

IN THE HIGH COURT OF SOLOMON ISLANDS

Civil Jurisdiction

Civil Case No. 416 of 2019

BETWEEN: JEFFREY FERRIS DAVID - Claimant**AND: ROBERT WALES - Defendant****Date of Hearing: 10 September 2025****Date of Judgment: 6 February 2026**

Mr. S. L. D. K. Getu for the Claimant

Defendant in person

JUDGMENT**AULANGA; PJ**

1. The Claimant brought this proceeding in his capacity as an administrator of his late father's estate. The land in dispute is a Temporary Occupation Licence ("TOL") parcel, registered as PN 191-052-193, Lot 827 ("Lot 827"), situated at Green Valley in East Honiara. It is pertinent to note that neither party to this proceeding has been granted a Fixed Term Estate ("FTE") in respect of the property. Both the Claimant and the Defendant are non-registered holders of FTEs of this property under the *Land and Titles Act (Cap. 133)*. Notwithstanding this, each party asserts ownership rights over the property, upon which a four-bedroom skeleton house has been erected.
2. The perpetual estate holder of Lot 827 is the Commissioner of Lands, who retains the ultimate legal title and authority over the property. The Commissioner, however, has not been joined as a party to this proceeding. This omission is material, as the Commissioner, in his capacity as the perpetual estate holder, is the sole authority legally empowered to grant or withhold rights of occupation, use, or development in respect of the land. The absence of the Commissioner as a party therefore raises issues concerning the proper constitution of the proceeding and the extent to which the Court may adjudicate the competing

claims of the parties, neither of whom holds a registered estate or proprietary interests in the disputed property.

3. In essence, this proceeding is not between the registered landowners but between two individuals asserting competing claims to the ownership, occupation, and use of the land that remains under the legal ownership of the Commissioner of Lands pursuant to a verbal agreement. The Court must therefore consider, with care, the legality and enforceability of the agreement when dealing with registered land, the standing of the parties, the nature of their occupation, the implications of adjudicating rights over registered land in the absence of the perpetual estate holder, and the prospects of the claim's success.

Background of the case

4. In or about 1998, the Claimant's late father, Mr. Ferris David, and the Defendant, Mr. Robert Wales, entered into a verbal agreement purportedly concerning the sale of three parcels of land held under TOL, namely Lots 827 (upon which a skeleton or incomplete four-bedroom house had been erected), 914, and 915. All of which are located at Green Valley, East Honiara. The agreement was never reduced to writing, contrary to the requirements of section 117(2) of the *Land and Titles Act*, which mandates that contracts for the disposition of interests in land must be in writing. Consequently, the precise terms and conditions of the alleged agreement remain uncertain, particularly in light of the death of Mr. Ferris David, who was a principal party to the arrangement.
5. According to the Defendant's account, the agreed purchase price for the three parcels of the TOL land and the incomplete house was \$100,000. This sum was said to comprise \$20,000 for each of the three parcels of land and \$40,000 for the incomplete four-bedroom house situated on Lot 827. The Defendant further asserts that his familial relationship to the late Mr. Ferris David, through marriage, formed part of the context in which the agreement was reached.
6. The verbal agreement was entered into on 12 October 1998, where the Defendant paid the first part payment sum of \$20,000. The Claimant contends that this payment represented only a partial fulfilment of the agreed purchase price, leaving an outstanding balance of \$80,000 which the Defendant failed to pay. The Defendant's version of events differs in that he asserts that the payment of \$20,000 was first made together with a transfer of a video set valued at \$5,000, which, according to him, was accepted by Mr. Ferris David as part of the consideration under the agreement. On this basis, the Defendant argues that the outstanding balance was not \$80,000 but rather \$75,000. He maintains that this arrangement

reflected a mutual understanding between himself and the late Mr. Ferris David. The Claimant disputes this assertion, insisting that the Defendant has not discharged the balance of the purchase price and therefore has no valid claim to ownership of the land or the house.

