

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

Civil Appeal  
Case No. 24/3803 SC/CIVA

**BETWEEN:** Family Noakai Niluan

Family Sam Sumak

*Appellants*

**AND:** Philip Masu Numake represented by Chief Tom Numake &  
Family

*Respondent*

**Date of HEARING:** 20th day of May, 2025 at 9:30 AM

**Before:** Justice Oliver Saksak

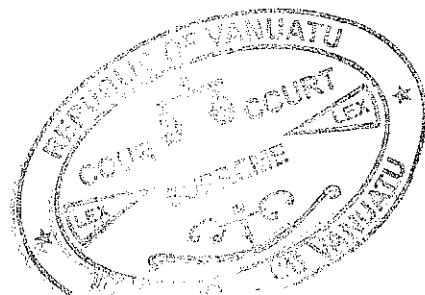
**In Attendance:** Appellants: No appearance  
Respondents: No appearance

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**DECISION ON REFERRAL OF CASE STATED**

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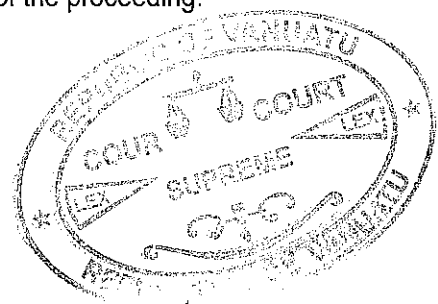
1. The Magistrate Court referred a question to this Court on 17<sup>th</sup> March 2025 under Rule 16.22 of the Civil Procedure Rules.
2. By a Decision dated 14 May 2025 the Court adjourned the hearing to 9:30am today, 20<sup>th</sup> May 2025.
3. Neither Mr Botleng nor the respondents have made any appearances. The direction in paragraph 12 required that the parties must be present at the hearing.



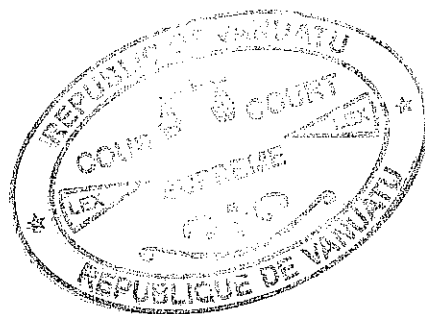
4. Lack of appearance by Mr Botleng on behalf of the applicants is a clear indication that there is a lack of want of prosecution of this purported appeal which has been filed as a "Cart before the horse."
5. In the case stated, the Senior Magistrate states in paragraph 5 that the case before the Magistrates Court is still proceeding (subjudice), and therefore as such the question is whether in the circumstances it is proper to direct access by the appellant to the Magistrates Court file and take copies of relevant documents for the purposes of preparing an appeal book?
6. This is unfortunately a process of an appeal and is not a question of law to become the subject of a case stated on a point of law. It is purely an administrative process.
7. The referral is made under Rule 16.22 of the Civil Procedure Rules. Sub rule (1) make reference to section 11 of the Courts Act (Cap.122). However the Courts Act was repealed in 2003, a year later after the Civil Procedure Rules were made in 2002. Section 11 as referred is no longer of any relevance. Section 72 of the Judicial Services and Courts Act (Cap 270) is the repealing section. Section 17 of the Judicial Services and Courts Act is now the relevant section. It states:

**"17. Reservation of questions of law**

- (1) A magistrate may reserve for the consideration of the Supreme Court on a case to be stated by the magistrate any question of law which may arise on the hearing of any criminal or civil proceedings. (emphasis added)
  - (2) *The magistrate must not deliver judgement in the proceedings until he or she has received the opinion of the Supreme Court.*
  - (3) *The Supreme Court has power to determine every such question after hearing argument."*
8. Section 17 of the Act gives a discretion to a Magistrate to state a case to the Supreme Court on a point of law which may arise in the course of the proceeding before the Magistrate which he/she would have to decide on the hearing. The referral of 17 March 2025 was not a referral on a question of law. However what the Magistrates Court did amounted to an enquiry as to process which in my view was helpful to this Court in terms of the progress of the proceeding.



9. Mr Botleng and the applicant have not assisted the Court adequately or at all. They failed to disclose to the Court on 7 March 2025 about the fact that there is currently an ongoing proceeding. They had misled the Court on that date. All that they had before the Court on 7<sup>th</sup> March was a bare Notice of Appeal with the Grounds with no supporting evidence by sworn statements. The applicant/ appellant was out on a fishing expedition, a highly improper thing to do by Counsel, an officer of the Court.
10. Where a case or proceeding is still ongoing and is subjudice before a Court of law, no party has any right to seek an order for access to the file to retrieve any documents. This right or entitlement can only be available to a litigant after a case has been heard and determined. Only then a party may apply to have access to the Court file in order to prepare an appeal book.
11. In this case Mr Botleng has not appeared twice to prosecute the appellant's case and to refute the position as put by the Magistrates Court which I repeat is not about a question of law but is only an administrative process.
12. For the reasons given, the applicant/ appellant is not entitled to have access to the Magistrates Court file when the case is subjudice or still ongoing and incomplete.
13. The result of this decision that the orders of 7<sup>th</sup> March 2025 are hereby vacated.



14. The appellants have no standing to file the purported appeal they have filed on 2 December 2024. They must await the final decision of the Magistrate's Court before deciding to file any appeal. Civil Appeal Case No. 24/3803 is therefore dismissed at this point. It has no basis or foundation.

**DATED at Port Vila this 20th day of May, 2025.**

**BY THE COURT**

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**Hon. Oliver Saksak**

**Judge**

