

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

**Civil Appeal**  
**Case No. 25/857 COA/CIVA**  
**[2025] VUCA 20**

**IN THE MATTER OF:** AN APPEAL FROM THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU

**BETWEEN:** MARK TARINU, LEIPAKO TARINU, TELWIN  
OLIVE, LENA OLIVE, MICHEL TOARA, LEWI  
TOARA, MARK PAUL, MARIE PAUL, MOSES  
NALIU, REIJIM NALIU, PETER TOM NALIU &  
IASIMUT  
Applicants

**AND:** LOVITE SIMAIMA KALSONG  
Respondent

**AND:** FAMILY KALMERMER  
Interested Party

**Date of Hearing:** 5 May 2025

**Coram:** Hon. Chief Justice V. Lunabek  
Hon. Justice J. Mansfield  
Hon. Justice O.A. Saksak  
Hon. Justice R. Asher  
Hon. Justice D. Aru  
Hon. Justice E.P. Goldsbrough

**Counsel:** Mr J Mesao for the Applicants  
Mr DK Yahwa for the Respondent  
Mr SC Hakwa for the Interested Party

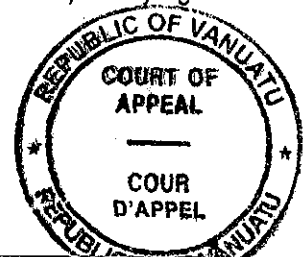
**Date of Judgment:** 16 May 2025

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**JUDGMENT OF THE COURT**

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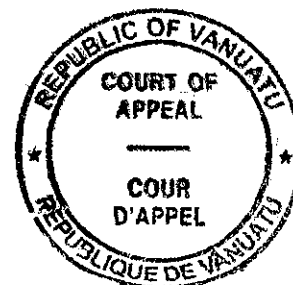
1. This is an appeal from a judgment of the Supreme Court of 28 November 2024, refusing to stay the execution of eviction orders on the Applicants. The appeal is out of time, so it is supported by an application for leave to appeal out of time.
2. It is necessary to note two earlier decisions of the Supreme Court in the same matter.
3. On 2 August 2024, judgment was entered for the Respondent for the eviction of the Applicants from leasehold title No. 12/0644/001 located on Efate Island (the leased land). The judgment included the following:



9. Judgment is entered for the Claimant and it is ordered as follows:
- a) The Defendants, their families and/or agents are to vacate leasehold title no. 12/0644/001, including removing their fencing, houses, personal properties and garden crops leaving the land vacant, **within 3 months from the date of service of this Judgment**;
  - b) The Defendants, their families and/or agents are not to enter onto the Claimant's leased land leasehold title no. 12/0644/001;
  - c) The Claimant is entitled to the costs of the proceeding fixed summarily at VT100,000 to be paid within 28 days of service of this Judgment on the Defendants.
4. That judgment followed the formal proof of the claim by the Respondent after the Judge had previously struck out the defence and counterclaim of the Applicants on 16 July 2024: *Kalsong v Tarinu* [2024] VUSC 343.
5. There was no appeal by the Applicants from that decision on 16 July 2024 or from the judgment given on 2 August 2024.
6. The judgment under appeal, subject to leave to appeal being granted, followed an urgent application by the Applicants made on 24 October 2024 to stay the proceedings. There were a number of allegations made in support of that claim, including that the service of the judgment and the eviction orders had not properly been made on some or all of the named Appellants.
7. In the judgment of 28 November 2024 the primary Judge rejected the claims made by the Applicants about inadequacies in the service of the judgment and eviction orders upon the Appellants. For that reason the application to stay the judgment was declined and dismissed.
8. However, in the course of consideration of that application, the Applicants drew to the judge's attention the decisions of the Court of Appeal in *laus v Noam* [2017] VUCA 40 at [12] and *Iapatu v Noam* [2018] VUCA 50 at [22]. Those decisions made it clear that any persons allegedly wrongfully occupying land, and against whom an order for eviction is sought, must be named in the proceeding and personally served.
9. In the light of those decisions, the primary Judge at [7] and [8] of the reasons for decision made the following comments and orders:

*"In accordance with the decisions of the Court of Appeal set out above, the adult children of the Defendants and other adults residing on the leased land may not be evicted pursuant to the Judgment dated 2 August 2024 as they were not named as parties to the present proceeding nor served with the Claim.*

*To avoid doubt, the words, "their families and/or agents" must be removed from the orders in paras 9(a) and (b) of the Judgment dated 2 August 2024.*



10. It was that part of the reasons for decision which, the Applicants contended, demonstrated error on the part of the primary Judge. That is because the primary Judge had no power to vary the judgment and orders made on 2 August 2024 in that way.
11. We agree with that contention. Once a judgment is drawn up and sealed, it is not available for the primary Judge to amend that judgment except under what is called "*the slip rule*". That rule permits an accidental slip or omission in a judgment or order, such as slight oversight or typographical errors, to be made. As the judgment of 2 August 2024 had been finalised, the primary Judge could not properly recall it for the purposes of amending its terms, as she sought to do, that is by varying the orders made on 2 August 2024 by deleting the words "*their families and agents*".
12. However, that error did not entitle the Applicants to an order setting aside the whole of the judgment appealed from. As already noted, the primary Judge heard and determined the substantive complaints of the Applicants about the validity or otherwise of the service of relevant documents upon each of them and the primary Judge found that proper service had been effected on each of them. They have not asserted any error on the part of the primary Judge in those conclusions on this appeal.
13. Counsel for the Applicants was not able to indicate any reason why, despite the purported correction to the judgment of 2 August 2024 purporting to have been made by the Order set out in [9] above, that error in any way affected the validity of the execution of the Judgment of 2 August 2024 upon any of his clients.
14. Consequently no reason exists to extend the time within which to appeal from the judgment of 28 November 2024, as there is simply no arguable case of error on the part of the primary Judge capable of leading to the setting aside of that judgment in relation to the Appellants. It is not therefore necessary in other respects to consider the factors relevant to the extension of time application. The belated nature of the application is perhaps understandable at least for some time following 17 December 2024, although perhaps not extending to the date of this application for leave to appeal on 11 April 2025. If there were any significant arguable propositions available to the Applicants to prosecute this appeal, we would have been inclined to grant that extension application in the absence of particular prejudice to the Respondent. However in the present circumstances no such arguable case has been demonstrated.
15. The application for leave to appeal from the decision of 28 December 2024 is refused. The Applicants are to pay to the Respondent's costs of the appeal fixed at VT100,000. There was no issue as to the costs of the interested party.

**DATED at Port Vila, this 16<sup>th</sup> day of May, 2025.**

**BY THE COURT**

**Hon. Chief Justice Vincent LUNABEK**

