

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

Civil Appeal Case No. 16 of 2013

**BETWEEN: NATIONAL HOUSING CORPORATION**

Appellant

**AND: KAMEN OKAU**

Respondent

**Coram:** *Hon. Chief Justice Vincent Lunabek  
Hon. Justice John von Doussa  
Hon. Justice Raynor Asher  
Hon. Justice Oliver Saksak  
Hon. Justice Daniel Fatiaki  
Hon. Justice Robert Spear  
Hon. Justice Dudley Aru*

**Counsel:** *Mr. Robin Tom Kapapa for the Appellant  
Mrs. Mary Grace Nari for the Respondent*

**Hearing:** 16 July 2013

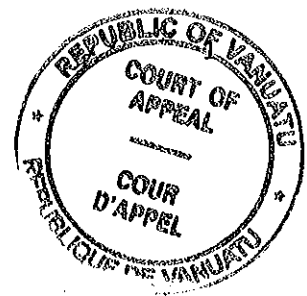
**Judgment:** 26 July 2013

---

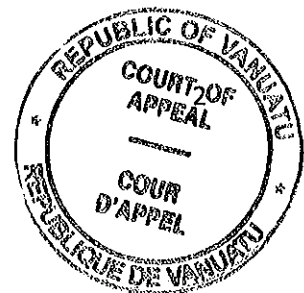
**JUDGMENT**

---

1. This is an appeal by the National Housing Corporation ("*the NHC*") instituted without leave against a decision of the Supreme Court made on 13 May 2013. The Supreme Court was exercising its appellate jurisdiction hearing an appeal from the Magistrates' Court. Section 30(4) of the ***Judicial Services and Courts Act*** [Cap 270] provides that a further appeal to the Court of Appeal is only permitted with leave and only on a question of law. The appellant therefore needs leave and must identify the question or questions of law raised by the proposed appeal.
2. We consider that there are potentially two questions of law raised on the papers before the Court. The first is whether the Magistrates' Court had jurisdiction to hear and determine the claim made in the proceedings before it. The second, if the answer to the first question is in the affirmative, concerns the proper construction of an agreement dated 12 April 2006 between NHC and Janet Okau (the purchaser) who was the mother of the respondent Kamen Okau (the Agreement). Having heard the parties, we are satisfied that leave to appeal should be granted.



3. The essential background facts are not in dispute. Prior to 2006 the purchaser had been occupying premises under a contract of some sort with NHC. In 2006 she was moved by NHC to a different property, and the Agreement was signed. The terms of the Agreement provide for the purchase of the leasehold interest in Lease Title No 11/OH32/093 by the purchaser from NHC. The Agreement required the payment of a deposit and thereafter monthly installments of VT5,000. The Agreement provided that on the payment of the total purchase price completion and the passing of possession would occur. In the meantime whilst the installments continued the Agreement provided for only very limited rights of access by the purchaser for defined purposes that did not include residing on the property.
4. However, it is common ground that the purchaser with the consent of NHC moved onto the property and erected shelter in which she lived. She was living there with her son, the respondent, when she died on 27 November 2010. Thereafter the respondent continued to reside on the property.
5. After the purchaser's death the installment payments fell into arrears. At one point NHC informed the respondent that he could acquire the leasehold interest by paying out the balance then due under the Agreement within a very short and unreasonable time which NHC stipulated. The respondent was not able to meet the time limit, and when he had arranged finance with a bank, NHC refused to accept the money and purported to terminate the Agreement.
6. Whether NHC was entitled to terminate the Agreement, having regard to its terms, is contested, and will turn on the proper construction of the Agreement that in important respects is ambiguous. That is the question of law that will arise if the Magistrates' Court had jurisdiction and, in turn, the Supreme Court and now this Court has jurisdiction to consider it.
7. In the Magistrates' Court NHC sought the following orders against the respondent:
  1. *An eviction order against the Defendant within 14 days;*
  2. *An order for mesne profit of VT500, 000;*
  3. *An order for loss and damages of VT500, 000;*
  4. *Any other orders the Court deems fit."*
8. It was pleaded that as the respondent had failed to complete the purchase under the Agreement he had no right to be on the property, and was a trespasser who had failed to leave the property when notified to do so.
9. NHC applied for summary judgment, which the Magistrates' Court granted. An order for eviction was made.



