IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU
(Civil Appellate Jurisdiction)

CIVIL APPEAL CASE NO. 24/2847

[2025] VUCA 8

BETWEEN: CHIEF JEFFREY MOSES AND FAMILY
Applicants

AND: CHIEF LUS AND FAMILY
First Respondents

AND: ALEXANDER SAMSON AND FAMILY
Second Defendants

AND: MALACHI VILE AND FAMILY
Third Respondents

AND: SILAS BOAZ AND FAMILY
Fourth Respondents

Before: *Hon. Chief Justice V. Lunabek*
Hon. Justice M. O'Regan
Hon. Justice R. White
Hon. Justice O.A. Saksak
Hon. Justice D. Aru
Hon. Justice V.M. Trief
Hon. Justice M. Mackenzie

Counsel: *Dr A.K.L. Thomas (in person) for the Applicants*
F. Loughman for the First Respondents
M.G. Nari for the Second and Third Respondents
R. Willie for the Fourth Respondents

Date of Hearing: *6th February 2025*
Date of Decision: *14th February 2025*

JUDGMENT

REPUBLIC OF VANUATU COURT OF APPEAL COUR D'APPEL REPUBLIQUE DE VANUATU

Introduction

1. The applicants apply to this Court for an extension of time to bring an appeal against a decision made by the Supreme Court in 1992 (the 1992 Decision). That decision is now reported as *Moses v Lus* [2006] VUSC 111, notwithstanding that the decision was made in 1992. The application for extension of time was styled as an application for leave to appeal out of time but the correct terminology is an application for an extension of time to appeal. The application was accompanied by other applications which, for reasons we will explain later, were not addressed at the hearing and this judgment addresses the application for extension of time only.

1992 Decision

2. The 1992 Decision addressed an appeal against the decision of the Santo/Malo Island Court dated 21 October 1988. The Island Court decision related to land disputes in the area of Big Bay, Espiritu Santo in three areas, Longkar, Longum and Matantas. The 1992 Decision dealt only with the Matantas land.

3. The 1992 Decision was signed by the primary Judge but made no mention of the assessors with whom he would have been required to sit (s 22(2) of the Island Courts Act 1983 [CAP 167] requires a Court hearing an appeal against the decision of an Island Court to appoint "two or more assessors knowledgeable in custom to sit with the Court"). However, it is common ground between the applicants and the first respondents that there were, in fact, assessors. The decision is not dated, but it is apparent from other material in the extensive bundle of documents produced for the Court by the applicants' representative, Dr Thomas, that it was delivered prior to 12 August 1992. There is also no case number on the decision.

4. The 1992 Decision appears to have been delivered orally in open Court and the signed version appears to be a transcript of the primary Judge's remarks in delivering it. In it, the Judge begins with this sentence "The decision in the land appeal from "MATANTAS" is now ready". He then continued:

> *The full reason[s] for the decision are long. I will not read them out now but you each may have a copy of them as soon as they have been put into typed form.*

5. Unfortunately, it appears that the full reasons were never provided to any of the parties and there is no record of them in the Court files (the Court records were lost in a fire and no records of the Supreme Court case remain). It is apparent that the applicants and their counsel made various efforts after the delivery of the 1992 Decision to obtain a copy of the full reasons but these were never provided to them. It appears that the primary Judge left Vanuatu not long after the delivery of the 1992 Decision and inquiries addressed to the then Chief Justice and to Court officials in 1992 and subsequently were to no avail.

6. The 1992 Decision itself records that the Supreme Court quashed the decision of the Island Court. The main reason for this was that the records kept by the Island Court were inadequate. The decision then declared that certain areas of the Matantas land were owned by the applicants and other areas by the first respondents, but the decision recorded that no land inside the relevant area was owned by the second, third or fourth respondents. The Court also directed that those people occupying the land within the relevant area were not custom owners and would need to negotiate leases and

directed that the declared custom owners were not to unreasonably withhold consent for such leases. The Court made an order that no costs would be payable by any party to any other party.

7. The copy of the 1992 Decision provided to the Court has attached to it a site map of the area to which the decision relates. It is not clear whether this site map was attached to the 1992 Decision when it was provided to the parties. There is no reference to it in the text and it does not have markings on it that reference the findings in the decision itself. It is possible it was attached to the 1992 Decision by a member of the Court staff after delivery of the decision.

Does the Court have jurisdiction?

