

BETWEEN: MOSTICK MALACHI represented by **ROBSEN MALJURON**
Appellant

AND: COLIN TAUR (Family Nbeckrow)
Respondent

Date of Hearing: 6 May 2025

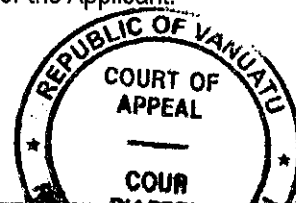
Coram: *Hon. Chief Justice V Lunabek*
Hon. Justice J Mansfield
Hon. Justice R Asher
Hon. Justice D Aru
Hon. Justice V Molisa Trief
Hon. Justice E P Goldsbrough

Counsel: *Rongo, R for the Appellant*
LIP represented with leave by Mr Taur Camille and Mr Sino Utissets

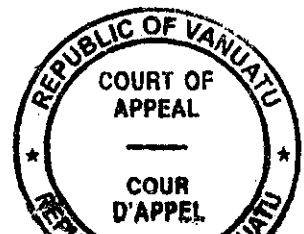
Date of Judgment: 16 May 2025

JUDGMENT OF THE COURT

1. A claim filed in the Supreme Court by Mostick Malachi, the present Applicant, for damages and other relief concerning the occupation of Amelprev Welele custom land on Rano Island, Malekula by Colin Taur, the present Respondent, came to an abrupt end on 4 February 2025 when the entire proceedings were struck out. A few days earlier, on 31 January 2025, an application filed by the Respondent to strike out the claim was heard in the absence of the Applicant.
2. The application that the claim be struck out had been filed on 14 November 2024. There is no evidence that it was ever served on the Applicant. However, a hearing was held before the same judge on 21 November 2024, just one week after the filing, with representatives from both the applicant and the respondent present. A further date of January 31, 2025, was set.
3. On 31 January 2025, the application to strike out the claim was heard and determined. The applicant, the present Respondent, was present, but neither the present Applicant nor his legal representative was there. It was not necessary to show that the Applicant had been given notice of the hearing of 31 January 2025, as he had appeared through counsel at the earlier hearing when the date was fixed. Nevertheless, a notice of hearing was sent to counsel for the Applicant.




4. Following the decision arising from the hearing on 31 January 2025, which was published on 4 February 2025, an application for leave to appeal out of time was filed on 25 March 2025. As the Applicant lives in a remote area of Malekula, he was not made aware of the decision until March 2025, hence the need to seek an extension of time. The appealed decision was sent electronically to the counsel on record for the applicant on the afternoon of February 4, 2024. Therefore, the application for an extension of time, filed on 25 March 2025, was approximately 25 days late. Given the short delay and the applicant's personal situation, and in the absence of any serious objection, the application for an extension of time to file the appeal is granted. What should have been filed as a draft Notice and Grounds of Appeal is to be regarded as the Notice of Appeal.
5. At this hearing, the Appellant was represented by his counsel and the Respondent, with leave, by his son, Camille Taur, who also appeared in the Supreme Court. Camille was assisted for language purposes by Sino Utissets, a grandson of the Respondent.
6. There are five grounds of appeal, mainly relating to the notion that the Appellant was deprived of the opportunity to be heard on the application to strike out. One ground of appeal relates to the service of the application.
7. The Appellant submits, on this appeal, that they neither attended nor had a representative present on 31 January 2025, as the application for strike out had not been set down for hearing on that date and the decision took them by surprise. It was understood by the Appellant, from the notice of hearing, that the matter was for a management conference only. The Respondent submits that the strike out application had been discussed at the hearing of 21 November 2025 and that his understanding was that it would be heard and determined on 31 January 2025. Regardless of what took place at the hearing of 21 November 2025, the Respondent arrived at court on 31 January 2025 with a further copy of his application to strike out and was ready to proceed to a hearing.
8. Counsel for the Appellant told this Court, when asked, the reason for the failure to attend the hearing of 31 January 2025. He was asked this question because there is no explanation in the appeal books for the failure to participate in the hearing. His reason was an oversight on his part, not on the part of his client. That explanation, in many ways, explains how this appeal became necessary. Given its significance, it is a detail which should not have been omitted from the appeal papers.
9. When hearing the application for strike out in the absence of the Appellant, it was incumbent on the Court to ensure that the application being heard had been properly served or otherwise brought to the attention of the respondent to it. This became necessary because of the non-attendance of that respondent, the present Appellant. As earlier noted, there is no formal proof of service of the application on the present Appellant. In submissions, the present Respondent suggests that the application was discussed at the hearing of 21 November 2025. The Appellant disputes this, and there is no record of any earlier discussion between the trial judge and the parties regarding setting down the application for hearing.



10. In those circumstances and noting that no inquiry was made by the trial Court of the circumstances of the Appellant's failure to attend the hearing or to send his legal representative, this Court is left with no alternative but to allow the appeal and send the matter back to be heard afresh. When making that order, this Court notes that this appeal became necessary only because the Appellant failed to attend a scheduled hearing. Taking that into account, the Appellant, although successful on appeal, is, in our view, not entitled to recover the costs of the appeal against the Respondent.
11. We make no findings on the submission that the Appellant was deprived of a right to be heard, given that he knew of the hearing and as the failure to be present was the fault of his counsel, not attributable to either the Respondent or the Court. We acknowledge that, given the failure of his counsel to be present at the resumed hearing, the Appellant was effectively not heard on the application as he was entitled to be.
12. The application to extend the time to file the appeal is allowed, and the appeal is allowed. The order of the Supreme Court to strike out the claim is quashed, and the application for strike out remitted to the Supreme Court for further hearing. As the Respondent is not legally represented on this appeal, no order for costs in his favour is made.

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

BY THE COURT



Hon. Chief Justice V Lunabek

