

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

Civil Appeal
Case No. 24/2850 COA/CIVA

BETWEEN: MORRIS AND FAMILY BALMET
Appellants

**AND: ROBIN BONG, MANGI BARRAF, JOEL MANNAI
BANI AND MASING KEITH**
First Respondents

AND: VINMAVIS VILLAGE LAND TRIBUNAL
Second Respondent

Date of Hearing: 8 November 2024

Before: *Hon. Chief Justice V. Lunabek
Hon. Justice M. O'Regan
Hon. Justice R. White
Hon. Justice O. A. Saksak
Hon. Justice D. Aru
Hon. Justice E. P. Goldsbrough
Hon. Justice M. A. MacKenzie*

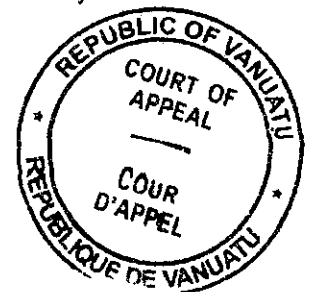
Counsel: *E. Molbaleh for Appellants
D. Yawha for First Respondents
S. Aron for Second Respondent*

Date of Decision: 15 November 2024

JUDGMENT

Introduction

1. On 17 September 2009, the Vinmavis Village Lands Tribunal (the Tribunal) made a decision in favour of the appellants that was subject to challenge by the first respondents. The first respondents applied to the Supreme Court for judicial review of the Tribunal's decision. The judicial review claim was ultimately resolved by orders made by consent by Justice D V Fatiaki on 7 January 2013. The consent orders were:



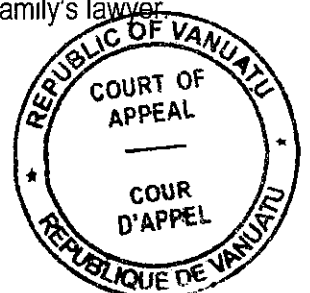
By consent the Claimants and the Second Defendant agree to the following orders:

- (1) *That the Decision of the Vinmavis Village Lands Tribunal dated 17 September 2009 is hereby quashed.*
- (2) *That the matter is hereby remitted to the Joint Village Lands Tribunal for a proper hearing to be conducted pursuant to the Customary Lands Tribunal Act [CAP 271].*
- (3) *Each Party to pay their own costs.*

2. The Consent Orders were signed by Mr C B Leo who was counsel for the then claimants (who are now the first respondents in the present appeal) and the then counsel for the current appellants, Mr K A Loughman.
3. The appellants applied to this Court for an extension of time to appeal against the Consent Orders. The Court heard arguments on both the application for extension of time and the substance of the intended appeal.

Extension of time

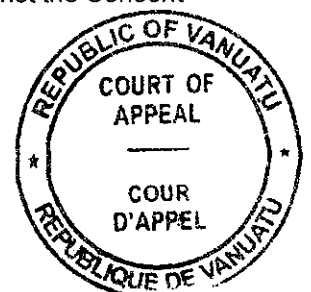
4. The appellants argue that they did not become aware of the Consent Orders until sometime in July 2024. They sought an extension of time to file an appeal promptly after becoming aware of the Consent Orders. The application was supported by sworn statements from Robson Balmet and Willie Balmet. The respondents had no objection to the evidence of Robson and Willie Balmet being adduced before us and we therefore admitted it into evidence.
5. In his statement, Robson Balmet deposed that he was the representative of Family Balmet in land matters and represented the family in the Tribunal. He said he did not recall talking to or meeting Mr Loughman to give him instructions in the appeal that was resolved by the Consent Orders. He said that his father, Morris Balmet, died on 12 September 2012. Therefore, his father could not have given instructions to Mr Loughman to sign the Consent Orders in January 2013 (it appears that counsel signed the Consent Orders in December 2012, and the Judge signed them on 7 January 2013). Robson Balmet said he was never informed of the Consent Orders until he received a letter from the Custom Land Management Office in June 2024, informing him of the existence of those Orders.
6. Willie Balmet supported the statement of his brother, Robson Balmet. He too said he did not recall giving instructions to Mr Loughman. He went as far as saying he had never seen or talked to Mr Loughman. He asserted that Mr Loughman was not his lawyer and was not his family's lawyer.



7. The appellants filed a waiver of privilege which would have allowed for Mr Loughman to respond to these serious allegations against him, but this was filed only two days before the hearing and we are unaware whether it was served on Mr Loughman. In any event, it was obviously too late for him to respond.
8. There are a number of indications in the Supreme Court file for the judicial review claim that call into question the assertions made by Robson Balmet and Willie Balmet in their statements supporting the application for extension of time. In particular, the statement of defence of the appellants in the judicial review proceeding was signed by Mr Loughman as their counsel on 5 June 2012, that is nearly six months before the date of the Consent Orders. In addition, the defence to the judicial review proceeding was supported by a sworn statement of Robson Balmet dated 11 July 2012, which, we infer, would have been prepared with the assistance of Mr Loughman.
9. During the hearing of the appeal, we asked Mr Molbaleh whether he had made contact with Mr Loughman to obtain Mr Loughman's response to the allegations made against him before filing the application for extension of time to appeal. He said he had not. We consider that to be reprehensible. Given the very serious nature of the allegations made against Mr Loughman, it was inappropriate for Mr Molbaleh to file proceedings in which he asserted misconduct against Mr Loughman and file statements making similar assertions without first having given Mr Loughman the chance to explain what had actually happened prior to the signing of the Consent Orders in 2013. If Mr Molbaleh had done this, it may be that the application for extension of time would not have been filed at all. And, if it had been filed, it would have meant that a waiver of privilege could have been filed earlier, so that Mr Loughman could have had a genuine opportunity to provide his version of events prior to the matter coming before the Court for consideration.
10. We do not consider the allegations made against Mr Loughman to be credible. In light of that, there is no basis for us to allow the appeal to proceed. In our view the application for an extension of time and the appeal itself should not have been brought before the Court.
11. We indicated this at the hearing.
12. We note also that Mr Molbaleh did not file any authorities supporting his application for the extension of time or outlining the basis on which the Court could interfere with the Consent Orders in light of the evidence before us.

Result

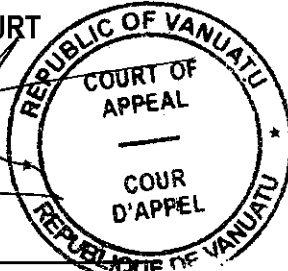

13. We dismiss the application for an extension of time to file an appeal to the Court against the Consent Orders and the appeal.



14. We order the appellants to pay costs of VT20,000 to both the first and second respondents.

DATED at Port Vila, this 15th day of November, 2024

BY THE COURT



Hon. Chief Justice Vincent Lunabek