8. The applicants' appeal from the Santo/Malo Island Court to the Supreme Court was advanced under s 22(1) of the Island Courts Act. At the relevant time, s 22(1)(a) of that Act provided that a person aggrieved by an order or decision of an Island Court could appeal to the Supreme Court. However, s 22(4) provided (and still provides) that an appeal made to the Supreme Court against an order or decision of an Island Court "shall be final and no appeal shall lie therefrom to the Court of Appeal". Counsel for the first respondents, Mr Loughman, argued that this was an unambiguous provision that meant that this Court did not have jurisdiction to entertain an appeal against the 1992 Decision.

9. We agree that s 22(4) of the Island Courts Act is decisive. As this Court put it in *Matarave v Talivo* [2010] VUCA 3:

> *"Stated bluntly, we consider this statutory provision means exactly what it says: the decision of the Supreme Court is final and cannot be the subject of an appeal to the Court of Appeal"*

10. That is not the end of the matter, however. This Court in *Matarave v Talivo* went on to make the following observation:

> *"However, the limitation imposed by s 22(4) is in relation to "an appeal made to the Supreme Court". That requirement will not be met if any one of those persons is subject to any matter that disqualifies them from exercising their statutory functions. ... It follows that if the Court which purports to exercise the appellate functions under s 22(1)(a) is not properly constituted, or if the Court properly constituted purports to decide custom ownership of land which is not subject to the dispute submitted to the Island Court, the Court will not be validly exercising its statutory function. For example, if only by a Judge and one assessor, the Court would not be validly exercising the statutory function. Nor would it be if it purported to decide ownership of land outside the area of the disputed land the subject of the appeal."*

11. The Court continued:

> *"Subject to this qualification, the direction in s 22(4) that the appeals to the Supreme Court shall be final and not subject to appeal to the Court of Appeal, means that the resolution of the dispute as to the ownership of the land is finally ended by the decision of the Supreme Court regardless of errors that may have been made by the Supreme Court in the exercise of its function, and whether the errors might be described as errors of law, or errors of fact. Thus, if the Supreme Court misapprehends an aspect of the evidence, and makes a finding of fact which is wrong, or fails to follow strictly the laws of evidence the error does not expose the decision of the Supreme Court to review or appeal."*

12. This limited exception to the finality of Supreme Court decisions on appeal from the Island Court was further explained by this Court in *Sovrinmal v Nalekon* [2022] VUCA 25. This Court noted the finding made in *Matarave v Talivo* and added (at [15]):

> *"We would add that this Court may also interfere with a Supreme Court decision as to ownership of land in other instances of jurisdictional error including where there was such a complete lack of procedural fairness shown in the circumstances of the case then it cannot be said there has been a valid hearing of the appeal by the Supreme Court."*

13. This Court again considered the jurisdiction to set aside a Supreme Court decision on appeal from the Island Court in *Kalsakau v Manarewo* [2024] VUCA 51.

14. We will treat the present application for an extension of time to appeal as an application for an extension of time to seek the setting aside of the 1992 Decision under the limited jurisdiction described in *Matarave v Talivo, Sovrinmal v Nalekon* and *Kalsakau v Manarewo*.

Grounds on which the application is advanced

15. Dr Thomas advanced the applicants' case on the following grounds:

    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 applicants in the Supreme Court;

    f. Alleged bribery of the assessors appointed to sit with the Supreme Court Judge.

16. It is clear that grounds (a), (c), (d), and (e) are matters which may have provided grounds supporting an appeal to this Court if this Court were not prevented by s 22(4) of the Island Courts Act from considering such an appeal. But they are clearly not matters which could be brought to bear in an application to have a judgment set aside under the limited jurisdiction described in *Matarave v Talivo*. We therefore put those matters to one side.

17. However, we will revert to ground (c) later and make some observations about the delineation of the boundaries of the land subject to the declarations of ownership in the 1992 Decision.

18. That leaves two possible grounds on which the applicants advance their case that the 1992 Decision should be set aside, namely the absence of full reasons and the bribery allegations.

Lack of, or inadequacy of, reasons

19. There is no doubt that the Supreme Court Judge contemplated that a set of reasons would be delivered to explain in greater detail the 1992 Decision. This is apparent from the second paragraph of the decision, quoted above, at para 4. It is also clear that despite the efforts of the parties and their counsel (described above at para 5) no reasons were ever provided and it seems they no longer exist, if they ever did."

