

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

Constitutional
Case No. 21/1221 SC/CNST

**BETWEEN: Chief Mariak Christopher Buletakak
represented by Nancy Mabon**

Applicant

AND: Republic of Vanuatu

Respondent

AND: Family Buletar Virado

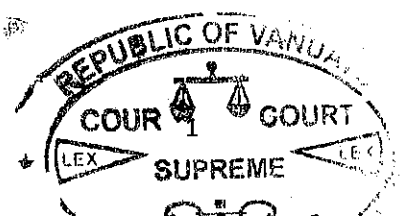
Interested Party

Date: 24 October 2022
Before: Justice V.M. Trief
Counsel: Applicant – Mr S. Kalsakau
Respondent – Mrs F.W. Samuel
Interested Party – Mr E. Molbaleh

DECISION AS TO APPLICATION TO AMEND THE CONSTITUTIONAL APPLICATION

A. Introduction

1. The Applicant Chief Mariak Christopher Buletakak represented by Nancy Mabon has brought an Urgent Constitutional Application against the First Defendant State. He alleges that his Constitutional rights have been breached by the decision of the Surukavian Joint Nakamal and of the National Coordinator of the Custom Land Management Office's refusal to cancel a Certificate of Recorded Interest in Land relating to Lerip land within Namaram on North Pentecost. Family Buletar Virado has been joined as Interested Party.
2. This is the decision as to Chief Buletakak's Application filed on 4 August 2022 for leave to amend his Constitutional Application (the 'Application'). It is made on the papers filed.



B. The Rules

3. Rule 1.3 of the *Constitutional Procedures Rules* provides as follows:

1.3 *If these rules do not make provision for a matter relating to a constitutional proceeding, the Civil Procedure Rules apply to that matter.*

4. Rule 4.11(1) of the *Civil Procedure Rules* (the 'CPR') provides as follows:

4.11 (1) *A party may amend a statement of the case to:*

(a) *better identify the issues between the parties; or*

(b) *correct a mistake or defect; or*

(c) *provide better facts about each issue.*

C. Discussion

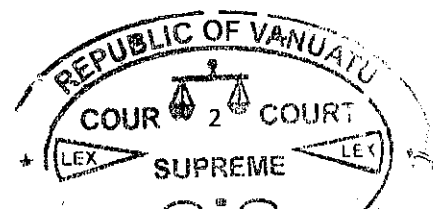
5. The Application is made on the following grounds:

- a. The amendment is necessary to ensure that all the issues and relevant facts of the case are presented to the Court per rule 4.11(1)(a) and (c);
- b. The amendment is also necessary to make minor corrections: Rule 4.11(1)(b); and
- c. As set out in the draft amended application annexed "A" to the Application which include further particulars of the alleged breach of article 5(1)(d) of the Constitution as to protection of the law (para. 4) and a pleading of breach of article 5(1)(k) of the Constitution as to equal treatment under the law or administrative action.

6. On 29 August 2022, the State filed Submissions in response and on 31 August 2022, the Applicant filed Submissions in reply.

7. The State submitted that to amend the Constitutional Application over a year after it was first filed 'deems' the proceeding no longer an Urgent Constitutional Application and that this matter should not be dealt with as a Constitutional Application but as a normal civil claim. With respect, I do not understand this submission. There is no provision in the *Constitutional Procedures Rules* for amendment of a Constitutional Application therefore pursuant to rule 1.3 of those Rules, rule 4.11(1) of the CPR applies. In any event, I agree with Mr Kalsakau that the State's submissions at its paragraphs 1-8 are not relevant considerations to determine whether or not leave should be granted.

8. The State also submitted that leave for the amendment should have been made at the first conference and to entertain such application at this juncture is an abuse of process under the *Constitutional Procedures Rules*. I also fail to understand this submission. There is nothing in rule 2.8 of the *Constitutional Procedures Rules* precluding the making of amendments and rule 1.3 of those Rules provides the legal basis with reference to the CPR for the making of amendments to a Constitutional Application.



9. With regards to paragraphs 14 and 15 of the State's submission, I agree with Mr Kalsakau that the case of *Nari v Republic* [2015] VJSC 132 does not assist or support the State's submissions. On the contrary, it underlines that the CPR are applicable to Constitutional proceedings when the *Constitutional Procedures Rules* do not make provision for a matter.
10. Finally, with respect to paragraph 16 of the State's submission, Chief Buletakak's failure to pay costs ordered is not a bar to seek to amend the Constitutional Application. Incidentally, the costs were paid after the State filed its submissions (Mr Kalsakau forwarded a copy of the receipt dated 31 August 2022 to State counsel and the Court).
11. In conclusion, the *Constitutional Procedures Rules* and the CPR permit an application for leave to amend a Constitutional Application. The amendments for which leave is sought seek to ensure that all the issues and relevant facts are pleaded and to make minor corrections. The State's submissions have not persuaded me otherwise. Leave will be granted.

D. Result and Decision

12. The Applicant's Application filed on 4 August 2022 to Amend the Constitutional Application is **granted**.
13. The costs of the Application are costs in the cause of the action.
14. The Applicant is to file and serve Amended Urgent Constitutional Application **by 4pm on 14 November 2022**.
15. The listings (2 days) on 1 and 2 December 2022 for Hearing of the Constitutional Application are **vacated** as this matter will not yet be ready for hearing.
16. This matter is listed for Conference **at 9am on 1 December 2022** at the Supreme Court Registry.

DATED at Port Vila this 24th day of October 2022

BY THE COURT


Justice Viran Molisa Trief

