

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU  
(Civil Jurisdiction)

Land Appeal Case No.  
17/2159 (old ref LAC 1996/13) SC/LNDA

IN THE MATTER OF LAND KNOWN AS PRV  
APPEAL FROM THE MALEKULA ISLAND COURT

BETWEEN: David Apia William  
First Appellant

AND: Pierre Titus Moulol  
Ninth Appellant

AND: Gaspart Tommy  
Second Appellant

AND: Rene Denis Iona  
Tenth Appellant

AND: Robert Toame  
Third Appellant

AND: Kalosak Massing  
First Respondent

AND: Pierre Wersets  
Fourth Appellant

AND: Collen Taur  
Second Respondent

AND: Klan Dona  
Fifth Appellant

AND: Yosef Peter  
Third Respondent

AND: Jack Klates  
Sixth Appellant

AND: Liemal Namalapane  
Fourth Respondent

AND: Edward Gorden  
Seventh Appellant

AND: Otel Soksok  
Fifth Respondent

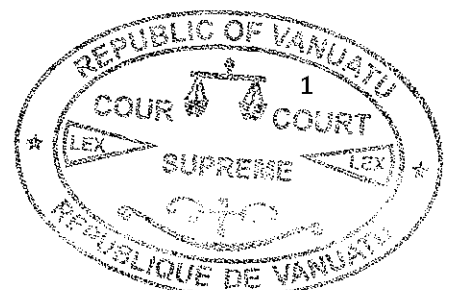
AND: Jeffrey Williams as rep. of  
William Family  
Eighth Appellant

Date of Hearing: 28 April 2025  
Before: Justice V.M. Trief  
In Attendance: First Appellant – Mrs M.G. Nari  
Second Appellant – no appearance (Mr S.T. Joel)  
Third & Sixth Appellants – no appearance (Mr S. Kalsakau)  
Fifth Appellant – no appearance (Mr K.T. Tari)  
Seventh Appellant – no appearance (in person)  
Eighth Appellant – Mr B. Livo

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**DECISION AS TO FIRST AND EIGHTH APPELLANTS' APPLICATIONS**

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Ninth Appellant – Mr R. Tevi  
Tenth Appellant – no appearance (Mr J. Mesao)  
First Respondent – Mr R. Tevi, as agent for Mr J. Tari  
Second Respondent – no appearance (Mr B. Bani)  
Third Respondent – no appearance (Mr D. Yawha)  
Fourth Respondent – Mr P. Fiuka  
Fifth Respondent – no appearance (in person)  
Date of Decision: 5 May 2025  
Copy to: Sheriff of the Supreme Court

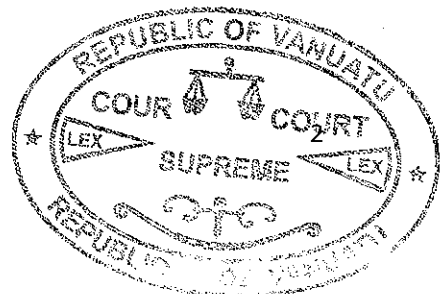
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## **DECISION AS TO FIRST AND EIGHTH APPELLANTS' APPLICATIONS**

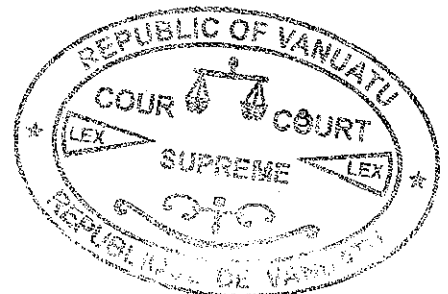
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### **A. Introduction**

