

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

Civil
Case No. 21/1204 SC/CIVL

BETWEEN: Jonathan Owe
Claimant

AND: Director of Lands & Director of Survey
First Defendant

AND: Republic of Vanuatu
Second Defendant

AND: Yang Lanvau Yet
Third Defendant

Date: 23 November 2021
Before: Justice V.M. Trief
Counsel: Claimant – Mr G. Takau
First and Second Defendants – Mr F. Bong
Third Defendant – Mr J. Tari

DECISION AS TO STRIKE-OUT APPLICATION

1. The parties have filed the Claim, First and Second Defendants' Defence and Third Defendant's Defence.
2. The First and Second Defendants the Director of Lands and the State filed Application to Strike Out the Claim on the grounds that the Claimant Jonathan Owe did not give notice pursuant to s. 6 of the *State Proceedings Act* of intention to sue the Government, the Claim was not served on them and the mistake or fraud alleged is not particularised. The Sworn statement of Tom Loughman was filed in support.
3. Despite being given the opportunity to file submissions in response, none have been filed for Mr Owe.
4. I do not accept that failure to give particulars is a ground to strike out a Claim. The Defendants may request further and better particulars of the Claim. There is no evidence that such has been requested and refused to be provided.
5. There is no proof of service of the Claim on the First and Second Defendants. A claim must be served within 3 months or it is ineffective: rules 5.3 and 5.8(3) of the *Civil*



Procedure Rules. At most, the Claim is ineffective against the First and Second Defendants.

6. Mr Loughman evidenced in his sworn statement that the State Law Office has not received any notice from Mr Owe as required under s. 6 of the *State Proceedings Act*. This is a mandatory requirement. Failure to give such notice will operate as a complete prohibition to the commencement of proceedings: *Republic of Vanuatu v Kwang Sing 1* [2013] VUCA 35.
7. No notice having been given under s. 6 of the *State Proceedings Act*, the Claim is **struck out**.
8. Costs must follow the event. The Claimant is to pay within 28 days the First and Second Defendants' costs summarily assessed at VT30,000 and the Third Defendant's costs summarily assessed at VT10,000.

**DATED at Lavatu, North Pentecost this 23rd day of November 2021
BY THE COURT**

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Justice Viran Molisa Trief