20. In 2002, a judgment of the Supreme Court in a case initiated by the applicants and the first respondents referred to the lack of reasons in the 1992 Decision: *Ova v Sampson* [2002] VUSC 101 at para 7.2 (the Supreme Court judgment was confirmed on appeal by this Court in *Sampson v Moses* [2002] VUCA 27). In that case, the second respondent in the present case, Alexander Samson, was the defendant. The Judge rejected his evidence to the effect that he had requested a handwritten copy of the reasons on the day the 1992 Decision was delivered. But the Judge accepted that Mr Sampson's counsel had requested the reasons on 24 June 1998, without success.

21. The fact that the full reasons were never delivered raises the question as to whether the 1992 Decision was, in fact, a decision at all. At one level it can be interpreted as an announcement, obviously given orally and in open Court, that a decision was about to be delivered. If that were so, then there would be no Supreme Court decision and this Court could remit the matter to the Supreme Court so that the appeal from the Santo/Malo Island Court could begin again.

22. We do not consider that it can be said there was no decision at all, however. It is clear there was. For example, the 1992 Decision announces that the decision of the Santo/Malo Island Court is quashed and gives the reason for that occurring. It then sets out the declarations as to the ownership of land by the applicants and the first respondents respectively, and announces that the second, third and fourth respondents have no rights to land in the relevant area. It also makes directions about the need for leases and makes an order that there will be no costs awards. In short, we conclude that the 1992 Decision is a decision, albeit one with inadequate reasons because of the fact that the full reasons were never delivered.

23. We have also considered whether the lack of adequate reasons would be a basis on which the Court could set aside the 1992 Decision under the jurisdiction referred to in *Matarave v Talivo*. We do not consider that it is. This is a not a case of a decision being given with no reasons at all; rather, it is a decision given with inadequate reasons. That would undoubtedly be a ground on which to advance an appeal to this Court if this Court had jurisdiction to consider such an appeal. But we do not consider that it is such as to mean that the 1992 Decision was not "an appeal made to the Supreme Court" in terms of s 22(4) of the Island Courts Act, that is, such as to lead to a conclusion that the Supreme Court was not validly exercising its statutory function when it made the 1992 Decision.

24. We conclude therefore 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. It is a matter of great regret that the parties to the present application have never been given adequate reasons for the findings made in the 1992 Decision. But, as this Court noted in *Matarave v Talivo*, s 22(4) of the Island Courts Act prevents an appeal to this Court even if there are errors made by the Supreme Court in the exercise of its functions, whether errors of law or errors of fact.

Alleged bribery

25. The applicants adduced evidence of the bribery that is said to have occurred in the course of the Supreme Court's consideration leading up to the 1992 Decision. Despite the fact that this evidence recounted events said to involve serious criminality by his client, Chief Lus, Mr Loughman said nothing about these allegations in his written and oral submissions and did not seek to adduce evidence to refute them.

26. The principal evidence of this is a sworn statement dated 22 November 2024 by Jean-Baptiste Palaud, a former police officer from Luganville and a relative of Chief Moses, which relates to an encounter he had in December 2008 with a man who was said to be one of the assessors in the Supreme Court case leading to the 1992 Decision, Chief Langi Pakoro. In his statement, he said while undertaking his duties as a police officer he found Chief Pakoro "dead drunk" and took him to the police station. He told Chief Pakoro that he was from the Matantas area, in response to which Chief Pakoro said he would confess something sinister he did for Matantas. The sworn statement continues:

> *"I interviewed him and he then told me that Chief Elvir Lus of Sara Village had paid him, Langi Pakoro of Malo Island and Chief Alvea of West Coast, Espiritu Santo, amongst others who were Adjudicators in the Matantas Land Case the sum of Vatu 40,000 for them to influence the Matantas Land Case Decision to grant a piece of land in that area to Chief Elvir Lus and his family members."*

27. Mr J-B Palaud deposes that he recorded this in a police statement, which he gave to his father, Denis Palaud, for safekeeping. However, no copy of this statement had been put in evidence before us. Mr J-B Palaud says that he later collected Chief Alvea of West Coast and asked him to accompany him to meet Denis Palaud. That meeting occurred and Mr J-B Palaud deposes that Chief Alvea confirmed that Chief Pakoro had bribed Chief Elvir Lus and that he, Chief Alvea, had also received a bribe of Vatu 40,000 to influence the Matantas Land Case decision.

28. Mr J-B Palaud deposes that he then urged family members like Chief Jeffrey Moses and others to file an appeal supported by this fresh evidence of bribery. Notwithstanding Mr Palaud's urging, Chief Moses did not attempt to file an appeal and nothing has been done until the present application made on behalf of the applicants by Dr Thomas and the Na Vuhu Sule Tribe Council in the present proceedings.

