

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

**Civil Appeal**  
**Case No. 20/2824 SC/CIVA**

**BETWEEN: Matova Toatau & Descendants**  
Appellant

**AND: Henry Cyrel Kalsurai Manlaewia**  
First Respondent

**AND: Ernest Kaloris & Descendants**  
Second Respondent

**AND: Vamele Family**  
Third Respondent

*Date:* 5 June 2023  
*Before:* Justice V.M. Trief  
*Counsel:* Matova Toatau & Descendants – Mr E. Macreveth  
First Respondent – Ms L. Raikatalau, holding papers for Mrs Ferrieux Patterson  
Second Respondent – Mr S. Kalsakau  
Third Respondent – Mr D. Yawha

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**DECISION AS TO APPELLANT'S URGENT APPLICATION TO STAY THE  
APPEAL HEARING LISTED ON 13 JUNE 2023**

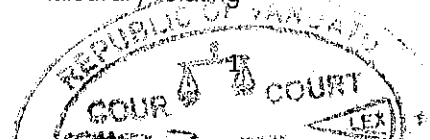
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A. Introduction

1. On 25 May 2023, the Appellant Matova Toatau & Descendants ('MTD') filed Urgent Application to Stay the Appeal Hearing listed on 13 June 2023 (the 'Application') and supporting Sworn statement of Kenedy Kalfau.
2. By Orders dated 30 May 2023, I required submissions in response to the Application to be filed and served by 11am on 5 June 2023. None have been filed.
3. I now proceed to determine the Application.

B. Discussion

4. The grounds for the Application are as follows:
  - a) That MTD has now lodged a criminal complaint against the First Respondent Mr Henry Cyrel Kalsurai Manlaewia ('Mr Kalsurai') relating



to the allegation of bribery involving the assessor Sam Borad Maripakoa in the present appeal;

- b) The Police are now investigating Mr Kalsurai in relation to the complaint made which might affect Mr Maripakoa sitting as an assessor in this appeal and the investigation might also reveal that Mr Maripakoa was bribing other assessors of the Island Court which will affect the hearing of this case; and
  - c) It would be safe to stay this appeal pending the criminal investigation so that when the appeal is heard we are sure the assessors sitting are not involved in the alleged bribery case.
5. A copy of Mr Kalfau's Police complaint dated 3 May 2023 is attached as **Annexure "KK2"** to his Sworn statement.
  6. As set out in the Orders dated 30 May 2023, Mr Maripakoa passed away about 2 weeks prior to those Orders.
  7. Accordingly, there is no longer any question as to Mr Maripakoa sitting as an assessor at the hearing of the appeal.
  8. In addition, there is **no** allegation made in the Police complaint attached to Mr Kalfau's sworn statement that any other persons besides Mr Maripakoa were bribed nor any allegation made that Mr Maripakoa bribed other assessors of the Island Court [**Annexure "KK2"**]. Accordingly, Mr Molbaleh's submission that 'the investigation might also reveal that Mr Maripakoa was bribing other assessors of the Island Court which will affect the hearing of this case' does not have any evidential basis.
  9. I note that the allegation of bribery is in relation to an alleged payment of VT100 for kava.
  10. In the circumstances, I do not consider that the hearing of the appeal should be stayed pending the Police investigation allegedly now underway. This can be contrasted with the situation where a criminal prosecution has commenced. I consider that this is more an attempt to again delay the hearing of the appeal in this matter.

C. Result and Decision

11. For the reasons given, the Appellant's Urgent Application to Stay the Appeal Hearing listed on 13 June 2023 **is declined and dismissed**.
12. The costs of the Application are **reserved**.

DATED at Port Vila this 5<sup>th</sup> day of June 2023  
BY THE COURT

  
Justice Viran Molisa Trief

