

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

Civil Appeal  
Case No. 25/1924 SC/CIVL

**BETWEEN:** Brownie Nungnung, Rutha Nungnung, Danny  
Philip, Willie Nungnung  
Applicants

**AND:** Saravana Community Company Limited  
First Respondents

**AND:** Etienne Paulo, Mathew Robinson, and Harry  
Nungnung  
Second Respondents

**Before:** Hon. Justice Oliver A Saksak

**In Attendance:** Mr Jerry Boe and Mr Stephen Kalo for the  
Applicants  
Ms Julieth Kaukare for the First and Second  
Respondents

**Date of Hearing:** 18<sup>th</sup> September 2025

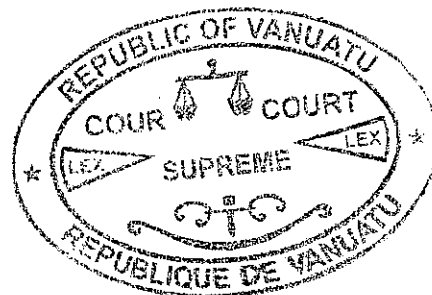
**Date of Judgment:** 25<sup>th</sup> September 2025

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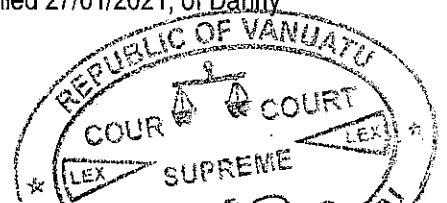
**JUDGMENT**

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1. This is a reserved judgment.
2. The Court is asked to decide on whether or not leave should be given to the applicants to file an appeal out of time.
3. The applicants seek leave to extend time in order to lodge an appeal against the summary judgment dated 4<sup>th</sup> November 2022 and to stay enforcement of the decision dated 2<sup>nd</sup> July 2024. The judgment and decision were issued in the Magistrates Court.
4. Two basic grounds were advanced, first that there was a denial of natural justice and procedural fairness. Secondly that the summary judgment was erroneously issued when there were disputed facts and issues.



5. The applicants relied on the cases of Stage Four Limited v 100% Pur Fun Limited [2024] VUCA 3, Kioa v West (1985), Ridge v Baldwin [ 1964], denton v TH White Ltd [ 2014], Swain v Hillman [ 2001].
6. In relation to their submission that the damages awarded by the Court below were excessive and unsubstantiated, the applicant relied on the cases of Marie Noelle Ferrieux Patterson v Dolcy Pakoa CC 21/246, and Raymond Nasse v Peter Lui, CC 16/648 but provided no copies of the judgment for easy reference by the Court.
7. Pursuant to Rule 20 of the Court of Appeal Rules 1973 the period of appeal is 30 days after the decision complained of was issued. In this case the summary judgment complained of was issued on 4 November 2022. And the decision to dismiss the applicants application to stay enforcement was issue don 2<sup>nd</sup> July 2024. Those decisions fall well outside the 30 days period by more than 2 years and more than 1 year.
8. The applicants seek leave to extend time therefore pursuant to Rule 9. The discretion to grant leave rests entirely on the judge determining the application.
9. The application was filed on 3<sup>rd</sup> July 2025 together with the sworn statement of Brownie Nungnung which annexes the summary judgment dated 4 November 2022 and the decision dated 2<sup>nd</sup> July 2024. The deponent of the sworn statements filed in the Magistrate's Court provide a detailed response which included the evidence challenging the legitimacy of the Saravanua Community Company Ltd and the contradicting accounts of the alleged incidents of trespass and harassments.
10. The applicants complained that despite those documents, the Senior Magistrate heard the summary judgment application in their absence and awarded exemplary damages of VT 50,000 without proof of repeated misconducts.
11. The applicants failed to annex the sworn statement referred to and/or any proper defence they filed to assist the Court.
12. It was however Ms Kaukare's clients who assisted the Court by annexing the sworn statements of Willie Nungnung filed 27/01/2025, Annexure "EP2", of Joe Maiake filed 27/01/2021, of Danny



Philip fled on 27/01/2021, of Richard Nungnung filed 4/2/2021 and of Ruth Rueben filed on 30/04/2024.