29. Mr J-B Palaud's evidence is supported by other evidence. Exhibited to a sworn statement of Dr Thomas dated 10 September 2024 are:

a. A statement by Sandy-Rose Pipite Closhard about interviewing Chief Pakoro in October 2008, during which Chief Pakoro admitted he had received a bribe of Vatu 40,000 from Chief Elvir Lus. She made a video of the interview on her phone, but the recording is no longer accessible.

b. Similar statements from Eldin-John Pipite and Ramisson Pipite were also exhibited.

30. The statement of Ms Pipite Closhard confirms that she accompanied Chief Pakoro to the stationery shop to get a statement typed up and signed. A copy of the statement signed by Chief Pakoro is also attached. This states that he was given Vatu 40,000 to influence the outcome of the 1992 Decision. It is not, however, a sworn statement and we have no information on the level of Chief Pakaro's literacy.

31. The proposed evidence, namely the sworn statement of Mr J-B Palaud, was sworn on 22 November 2024. But it records events that are said to have occurred in December 2008. Mr Palaud says that he took a police statement from Chief Pakoro, but, as indicated earlier, no copy of that statement has been produced. Nor is there any evidence that Chief Pakoro was charged with a criminal offence, as could have been expected in circumstances where he had confessed to a very serious

crime. Chief Pakoro is now deceased so there is no ability to confirm the evidence. We understand that Chief Alvea has also died.

32. None of the statements of Ms Pipite Closhard and Messrs Pipite are sworn statements, nor is that of Chief Pakaro himself. And, as noted in relation to Mr J-B Palaud's evidence, they are over 16 years old. It is notable that the statement of Ms Closhard refers to the admission made to her by Chief Pakoro occurring in October 2008, when that of Mr Palaud records an admission, apparently for the first time, in December 2008.

33. We do not have any reason to question the veracity of the statements of Ms Pipite Closhard or Messrs Pipite, but we cannot ignore that they are not sworn statements and in all cases they have not been subjected to any testing such as by way of cross-examination. They record events that happened 16 years ago and the admission by Chief Pakoro was said to relate to the receiving of a bribe 16 years earlier than that.

34. The applicants also received advice in 2019 from the lawyer who represented them in 1992 to the effect that they should engage a lawyer to pursue whatever remedies were available in light of the bribery allegations. But again, they did not act on this advice and nothing was done until the present application was filed in 2024.

35. It is not apparent in what manner an assessor appointed to assist a Judge of the Supreme Court could influence a decision to the extent Chief Pakoro claims he did. The role of an assessor in an appeal to the Supreme Court from a decision of an Island Court is relatively limited, in that the assessor's role is to advise the Judge on matters of custom if requested to do so by the Judge. The assessor is not a Judge. And in the present case we make it clear that there is no allegation of any form of corruption on the part of the Supreme Court Judge himself.

36. In summary, we accept 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, as highlighted earlier, and the 16-year delay in bringing this evidence to the Court means there is no longer any real possibility of resolving those shortcomings.

Extension of time

37. Although we have treated the application for an extension of time to appeal as an application for an extension of time to seek leave to have the 1992 Decision set aside, we see the criteria for the assessment of the application as the same for both cases.

38. This Court outlined the matters to be taken into account in determining whether an extension of time should be granted to file an appeal in *Laho Ltd v QBE Insurance (Vanuatu) Ltd* [2003] VUCA 26. The factors to be considered include:

    a. The length of the delay;

    b. The reasons for the delay;

    c. The chances of the appeal being successful if time were extended; and

    d. The degree of prejudice to the potential respondent if the application were granted (and, we would add, the degree of prejudice to the potential appellant if the application were refused).

39. Ultimately, the Court must be satisfied that it is in the interests of justice to grant the extension.

40. Adapting these criteria to the situation where the extension is sought to apply to have a decision of the Supreme Court set aside under the jurisdiction described in *Matarave v Talivo*, rather than to appeal to this Court, we assess the present application against the following criteria:

a. The length of the delay;

b. The reason for the delay;

c The chance of the application to have the 1992 Decision set aside succeeding;

d. The prejudice to the applicant if the extension were not granted;

e. The prejudice to the respondent if the extension of time were granted; and

f. The overall justice of the case.

