IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU – Port Vila
(Land Appellate Jurisdiction)

Matantas Land
Case No. 25/511 SC/CUST

BETWEEN: Dr Andrina KL Thomas
Na Vuhu Sule Tribal Council of Matantas
Big Bay
Santo

Applicant

AND: Chief Lus and Family
First Respondents of Sara Village
East Santo

Respondent

Date of Hearing: *30 May 2025*
Before: *Justice B. Kanas Joshua*
Counsel: *No appearance for the applicant*
Mr Julian Wells, representing the respondent

DECISION ON THE APPLICATION TO STRIKE OUT

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1. The matter was listed for hearing of the application to strike out the proceeding today. The application was filed on 6 May 2025, with a sworn statement of Nelson Timothy filed on the same date. Response to the application to strike out was filed, by the respondent, on 23 May 2025. Response to Nelson Timothy was filed on 26 May 2025.

2. The grounds for this application are:

   a. That the matter is *res judicata,* having been fully determined in or around 12 August 1992 by this court in *Moses v. Lus*[1] ("**Moses SC case**"), which is final and binding pursuant to Article 78(3) of the Constitution and Section 22(4) of the *Island Courts Act* [CAP167] as well as *Moses v. Lus*[2] ("**Moses CA case**").
   b. That the present Applicant (Andrina KL Thomas and Na Vuhu Sule tribal council) was never a party to the original land appeal case (Moses CA case) and therefore lacks standing to seek clarification of boundaries of land declared therein.
   c. That the application does not name the other parties to the original land appeal case which is an abuse of process.
   d. That the boundaries of land determined therein (Moses CA case) are definite and unambiguous and do not require any "verification" or "delineation".
   e. That the application has been brought after inordinate and unjustifiable delay of over 33 years.
   f. That the application discloses no reasonable cause of action, and fails to identify any lawful or justifiable basis for altering or clarifying the boundaries now.

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[1] [2006] VUSC 11.
[2] [2025] VUCA 8.

g. That, in any event, the parties to the original land appeal case have accepted and relied on the 1992 Judgment for over 33 years and it would be prejudicial particularly to the respondents, to reopen the matter now.
h. That as contained in the sworn statement of Nelson Timothy.

3. For understanding purposes, in this matter when reference is made to the applicant, I am referring to Dr Andrina KL Thomas, not the applicant of this strike out application. Respondent is Chief Lus and Family. This is because of the two applications filed by Dr Thomas, before the application to strike out was filed. The first application ("**application 1**") filed on 12 March 2025 was made pursuant to the 1992 Trial and Supreme Court Matantas Land case decision. It is an application for Matantas land boundary verification and delineation. The second application ("**application 2**") is for interlocutory orders to stop any activities within the disputed areas of the Matantas area. Application 2 was filed on 25 March 2025.

4. On 10 April 2025, this court issued orders for the respondent to file and serve response to application 1, with supporting sworn statement by 2 May 2025, and listed the matter for hearing of application 1 on 7 May 2025. Service of this order was executed by the Assistant Sheriff of the court on the respondent on 23 April 2025.

5. The hearing did not occur on 7 May 2025, as Mr Willie informed the court that he was unaware of the application 1 that was filed with four sworn statements[3]. The sworn statements were in addition to the sworn statement of the applicant and all were filed on the same date as application 1. Mr Willie had, however, filed another application for an interlocutory order with supporting sworn statement on 25 March 2025 to stop any activities within the disputed areas of Matantas area. This uncertainty led to Mr Willie seeking an adjournment for the purposes of obtaining further instructions from the applicant.

6. There had been no response filed by the respondent either, however, Mr Wells, who was granted leave to represent the respondent, had filed an application to strike out on 6 May 2025, with its supporting sworn statement of Nelson Timothy. A proof of service, filed on same date, showed that the applicant was served directly.

