

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

**Civil**  
**Case No. 24/839 SC/CIVL**

**BETWEEN: GODFREY TAHI**  
**NESTER TAHI**  
*Claimants*

**AND: JOHN LEO**  
**KINNETH LEO**  
**TARI NGALA**  
**CHARLES LEO**  
**SOLOMON LEO**  
**BWIRI LANGE**  
*Defendants*

**Coram:** *Justice Oliver A. Saksak*

**Counsel:** *Mr Roger Tevi for the Claimants/respondents*  
*Mr Colin B. Leo for the Defendants/applicants*

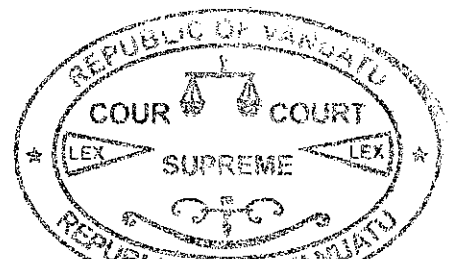
**Date of Hearing:** *19 March 2025*

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## **DECISION**

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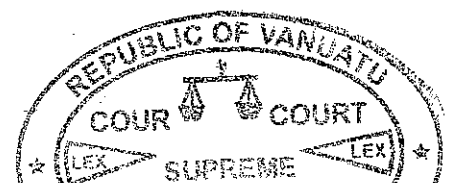
1. I heard Mr Leo in Chambers today at about 8.25am today in relation to a strike out application filed on 9 October 2024 seeking orders that:
  - (a) The claims filed by the Claimants on 18 March 2024 be struck out.
  - (b) Costs of VT150,000 be paid by the Claimants.
2. The grounds in support of the application are that:
  - (a) The Claimants failed to comply with numerous Court Orders requiring them to file their evidence.



- (b) Non-compliance with Court Orders warrants the strike out of the claim pursuant to Rule 18.11 of the Civil Procedure Rules.
  - (c) Upon the evidence by sworn statement of Mr Leo filed on 9 October 2024 showing that 6 months had lapsed without the Claimants taking any active and progressive steps to ensure their proceeding continues.
3. Mr Leo informed me that he was to appear before another Judge at 9.00am and upon my suggestion to him whether he was content with the Court formulating a decision on the papers, Mr Leo agreed, and I granted leave for Mr Leo to be excused. He sought costs at VT150,000.
  4. Shortly after Mr Leo left Chambers, Mr Tevi knocked and opened the door. He expected to see Mr Leo but quite to his surprise Mr Leo had been excused. That was about 8.35am. I however allowed Mr Tevi in and I informed him about what happened earlier when I heard Mr Leo. I asked Mr Tevi whether he had filed any submissions, and he answered positively and said he relied solely on those submissions. Mr Tevi also agreed that the Court would decide the application on the papers.
  5. I gave Mr Tevi an opportunity to respond to the request for costs in the of VT150,000. Mr Tevi responded saying the defendants were entitled to some costs but submitted VT150,000 was excessive.

