

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

**Land Appeal**  
**Case No. 22/1285 SC/LNDA**

**BETWEEN: John Gordon Arnhabat**  
*First Appellant*

**AND: Johnathan Tawi**  
*Second Appellant*

**AND: Markton Sanhabat**  
*First Respondent*

**AND: Leonard Bill**  
*Second Respondent*

**AND: Belton Joe**  
*Third Respondent*

**AND: Ephraim Sairus & Jerety**  
*Fourth Respondent*

**AND: Albert Horambat**  
*Fifth Respondent*

**AND: Shedrack Salemulu**  
*Sixth Respondent*

**Coram: Justice Dudley Aru**

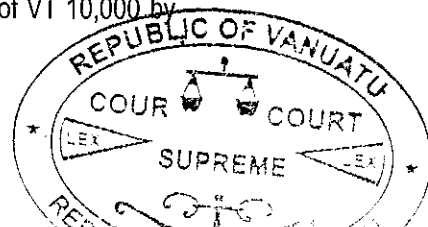
**Counsel: Mrs. T. Harrison for the First Appellant (John Gordon)**  
**Ms. V. Muluane for the First Respondent (Markton Sanhabat)**  
**Mr. R. Rongo for the Second Respondent (Leonard Bill) no-appearance**  
**Third Respondent (Belton Joe) no-appearance**  
**Fourth Respondent (Ephraim Sairus & Jerety) no-appearance**  
**Fifth Respondent (Albert Horambat) no-appearance**  
**Mr. J. Boe for the Sixth Respondent (Shedrack Salemulu)**

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## **DECISION**

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1. At a conference on the 16 February 2026 with only Mr Yahwa and Ms Muluane present, Ms Muluane indicated that she had filed and served an application pursuant to rule 3.9 of the Civil Procedure Rules to appoint a representative of the 1<sup>st</sup> respondent who is now deceased and also filed a number of objections to material filed by the 1<sup>st</sup> and 2<sup>nd</sup> appellants in their appeal books.
2. Directions were then issued allowing the appellants 14 days to file and serve their response. Ms Muluane also made an oral application for payment of the respondents' costs of VT 10,000 by



the 2<sup>nd</sup> appellant which were ordered on 21 August 2024 but have remained outstanding to date. The application was for the 2<sup>nd</sup> appellant's appeal to be struck if the order for payment is not complied with by 31 March 2026. (see rule 6.8 (1) and (2)) This was acknowledged by Mr Yahwa.

3. Despite the cost order, Ms Muluane submits that the VT 10,000 has not been paid to the first respondent to date. She now makes an oral application to strike out the 2<sup>nd</sup> appellant's appeal due to their non-compliance with the cost order.
4. Mrs Harrison informed the Court she had received a payment of VT10,000 from the 2<sup>nd</sup> appellant saying they were ordered by the Court to do so. Louise Yahwa now confirms in her sworn statement filed on 2 April 2026 that payment in compliance with the 21<sup>st</sup> August 2024 order was made on 4 March 2026 but made in error to Mrs Harrison instead of Ms Muluane. The oral application to strike out the 2<sup>nd</sup> appellant's appeal is therefore refused. Mrs Harrison is to transfer the VT 10,000 immediately to Ms Muluane in payment of the wasted costs order.

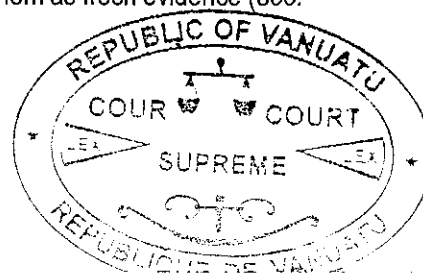
Application by Daniel William Sanhabat

5. Daniel W Sanhabat is the eldest son of the 1<sup>st</sup> respondent and deposes in a sworn statement filed on 14 January 2026 that his father died on 10 November 2022 as evidenced by the death certificate dated 20 October 2025 signed by doctor Stephano Melteror annexed to his sworn statement **Annexure "DW"**. He deposes that he intends to continue the proceedings in his name on behalf of his father.
6. It was submitted that the proceedings are still on foot and there is no opposition to the appointment from the 1<sup>st</sup> respondent's family and the application accords with custom as the applicant being the eldest son will always be his father's successor
7. **The application was conceded therefore Daniel William Sanhabat will represent his father as the 1<sup>st</sup> respondent.**

*Objections to material in the 1<sup>st</sup> appellant's supplementary appeal book A*