41. We will consider the application by reference to those factors.

Delay

42. The delay in the present case is nearly 33 years. That is obviously a very extensive delay and one which would, in most cases, be fatal to an application for an extension of time. We see this as a strong fact counting against the granting of an extension.

Reasons for delay

43. The reason for the delay is not entirely apparent to us. Dr Thomas pointed out that she wrote to the then Chief Justice in 1992 seeking the release of the reasons and clarification of the boundaries but received no response. However, that was not the appropriate way to pursue the matter albeit it is unfortunate that the then Chief Justice did not respond to that letter. The counsel who appeared for the applicants in the 1992 Supreme Court hearing did write to the Court seeking the release of the reasons, but this did not yield any result either.

44. Dr Thomas pointed out that the applicants initially accepted the decision and tried to make the best of it. She said it is only recently when parties associated with the family of Chief Lus have trespassed onto the land and begun logging that it has become necessary to pursue an outcome that protects the position of the applicants and the preservation of the forests on their land.

45. We hesitate to be critical of the applicants because they did make an effort to pursue the matter in 1992 but did not achieve an outcome. And we acknowledge Dr Thomas's submission that many of the applicants are illiterate. We also acknowledge that, as Dr Thomas pointed out, the evidence of the alleged bribery of the assessors by interests associated with Chief Lus became available only in 2008, 16 years after the 1992 Decision. That in itself may explain the first 16 years of delay, but it does not explain the delay of 16 years since the bribery evidence became available. If the present application had been made to the Court immediately after the bribery evidence became available, it would have allowed for a process to appropriately test that evidence, possibly before either of the assessors died. That would have allowed the Court to make a clear finding about whether or not the bribery occurred. That is not something the Court can now do, 16 years later.

46. Overall, we do not consider that there has been an adequate explanation of the delay since 2008 in pursuing the current application.

Chances of success

47. It is hard to assess this criteria. It is clear that, if it were proven that the bribery allegations were true, the decision of the Supreme Court would be vitiated and would need to be set aside. But, as already indicated, it is hard to see how there could be such proof on the evidence before us.

Prejudice if extension not granted

48. The very extensive and comprehensive evidence filed by Dr Thomas gives a very clear indication of the prejudice that the applicants consider will occur if the applicants are not given an extension of time to apply to have the 1992 Decision set aside. She said the applicants are adversely affected by the award of some land in the relevant area to the family of Chief Lus, and the inadequacy of the description of the boundaries in the 1992 Decision. She said the applicants are subjected to threats and trespass from interests associated with the first respondents and the felling of trees on the land the applicants claim is theirs. We accept that the potential prejudice to the applicants is significant.

Prejudice if extension granted

49. Mr Loughman said the first respondents would be prejudiced if their property rights at Matantas that they have enjoyed for over 33 years by virtue of the 1992 Decision were called into question. He said this would not only be unjust and prejudicial to the first respondents but could undermine the principles of judicial finality and integrity which provides certainty to the parties involved and the public. He argued that the applicants had not adduced any credible evidence or justification as to why they waited 33 years before seeking to challenge the 1992 Decision.

50. Although not advanced by Mr Loughman, it seems to us that a significant prejudice to the first respondents from the delay is the fact that, were leave to be granted, they would not be able to challenge the bribery allegation as they would have been able to do if the application to have the 1992 Decision set aside had been made promptly after the allegations came to light.

51. Mr Loughman pointed out that the applicants' own evidence indicated that they initially accepted the 1992 Decision. He said they had also collaborated with the first respondents with respect to the land at Matantas, as demonstrated by the fact that the applicants and the first respondents jointly pursued a claim against the second respondents in 2002, as recorded in the judgment resolving that claim, *Ova v Simpson*, referred to above, at para 20.

52. Mr Loughman also said that the applicants were estopped from challenging the 1992 Decision. He said the applicants and the first respondents had, in reliance on the 1992 Decision, sought orders from the Supreme Court in 2001 to evict the second respondents from the relevant land. He said this meant the applicants were estopped from challenging the 1992 Decision now.

53. The Supreme Court decision in *Ova v Lus* referred to earlier was, as Mr Loughman suggested, a case in which the applicants and the first respondents relied on the 1992 Decision in seeking the eviction of others. But we do not see how that would create an estoppel from challenging the 1992 Decision, if there were a process to allow such a challenge and proper grounds for challenge. We put to one side, therefore, the argument that an estoppel arises.

54. Mr Loughman also argued that the present application was an abuse of process. We do not agree. However, we accept Mr Loughman's point that the 33-year delay means there would be considerable prejudice to the first respondents in allowing the application to have the 1992 Decision set aside to proceed, after all parties have relied on it during that 33-year period.

