

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

**Land Appeal  
Case No. 17/2148 SC/LNDA  
(old ref:05/65)**

**BETWEEN: Makton Sanhambat**  
First Appellant

**AND: Leonard Bill**  
Second Appellant

**AND: Belten Joe**  
Third Appellant

**AND: Jonathan Tawi**  
Fourth Appellant

**AND: Ephraim Cyrus and Jerety**  
Fifth Appellant

**AND: John Gordon Arnahambat**  
Sixth Appellant

**AND: Shedrak Salemumu**  
First Respondent

**AND: Albert Horambat**  
Second Respondent

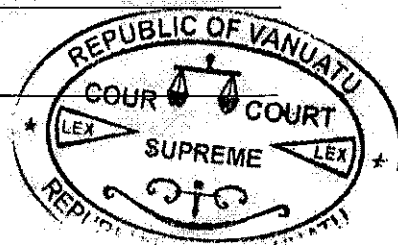
*Coram: Justice Aru*

*Counsel:*  
*Mrs. M.G. Nari for the 1<sup>st</sup> Appellant (Makton Sanhambat)*  
*Mr. A. Bal for the 2<sup>nd</sup> Appellant (Leonard Bill)*  
*Mr. S. Joel for the 3<sup>rd</sup> Appellant (Belten Joe)*  
*Mr. D. Yawha for the 4<sup>th</sup> Appellant (Jonathan Tawi)*  
*Mr. L. Napuati for the 5<sup>th</sup> Appellant (Ephraim Cyrus and Jerety)*  
*Mr. J. Tari for the 6<sup>th</sup> Appellant (John Gordon Arnahambat)*  
*Mr. T. J. Botfeng for the 1<sup>st</sup> Respondent (Shedrak Salemumu)*  
*Mr. J. Kilu for the 2<sup>nd</sup> Respondent (Albert Horambat)*

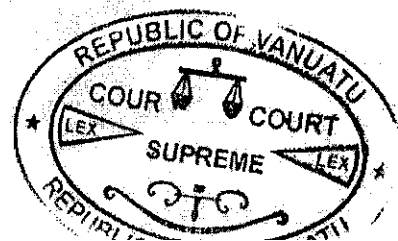
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**RULING**

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1. This is an application by the 6<sup>th</sup> Appellant for orders that the matter be remitted to the Malekula Island Court for re-hearing.
2. The main ground in advancing the application was that the Island Court file containing records of the hearing cannot be located by the Registry. As such the file cannot be inspected to obtain documents including records of evidence in order to file the appeal book.
3. All the other appellants spoke in favour of the application.
4. On 18 February 2020 the Chief Registrar informed all the parties by letter that the Island Court file could not be located and that it may have been destroyed in the Court house fire in 2007 and was never reconstructed.
5. The respondents opposed the application. The second respondent submitted that the hearing should proceed and the Court will decide whether it needs to remit the matter back or not. The first respondent was of the same view and says they will be prejudiced if the matter is remitted therefore they were seeking security for costs.
6. That application is refused. The respondents have not shown that they meet the criteria under the Rules to seek security for costs.
7. The parties were initially asked at the beginning of these proceedings whether there was consent for the matter to be dealt with under the Land Management Act but not all parties agreed. Given that the Malekula Island Court heard the matter originally, I accept that it should rehear the matter with the same parties.
8. This is the final appellate Court and to make a final decision in the absence of the records of the Court below would be prejudicial to the parties. In the interest of justice, the better resolve would be to order a re-hearing in the Malekula Island Court.
9. The final orders are:-



- (1) The matter is remitted to be re-heard by a differently constituted Malekula Island Court.
- (2) The rehearing is restricted to the current parties.
- (3) Parties to bear their own costs.

DATED at Port Vila this 30<sup>th</sup> day of March, 2020

BY THE COURT

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D. Ari  
Judge

