

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

**Civil Appeal**  
**Case No. 21/1579 SC/CIVA**

**BETWEEN: Erick Wayback & Descendants**  
Appellants

**AND: Willie Bebe**  
First Respondent

**AND: Jonah Wayback**  
Second Respondent

*Date of Hearing:* 6 June 2022  
*Before:* Justice V.M. Trief  
*Counsel:* Appellants – Mr R. Rongo  
First Respondent – Mr J. Tari  
Second Respondent – Mrs M.G. Nari  
*Date of Decision:* 9 June 2022

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**JUDGMENT**

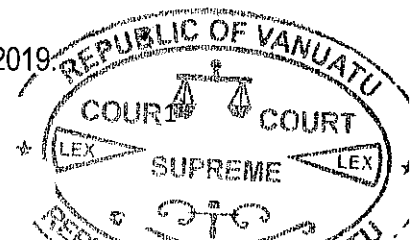
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A. Introduction

1. This appeal arises from the Magistrates' Court decision dated 28 April 2021 in Civil Appeal Case No. 2922 of 2019 setting aside the decision of the Pentecost Island Court dated 31 August 2019 and returning the matter for re-hearing before a differently constituted Pentecost Island Court.

B. Background

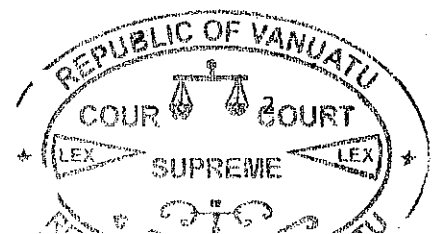
2. On 1 August 2019, Mr Ron Temakon Tamtam filed Civil Case No. 3 of 2019 in the Pentecost Island Court, a chiefly title dispute over the name, "Lustavu".
3. On 19 August 2019, Mr Simon Tor Bebe Teol Tavu filed his counter-claim.
4. The Island Court issued notice of hearing to the two parties on 1 August 2019.



5. On 12 August 2019, Mr Tamtam wrote to the Court that he would not attend the hearing (he was imprisoned on Santo) and consented to the chiefly title being transferred to Mr Tavu.
6. On 29 August 2019, Mr Rolanson Bule on behalf of his brother the Second Respondent Jonah Wayback Tor wrote to the Island Court requesting cancellation of the hearing so that he be given the opportunity to present his counter-claim. The Court clerk took no notice of the letter.
7. By decision dated 31 August 2019, the Island Court dismissed Mr Tamtam's claim and ordered that the chiefly title of Lustavu belonged to Mr Tavu and his tribe and that Mr Tamtam cease using that title.
8. The First Respondent Willie Bebe and Mr Tor appealed to the Magistrates' Court.
9. On application by the parties that the matter be dealt with by way of revision, Senior Magistrate Peter Moses as supervising magistrate of the Pentecost Island Court by decision dated 28 April 2021 set aside the Pentecost Island Court decision dated 31 August 2019 and ordered pursuant to para. 21(2)(b) of the *Island Courts Act* [CAP. 167] that the case be retried by a differently constituted Pentecost Island Court. The appellants and any other persons who may have an interest in the chiefly title, "Lustavu" were given liberty to file their claims in the Pentecost Island Court.

C. The Appeal and Discussion

10. The Appellants Erick Wayback and Descendants now appeal the Senior Magistrate's decision on the grounds (set out in the Amended Notice and Grounds of Appeal) that he erred in:
  - a. Finding that the hearing was held within 28 days of the filing of the claim in the Island Court and not after 30 days as required by rule 1(4) of the *Island Courts (Civil Procedure) Rules 2005*;
  - b. His interpretation of rule 4 of the *Island Courts (Civil Procedure) Rules* to hold that Mr Tamtam's letter could have prevented the Island Court from proceeding to hear the matter until Mr Tamtam was released from custody; and
  - c. Failing to consider that Erick Wayback's family had performed a custom ceremony giving Mr Tavu the right to speak on their behalf and in failing to consider that Erick Wayback's family were the rightful surviving bloodline of "Lustavu".
11. Submissions were filed for both the First and Second Respondents that the appeal be dismissed.



12. The Island Court hearing was listed 28 days after the date of filing of Mr Tamtam's claim. This was contrary to rule 1(4) of the *Island Courts (Civil Procedure) Rules* which required that the claim be listed for hearing not earlier than 30 days after the date of filing. The Senior Magistrate was correct in so finding; there is no merit in this ground of appeal.
13. Mr Tamtam by his letter to the Island Court consented to the hearing proceeding in his absence and that the chiefly title be declared to the counter-claimant. The Senior Magistrate was correct in holding that Mr Tamtam's letter could have been relied on to adjourn the hearing and was also correct in noting that Mr Tor's intention to file a counter-claim had already been notified to the Island Court clerk (through Mr Rolanson Bule's letter) but ignored. In the circumstances, opportunity should have been given to all persons to present their counter-claims and the matter be fully heard. The second ground of appeal is not accepted.
14. The remaining grounds of appeal relate to the substance of the claim in the Island Court. They did not arise on appeal in the Magistrates' Court therefore the Senior Magistrate did not err in not considering them.

D. Result and Decision

15. For the reasons given, the appeal is dismissed.
16. The Magistrates' Court decision dated 28 April 2021 in Civil Appeal Case No. 2922 of 2019 is upheld.
17. Costs follow the event. The Appellant is to pay the Respondents' costs fixed in the sum of VT60,000 for the First Respondent and VT60,000 for the Second Respondent **by 4pm on 11 July 2022.**

DATED at Port Vila this 9<sup>th</sup> day of June 2022  
BY THE COURT

  
Justice Viran Molisa Trief

