latter occurs following a hearing of issues and a judicial determination on all issues.
11. The first claim filed by Mr Kapalu was simply struck out. That means it has been removed from the Court register but the issues have not been heard fully and determined. In such a scenario, it is my view the claimant was entitled to file the new claim again by Mr Yawha on 26th August 2024, just two days after it was struck out.

Result

12. In my considered view the claim is not vexatious and is not an abuse of process.
13. Accordingly the application by the defendants is declined and dismissed.



14. As for costs, it was a fixed cost. Mr Kapalu could have objected to the amount before the primary judge. There is nothing on record showing he did. He cannot now oppose the costs of VT 30.000 as ordered. His client has failed seriously to pay costs as ordered within the time directed.
15. Those costs must now be paid by the claimant before the claimant can progress the claim further. The claimant must pay those costs within 14 days from the date of this decision, by 4th March 2026.

The defendants are not entitled to any costs of the application and neither is the claimant because they have not complied with the costs order of 23rd August 2024.

DATED at Port Vila this 19th day of February 2026

BY THE COURT


Hon. Justice Oliver A Saksak

