

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU

Civil

Case No. 18/1192 SC/Civil

**BETWEEN:** Andrew Welwel, Jeredly Roriri, Gideon Leingkon,  
Willaim Josiah and Masseng Ray

Claimants

**AND:** Jehu Bongnaim

First Defendant

**James Dan**

Second Defendant

**Rickson Samson**

Third Defendant

**Freddy Maxwell**

Fourth Defendant

**Rarao Maxwell**

Fifth Defendant

**Laan Ham Bongmatur Malto**

Sixth Defendant

**Eli Tiwor**

Seventh Defendant

**Benjamin Lewa**

Eighth Defendant

**Jimmy Lewa Jehu**

Ninth Defendant

*Date:*

12 June 2019

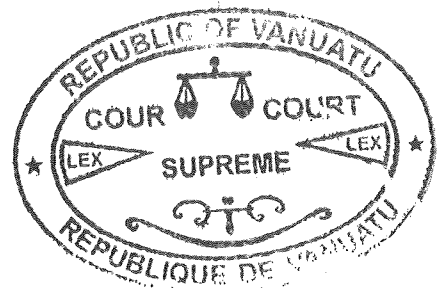
*Before:*

Justice G.A. Andrée Wiltens

*Counsel:*

Mr G. Boar for the Claimants

Mr E. Nalyal for the 6<sup>th</sup> Defendant



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## JUDGMENT

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### A. Introduction

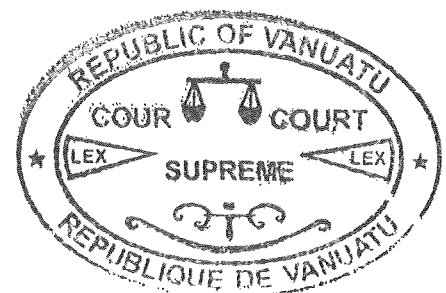
1. This is another case in the long-running saga of disputes between these parties. This time it is alleged that the defendants defamed the claimants by the use of the terms "black magic" and "witchcraft", which were allegedly expressed by the defendants about the claimants to explain the sudden death of Rolland Jehu. The background to the allegation stems from a dispute over Melwe/Metamy land where everyone resided at the time in or near the village of Fanjever.
2. When this matter was called, of the numerous defendants named only Mr Nalyal's client was present. Mr Nalyal sought an adjournment due to only being instructed last Friday, which was declined. This matter has been scheduled for trial since February 2019, and the late instructions cannot dictate the Court's diary – the sixth defendant must suffer any consequences for not acting sooner.
3. Mr Nalyal then sought time to be able to file a defence – that too was declined, as Mr Nalyal had ample time to deal with that prior to today. It seems to the Court that counsel should not accept instructions if unable to be ready in time to act, or to accept instructions solely to make an application to adjourn which if not granted would mean counsel seeks leave to withdraw.

### B. Facts

4. The issue of customary ownership of land has been in dispute between these parties, and each group has apparently take steps to impress on the other their claims. Those steps have included numerous Court appearances, but also steps taken out of frustration and outside what might be termed legal steps.
5. Mr Jehu passed away after a period of illness in July 2010. The defendants are said to have attributed his demise to the use by the claimants of black magic and witchcraft. This led to a village meeting being called approximately a week later, at which the allegations were repeated, allegedly accompanied by violence. The village Chief fined the claimants VT 200,000 for their alleged causing of Mr Jehu's demise.
6. Both incidents are relied on as establishing not only the use of defamatory terms but the publishing of those defamatory comments to the local community.

### C. Application

7. Mr Nalyal, having failed with his other applications, then raised the issue of the Limitation Act. The events in question are said to have occurred in July 2010. The Claim was filed in the Supreme Court on 27 April 2018.



8. Mr Boar tried vainly to persuade me otherwise, but clearly the claim is outside time. An action based on tort, must be filed within six years – section 3 of the Limitation Act [Chapter 212].

D. Result

9. This Claim is dismissed as being filed out of time.
10. Although this case has been running for some time, the reality is that only one defendant appeared at trial. The only defendant to have taken an active step by filing a sworn statement has apparently died. Mr Laumae, who has had carriage of the defence case for most of the life of the file, filed a Notice of Ceasing to Act in April 2019. Mr Nalyal has obviously done very little by way of legal work on this case.
11. Taking all those matters into account, including the historic background to this matter, I determine that no order for costs is the most appropriate order – each side is to bear their own costs.

Dated at Port Vila this 12th day of June 2019

BY THE COURT

*Gardie Wiltens*  
Justice G.A. Andrée Wiltens