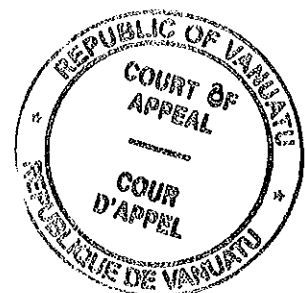
10. The respondent appealed to the Supreme Court which set aside the eviction order on the ground that the Magistrates' Court did not have jurisdiction. It so decided on two grounds. The Supreme Court considered that the facts raised a question as to the right of succession of the respondent to his mother's interest under the Agreement with NHC, and that was a matter of succession within the exclusive jurisdiction of the Supreme Court. Further, the proceedings concerned a registered leasehold interest and the Magistrates' Court lacked jurisdiction to deal with any matter or issue under the Land Leases Act. **Peter Kapen & Ors v DD Investments Limited** Civil Appeal Case (from the Magistrates Court) No 7 of 2012 was cited for this proposition.
11. The Jurisdiction of the Magistrates' Court is provided for in the Magistrates' Court (Civil Jurisdiction) Act [CAP 130] (the Act). Section 1 provides:-

***"1. Jurisdiction of the Magistrates' Court in civil matters***

*The Magistrates' Court established pursuant to section 12 of the Judicial Services and Courts Act [Cap. 270] shall have jurisdiction to try all civil proceedings –*

- (a) in which the amount claimed or the value of the subject matter does not exceed VT 1,000,000 except claims relating to permanent physical damage to a person;*
- (b) relating to disputes between landlords and their tenants where there is no claim for damages or compensation or if there is such a claim if the value does not exceed VT 2,000,000;*
- (c) subject to such directions as may be made by the Chief Justice those relating to undefended suits for divorce or judicial separation; or*
- (d) relating to claims made under the –*
  - (i) Maintenance of Family Act [Cap. 42]*
  - (ii) Maintenance of Children Act [Cap. 46];*

*or any other law providing for the maintenance of children, mothers of children or wives by the fathers of children or husbands as the case may be where the annual sum claimed does not exceed VT 1,200,000."*

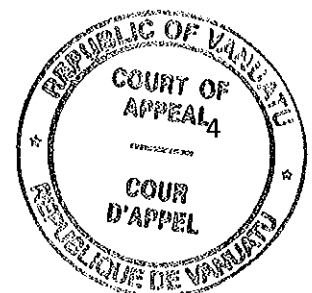


12. Section 2 places certain restrictions on the jurisdiction of the Magistrates' Court in civil matters:

***"2. Restriction on jurisdiction of the Magistrates' Court in civil matters***

*The Magistrates' Court shall not have jurisdiction to try a suit concerning wardship, guardianship of minors and persons of unsound mind, interdiction, appointment of a conseil judiciaire, adoption, civil status, succession, wills, bankruptcy, insolvency or liquidation of corporate bodies."*

