

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**

(Civil Jurisdiction)

Civil

Case No. 21/2548 SC/CIVL

**BETWEEN: Kalulu Kalsrap Family represented by Kalsong
Kalulu Kalsrap and Daniel Kalulu Kalsrap**
Claimant

AND: Republic of Vanuatu
First Defendant

AND: Leiwi Kalpoi and Nadia Kalpoi
Second Defendants

AND: Claymore Limited
Third Defendant

AND: Bruce Kalotiti
Fourth Defendant

AND: Berry Kalotiti Kalotrip & Michel Kalotiti Kalotrip
Fifth Defendants

Date: 31 January 2023

Before: Justice V.M. Trief

Counsel: Claimant – Mr S.C. Hakwa

First Defendant – Mrs F.W. Samuel

Second Defendants – in person

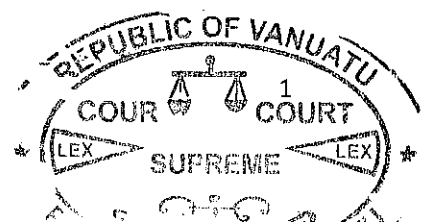
Third Defendant – Ms L. Raikatalau, holding papers for Mrs M.N. Ferrieux Patterson

Fourth and Fifth Defendants – Mr D. Yawha

DECISION AS TO CLAIMANT'S APPLICATION FOR LEAVE TO APPEAL

A. Introduction

1. The Claimant Kalulu Kalsrap Family by the named representatives ('Family Kalsrap') filed the Claim seeking the cancellation of the registration of leasehold title no. 12/0844/238 on 11 May 2010 (the 'lease') and of its transfer on 17 June 2010, and damages.
2. The First Defendant the State, the Third Defendant Claymore Limited, the Fourth Defendant Bruce Kalotiti Kalotrip and the Fifth Defendants Berry Kalotiti Kalotrip and Michel Kalotiti Kalotrip filed separate Applications to strike out the Claim. The Applications were determined in the Court's decision dated 28 September 2022 with the result that the Claim was struck out for lack of standing.



3. On 26 October 2022, Family Kalsrap filed Application for Leave to Appeal (draft Notice and Grounds of Appeal attached to the Application) (the 'Application').

4. This is the decision as to the Application.

B. Discussion

5. The grounds of the Application are that Family Kalsrap intended to file an appeal in the Court of Appeal and as set out in the supporting Sworn statement of Kalsong Kalulu Kalsrap. That sworn statement merely repeats that Family Kalsrap intended to appeal the Court's decision dated 28 September 2022.

6. The grounds of the Application on its face simply did not assist the Court.

7. Turning to a well-known principle, leave to appeal interlocutory orders (such as in the decision dated 28 September 2022) will not generally be granted unless there are reasonable prospects of success: *Ebbage v Ebbage* [2001] VUCA 7 at [33].

8. In the draft Notice and Grounds of Appeal, Family Kalsrap set out that the declaration that the Claimant's submissions in response filed on 4 July 2022 was ineffectual deprived them of their right to participate in a fair hearing. However, paras 4-6 of the 28 September 2022 decision make clear that Family Kalsrap had already filed submissions in response to each of the Applications. Therefore its 4 July 2022 submissions "in response" were a second set of submissions filed in response to the Strike-out Applications for which the Defendants would not get any right of reply. This was not procedurally fair and hence I declared the document ineffectual.

9. As to the draft Grounds of Appeal to the effect that I misconstrued Family Kalsrap's cause of action in the Claim, the reasons for my decision as to what cause of action was disclosed in the Claim and the ensuing result are set out in the decision dated 28 September 2022. I concluded that the Claim and this proceeding were premature as custom ownership rights had not yet been determined and that in those circumstances, Family Kalsrap did not have standing and the Claim must be struck out.

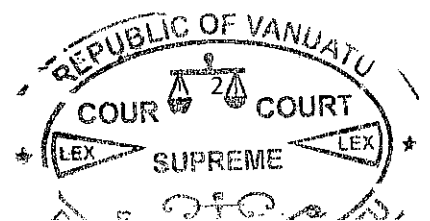
10. Against that backdrop, I consider that the prospects of success of the appeal are poor. This counts against the grant of leave to appeal.

11. As the Claim is premature and can be brought once the custom owners have been identified, I consider that the 28 September 2022 decision does not have any practical effect of finally determining Family Kalsrap's rights. This also counts against granting leave to appeal.

12. For the reasons given, leave to appeal will be refused.

C. Result and Decision

13. The Claimant's Application for Leave to Appeal filed on 26 October 2022 is **declined and dismissed**.

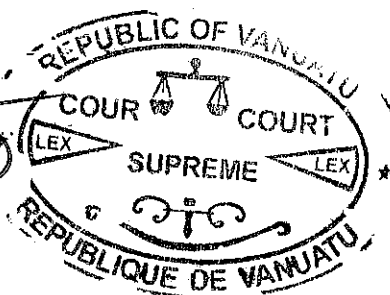


14. Leave to appeal is **refused**.

15. There is no order as to the costs of the Application.

**DATED at Port Vila this 31st day of January 2023
BY THE COURT**

VM Trief
Justice Viran Molisa Trief



The seal of the Supreme Court of Vanuatu is circular. The outer ring contains the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom. Inside the ring, the words "COUR" and "COURT" are positioned on either side of a central scale of justice. Below the scale, the word "SUPREME" is written in a larger font. Two small triangles containing the word "LEX" are located on the left and right sides of the seal. A decorative flourish is at the bottom center of the seal.