7. There were some incidences of violence, and theft of the Defendant's properties, caused by the late Ferris David's children in 1999 and 2001 which led to discussions on the form of purchase the Defendant would undertake to purchase the three TOL parcels and the incomplete house.
8. In 2001, the Defendant claims to have discharged the outstanding balance of the purchase price for the three parcels of TOL land and the incomplete house. According to him, this payment was made at Green Valley and comprised 43 strings of shell money valued at \$1,500, a new video set valued at \$5,000, and cash in the sum of \$5,500. The Defendant asserts that these items, taken together, amounted to a consideration towards the balance of the purchase price of the properties. The Claimant, however, denies that this transaction ever took place. He disputes both the delivery of the shell monies, the video set and the \$5,500, and maintains that no such payment or transfer of property was accepted by his late father, Mr. Ferris David. In the Claimant's view, the Defendant has failed to establish that any further payment beyond the initial \$20,000 was ever made, and therefore remains indebted for the balance of \$80,000.
9. Ferris David then died in 2014. The Defendant later discovered that only Lot 827 was registered to late Ferris David and not the other two TOL parcels of land.

The claim

10. As a result of the Defendant's alleged failure to pay the remaining balance of \$80,000 under the purported verbal agreement, the Claimant, acting in his capacity as administrator of the estate of the late Mr. Ferris David, instituted this proceeding seeking relief from the Court. The Claimant's primary relief is framed as follows:

- (a) A declaration that the four-bedroom property situated on PN 191-052-193, Lot 827, at Green Valley, East Honiara, is the family property of the late Mr. Ferris David. The Claimant asserts that, as the son of the deceased and duly appointed administrator of his estate, he represents the family's interest in the said property. The Claimant further contends that the Defendant has not

fully paid the agreed purchase price for the property and therefore holds no valid proprietary claim to it, notwithstanding that the Defendant's family continues to occupy the premises.

- (b) A declaration that the agreement dated 12 October 1998 between the late Mr. Ferris David and the Defendant was repeatedly breached by the Defendant despite numerous reminders by late Ferris David to complete the payment in the sum of \$80,000 then for the said four-bedroom property situated in Green Valley, East Honiara, Solomon Islands.
- (c) A declaration that an initial offer for the property described as PN 191-052-193, Lot 827, was made to the Claimant's father. However, the premium offer fee of \$2,700 was not paid by the Claimant's father pursuant to the agreement dated 12 October 1998 between the Claimant's father and the Defendant, under which the Defendant undertook responsibility and agreed to purchase the four-bedroom property on PN 191-052-193, Lot 827 for the sum of \$100,000.
- (d) A declaration that the agreed purchase price of \$100,000 for the four-bedroom property on PN 191-052-193, Lot 827, owned by the Claimant's father, was to be paid in the following manner:
 - (i) \$50,000 in cash;
 - (ii) One 15-seater bus valued at \$45,000; and
 - (iii) One video set valued at \$5,000, of this agreed consideration, only \$20,000 in cash was paid, contrary to the agreement set out in paragraph (d)(i).
- (e) A declaration that, in view of the Defendant's non-compliance with the agreement dated 12 October 1998 over the past 20 years, specifically, the failure to compensate the Claimant's father for the agreed purchase price of the four-bedroom family property on PN 191-052-193, Lot 827, the Fixed Term Estate in the said property cannot lawfully or legally be granted to the Defendant. Justice would not be served, as the Claimant's the four-bedroom property is located on the said land, which has not been fully paid for by the Defendant. In the interest of justice, the property should instead be offered to the Claimant, who is now the representative of the family estate, as confirmed in the letter dated 25 June 2018.
- (f) An order that the offer letter for the subject property on PN 191-052-193, Lot 827 be issued to the Claimant, as the family representative of the said property.

(g) Such further or other orders as the Court deems fit.

(h) Costs.

Non filing of Agreed Facts and Issues

11. For the purposes of this proceeding, it is noted that the parties have not reached any agreement on the Agreed Facts and Issues for trial, notwithstanding the Court's direction that such a document be filed. The absence of an agreed statement, however, does not impede the Court's consideration of the matter. The pleadings, together with the evidence adduced and relied upon by each party, sufficiently disclose the material facts and circumstances of this matter. From these, the Court is able to discern and understand the issues in dispute and the factual matrix within which they arise.

