

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

Civil Appeal
Cases No. 24/3694 & 24/3789 COA/CIVA
[2025] VUCA 15

BETWEEN: WILLIE LOP and Family
Appellant

AND: FAMILY KAUKARE
Respondent

Date of Hearing: 6 May 2025

Coram: Hon. Justice J. Mansfield
Hon. Justice R. Asher
Hon. Justice D. Aru
Hon. Justice E. Goldsbrough
Hon. Justice V. Molisa Trief

Counsel: Mr E Molbaleh for the Appellant
Mr G Blake for the Respondent

Date of Judgment: 16 May 2025

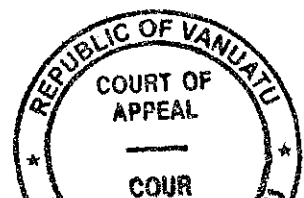
JUDGMENT OF THE COURT

Introduction

1. This is an appeal from a judgment of the Supreme Court dated 19 November 2021 where an eviction order was made against the appellant, Willie Lop, and costs were awarded.
2. The background facts as disclosed by the Court file can be expressed concisely. In question is custom land known as Iamanou-Mene in south-west Tanna. The representative of the family Kaukare, Daniel Yawha, has deposed since the hearing that despite obtaining an eviction order on 19 November 2021, and that having been served on the appellant, Willie Lop, Mr Lop had still had not vacated the land.

Brief facts

3. The appellant, either in person or by counsel, did not appear at the hearing on 19 November 2021, the date of the judgment. Various timetable directions had not been followed. A fixture had been

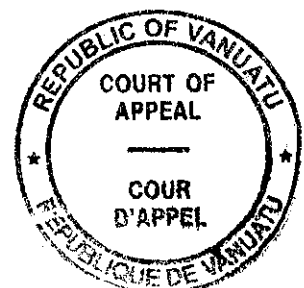


set down for 23 November 2021, but because of the appellant's failure to meet timetable orders the matter was set down at the earlier date, and heard by way of formal proof.

4. Mr Yawha had asserted that his family was the declared custom owner of the land as evidenced by a green certificate dated 21 May 2018. He asserted further that a three-month's notice to quit the land had been served on the appellants on 21 February 2021. He confirmed that the appellants had not vacated the land.
5. At that hearing on 19 November 2021 there was no appearance for the appellant. An affidavit dated 2 July 2021 of Daniel Yawha Kaukare had been filed prior to the hearing. The Supreme Court judge accepted Mr Yawha's evidence completely and ordered eviction within 28 days. Mr Yawha had confirmed that he had obtained a certificate of recorded interest in the land and that his family was the legal customary owner of the land. He confirmed the other details that were set out in the Supreme Court decision.
6. We are informed that the only family member of William Lop and families occupying the land is Willie Lop, the appellant.

Assessment

7. Mr Eric Molbaleh appeared at the hearing before us as counsel for the appellant. Mr Blake appeared for the respondent.
8. Mr Molbaleh was unable to challenge any of the findings that were the basis of the Learned Judge's decision. There was some issue raised about the appellant's lawyer being disbarred at the time of the hearing on 19 November 2023, but we received advice that this was not correct. There was certainly no evidence to support this contention. Mr Molbaleh criticised the Trial Judge for not making an attempt to contact Mr Lop to attend the Court conferences and hearing when his counsel failed to attend. He also said that the Judge erred in fact and law by not contacting him and informing him of the hearing.
9. It was not the Judge's job to contact the appellant, who had taken the step of briefing his lawyer and had plainly not followed up on that briefing.
10. Further, there is no explanation for the massive delay between the judgment being issued on 19 November 2021 and this appeal being filed on 24 March 2024. There was no diligence shown in proceeding with a hearing for the appeal.
11. We are obliged to conclude that the appeal is entirely without merit. The 2021 Supreme Court judgment appears to be entirely correct. There is no basis for an extension of time as there is no excuse for the extraordinary delay, and because of that lack of merit there is no basis for us to be moved in any way in the exercise of our discretion.



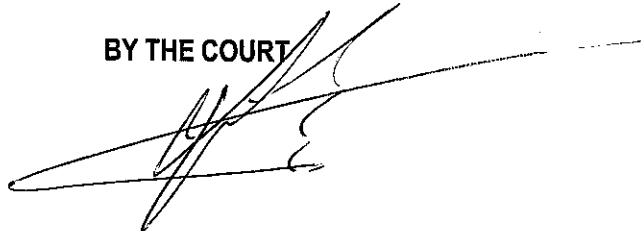
12. We also record our concern at the lack of recognition by Mr Molbaleh of the great delays and the lack of any explanation for them. Counsel should not appear in front of us on appeal, and then fail to present any arguable points in support.

Result

13. The appeal is dismissed.
14. Costs are awarded against the appellant of VT50,000.

DATED at Port Vila, this 16th day of May, 2025.

BY THE COURT

A handwritten signature in black ink, appearing to be 'J. Mansfield', written over a horizontal line.

Hon. Justice John Mansfield