

BETWEEN: NELSON BULURAVE, STEVEN BOE,
JOHNSON GARAE EBRAHAM BULURAVE,
ERON BULURAVE, FRED BULURAVE, JOHN
VIRA, JOSEPH BULURAVE, JEFFREY
BULURAVE, SAKARAIA BULURAVE,
TOMSEN BULURAVE, EDMON BULURAVE
and OBED BURONO
Appellants

AND: TAFTUMOL FAMILY represented by Victor
Moltures
Respondent

Coram: *Hon. Chief Justice V Lunabek*
Hon. Justice J Hansen
Hon. Justice R White
Hon. Justice O A Saksak
Hon. Justice V M Trief
Hon. Justice E Goldsbrough

Counsel: *M B Markward for the Appellants*
G Avock for the Respondent

Date of hearing: 10 February 2023

Date of Decision: 17 February 2023

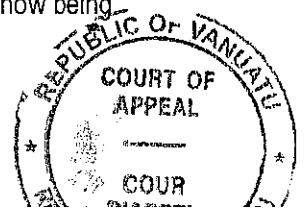
JUDGMENT OF THE COURT

Introduction

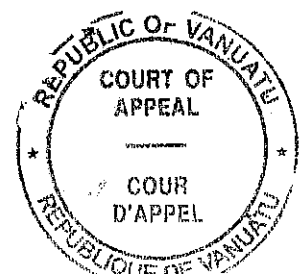
1. This is an appeal against the Decisions of a judge of the Supreme Court granting a renewal of an enforcement warrant (Non-Money Order) dated 5th July 2022, and dismissing the appellants' application for a stay of enforcement dated 25th August 2022.
2. The appellants seek leave of the Court to appeal against the judge's decisions as the appeal was filed outside the thirty days appeal period required by the Court of Appeal Rules (Rule 20).

Background Facts

3. It is essential to set out the background facts of the case leading up to the decisions now being challenged on appeal.



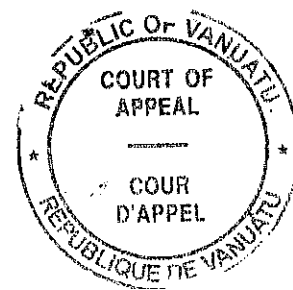
4. On 29th September 2020 Taftumol Family as represented by Victor Moltures (the respondent) filed their Supreme Court Claim claiming an order for eviction against the defendants, their relatives, servants or agents.
5. The Claim initially named a total of 59 defendants including the thirteen (13) who are now named as the appellants.
6. Some of the defendants were served with the Supreme Court Claim between 5th and 8th October 2020 according to service documents, pages 150 – 165 of Appeal Book B.
7. Following service of the Claim, Mr Lent Tevi of Counsel for the defendants filed a defence on 16 December 2020 (pages 44 – 47 Appeal Book A).
8. Another defence was filed on 18th June 2021 by Mr Tevi for the defendants.
9. The respondent applied for summary judgment on 23 November 2020 prior to the defence being filed on 16 December 2020.
10. The Judge in the Supreme Court heard and allowed the application for summary judgment on 9th March 2021. Mr Tevi did not attend the hearing and did not provide any reasons for non-attendance.
11. The Judge said in [10] that “Unless the defendants have permission and authorisation from Family Taftumol to remain on the land, they remain as trespassers.” The Judge ordered in paragraph 2 that “the defendants and their families and relatives are to be evicted from the claimant’s land by 30 April 2021.”
12. Subsequently, the defendants through Mr Colin Leo applied for a stay order on 6th April 2021. The Judge fixed the hearing of the application for 30th August 2021 on 20th August 2021.
13. At the hearing on 30th August 2021, neither Mr Leo nor Mr Tevi were present. The Judge struck out the application for a stay and listed the matter for a further conference on 20th September 2021.
14. At the Conference hearing on 20 September 2021, Mr Leo appeared for defendants Bertrand Tura, Rolland Tura and Marco Tamata. Mr Tevi appeared for defendant Bernard Vira.
15. The Judge noted that following evidence by sworn statement Mr Tevi’s client has a lease. Mr Leo’s clients were occupants of the claimant’s land. Mr Avock applied orally for an enforcement warrant which the Judge allowed and directed those copies be prepared and submitted for endorsement by the Court by close of business on 23 September 2021.
16. On 23rd September 2021, the Judge endorsed the Enforcement Warrant authorising the Sheriff to enter and take possession and deliver vacant possession of the lands to the Claimant. The warrant expired on 20th December 2021.