Main issues for the Court's determination

12. Against the background of the pleadings and evidence adduced, and having regard to the fact that this proceeding concerns a registered land held in perpetuity by the Commissioner of Lands, as well as the requirements of the *Land and Titles Act*, the Court considers that the critical issues for determination are: whether the alleged verbal agreement for the sale of PN 191-052-193, Lot 827 is valid and enforceable in light of section 117(2) of the *Land and Titles Act*; second, whether the terms of the alleged verbal agreement for the sale of the four-bedroom skeleton house are sufficiently certain and supported by credible evidence to sustain the Claimant's claim for the balance of the purchase price; third, whether the parties, being non-registered Fixed Term Estate holders of Lot 827, have the requisite standing to assert any proprietary rights in the absence of the Commissioner of Lands, who remains the perpetual estate holder of PN 191-052-193, Lot 827; and finally, whether the Claimant is entitled to the remedies sought in the claim.

Whether the alleged verbal agreement for the sale of PN 191-052-193, Lot 827 is valid and enforceable under the *Land and Titles Act*

13. In this proceeding, it is not disputed that Lot 827, the land in question, is a registered land. The Claimant's late father, Mr. Ferris David, purported to sell Lot 827, together with the four-bedroom skeleton house erected upon it, to the Defendant in 1998. At all material times, however, the perpetual estate in Lot 827 was and remains under the Commissioner of Lands, who holds the ultimate legal title to the property

under the *Land and Titles Act*. Neither the Claimant's late father nor the Defendant was ever the registered proprietor of a FTE in respect of Lot 827. The Claimant's evidence, which was not contested, established that the Claimant's father was merely the holder of the TOL over Lot 827 at the time of the purported sale. As such, it is therefore necessary to correct the misconception that a TOL confers ownership. A TOL does not vest any proprietary rights in land to a person. It merely grants permission to occupy and use the public land for a limited period under specified conditions. Hence, it cannot be transferred, sold, or otherwise used to convey legal ownership to another person.

14. Both parties in this proceeding have agreed that the alleged transaction between the Claimant's late father and the Defendant for the sale of Lot 827 and the incomplete house was concluded by a verbal agreement. Such an arrangement, as recognised under the *Land and Titles Act*, is legally ineffective and void in the context of a registered land.
15. Section 117(2) of the *Land and Titles Act* provides in mandatory terms that any dealing, transfer, or disposition of an interest in registered land must be effected by way of a written agreement. The statutory requirement is clear and unequivocal. As Chetwynd J observed in *Perogolo v Laugana* [2011] SBHC 103 at paragraph 17: "*In that regard section 117(2) of the Land and Titles Act is relevant. Any agreement for sale or transfer must be in writing.*" Similarly, in *Isihanua v Kohia* [2023] SBHC 28, Faulkner DCJ stated at paragraph 18: "*Section 117(2) of the Land and Titles Act makes it clear that any verbal contract for the purchase of registered land is not enforceable.*" These authorities highlight the principle that any purported sale or transfer of Lot 827 by oral agreement, without compliance with the statutory requirement of writing under section 117(2) of the *Land and Titles Act*, is incapable of conferring any proprietary rights to any of the parties herein.
16. The Court must therefore determine whether the alleged verbal agreement between the late Mr. Ferris David and the Defendant can be recognized or enforced in law. On the plain wording of section 117(2) of the *Land and Titles Act*, the answer is in the negative. The agreement entered into in 1998, or any subsequent oral arrangements, being unwritten, fall foul of section 117(2) of the *Land and Titles Act* and cannot operate to transfer or create any legal interest in Lot 827. At most, such an arrangement may be regarded as an informal understanding lacking in enforceability between the parties. However, informal understandings or arrangements cannot displace the statutory requirements nor confer any enforceable proprietary rights in a registered land.

17. The legal position is further reinforced by the principle that fixtures, including buildings permanently affixed to land, form part of the land itself. The four-bedroom skeleton house erected on Lot 827 is inseparable from the land and cannot be treated as a distinct chattel capable of independent sale. Accordingly, any purported sale of the house, absent a valid transfer of the land itself, is legally ineffective. The Claimant and even the Defendant's reliance on the verbal agreement as a basis for ownership of either the land or the house must therefore fail.

