

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

**Civil Appeal
Case No. 21/3418
SC/CIVA**

BETWEEN:

**Obed Makeke, Elder Ishmael,
Peter Kaule, Edwin Jack, Isaac
Walu, James Narueng, Jimmy
Nambas, Joe Tauaha, Joel Paku,
Moses Lamai, Nauka Philip, Tasi
Graham, Tom Grems, Malcolm
Mo, Moses Lamai,**
First Appellants

**Joe Kawanu Narua, Sale Iawia,
Faina Lasap, Gideon Ikapus,
Helen Nasu, Jack Mark, James
Kara, Johnny Iawakel, Johnny
Nasiap, Kami Nako, Kuwau tuta,
Maxsin Kwanu, May Nawong,
Nawia Kami, Sam Kwanu, Tened
Nasuwei, Tom Namal**
Second Appellants

AND:

Dataka Holding Limited
Respondent

Before: *Justice Oliver A. Saksak*

Counsel:
Anna Sarisets for the Second Appellants/Applicants
Roger Rongo for First Appellants
Philip Fiuka for Dataka Holdings Ltd, Respondent

DECISION

1. I heard the Second Appellant's urgent application to stay an enforcement warrant at 2.40pm today.
2. I declined and dismissed it orally with costs in favour of Mr Fiuka's client.
3. I now provide the reasons for my decisions.
4. Mr Rongo took a neutral position. He assisted the Court only by informing that at the last hearing Mr Molbaleh attended and conceded that his clients should vacate the land they now occupy. Further counsel said this application should have been made earlier.

5. I asked Ms Sarisets to identify where on the subdivision map “JK3” are her clients residing and it was indicated that they reside at the very right-hand corner on Lot 01.
6. That Lot is within the surrendered Title No. 12/0822/107. That Head Lease has been surrendered by Chief Simeon Poilapa on 30 March 2013. It was only registered on 11th August 2016 with Dataka Holdings Ltd as the Lessee.
7. As such it does not matter therefore that their subdivision are not registered. Dataka Holdings Ltd are now the registered proprietor of all that land in Annexure “JK3”. They have had the consent of the custom owners of the land.
8. It is therefore not correct for the applicants to claim the land they now occupy is vacant land. The sworn statements of Levi Tarosa and Joe Kwanu Narua are deceptive and do not assist the applicants.
9. I am told by Mr Fiuka that since 2014 the appellants have had up to 6 lawyers assisting them in this matter which started as Civil Case No. 125/2014 in the Magistrates Court. Two eviction orders were issued and challenged on the basis of jurisdiction. The matter ended up in the Supreme Court. The position was rectified and the warrants were reissued in this Court.
10. I accept Mr Fiuka’s submission that the application is an abuse of process. As such it is declined and dismissed with costs of VT20.000 in favour of Dataka Holdings Ltd.
11. The appellants must pay the VT20.000 within 14 days from the date of this decision.

DATED at Port Vila this 8th day of August, 2022.

BY THE COURT

OLIVER A. SAKSAK

Judge