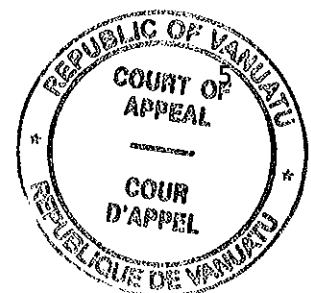
13. The issue about succession arose as the respondent pleaded in the Magistrates' Court that he was applying for probate of his mother's property. A grant of probate or letters of administration would have perfected his status to claim as a beneficiary of his mother's estate, and in turn to claim as a successor in title to his interest under the Agreement. The Magistrate's Court undoubtedly has no jurisdiction to try a suit concerning succession: s. 2 of the Act.
14. In our opinion the claim in the Magistrates Court did not turn on any issue about succession, and was not a suit about succession. The possible entitlement of the respondent to a grant of probate or letters of administration of his mother's estate was quite separate from the issue before the Magistrates' Court. It would have been open to the Magistrates' Court if it otherwise had jurisdiction to adjourn the eviction proceedings so that the respondent could pursue a grant in the Probate jurisdiction of the Supreme Court, but this did not make the matter in the Magistrates' Court a succession matter. The matter before the Magistrates Court was a straightforward claim for an eviction order.
15. A claim for an eviction order is a civil matter. If the Magistrates' Court had jurisdiction it would have to arise under either s. 1 (a) or 1 (b) of the Act. The other paragraphs of s.1 plainly do not have application.
16. We do not consider the claim for an eviction order by NHC was a claim relating to a dispute between landlord and the tenant. Even though NHC had become the de facto landlord of the deceased by allowing her to reside on the property, there was never any tenancy agreement existing between NHC and the respondent.
17. On NHC's case, at least once the Agreement was terminated, the respondent had no right whatsoever to be there, and the claim was being advanced as a straightforward case of trespass by the respondent.



18. The question therefore is whether the Magistrates' Court had jurisdiction under s. 1 (a) as a civil proceeding "*in which the amount claimed or the value of the subject matter does not exceed VT 1,000,000...*"
19. The claim for an order for eviction was not a money claim. What was claimed was possession of the leasehold land of which NHC was the registered lessee. Did the subject matter of the claim exceed VT1,000,000?
20. The Agreement provided for a purchase price of VT1,138,000, but that was back in 2006. There was evidence before the court of the current value of the leasehold title in the form of a valuation certificate from Tahi Consultant and Real Estate Services dated 7 October 2011 which assessed the value at that date to be VT1,500,000.
21. **Angle v Joy** [1911] KB 666 considered the jurisdiction of the County Court under legislation which gave the County Court jurisdiction in an action for the cancellation of any agreement for lease of any property "where the value of the property shall not exceed the sum of £500". The plaintiff had agreed to take a lease for a term of years. The court considered whether the "*value of the property*" was the value of the leasehold interest, the value of the plaintiff's somewhat greater interest in the property or the value of the freehold. On the first two possible bases the value was less than £500, but the freehold value exceeded that amount. It was held that the freehold value was the value that determined jurisdiction. The court said at 672:

*"Mr Haden contended that in the case of a lease "the value of the property" must mean the value of the interest conferred by the lease and are not the value of the lessor's interest. Now in the case of a sale or purchase the Legislature seems to have contemplated as the measure of the County Court's jurisdiction the value of the interest which passes on the sale or purchase, for in that case the purchase money is taken as the measure; but in the case of a lease the consideration is not taken as the standard; nothing is said as to the rent reserved or the value of the covenants to be performed or about any premium to be paid by the lessee. The only thing to be considered is the value of the property."*

22. In this case what was in issue was the leasehold title for the property, not a freehold title. It is not possible in the case of a leasehold title to argue that the value is something less than the value of the leasehold because a lessee has no residual interest in the title that can be valued separately from the leasehold interest.
23. In our opinion in a case where an order for possession or eviction is sought by the lessor the value of the subject matter before the court is the value of



the leasehold interest. In this case that value was clearly above VT1,000,000. The Magistrates Court therefore did not have jurisdiction.