Whether the terms of the alleged verbal agreement for the sale of the four-bedroom skeleton house are sufficiently certain and supported by credible evidence to sustain the Claimant's claim for the balance of the purchase price

18. Even if there was part performance of the verbal agreement by the parties in good faith, such reliance cannot overcome the statutory requirement of the need for the agreement to be in writing unless the circumstances fall squarely within the exception recognised under section 117(2) of the *Land and Titles Act*. That proviso allows an intending purchaser or lessee who has performed, or is willing to perform, his or her part of a contract to rely on part performance where: (i) he or she has taken possession of the property or any part thereof; or (ii) being already in possession, continues in possession and has done some other act in furtherance of the contract. However, even if the possession or acts of part performance were established by the parties, the certainty of the terms of the alleged agreement remains a critical issue. Without the clear and definite terms of the oral agreement, the Court cannot enforce an arrangement that is vague or uncertain.

19. The Claimant's claim, filed on 22 July 2019, essentially seeks a number of remedies, essentially to compel the Defendant to pay the outstanding balance of \$80,000 for the purported sale of Lot 827 and the incomplete house, based on the verbal agreement said to have been entered into between the Claimant's father and the Defendant. Upon the Court's close examination of the pleadings, it is apparent that the Claimant has not adequately set out the particulars of the alleged contract. The pleadings fail to specify the essential elements such as the identity of the parties, the precise subject matter, the agreed terms, the date, and the place of the agreement, all of which are necessary for the Court to ascertain the existence and enforceability of a contract.

20. While an oral contract is recognised at common law and may be enforceable subject to statutory limitations, such as those imposed by the *Land and Titles Act*, it must nonetheless be sufficiently pleaded and proven. The Court must be able to identify with precision what the parties intended at the time of

contracting. This requirement is particularly important in a case involving an oral agreement, where ambiguity and uncertainty can easily undermine its validity and enforceability. In the present case, the absence of clear pleadings and evidence as to the essential terms of the alleged contract renders the Claimant's case deficient.

21. In *Naki v AGC (Pacific) Ltd* (2006) N5015, at paragraph 14, Canning J emphasised the factors necessary to prove an oral agreement:

"If a person submits that there was a contract – especially if an oral contract is relied on – the court must be able to identify the 'who, what, when, where and would' of the contract. That is:

- *Who are the parties?*
- *What is the subject of the contract and what are its terms?*
- *When was the contract entered into? A particular date must be identified.*
- *Where was the contract entered into? This is vital if the contract is oral.*
- *Would anyone be able to sue on the basis of it?"*

22. Further guidance can be drawn from *Douglas v Mikhael* [2023] NSWSC, at paragraph 18, where the Court highlighted several important considerations for parties seeking to rely on an oral contract. First, the party asserting the existence of a verbal agreement bears the onus of proving it. Second, the relevant conversation must be established to the reasonable satisfaction of the Court, which requires the Court to feel an *"actual persuasion"* of its occurrence. Third, the Court must be satisfied that any consensus reached was sufficiently certain to form a binding contract and that the parties intended it to be legally enforceable. Fourth, the history of the relationship between the parties is relevant to assessing whether such intention existed. Finally, the conduct of the parties both prior to and at the time of the alleged agreement, as well as their subsequent conduct, may be taken into account.

23. These principles highlight the evidential burden resting on the Claimant in this case. Without clear proof of the conversation, certainty of terms, and demonstrable intention of the parties to create legal relations, the alleged oral agreement cannot be recognised as a binding contract capable of conferring proprietary rights in Lot 827 or the house erected upon it.

24. The unfortunate reality of the Claimant's case is that the principal party to the purported verbal agreement, namely the Claimant's late father, Mr. Ferris David, passed away before the commencement of this proceeding. It was Mr. David who was a party to the agreement, not his son, the Claimant herein.