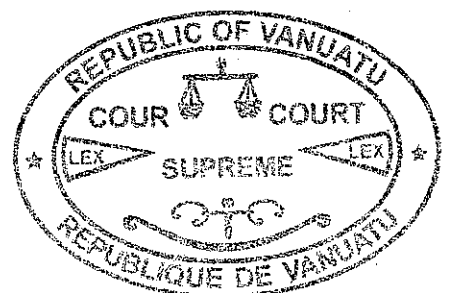
### **Discussion**

6. This matter was first listed for conference hearing for the very first time on 19 June 2024 by Notice dated 11 June 2024. The fixture was vacated due to power outage. An email dated 19/6/24, 09:43am was issued to counsel to notify them.
7. On 20 June 2024 the Second Notice of Conference was issued making the case returnable on 27 June 2024 at 1.45pm. On this date Mr Tevi did not appear in person but sent an email seeking an adjournment due to influenza. Mr Leo did not appear. The Court adjourned the matter to Friday 5 July 2024 at 8.45am and directed that the Claimants have some indication whether they had served the defendants with their claim.
8. On 5 July 2024 both Mr Tevi and Mr Leo attended. Mr Tevi informed the Court he intended to file 2 sworn statements and sought an extension of 14 days. Mr Leo agreed and sought 14 days to file and serve responses. The matter was adjourned to 16 August 2024 at 9.00am.
9. On 1 July 2024 Mr Tevi filed proof of service by Martha Bebe deposing that service was affected on defendants Charles Leo, Solomon Leo, John Leo and Tahi Ngala by Sgt James Tamata and annexed copies of the Process Service Reports as "MB1".
10. On 16 Augst 2024 only Mr Tevi attended the conference and Mr Leo was absent. Mr Tevi informed the Court that he was having difficulties having the statements sworn by the Claimants



on Pentecost due to the flight issues with Air Vanuatu and sought further extension of a further 14 days. Leave was granted and the matter was further adjourned to 19 September 2024 at 9.00am.

11. On 19 September 2024 there was no conference hearing as the Judge had done overseas and the matter was listed for hearing instead on 27 November 2024 by Notice dated 15 November 2024.
12. On 9 October 2024 Mr Leo filed the strike out application together with his sworn statement in support. These were served on Tevi Bulu Lawyers on 15 October 2024 by Makaly Tari who filed proof of service on 17 October 2024.
13. On 27 November 2024 Mr Leo did not appear. Mr Tevi sent another email that he had been having strong flu and sought to be excused. The Court noted that as Mr Leo was not in attendance to prosecute his application, the matter stood adjourned to 30 January 2025 at 8.15am.
14. During this period of adjournment Mr Tevi filed the sworn statements of Nester Tahi and Godfrey Tahi on 26 November 2024 and his submissions in response to the strike out application.
15. Those sworn statements and submissions were served on the office of Mr Leo on 6 December 2024 and proof of service was filed on 9 December 2024 with copies of Process Service Report as "RT1".
16. On 30 January 2025 Mr Tevi and Mr Leo did not attend, and the Court adjourned further to 26 February 2025 at 8.30am.
17. On 26 February 2025 only Mr Tevi attended. Mr Leo did not appear, and the Court adjourned the matter to 19 March 2025 at 8.45am.
18. Mr Leo filed a Notice of Beginning to Act for the defendants on 17 May 2024. And he filed his legal submissions on 15 October 2025.
19. Also, on 17 May 2024 Mr Leo filed the sworn statements of Kinneth Leo and George Sivehi in support of the defence.
20. All those documents are on the File. What are missing are the Response and the Defence of the defendants. These are required by Rule 4.4 and Rule 4.5 and the period required is 14 days from the date of service of the claim which was done on 26 March 2024, some 10 days after filing of the claim on 18 March 2024. The lack of response and defence is one factor. There is no explanation by Mr Leo for that omission.



21. The record of attendance by Counsel and history of the matter show absenteeism by Mr Leo on more than 2 occasions is another factor for consideration. Again, there are no explanations for those non-attendance. The claimants on the other hand provided good explanations why they did not file statements within the time ordered and sought extension of time.
22. Mr Leo made a short oral supplementary submission pointing me to Rule 4.2 of the Rules and submitting that the claimants' statement of the case has not pleaded any statute or principle of law to be the basis of their claim. Be that as it may, Mr Leo has not provided any explanation why no response or defence have been filed to comply with Rules 4.4 and 4.5. This is equally important for the defendants as well.
23. It is pleaded at paragraph 4 of the claim that John Leo is not the declared custom owner of Ataninumba custom land. Without any response and/or defence, this pleading stands unchallenged.
24. I find no basis for the application.

### **Conclusion**

25. For the findings made, I have reached the conclusion that the application for strike out by the defendants is pre-mature. Accordingly, the orders sought are declined and the application is dismissed.
26. Cost are to be reserved as costs in the cause of the matter.

**DATED at Port Vila this 20<sup>th</sup> day of March 2025.**

**BY THE COURT**

  
**Hon. Justice Oliver A. Saksak**