7. With the application to strike out, the court granted the adjournment for Mr Willie to obtain instructions from his client and to respond to the application to strike out. On 12 May 2025, Mr Wille filed a notice of ceasing to act. However, on 23 May 2025, a response to the application to strike out and a supporting sworn statement was filed. No proof of service was filed and this was confirmed by Mr Wells.

8. At the hearing today for the application to strike out, there was no appearance for the applicant. Mr Wells informed the court that the applicant was aware of today's date, and that was satisfied with a proof of service filed on 6 May 2025. Mr Wells also added that the applicant has never served them any documents to date. The only document

[3] Sworn statement of Chief Yankee Norris Steven, filed 18/3/25;
Sworn statement of Jean Baptiste Palaud, filed 25/3/25;
Sworn statement of Andrew Hutchinson, filed 7/4/25; and
Sworn statement of Sandy Rose Clochard, filed 16/4/25.

they have is application 1, which they have had to collect themselves at Mr Willie's office. This, presumably, would have been after the Assistant Sheriff had served them with the first court order, as there are no other proofs of service filed by the applicant.

9. The court is satisfied that the applicant has never served the respondent, with application 2 and the response to the application to strike out. I am satisfied that the respondent has served the applicant[4] and that she is aware of today's date. Based on this, we proceeded to the hearing of the application to strike out.

10. The application to strike out is made pursuant to Rule 9.10(1) and (2), Rule 18.10(2)(a), Rule 18.11(2) and Rule 18.11(4)(a) of the Civil Procedure Rules[5]. In the hearing, the respondent relied on his application and supporting sworn statement of Nelson Timothy[6], filed on 6 May 2025.

11. Rule 9.10(1) and (2) of the Civil Procedure Rules, state that

(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.

12. The applicant has never attended a court hearing, except for the one time that Mr Willie attended. Soon after that Mr Willie filed a notice of ceasing to act and there is very little progress carried out by the applicant. Based on Rule 9.10(1)(a) the claimant has not taken steps in the proceeding to ensure the proceeding continues.

13. In addition to the little progress by the applicant, they have not complied with court orders. Rules 18.11(2) and 18.11(4)(a) state,

Failure to comply with an order
18.11(2)
A party who is entitled to the benefit of the order may require the non-complying party to show cause why an order should not be made against him or her.

18.11(4)(a)
The court may give judgment against the non-complying party.

14. Mr Wells pointed out further to the applicant not been attending court, they have also breached court's orders, in particularly, serving the respondent. The respondent was never served with any documents filed by the claimant. The respondent had to retrieve

[4] Sworn statement of proof of service (Nelson Timothy), filed on 6 May 2025.
[5] No. 49 of 2002.
[6] Filed on 6/5/25.

application 1 from Mr Willie's office, in order to respond to it. Although no written application was made for failure to comply with an order, as per Rule 18.11(3), I accept the oral submission made because even the application to strike out did not cause the applicant to attend court, and that should cause anyone to attend court if they truly wanted to defend their interest. I accept this point made in oral submission by Mr Wells as part of his application to strike out.

15. Based on the procedural ground alone, the court can strike out this proceeding. However, I shall proceed to address the grounds of the application.

16. The first ground is whether the matter is *res judicata*. Mr Wells submitted that the matter had been fully determined in the 1992 Decision, as was held in the *Moses SC case*, and is final and binding pursuant to Article 78(3) of the Constitution and Section 22(4) of the Island Courts Act [CAP 167], as was held in the *Moses CA case*.

17. In the *Moses SC case,* the Supreme court quashed the decision of the Island court. The court had examined the evidence presented and considered it separately on behalf of each claimant[7] and then as a whole, and concluded that each claim overlapped each other and cannot succeed. The land was then declared to be owned by Family Lus and Family Moses and a description of the boundaries, as represented on the survey map, was made.