The Claimant in this case seeks to enforce an arrangement to which he was not a direct party. Compounding this difficulty is the absence of any independent eyewitness evidence who would give material evidence to the formation and terms of the alleged verbal agreement in 1998, or to any subsequent oral agreements said to have been made between late Ferris David and the Defendant. As a result of Mr. David's passing, it is extremely difficult for the Claimant to prove with certainty the exact terms, conditions, and intentions underpinning the alleged contract.

25. The Claimant confines his case to the unpaid sum of \$80,000, alleged to be the outstanding balance for the land in Lot 827 and the incomplete house situated thereon. The Defendant, however, contends that he was offered by the Claimant's late father to purchase the three parcels of TOL, namely Lots 827, 914, and 915, for the sum of \$100,000, which he asserts was fully paid to the Claimant's late father in 2001 in Green Valley. These varying accounts are contradictory, and the Court cannot accept both as true. In light of these conflicting accounts, and given that the agreement relied upon by the Claimant was verbal in nature, the Court is left in a state of uncertainty as to which version of the accounts ought to be believed. However, it is well established law that the burden rests upon the Claimant to prove his case on the balance of probabilities.

26. The Claimant's case would have been best prosecuted while Mr. Ferris David was still alive, as he could have provided material evidence regarding the principal terms and conditions of the verbal agreement entered into between himself and the Defendant. In light of Mr. David's passing, this Court is left with grave uncertainty as to whether the sum of \$80,000 constituted the outstanding balance of the purchase price for Lot 827 alone, or whether it included Lots 914 and 915 as well, or whether it had already been discharged by the subsequent payments made at Green Valley by the Defendant, which included the payment of 43 shell monies valued at \$1,500 each, a video set worth \$5,000, and \$5,500 in cash. The Defendant, as a party to the agreement, has consistently denied the existence of any unpaid balance, even when the Claimant confines his claim solely to Lot 827 and the incomplete house. Ultimately, the evidence relied upon by the Claimant to establish these material facts concerning the terms of the oral contract, and to demonstrate any outstanding debt owed by the Defendant in respect of Lot 827, is uncertain, confusing, and unreliable. As earlier stated, the passing of the Claimant's father, who was the material witness to the Claimant's case, renders the entirety of the Claimant's evidence on this aspect hearsay and therefore inadmissible. This omission raises a fundamental issue of certainty in the contractual terms of the agreement, an issue which operates fatally against the Claimant's case and undermines the very foundation upon which the claim is advanced.

27. In *Dalgro Solomon Islands Ltd v KK Real Estate Proprietor Ltd* [2008] SBHC 90, Faulkner J stated at page 3: “In any contract the terms must be certain. If there is any uncertainty in the terms, the court will declare the contract void for reason of uncertainty.” Applying this principle to the present case and taking into account the absence of any direct testimony from the principal contracting party from the part of the Claimant, coupled with the lack of clear evidence as to the precise terms of the alleged agreement, all these unfortunately render the Claimant’s case untenable. The Claimant has not discharged the evidential burden required to establish the existence of a binding and enforceable contract. The Court is therefore left without a reliable basis to conclude that the purported verbal agreement as conferring any proprietary rights in Lot 827 or the house erected upon it to the Claimant has been breached.

Whether the parties, being the non-registered Fixed Term Estate holders of the estate in Lot 827, have the requisite standing to assert any proprietary rights in the absence of the Commissioner of Lands, who remains the perpetual estate holder of the PN 191-052-193, Lot 827

28. The Court must next consider the legal standing of the parties to this proceeding to claim any proprietary rights in respect of Lot 827. As the evidence overwhelmingly establishes before this Court that neither the Claimant nor the Defendant holds a FTE or any registered title over the property. The perpetual estate in Lot 827 is vested in the Commissioner of Lands, who retains the ultimate legal ownership and authority of Lot 827 under the *Land and Titles Act*.

29. The registered land tenure system of Solomon Islands recognizes only the perpetual estate holder and those granted derivative estates, such as Fixed Term Estates, as having legally enforceable interests in land. Individuals who are not registered holders of such estates cannot, in law, assert any proprietary rights against another, since their occupation or use of the land derives solely from the authority of the Commissioner of Lands.