1. Section 22 of the *Island Courts Act* [CAP. 167] (the 'Act') (prior to 2001) provided as follows:
  22. (1) *Any person aggrieved by an order or decision of an island court may within 30 days from the date of such order or decision appeal therefrom to-*
    - (a) *the Supreme Court, in all matters concerning disputes as to ownership of land;*
    - (b) *the competent magistrates' court in all other matters.*
  - (2) *The court hearing an appeal against a decision of an island court shall appoint two or more assessors knowledgeable in custom to sit with the court.*
  - (3) *The court hearing the appeal shall consider the records (if any) relevant to the decision and receive such evidence (if any) and make such inquiries (if any) as it thinks fit.*
  - (4) *An appeal made to the Supreme Court under subsection (1)(a) shall be final and no appeal shall lie therefrom to the Court of Appeal.*
  - (5) *Notwithstanding the 30 day period specified in subsection (1) the Supreme Court or the magistrate's court, as the case may be, may on application by an appellant grant an extension of such period provided the application therefore is made within 60 days from the date of the order or decision appealed against.*
2. In 1985, the Malekula Island Court delivered its judgment in the PRV land case. The First Appellant filed his notice of appeal against that judgment within time, in 1985.
3. In para. 4 of the Orders dated 4 November 2009, Justice Spear ordered the following:

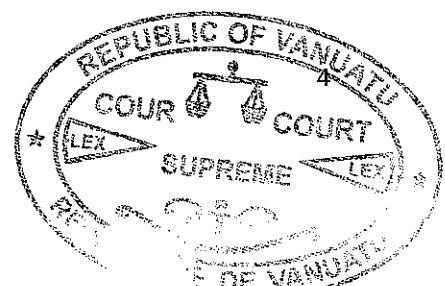


4. *The Application of Jeffrey Williams to be joined as a Party as a representative of the Williams family is granted.*
5. In subsequent Orders, Jeffrey Williams was named as the "Eighth Appellant".
6. It is the Eighth Appellant's stated intention to rely on the First Appellant's notice of appeal filed in 1985 as the Eighth Appellant's notice of appeal.
- B. Application by First Appellant
7. On 28 March 2025, the First Appellant filed Application for Strike out seeking an order that the Eighth Appellant be struck out as an appellant in this proceeding (the 'First Appellant's Application') and the Sworn statement of Willion Apia in support.
8. On 23 April 2025, the First Appellant filed First Appellant's Submission on Application for Strike out.
9. The Eighth Appellant did not file written submissions in response to the Application.
10. The Eighth Appellant relied on the following sworn statements:
  - a) Sworn statement of Jeffrey William in support of what the Eighth Appellant's Notice of Appeal filed on 19 November 2024;
  - b) Sworn statement of Darvol Kenery William in reply to Willion Apia filed on 2 December 2024;
  - c) Sworn statement of Darvol Kenery William in support of Application to Strike out David Apia from this Proceeding; and
  - d) Sworn statement of Gordon Arnhambath in support of Jeffrey Williams Submissions on what the Eighth Appellant's Notice of Appeal filed on 18 November 2024.
11. Having considered the First Appellant's Application and other documents filed, the Eighth Appellant's sworn statements, and having heard counsel, the Application is **declined and dismissed** for the following reasons:
  - a) The grounds for the Application are that the Eighth Appellant has not filed a notice of appeal within the mandatory time limits set out in subss 22(1) and (5) of the Act, that the declaration in the Malekula Island Court judgment is in the name of the late Mr Apia and not Family Williams as purported by the Eighth Appellant, that the First Appellant has filed an Amended Notice and Grounds of Appeal therefore the original notice of appeal has been made redundant, that the parties to a land appeal case



are required by subss 22(1) and (5) of the Act to file notice of appeal within 30 days or apply for leave to join as a party within 60 days, and that the Eighth Appellant has been joined as a separate appellant contrary to s. 22 of the Act: *Kalsakau v Hong* [2004] VUCA 2 and *James v Regenmal* [2014] VUCA 35;