*a. Further sworn statement of John Gordon Arnahabat filed on 8 April 2024*

8. The first respondent objects to this sworn statement as it was filed in support of an application to introduce it as fresh evidence. It was submitted that the application was dismissed on 21 August 2024 therefore the sworn statement cannot be relied on for the purposes of the appeal hearing and should not be included in the Appeal Book.
9. **Mrs Harrison concedes to the objections therefore the sworn statement of John Gordon Arnahabat filed on 8 April 2024 is struck out.**
  - b. Sworn statement of John Gordon Arnahabat filed on 23 January 2024*
  - c. Sworn statement of John Gordon Arnahabat filed on 26 July 2023*
10. The basis of the first respondent's objections to these two sworn statements is that these are new sworn statements filed in support of the appeal. It was submitted that this evidence was available but not presented before the Island Court. These sworn statements were filed in support of the appeal but no application was made seeking leave to rely on them as fresh evidence (see: *Philip v Philip Civil Appeal Case No 2092 of 2018*).



11. Mrs Harrison argued that supplementary appeal books are allowed. I agree, however they must contain material already before the Island Court or if the evidence is new, then it must meet the requirements of fresh evidence. **Both sworn statements are not fresh evidence and no leave was sought to rely on them therefore both sworn statements are struck out.**

*Objections to material in the 2<sup>nd</sup> appellant's appeal book A and B*

*a. Appeal book A*

*i). sworn statement of Fremden Yanhambat*

12. The first respondent objects to this sworn statement on the basis that it was filed in support of an application to call fresh evidence. As the application was withdrawn it was submitted that the sworn statement could not be relied on for the hearing and should not be included in the appeal book. The second appellant has not filed any response and despite their awareness of today's hearing, there was no appearance from Mr Yahwa. **I agree with the first respondent. As the application to call fresh evidence was withdrawn, this evidence could not be used in the hearing of the appeal and is therefore struck out.**

*ii). Notice of Appeal of Shedrack Salemumu filed on 12 December 2022*

13. The first respondent objects to the inclusion of Shedrack Salemumu's notice of appeal in the appeal book as it was struck out on 10 June 2024 for reasons that it was filed out of time. That decision has not been appealed therefore this notice of appeal should not be part of the appeal book. **The objection is allowed.**

*b. Appeal Book B*

*i). Page 175 – 212 – Kastom stone mo nasara blong Shedrack Salemumu long Melwe*

14. The first respondent raises this objection on the basis that Shedrack Salemumu's appeal has been struck out therefore his documents should not be part of the appeal book. Shedrack Salemumu remains in the proceedings as a respondent. The document being objected to is part of the documents relied on by Sedrack Salemumu in the Island Court. Although he is no longer an appellant, the document is part of the records of the island Court. **The objection is rejected.**

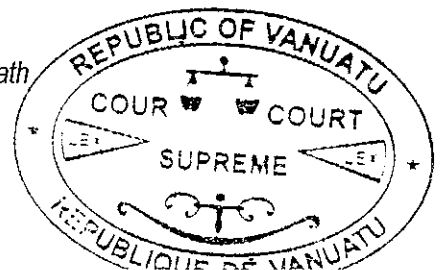
*ii). Pages 400 – 428 - Ephraim claim on Eldu land*

15. The objection is raised on the same basis that Ephraim is not an appellant and his claim relates to a different land known as *Aldu* land and not *Nerghies* land therefore the documents should not be in the appeal book. Ephraim remains a respondent in this appeal and the documents objected to are part of his claim before the island Court. The document is part of the records of the Island Court. **Therefore, for the same reasons as in paragraph 12 above, the objection is rejected.**

*iii). Pages 448 – 457 – Statement blong Jonathan Tawi blong graon long Eldu*

16. The objection is made on the same basis as in paragraph 13 that the statement concerns *Eldu* land and not *Nerghies* land. The statement is part of the records of the Island Court therefore the objection is refused.

*iv). Pages 461- 466- Undated sworn statement of Fremden Yanhambath*



17. The objection is made on the basis this evidence was not before the island Court and no leave was sought to rely on this evidence as fresh evidence. **The objection is allowed as the evidence was available at the time of the hearing but was not called therefore it is not fresh evidence and is struck out.**

*iv). Pages 378 - 399 – Second part blong statement blong jif Gordon Arnahabath*

18. The objection is made on the same basis as in paragraph 15. The evidence was available but was not put before the Island Court and is now submitted as new evidence. **It is not fresh evidence therefore the objection is allowed and the statement is struck out.**

19. The matter is relisted for further mention on **28<sup>th</sup> May 2026 at 8.30 am.**

20. Costs in the course.

DATED at Port Vila this 7<sup>th</sup> day of April, 2026

BY THE COURT



Dudley Aru  
Judge