18. In the *Moses CA case,* an application was made for an extension of time to appeal. The court treated the application as one for an extension of time to seek the setting aside of the 1992 Decision. The 1992 Decision was an appeal against the decision of the Santo/Malo Island court in 21 October 1988. The decision was related to land disputes in Longkar, Longum and Matantas areas, in Big Bay, Santo. Grounds for the application in *Moses CA case* were:

> *a. The 1992 Decision was undated and was not numbered, making it incomplete;*
> *b. The detailed reasons were never furnished to the applicants or respondents;*
> *c. The site map attached to the decision does not correspond to the boundaries of the disputed land;*
> *d. Errors of law and fact;*
> *e. Inadequate consideration of the evidence tendered by the appellants in the Supreme Court;*
> *f. Alleged bribery of the assessors appointed to sit with the Supreme Court Judge.*

19. Grounds (a), (c), (d) and (e), were put to one side, as they could not be brought to bear in an application to have a judgment set aside under the limited jurisdiction of the Island courts[8].

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[7] Chief Jeffrey Moses, Chief Lus, Alexander Samson, Vile, Boaz.

[8] Island Courts Act CAP 167, Section 22(4):
(4) An appeal made to the Supreme Court under subsection (1)(a) shall be final and no appeal shall lie therefrom to the Court of Appeal.

20. Grounds (b) and (f) were dealt with to advance the application to have the judgment set aside. In brief, for ground (b), the court concluded that

> *"The inadequacy of the reasons for the 1992 Decision is not a basis on which this Court can give leave to the applicants to apply to have the 1992 Decision set aside."*[9]

For ground (f), the court accepted

> *"That if the bribery allegations were proven to be true, that would provide a proper basis for this Court to set aside the 1992 Decision. But there are shortcomings on the evidence...and the 16-year delay in bringing this evidence to the Court means there is no longer any real possibility of resolving those shortcomings."*[10]

21. After considering the two grounds, the court of appeal declined the application to set aside the 1992 Decision, in *Moses CA case.*[11] It further stated that,

> *"If the 1992 Decision did not adequately delineate the areas of land subject to the declarations in the 1992 Decision, it was open to the applicants to apply to seek clarification of the 1992 Decision from the Supreme Court Judge* ***soon after the delivery of the 1992 Decision.***[12]
>
> (My emphasis)

22. Application 1 seeks verification and delineation for Matantas land boundary. The grounds in the application fall under the grounds addressed by the court of appeal in the *Moses CA case,* as shown in the following table:

Application for Matantas Land Boundary Verification and Delineation pursuant to the 1992 Trial and Supreme Court Matantas Land Case Decision	***Moses CA case***
Ground 1	Ground (a)
Ground 2	Ground (c)
Ground 3	Ground (e)
Ground 4	Ground (d)
Ground 5	Ground (a)
Ground 6	Ground (e)
Ground 7	Ground (b)
Ground 8	Ground (f)
Ground 9	Ground (b)
Ground 10	Ground (e)
Ground 11	Ground (e)
Ground 12	Ground (a)

[9] [2025] VUCA 8, at paragraph 24.
[10] Ibid, at paragraph 36.
[11] Ibid, at paragraph 56.
[12] Ibid, at paragraph 57.

Ground 13	Grounds (a), (b), (c), (d), (e), (f)

23. The grounds in application 1 have been addressed by the court of appeal in the *Moses CA case.* When the court stated in paragraph 57 that *"it was open to the applicants to apply to seek clarification of the 1992 Decision from the Supreme court judge soon after the delivery of decision"*, it did not mean 33 years after the 1992 Decision. The court of appeal stated in the *Moses CA case* that 33 years was an *"extensive delay"*[13] and I agree with it.

24. In considering the above, it appears that application 1, filed by the applicant on 12 March 2025 appears to re-open matters which have been put to rest in the *Moses CA case.* I agree that the matter is *res judicata.* Having said this, I do not need to address grounds (b) – (f) of the application.

25. The application to strike out the proceeding is granted. This proceeding is struck out in its entirety.

Dated at Port Vila on this 13th day of June, 2025

BY THE COURT

Justice B. Kanas Joshua

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[13] Ibid, at paragraph 42.