- b) As to the first ground of the Application, it is common ground that the Eighth Appellant has not filed a notice of appeal within the mandatory time limits set out in subss 22(1) and (5) of the Act. However, he is intending to rely on the First Appellant's notice of appeal which was filed within the 30-day period prescribed in subs. 22(1)(a) of the Act;
- c) As to the second ground of the Application, it is correct that the declaration in the Malekula Island Court judgment is in the name of the late Mr Apia and not Family Williams. However, *any* aggrieved person may appeal a land decision of an island court, hence the Eighth Appellant may style his entitling to include Family William;
- d) As to the third ground of the Application, namely that the First Appellant has filed an Amended Notice and Grounds of Appeal therefore the original notice of appeal has been made redundant, I consider that by filing that amended notice, the First Appellant has chosen to no longer rely on the original notice of appeal which he filed. However, this does not stop the Eighth Appellant from relying on the original notice of appeal which was filed within the time prescribed in s. 22 of the Act. Accordingly, I reject this ground which asserts that the original notice of appeal has been made redundant in relation to the Eighth Appellant;
- e) As to the balance of the grounds of the Application, it is correct that parties to a land appeal case are required by subss 22(1) and (5) of the Act to file notice of appeal within 30 days or apply for leave to join as a party within 60 days;
- f) The Eighth Appellant's case – and as set out in the sworn statements filed by the Eighth Appellant – is that he was part of and supported the First Appellant's claim in the Malekula Island Court land case. In fact, he was the spokesperson for the First Appellant. However, after the First Appellant David Apia William passed away on 30 December 1994, a dispute arose between the late David Apia's sons and the Eighth Appellant Jeffrey William. Consequently, Jeffrey William applied to be joined as a party as a representative of William family, which application was granted on 4 November 2009. The Eighth Appellant is seeking to rely on the notice of appeal filed by the First Appellant in 1985 when they were still one party;
- g) I consider that given that the Eighth Appellant was one party with the First Appellant in the Malekula Island Court land case (he was the First



Appellant's spokesperson) and that they were one party on the filing of the First Appellant's notice of appeal, that the Eighth Appellant may rely on that notice of appeal as on the date that it was filed, it was filed also on his behalf as part of the First Appellant;

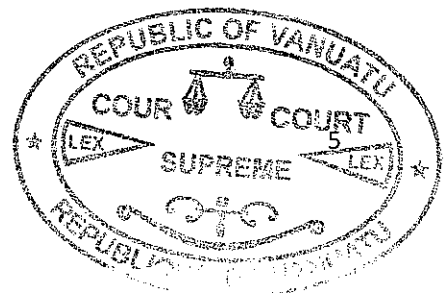
- h) I also consider that given that the First Appellant has subsequently chosen to amend the notice of appeal, that this affects only the First Appellant in terms of setting out his new notice and grounds of appeal thus superseding his original notice of appeal. However, this does not make the original notice of appeal 'redundant' vis-à-vis the Eighth Appellant, as the Eighth Appellant may rely on it in its original terms as the Eighth Appellant's notice of appeal for the reasons already given;
- i) Accordingly, I reject the grounds of the Application to the effect that the Eighth Appellant has been joined as a separate appellant contrary to s. 22 of the Act for the foregoing reasons including that he was 'one party' with the First Appellant when the First Appellant filed the notice of appeal and it was only after 30 December 1994 that a dispute arose with the First Appellant's sons resulting in the Eighth Appellant seeking to be joined as a party as a representative of the William family. Therefore, I consider that in the specific circumstances of this particular case, that the Eighth Appellant has not been joined as a separate appellant contrary to s. 22 of the Act;
- j) The Court of Appeal judgments in *Kalsakau v Jong Kook Hong* [2004] VUCA 2 and *James v Regenmal* [2014] VUCA 35 are distinguishable on their facts thus do not apply; and
- k) For the reasons given, the First Appellant's Application is **declined and dismissed**.