17. On 20th December 2021, Mr Edwin Macreveth filed an application seeking an order to suspend the warrant dated 23rd September 2021 on behalf of Roy Wilson.
18. The Deputy Master heard the application on 5th July 2022 and allowed a one-month suspension only until 4th August 2022.
19. On 3rd February 2022 the respondent filed an application for renewal of the Enforcement Warrant dated 23rd September 2021.
20. On 5th July 2022 the Judge issued the renewal warrant to expire on 5th July 2023 authorising the Sheriff to enter the lands to take and deliver vacant possession of the lands to the respondent. The Judge dismissed the stay application of the appellants and ordered costs of VT50,000 against them.
21. The Sheriff of the Court posted a Notice of eviction on 1st August 2022. Service of the enforcement warrant was effected on some of the appellants.
22. The Sheriff subsequently carried out checks on the property on 11th August 2022.
23. The Sheriff executed the enforcement warrant together with police officers on 26th August 2022.

The appeal

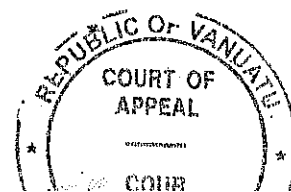
24. Thirteen of the 59 defendants lodged an appeal against the Judge's decisions on six grounds namely –
 - (a) The requirements of personal service on the occupants, lack of display of the warrant and enforcement executed less than 7 days was a violation of Rule 14.46 of the Civil Procedure Rules.
 - (b) There were other occupants not named in the proceeding who were also affected by the Sheriff's execution of the warrant who were not served, notified or given time to remove their properties and crops. Only some of the unnamed persons were served with the notice to vacate and the warrant.
 - (c) The Judge although fully aware there were unnamed parties, families and children failed to allow them to be joined as parties and to allow them time to remove their properties.
 - (d) Great injustice was done to the appellants when the warrant was executed other than in accordance with the requirements of Rule 14.45 and Rule 14.46 of the Civil Procedure Rules.
 - (e) The enforcement warrant was executed too soon when it had an expiry date of 23 August 2023, without any prejudice to the respondent.



- (f) The appellants and unnamed parties have suffered general and special damages following the enforcement and now seek time to be allowed to enable them to re-enter the land and remove their properties.