30. In this proceeding, the Commissioner of Lands as the perpetual estate holder of the land has not been joined as a party. This omission is significant. As the perpetual estate holder, the Commissioner is the only authority legally empowered to grant or withhold rights of occupation, use, or development over Lot 827. In this proceeding, the Court is faced with adjudicating the competing claims between the Claimant and the Defendant, both of whom lack registered title to Lot 827.

31. Although both parties have claimed to receive an offer in respect of Lot 827, such an offer does not, in itself, operate to transfer or vest a legal title to the land in either party. The mere existence of an offer is

insufficient to confer any ownership rights or establish proprietary interests in Lot 827. The title to land can only be conveyed through compliance with the formal requirements under the *Land and Titles Act*, including proper execution of a transfer instrument, registration with the relevant land authority, and fulfilment of any statutory requirements required for the grant of title. Until these legal processes are completed, neither party can claim ownership of Lot 827 by virtue of the offer alone.

32. The Court therefore concludes that neither party has the requisite standing to assert any proprietary rights in Lot 827. Their claims, whether based on alleged agreements or occupation, cannot override the statutory framework which vests the ownership of the disputed property in the Commissioner of Lands. Any relief sought that purports to declare ownership, transfer title, or confer an estate in Lot 827 would be legally ineffective in the absence of the Commissioner of Lands.

33. Accordingly, the Court finds that the proceeding, in its present form, suffers from a fundamental defect. The parties before the Court are not registered holders of any legal estate in Lot 827. Moreover, the Commissioner of Lands, who remains the perpetual estate holder of the property, has not been joined as a necessary party to the proceeding. The absence of the Commissioner is fatal to the Claimant's case, as it prevents the Court from adjudicating upon the substantive relief sought, which directly concerns questions of ownership, title, and entitlement to the disputed land. Without the participation of the Commissioner of Lands, any determination by the Court would be incomplete, ineffective, and incapable of binding the true estate holder.

Whether the Claimant is entitled to the remedies sought in the claim

34. Having considered the foregoing issues, the next critical issue is whether the Claimant is entitled to the remedies sought. The Claimant seeks declarations that the four-bedroom house on Lot 827 is the family property of the late Mr. Ferris David, that the Defendant failed to discharge the agreed purchase price, and that the Fixed Term Estate in the property should not be granted to the Defendant but instead to the Claimant as administrator of the estate.

35. The Court has already found that the alleged verbal agreement of 1998 is void and unenforceable under section 117(2) of the *Land and Titles Act*, as it was not reduced to writing. The Court has further found that the terms of the alleged agreement are uncertain and unsupported by credible and admissible evidence, and that neither party has legal standing to assert any proprietary rights in Lot 827 in the absence of the Commissioner of Lands, who remains the perpetual estate holder.

36. In light of these findings, the remedies sought by the Claimant cannot be granted. The Court cannot declare the ownership or entitlement to a FTE in Lot 827 in favour of either party, as such rights can only be conferred by the Commissioner of Lands in accordance with the *Land and Titles Act*. Nor can the Court order that the offer letter for Lot 827 be issued to the Claimant, since the Commissioner of Lands, who alone has authority to grant such rights, is not a party to this proceeding.
37. The Court is mindful of the Claimant's position as administrator of his late father's estate and of the family's continued interest in the property. However, the remedies sought must be grounded in law. The statutory requirements governing the registered land in Solomon Islands are clear, that is, the Court cannot override them, by granting any relief that would effectively transfer any proprietary rights without the participation of the Commissioner of Lands.
38. Accordingly, the Court finds that the Claimant is not entitled to the remedies sought in the claim. The proceeding fails to establish a valid and enforceable agreement. It also fails to prove the certainty of the terms of the agreement pertaining to the purchase of the property, and fails to demonstrate the legal standing of the parties to assert any proprietary rights in Lot 827. The claim must therefore be dismissed. There will be no orders as to costs as the parties to this proceeding shall bear their own costs.

Orders of the Court

- 1. The Claimant's claim is dismissed in its entirety.**
- 2. Parties to bear own costs.**

