

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

Civil
Case No. 21/1720 SC/CIVL

BETWEEN: TAFTUMOL FAMILY
Claimant

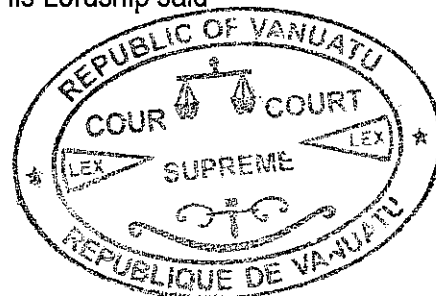
AND: LOIROR LIN
Defendant

Date: 3 September 2024
Before: Justice M A MacKenzie
Counsel: Claimant – A. Godden
Defendant – L Tevi

DECISION STRIKING OUT CLAIM

The issue

1. The claim was filed on 28 May 2021. As identified by Justice Geoghegan in a Minute dated 23 March 2023, the claim appears to be problematic, as it would effectively proceed as an application to evict the defendant and others from land. As His Lordship noted- quite how the Court could order a declared custom owner to vacate custom land is an issue counsel would have to clearly consider and suggested the more appropriate forum to be the Island Court.
2. On 23 March 2023, Justice Geoghegan also made a number of timetabling directions and allocated a trial date. The timetabling directions were not complied with by the Claimant.
3. Justice Spear issued a Minute on 19 May 2023 expressing concern about the non-compliance with the directions made by the Court on 23 March 2023. The trial date was also vacated by Justice Spear as it could not be “maintained”.
4. Justice Spear also raised a concern about the Court’s jurisdiction to entertain the claim and made very clear directions at paragraph 4 of the Minute. His Lordship said –



Counsel are to forthwith prepare a memorandum addressing the issue of jurisdiction and that memorandum is to be filed with reference to all relevant case authorities by no later than 2 June 2023. If it is not filed by the claimant by that date or the Court otherwise accepts that it does not have jurisdiction to entertain the claim, then the claim will be struck out without further reference to the parties.

5. The Claimant did not comply at all with the directions made by the Court on 23 March 2023 and 19 May 2023. The Claimant has not taken any step in the proceeding for 15 months. This is despite Justice Spear giving a very clear direction that if the memorandum directed to be filed by no later than 2 June 2023 was not, then the claim would be struck out without further reference to the parties.

Should the claim be struck out?

The applicable rule

6. Rule 9.10 of the Civil Procedure Rules applies and says;

Striking out

9.10 (1) *This rule applies if the claimant does not:*

- (a) take the steps in a proceeding that are required by these Rules to ensure the proceeding continues; or*
- (b) comply with an order of the court made during a proceeding.*

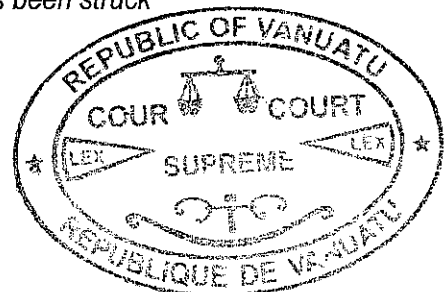
(2) *The court may strike out a proceeding:*

- (a) at a conference, in the Supreme Court; or*
- (b) at a hearing; or*
- (c) as set out in subrule (3); or*
- (d) without notice, if there has been no step taken in the proceeding for 6 months.*

(3) *If no steps have been taken in a proceeding for 3 months, the court may:*

- (a) give the claimant notice to appear on the date in the notice to show cause why the proceeding should not be struck out; and*
- (b) if the claimant does not appear, or does not show cause, strike out the proceeding.*

(4) *After a proceeding has been struck out, the Registrar must send a notice to the parties telling them that the proceeding has been struck out.*

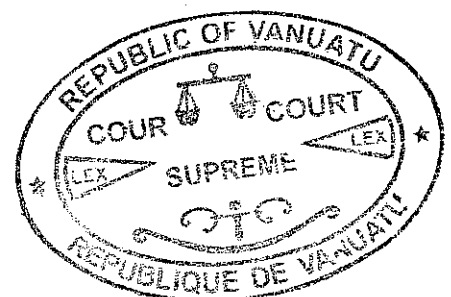


Discussion

7. The Claimant has not complied with the timetabling orders made on either 23 March 2023 or 19 May 2023, and has not taken any step in the proceeding for 15 months. Rule 9.10 is directly engaged.
8. On 12 April 2024 the defendant filed an application to strike out the claim. There is no proof of service on the Court file. Given rule 9.10(2)(d), I do not consider it necessary to progress that application.
9. **As was said** in *Western Pacific Cattle Co Ltd v Mass (trading as Raw for Beauty)* [2019] VUCA 26 (at 32);

“A liberal approach to excusing non-attendance, and non-compliance generally with court rules and their technicalities is justified where a party to the proceedings would otherwise be denied a fair opportunity to put the case relied upon to advance or resist the claim. Every case is likely to be different, but where in all the circumstances the party in default has had a reasonable opportunity to advance its case, and the other party has given the defaulting party reasonable opportunity to do so before seeking to rely on strict form, the substantial justice of the matter is likely to favour the application of the rules according to their strict requirements”.

10. In this case, the Claimant has had a more than sufficient and reasonable opportunity to comply with the directions made by the Court. This is not a situation where strictly applying the rules would deny the Claimant a fair opportunity to advance what is a problematic claim. There are no issues about form over substance. The Claimant was put on notice about the outcome if steps were not taken and 15 months has elapsed without any step being taken and continued non-compliance.
11. This is a case where the Court will strictly apply the Civil Procedure Rules, given;
 - a. No step has been taken in the proceeding by the Claimant for 15 months.
 - b. The Claimant has not complied with directions made by the Court on 23 March 2023, and 19 May 2023.
 - c. The Claimant was put on notice about the consequences of non-compliance in the Minute dated 19 May 2023, which is that the claim would be struck out without reference to the parties.



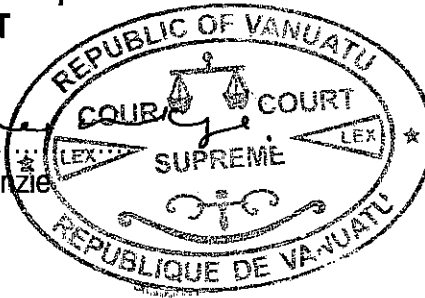
- d. Both Justices Geoghegan and Spear raised with counsel the difficulties with the claim to give a fair opportunity to persuade the Court there was jurisdiction. The Claimant has chosen to ignore the opportunity to address the jurisdictional issue.

Outcome and orders

12. For the reasons set out above, the claim is struck out pursuant to rule 9.10(2)(d) for non-compliance with Court orders and failing to take any step in the proceeding for 15 months.
13. Pursuant to rule 9.10(4), the Registrar must send a notice to the parties telling them that the proceeding has been struck out. Therefore, this order is to be urgently referred to the Registrar to send a notice to the parties as required by the rules.

**DATED at Port Vila this 3rd day of September 2024.
BY THE COURT**

name
.....
Justice M A MacKenzie

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a sword. The text "REPUBLIC OF VANUATU" is written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, the words "COURT" and "COURT" are positioned on either side of the scale, with "LEX" and "LEX" on either side of the sword. The word "SUPREME" is written in the center below the scale. A small star is located on the right side of the seal.