

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

Civil Appeal
Case No. 20/2483 SC/CIVA

**BETWEEN: Edwin Manuriki and Gloria Bob
Kua**

Appellants

AND: Leimas Manuriki

Respondent

Date of Hearing: 1 February 2021
By: Justice G.A. Andrée Wiltens
Counsel: Mr J. Nalwang for Mr D. Yahwa for the Appellants
Ms T. Matas for the Respondent (absent)

Date of Decision:

Judgment

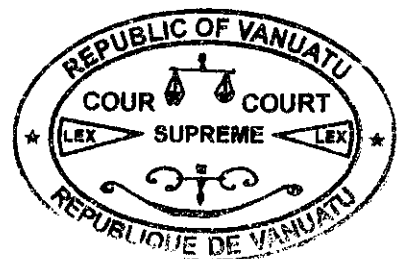
A. Introduction

1. This was an appeal from a Magistrate's Court decision dealing with matrimonial matters.

B. The Decision

2. In Matrimonial Case no. 1530 of 2020, Magistrate Laloyer made a number of orders on 10 August 2020 in the absence of an appearance by either the Respondent Mr Manuriki or the Co-Respondent Ms Kua. The orders, so far as they are relevant to this appeal are as follows:

- "1. A decree nisi shall be issued in this matter.
- 2. The Respondent shall maintain the Petitioner and the children in the sum of VT 25,000 on fortnightly basis.



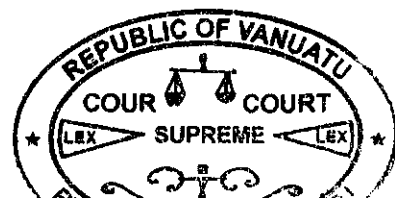
- 3. The iron roof sheets, pig fence and tools located at the matrimonial home of the Petitioner located at Stade area, Efate shall remain with the Petitioner and her children to be used by them to build a new home.
- 5. The default judgment granted to the Petitioner against the Co-Respondent in the sum of VT 500,000 to be paid within 30 days."

C. The Appeal

3. The appeal challenges those orders on 3 grounds.
4. It was submitted that a Magistrate has no jurisdiction to make Orders 2 and 3.
5. In respect of Order 5, the submission was that the amount awarded was excessive.
6. Lastly, it was submitted that the notice of the hearing date was not served on the Appellants, that they were therefore unaware of the hearing, and accordingly did not attend. That was submitted to be a breach of natural justice.
7. The Appellants sought that the matter be remitted for rehearing by the Magistrate's Court as to those matters in respect of which the Magistrate's Court has jurisdiction.

D. Discussion

8. When the matter was first called, Mr Nalwang was unable to answer questions relating to the appeal as he had only just been given the file earlier in the day. Accordingly, I invited him to research several issues and return at 2pm and make submissions.
9. Mr Nalwang was unable to point to any authority setting out that Magistrates are unable to hear cases involving maintenance. Indeed there is legislating stipulating the opposite – in the Maintenance of Family Act and the Maintenance of Children Act. There is no merit in this point.
10. Mr Nalwang was unable to point to any authority that Magistrates are unable to hear cases involving matrimonial property issues. In my view, without some clear authority to the contrary, this type of case is within a Magistrate's jurisdiction pursuant to the Magistrate's Court (Civil Jurisdiction) Act. Accordingly, there is also no merit in this point.
11. Mr Nalwang was unable to articulate on what basis the VT 500,000 award was excessive or could be seen to be excessive. To gain traction, some evidence would need to be presented to the Court as to the means of the various individuals involved. There is nothing to support the contention that the amount awarded is excessive. This ground of appeal therefore also fails.
12. The final ground relates to service of the petition on the Appellants. What is contended is that the petition for divorce and other orders was served on Ms Kuao on 23 July 2020. She then went on a Court tour to Aneityum on 1 August 2020 and did not return home until 8 August 2020. The Orders made on 10 August 2020 were served on the Appellants that same day. No mention is made regarding service of the hearing date on Mr Manuriki. The Appellants maintain, by way of submission, that they were not given notice of the hearing.



13. The complaint is based on unsatisfactory material. This Court is unable to say whether notice was given or not, as there is no evidence on the point one way or the other. To succeed, the Appellants need to demonstrate what actually occurred. It may well be that notice was duly given, but that due to being absent, Ms Kuao did not receive it in time to be able to be present. As this is a not-unlikely scenario, this ground of appeal also fails.

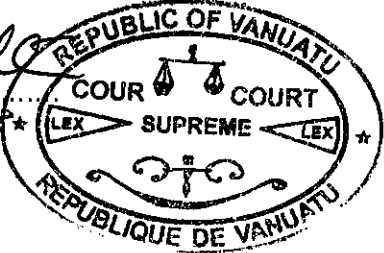
E. Result

14. The appeal fails.

15. Due to no steps having been taken by Mrs Manuriki or her counsel in this matter, there is no order as to costs.

Dated at Port Vila this 5th day of February 2021
BY THE COURT

Jandrei Uilo
Justice G.A. Andrée-Wiltens

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a cross. The text "REPUBLIC OF VANUATU" is written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, the words "COUR" and "COURT" are positioned on either side of the scale, with "SUPREME" below them. The word "LEX" is written in two small boxes on either side of "SUPREME". Two small stars are located on the left and right sides of the seal.