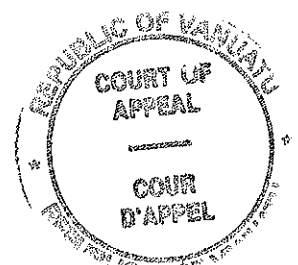


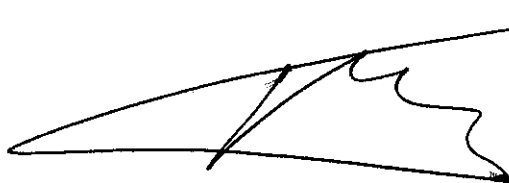
2. During the hearing of this appeal a fourth ground of appeal was added namely that the Court had no jurisdiction to strike out the claim because the first and second respondents had not served on the appellant any application to strike out the claim (Rule 18.11 Civil Procedure Rules).
3. This case has a long and frustrating history of neglect by the appellant. His claim seeks orders pursuant to section 100 of the Land Leases Act cancelling the first respondent's leasehold title alleging it was obtained by fraud or mistake.
4. His claim was struck out in 2009 for inactivity and reinstated in September 2010.
5. Call overs and abandoned trial dates followed. The appellant was ordered to file a memorandum particularising the allegations of fraud and mistake and for counsel to pay a wasted costs order to both respondents. A conference date of 13 February 2014 was arranged before a judge of the Supreme Court. Neither the appellant nor his counsel appeared. Counsel mistakenly thought the conference date was 14 February 2014.
6. At that conference the judge said that after an analysis of the conduct of the litigation by the appellant that he would "*grant the two applications to strike out the claim*" for the reasons identified. There remained the first respondents' counterclaim which was adjourned.
7. We need only consider the fourth ground of appeal in this case.
8. Both respondents had filed applications to strike out the appellant's claim but neither had served their applications on the appellant.
9. The second respondent had apparently filed their application in the Supreme Court on 10 January 2014 (5 weeks or so before 13 February hearing). The application did not have an accompanying sworn statement (R 18.11 (3) (b)). A sworn statement was subsequently filed but the application was not served on the appellant.
10. The first respondent had prepared and filed an application to strike out the claim at mid-day 12 February 2014, the day before the conference. He was unable to serve the application on the appellant. In any event such service would not have complied with the three day service requirement (Rule 18.11 (3) (c)).



11. Rules 6.8 and 9.10 empowers the Court to strike out a claim if a claimant or his lawyer fails to comply with an order of the Court.
12. The respondent's claim was that the appellant's lawyer had failed to file the memorandum of further particulars and so the authority to strike out the claim existed.
13. However Rule 18.11 provides that where a party fails to comply with an order of the Court "*dealing with the progress of the proceeding or steps to be taken in the proceeding*" (Rule 18.11 (1)) then the other party may apply to (amongst other orders) strike out the claim. Such an application must set out the details of the failure, provide a sworn statement in support of the application and be served 3 working days before the application can be heard.
14. Here the respondents accept they had not served their applications before the hearing on 13 February 2014. Most unfortunately, the Judge was not told the application had not been served before he struck out the claim. It follows therefore that the Judge had no jurisdiction to make the order he did.
15. The appeal is allowed and the order striking out the claim quashed.
16. In the circumstances we make no order as to costs.

DATED at Port Vila, this 4th day of April, 2014.

FOR THE COURT



**Hon. Vincent Lunabek
Chief Justice.**

