

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

Civil Appeal Case No. 128 of 2009

**BETWEEN: CHIEF SIMEON POILAPA IV and TASIL  
MALASTAPU**

Appellants

**AND: KALOKAI MASAAI**

Respondent

Appellants: Mr. J. Kilu  
Respondent: Mr. S. Joel

**DECISION**

1. The Respondent has filed an Application to Strike Off the Appeal of the Appellants. A hearing is been heard today to deal with this Application.
2. The Respondent argues that when this matter was before the Island Court, Simeon Poilapa III was the Appellant but he is now deceased. The Respondent submits that:
  - (a) Simeon Poilapa IV cannot make a claim for Chiefly title as although Simeon Poilapa IV was a party before the Island Court he was not at that time claiming Chiefly title and therefore is not able to appeal the decision of the Island Court and the subsequent decision of the Magistrate Court.
  - (b) The Respondent also argues that pursuant to the Civil Procedure Rules 3.9 (1), Simeon Poilapa IV is not a personal representative of Simeon Poilapa III. Rule 3.9 (1) says:-

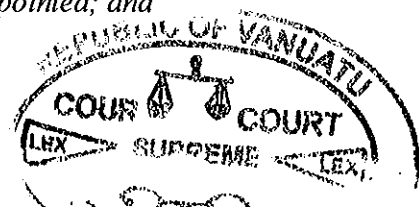
***"Death of party***

**3.9 (1) If:**

- (a) *the claimant dies during a proceeding; and*
- (b) *the proceeding involves a cause of action that continues after death;*

*then:*

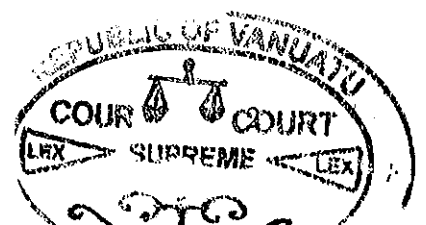
- (c) *the proceeding may be continued by the claimant's personal representative; and*
  - (d) *the court may give whatever directions are necessary to allow the personal representative to continue the proceeding.*
- (2) *If, at the start of a proceeding:*
- (a) *the defendant is dead; and*
  - (b) *no personal representative has been appointed; and*



- (c) *the cause of action continues after the defendant's death, then;*
- (d) *if the claimant knows the person is dead, the claim must name the "estate of [person's name] deceased"; and*
- (e) *after a personal representative is appointed, all documents in the proceeding must name the personal representative as defendant."*

(c) The Respondent also argues that Simeon Poilapa IV has to commence his claim to Chiefly titleship in the Island Court and not through these appeal proceedings.

3. The Appellant opposes the Application to Strike Off on the basis that:-
- (a) Simeon Poilapa IV did not have standing to claim Chiefly title while his brother, Simeon Poilapa III, was alive. However the Appellant says that upon the death of Simeon Poilapa III then by custom Simeon Poilapa IV does have the right to claim the chiefly title and should be allowed to do so.
  - (b) The Appellant argues that the rights of Simeon Poilapa IV are based on custom and therefore the provisions of Rule 3.9 so not apply.
  - (c) Simeon Poilapa IV only has the right to chiefly title if Simeon Poilapa III before him had that same right and therefore the appeal should proceed.
4. The decision of this Court is that the Strike Out Application should be dismissed. Simeon Poilapa IV could not be a Claimant for chiefly title through custom while Simeon Poilapa III was still alive and pursuing his rights through the Island Court and the Magistrate's Court. The Claim for chiefly title by Simeon Poilapa IV is based on custom which is a constitutional right and the provisions of Rule 3.9 of the Civil Procedure Rules are inapplicable.
5. This appeal may proceed to determine whether or not Simeon Poilapa III would have been a person declared to have chiefly title had he still been alive. If that appeal is successful then Simeon Poilapa IV would then need to go back to the Island Court to commence a claim for chiefly titleship as the claimed proper person to be appointed after Simeon Poilapa III. If this appeal is unsuccessful then Simeon Poilapa



IV would have no claim before the Island Court for chiefly title based on the claimed rights of Simeon Poilapa III.

6. The Appellant has not in his Application for appeal set out the statutory basis for his grounds of appeal. It would seem that the proper statutory basis is that set out in the Island Court's Act [CAP 167] section 22 (1) which says:-

***"APPEALS***

*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."*

The Appellant will therefore need to persuade this Court that it has jurisdiction to deal with this appeal which is a claim for chiefly titleship.

7. The Appellant is to file and serve submissions as to the jurisdiction of this Court to hear this appeal by 5<sup>th</sup> November, 2010. The Respondent is to file and serve submissions in response by 12<sup>th</sup> November, 2010. The submissions will then be considered at a conference to be held at 2 pm on 17<sup>th</sup> November, 2010 in a hearing room behind the Supreme Court Office.
8. Costs will remain in the cause.

**DATED at Port Vila, this 22<sup>nd</sup> day of October, 2010**

**BY THE COURT**

*N.R.D.*  
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**N. R. DAWSON**  
Judge