Discussion

25. In relation to the application for an enlargement of time to appeal, Mrs Markward submitted the application should be allowed to afford fairness to the applicants. Counsel argued the applicants had a delay of only 71 days from 5th July 2022 to 26th August 2022, when the Sheriff executed the warrant by comparison with the case of Veremaito v Katalo VUJC 27 CC 192 of 2007 where the Supreme Court granted leave to appeal out of time after a delay of 2 years.
26. Secondly, Mrs Markward submitted there could be no prejudice to the respondent if leave was granted as the appellants conceded the respondent owns the land but, all they are seeking is to be allowed time to enter the land and harvest their garden crops.
27. Thirdly, Mrs Markward submitted the appellant's appeal has prospects of succeeding if leave was granted.
28. Contrary to what Mrs Markward submitted, the length of delay is longer than 2 years. The respondent Family was declared custom land owners of Tambotal, Belmol and Beleru custom lands since 29th June 2020 in the Supreme Court.
29. That judgment was the basis of the respondent's Supreme Court claim filed more than 2 years ago on 29th September 2020. That claim is the very basis of the respondent Family's claim for eviction orders against 59 defendants, including the 13 who now are applicants/appellants.
30. Although the defendants filed defences on 16th December 2020, the respondent filed an application for summary judgment which was heard in the Supreme Court on 9th March 2021 and allowed. The Judge ordered that the defendants be evicted from the respondent's land by 30th April 2021.
31. The Court published the reasons for the decision of 9th March on 18th March 2021. At [10] the Judge said: "Unless the defendants have permission and authorisation from family Taftumul to remain on the land, they remain as trespassers."
32. The appellants did not and have not appealed against that decision. Instead, they chose to remain on the respondent's lands as trespassers from 9th March 2021 until the respondent Family obtained an Enforcement Warrant on 23rd September 2021. That warrant authorised the Sheriff to enter onto Tambotal, Beleru and Belmol custom lands and take and deliver vacant possession of them to the respondent.
33. That warrant was to have been executed before 20th December 2021. It was not executed and it expired, giving rise to the respondent's application for a renewal. On 5th July 2022 the Judge issued a renewed warrant for a period of 12 months to 5th July 2023. This warrant was executed by the Sheriff on 26th August 2022.



34. The prejudice to the respondent family was that from 30th April 2021 and earlier since they were declared custom-land owners by the Supreme Court on 29th June 2020, the respondent family has been denied the fruit of their judgment and the length of delay attributed to them was more than 3 years and not 71 days as asserted by the appellants.
35. We therefore reject the appellants' submissions in relation to their application for enlargement of time to appeal.
36. In relation to the substantive appeal, Mrs Markward argued that Rule 14.45 and, 14.46 of the Civil Procedure Rules were violated when insufficient notice of less than 7 days was given to the appellants, and there were unnamed persons who should have been made parties and served, thus resulting in unfairness and injustice and damages for which they seek orders for compensation.
37. Mrs Markward submitted that in accordance with the Court of Appeal Judgment in *laus v Noam* [2017] VUCA 40 that all adult persons should be named and served.
38. Rule 14: 46(3) states –

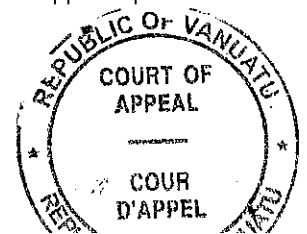
"(3) The warrant must:

(a) be served personally on the person against whom the order was made, and on anyone else who seems to be in possession of the land; and

(b) be displayed prominently at the entrance to the land.

(4) The warrant cannot be enforced until 7 days after the display and the latest service."

39. The requirements in Rule 14.46 were confirmed by this Court in the case of *laus v. Noam* [2017] VUCA 40, however the warrant the subject of this appeal is spent. At the hearing, both Mr Avock and Mrs Markward accepted the appeal is academic. As such it is pointless to pursue it any further.
40. The appellants also raised breaches of their constitutional rights under Article 5 (1) (d) and (j) of the Constitution during the execution of the warrant. They also complain about matters relating to how the warrant was executed. However, this would have to be the subject of separate proceedings.
41. The appellants have chosen to appeal the end process of a judgment. They did not appeal against the initial warrant issued on 23rd September 2021. And they did not appeal the summary judgment issued on 9th March 2021. That was their starting point, instead they have chosen to appeal the end of the process. That is the wrong approach that makes this appeal quite distinguished from the *Noam* Case.



The Result

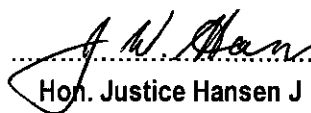
42. For the foregoing reasons, the Court refuses to grant leave. The appellants' application is hereby dismissed.

Costs

43. The respondents are entitled to their costs which we fix at VT75,000.

DATED at Port Vila this 17th day of February, 2023.

FOR THE COURT


Hon. Justice Hansen J