13. The Senior Magistrate in her Judgment recorded right at the opening of her Judgment that the application was heard in the absence of the applicants so this was not a mystery. Further in paragraph (e ) the Senior Magistrate referred to the sworn statements of Richard Nungnung, Brownie Nungnung, Rutha Nungnung, Willie Nungnung and Joe Maiake and said this:

*" It was not stated clearly what those sworn statements were made in support of. As they are only sworn statements filed by the defendants they are used for information purposes by the Court."*

Then at (1)(f) the Senior Magistrate continued:

*" On 27<sup>th</sup> January 2021 a response to the Magistrates Court claim was filed. No other defence was filed so it is taken that the response is the defence."*

14. The Senior Magistrate recorded her findings at [2]:

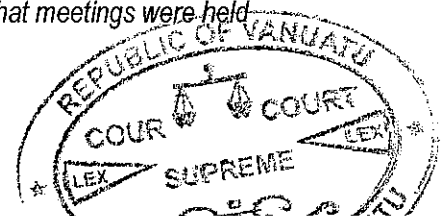
*" a) the defence filed by the defendants does not contain substantive point that can lead to a trial.*

*b) The points denied were:*

- a. That the first claimant is not an established company,*
- b. That the Second Claimants are not directors of the board of the first claimant.*
- c. That the second claimants was illegally and unlawfully registered;*
- d. That the second claimants are elected members of the Committee of Gentlemen Youth Association. They are not the Directors of a company;*
- e. That the rest of the response/ defence denied any forms of threatening or harassment denied made by the defendants towards the claimants. Furthermore, that the claimants were elected office bearers and not Company Directors."*

15. The Senior Magistrate then considered Rule 9.6 and the required standard of proof on the balance of probabilities in paragraphs 3 and 4 of her judgment. Then she applied the Rule to the facts as raised in the response in paragraph 5. Then in subparagraph (b) the Senior Magistrate recorded this:

*" In weighing the circumstances of the matter, the determining factors for this Court is the registration of the company. The claimant's evidence show that meetings were held*



*from 2018 that show the name changes up to SARAVANUA COMMUNITY COMPANY. If this was disputed some sort of meeting should have been held to show this. There has not and the company was registered as such. The claimant's evidence show that it was more probable than not that the first claimant is a lawful company"*

16. Then at [6] the Senior Magistrate concluded:

*"a) The defendant has no real prospect of defending the claimant's claim and there is no need for a trial of the claim."*

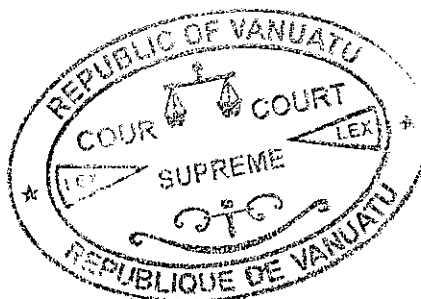
17. The application for leave was opposed strongly by the respondent on grounds (a) that it is more than 2 years out of time, (b) that the applicants had legal representatives by Mr Colin Leo, Mr Albert Nalpini, and Mrs Meresimani Markward, (c) that they were served with summonses to appear for hearings of the application and they ignored all summonses and did not attend hearings. They even had Mr Joshua Bong attending Court proceedings on their behalf and were well aware of what was happening.

18. It is submitted by the respondents that the applicants cannot now complain they were denied natural justice and that their application for leave should be refused and dismissed with costs on an indemnity basis.

19. I accept the submissions by Ms Kaukare. There has been substantial delay in taking steps to appeal the decisions of the Senior Magistrate. The applicant had legal representations. They failed to respect Court summonses to attend to be heard. They cannot now complain after almost 3 years have gone by that they were denied natural justice.

20. The Senior Magistrate treated their sworn statements and responses as a defence quite wrongly in my view, but that is not challenged and nothing will turn on that view. The Senior Magistrate concluded there were no disputed facts to require a trial. That was the end of the matter.


21. The application for leave is therefore refused and is hereby dismissed. The summary judgment and the decision to refuse and dismiss the application to stay enforcement are upheld.



22. The respondents are entitled to their costs of the application against the applicant on the standard basis as agreed or taxed.

**Dated at Port Vila this 25<sup>th</sup> day of September 2025**

**BY THE COURT**

  
Hon. Justice Oliver A Saksak

