

**BETWEEN:** PHILIP PAUL, SAMULE PAUL, VOKE SANDY,  
STEVEN TOA, BENAIA VANUA, ROBERT  
VANUA, ENOCK MOSES

Appellants

**AND:** MR AND MRS VEHAJUJU MELE

Respondents

*Date:* 17<sup>th</sup> July 2023  
*Before:* Justice W.K. Hastings  
*Counsel:* Mr L Tevi for the Appellants  
Mr J Garae for the Respondents

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## JUDGMENT

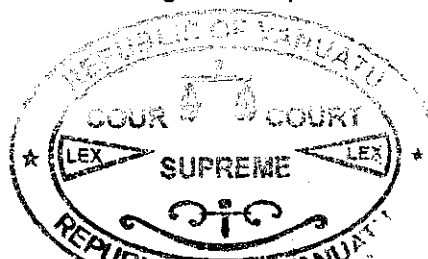
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### Introduction

1. The appellants seek leave to appeal out of time. If granted, they also seek an order quashing the summary judgment of the Magistrates Court by which the appellants were ordered to pay VT 817,000 to the respondents for the loss caused by the appellants' destruction of the respondents' trees, fruit trees and crops in Vunavus village, South Santo, in 2018.
2. I am grateful to both counsel for making oral submissions by telephone on both the issue of leave to appeal out of time and the appeal itself.
3. I will deal with the application for leave to appeal out of time first.

### Leave to appeal out of time

4. The following considerations are relevant to applications for leave to appeal out of time:
  - a. The length of the delay. The longer the delay, the greater the indulgence required and the stronger the case will have to be for extension;



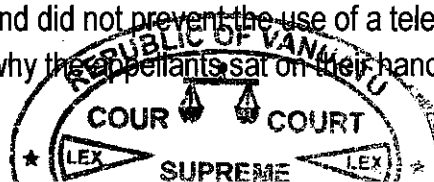
- b. The reasons for the delay. If the delay is the result of indecision or a change of mind, there is less justification for an extension;
  - c. The conduct of the parties, particularly the applicant.
  - d. Whether or not there is prejudice to the respondent or others with a legitimate interest in the outcome;
  - e. The significance of the issues raised by the proposed appeal, both to the parties and more generally.
5. The summary judgment was delivered on 25 March 2021. It was served on the appellants' then lawyer on 31 March 2021. There is a sworn statement of service on file to that effect.

### Submissions

6. Mr Tevi relied on the sworn statement of one of the appellants, Enock Moses, dated 6 February 2023. In that statement, Mr Moses states that after receiving the Magistrate's decision, the appellants went to the police station and asked for help to find a lawyer to appeal it. He says they were put in touch with a prosecutor who explained the court process. He says they gave the prosecutor VT 30,000 to help them find a lawyer. He states that they had no further communications after that, and that they stayed home because of covid restrictions and their fear of the disease. He says the appellants only realised that an appeal had not been lodged when they were served on with a notice to attend an enforcement conference on 14 February 2023.
7. Mr Garae submitted the appellants had a lawyer, but instead of going to him, they went to the police station. He also submitted that covid travel restrictions were in force from March to July 2021, and sporadically after that. Even with the restrictions, he submitted the appellants had from August 2021 until now to lodge an appeal but did not. There are also telephones that could have been used to keep in touch even during travel restrictions.

### Discussion

8. Mr Moses does not say in his sworn statement the date on which the appellants went to the police station for advice on appealing the decision, and neither counsel could assist. From paragraph 9 of the statement however, it must have been before covid restrictions came into force in March 2021, close in time to the date of the Magistrate's decision. The notice of appeal was filed on 6 February 2023, which means nearly two years elapsed between the time of the Magistrate's decision and the appellants becoming aware of it, and the date on which the notice of appeal was filed.
9. The application for leave to appeal does not explain why the appellants went to the police station and a prosecutor for advice when they had a lawyer (and on Mr Garae's account, this was their second lawyer). Covid restrictions is the explanation given in the application for leave for not following up with the prosecutor, but they were not in place for two years and did not prevent the use of a telephone. I do not find covid restrictions to be a satisfactory answer for why the appellants sat on their hands for two years.



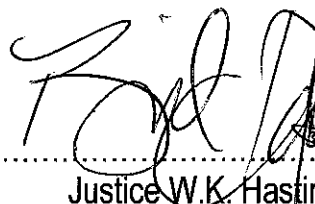
10. There would be prejudice to the respondents if leave to appeal out of time were granted. They have been waiting since the Magistrate delivered his judgment on 25 March 2021. The application for leave to appeal has further delayed enforcement.
11. There are two grounds of appeal. The first is whether the Magistrate erred in stating the defendant partially admitted wrongdoing when two of them offered the respondents a custom reconciliation that was rejected. Mr Garae said that all of the appellants were at the ceremony, and that when the respondents opened the envelope and saw an amount of money they thought was inadequate, they returned it to the Chief. Whether two or all of the appellants participated is a factual matter that cannot be resolved at this hearing. It raises an issue in my mind as to whether the offer of a custom reconciliation is effectively a settlement offer made without prejudice, or, as the Magistrate thought, an admission of wrongdoing. That issue, however, is not said to be a ground of appeal.
12. The second ground of appeal is that, contrary to what the Magistrate said, the appellants were not served with notices to attend pre-trial hearings. All but one of the sworn statements of service state service was on people who are not the appellants. Mr Garae explained that it is usual in remote places on Santo to apply for substituted service on local Chiefs.
13. Although the issues raised by the proposed appeal are significant to the parties, they are primarily factual matters the Magistrate was best placed to consider and are of relatively limited general significance as pleaded. The significance of the issues raised by the proposed appeal are to my mind outweighed by the two-year delay, the lack of explanation as to why the appellants went to the police station and a prosecutor for appeal advice when they already had a lawyer, and the inadequacy of covid restrictions as a reason for not following up either with their lawyer or the prosecutor.
14. For these reasons leave to appeal out of time is declined.

#### Appeal

15. Having declined leave to appeal out of time, the appeal is dismissed.

**Dated at Port Vila this 17<sup>th</sup> day of July 2023**

**BY THE COURT**



Justice W.K. Hastings