12. The costs of the First Appellant's Application are **reserved**.

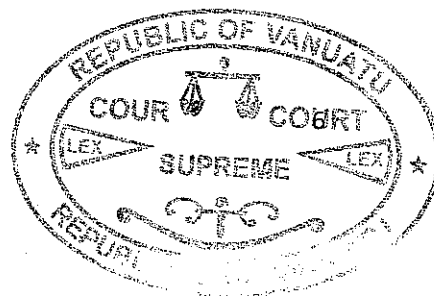
C. Application by Eighth Appellant

13. On 4 April 2025, the Eighth Appellant filed Application to Strike out David Apia from this Proceeding (the 'Eighth Appellant's Application'). He relied on the following in support:

- a) Sworn statement of Jeffrey William in support of what the Eighth Appellant's Notice of Appeal filed on 19 November 2024;
- b) Sworn statement of Darvol Kenery William in reply to Willion Apia filed on 2 December 2024;



- c) Sworn statement of Darvol Kenery William in support of Application to Strike out David Apia from this Proceeding; and
  - d) Sworn statement of Gordon Arnhambath in support of Jeffrey Williams Submissions on what the Eighth Appellant's Notice of Appeal filed on 18 November 2024.
14. On 25 April 2025, the Eighth Appellant filed Jeffrey William's Legal Submission on Application to Strike out David Apia from this Proceeding.
15. On 23 April 2025, the First Appellant had filed his Response Submission to Strike out Application of Eighth Appellant.
16. Mrs Nari formally **withdrew** the Response to Application for Strike out by Jeffrey Williams filed on 11 April 2025.
17. Having considered the Eighth Appellant's Application and other documents filed, the First and Eighth Appellant's written submissions, and having heard counsel, the Application is **declined and dismissed** for the following reasons:
- a) The grounds for the Application are that David Apia is not the bloodline of William Family and has no right in custom to use the name 'William' per the Malekula Island Court decision dated 15 March 2019 in CC No. 2840 of 2018, that in the Malekula Island Court David Apia and Jeffrey William claimed together as one party under the name of Family William and at the time the notice of appeal was filed that they were together, that the late David Apia's sons only began their dispute with the Eighth Appellant after David Apia passed away, and that the 4 November 2009 order joining the Eighth Appellant has never been appealed;
  - b) As to the first ground of the Application, this Court cannot on this interlocutory application determine matters of bloodline or rights in custom;
  - c) As to the second ground of the Application, I have accepted above that in the Malekula Island Court David Apia and Jeffrey William claimed together as one party and that at the time the notice of appeal was filed, that they were one party;
  - d) As to the third ground of the Application, I have also accepted above that the late David Apia's sons only began their dispute with the Eighth Appellant after David Apia passed away on 30 December 1994;
  - e) As to the final ground of the Application, it is not disputed that the 4 November 2009 order joining the Eighth Appellant has never been appealed;



- f) However, even though Mr Apia's sons and Jeffrey William have had a dispute since Mr Apia's passing away, and even though according to the Eighth Appellant, that David Apia allegedly no longer has a right in custom to use the name 'William', the declaration in the Malekula Island Court judgment is in the name of the late Mr Apia therefore on this interlocutory application, the Court may not make findings of fact such as to conclude that David Apia does not have a right in custom to use the name 'William' and therefore order that the First Appellant be struck out from this proceeding (or be removed as a party or appellant); and
- g) For the foregoing reasons, the Eighth Appellant's Application is **declined and dismissed**.

18. The costs of the Eighth Appellant's Application are **reserved**.

D. Result and Decision

19. The First Appellant's Application for Strike out seeking an order that the Eighth Appellant be struck out as an appellant in this proceeding, filed on 28 March 2025, is **declined and dismissed**.
20. The costs of the First Appellant's Application are **reserved**.
21. The Eighth Appellant's Application to Strike out David Apia from this Proceeding, filed on 4 April 2025, is **declined and dismissed**.
22. The costs of the Eighth Appellant's Application are **reserved**.
23. The other parties are to bear their own costs of the Applications.

**DATED at Port Vila this 5<sup>th</sup> day of May 2025**  
**BY THE COURT**

  
Justice Viran Molisa Trief