Positions of the other respondents

55. The second and third respondents supported the applicants' application for an extension of time. However, their submissions were based on the proposition that the Supreme Court was not properly constituted in the 1992 Decision because there were no assessors. While the 1992 Decision does not refer to any assessors, we are satisfied that there were, in fact, two assessors as required by s 22 of the Island Courts Act. The fourth respondents also supported the application for extension of time. They wish to challenge the finding in the 1992 Decision that the fourth respondents are not entitled to any rights in respect of the relevant land. They say the applicants acknowledged that the applicants and the fourth respondents are related from the same family tree and should have equal rights to share in the land. They are, however, in the same position as the applicants in that they would need an extension of time to seek leave to have the 1992 Decision, an application that would suffer from the same problems as face the applicants in this case.

Overall justice of the case

56. We are not satisfied that the applicants have made out their case for an extension of time to apply to this Court to have the 1992 Decision set aside. In our view, the overall justice of the case requires the application to be declined. The delay of 33 years is inordinate and the reason for a delay of that magnitude is not sufficiently explained. We accept that the applicants were not aware of the bribery allegations until 2008, but the delay since then is itself extremely long, 16 years. That delay means that the shortcomings on the evidence supporting the bribery allegations cannot be remedied by the normal processes of testing the evidence, as could have happened if the present application had been brought soon after the allegations came to light. We consider that the need for certainty and finality, which the Island Courts Act seeks to promote (as evidenced by the provision for finality of Supreme Court decisions under s 22(4)), outweighs the case for allowing the application to have the 1992 Decisions set aside to proceed after such a long delay.

Boundaries

57. 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. It may still be open to them to do so, though any such application would also confront the delay since the decision was made. It is not for this Court to determine how the Supreme Court would approach such an application.

58. Dr Thomas said the site map attached to the 1992 Decision did not reflect the decision itself. As we indicated earlier, that may be because the site map was not, in fact, part of the 1992 Decision but added later.

Other applications

59. We also had before us two other applications made on behalf of the applicants. One was an application for summary judgment and the other was an application for an order for confiscation and return of land said to have been seized by Chief Lus and family for restraining orders issued against the respondents for entering the land without permission. These were applications that seemed to be directed to the Supreme Court rather than this Court. If there is a basis for making these applications consistently with the allocations of land in the 1992 Decision, they should be made to the Supreme Court. We formally dismiss the applications in this Court.

60. We also had before us an application by Solomon Tavue for an order that he be added as a party to the present proceeding. This was said to be on the basis that Dr Thomas and the Na Vuhu Sule Association Tribunal Council did not represent the interests of the applicants. That application was strongly opposed by the applicants. There was no appearance at the hearing of the appeal on behalf of Solomon Tavue and in light of the result of the present application the application he made is now of no practical significance. We formally dismiss it.

Result

61. We find that the applicants have not made out a case for an extension of time of nearly 33 years to apply to have the 1992 Decision set aside. Their application for extension of time is therefore dismissed.

Costs

62. Normally costs would follow the event and an award of costs would be made against the applicants as the unsuccessful parties. But in the present case, counsel for both the first respondents and fourth respondents failed to serve their submissions on the other parties, which meant that the Court had to ensure that copies of these submissions were provided to Dr Thomas and Ms Nari and they were given time to read them and respond to them. We see this failure to meet their professional obligation and duty to the Court as disentitling the first and fourth respondents to any award of costs. It is in stark contrast to the conduct of the applicants who were not represented by a lawyer but assiduously followed the requirements of Practice Direction 01 of 2020 and promptly served on the respondents all documents they filed with the Court. Both Mr Loughman and Mr Willie accepted that, in these circumstances, it was inappropriate that any award of costs be made in favour of the first or fourth respondents.

63. As the second and third respondents supported the position of the applicants, there is no basis for an award of costs in favour of them. We therefore make no award of costs.

Addendum

64. We express our appreciation to Dr Thomas for the quality of the material she placed before the Court in the Appeal Books and other documents, which assisted us in navigating the large volume of material and for her efforts to ensure the material was placed before the Court and the other parties to give them adequate time to consider it.

DATED this 14th day of February 2025

BY THE COURT

REPUBLIC OF VANUATU COURT OF APPEAL COUR D'APPEL REPUBLIQUE DE VANUATU

Hon. Chief Justice V. Lunabek