24. In other cases, where the value of the subject matter is uncertain the provisions of s.4 of the Act will be important That section provides:

***"4. Decisions on value***

*(1) Where the value of property or a claim cannot be precisely given a plaintiff may give an estimated value in his plaint.*

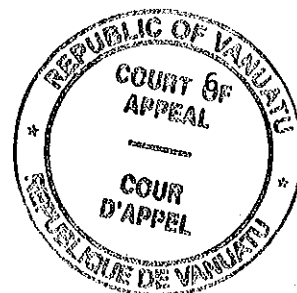
*(2) When an estimated value is given in accordance with subsection (1) the court shall try the question of value as a preliminary issue.*

*(3) When the court has heard the evidence and representations on value under subsection (2) it shall determine whether or not the claim comes within its jurisdiction and if it decides that it does not, shall... refer the claim to the Supreme Court."*

25. In the Supreme Court reference was made to ***Peter Kapen & Ors v DD Investments Limited*** Civil Appeal Case (from the Magistrates Court) No 7 of 2012. In our opinion that decision does not support the broad proposition that the Magistrates Court lacks jurisdiction to deal with any matter or issue under the Land Leases Act, even an application for possession or eviction from leasehold land. The relevant passage in the judgment of the Chief Justice in that case is as follows:

*"At the outset, the subject matter land is a leasehold land administered and managed under the provisions of the Land Leases Act [CAP 163]. The Magistrates Court has no jurisdiction to deal with any matter or issues under the Land Leases Act. Further, although a Magistrate has general powers to issue eviction orders, a Magistrate is not empowered to issue eviction orders in claims for which the substantive cause of action is beyond the jurisdiction of the Magistrates Court."*

26. That passage has to be understood in the context of the matter then before the court. The defence to the claim for eviction was that the defendant had a right to possession under s. 17 (g) of the Land Leases Act. In other words, the claimant did not have a clear title as lessee and there was an issue whether the defendant had an overriding interest that qualified the title that the claimant was seeking to assert.



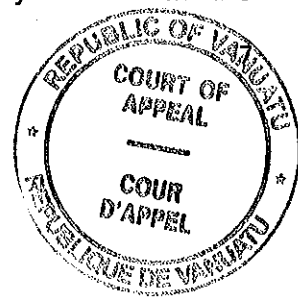
27. The statement of the Chief Justice was entirely consistent with the observations of the Court of Appeal in **Remy v Palaud [2005] VUCA 23** which raised issues similar to those in this current appeal. The claim was instituted in the Magistrates Court claiming eviction and mesne profits. Having heard the matter, eviction orders were issued. On appeal, the Supreme Court held that the Magistrates' Court had no jurisdiction to deal with a matter in relation to the legality of lease titles. On further appeal, the Court of Appeal said:

*"We are of the view that his lordship misapprehended the nature of the claim when he held that the court below had no jurisdiction to deal with the matter in relation to the legality of leasehold titles. The claim did not challenge the title. It was a claim for an eviction order, mesne profits and interests. The Appellant before the Magistrate Court had to establish that he had a good title to the said leasehold property in order to succeed in his claim.*

*... the Magistrate in the first hearing had jurisdiction to deal with a claim for an eviction order when there is no counterclaim challenging the legality of the leasehold title under section 100 of the Land Leases Act.*

*If there had been such a counterclaim, the Magistrate court would have had to stay the claim and transfer the counterclaim to the Supreme Court to deal with as the challenge would then be as to the legality of land leasehold title under section 100 of the Land Leases Act which is beyond the jurisdiction of the Magistrate Court."*

28. The Magistrates' Court does have jurisdiction to determine claims for possession or eviction relating to registered leasehold land, but only where the title of the claimant lessee is not put in dispute, and only where the value of the leasehold is less than VT1,000,000.
29. We note that this monetary limit was enacted in 1994, and Parliament may wish to consider whether the monetary limits in ss.1 (a) and 1 (b) of the Act should be increased.
30. In our opinion, for reasons which differ from those of the Supreme Court, we consider the decision of the Supreme Court now under appeal was correct. The Magistrates Court did not have jurisdiction because the value of the leasehold at VT1,500,000 exceeded VT1,000,000.
31. In light of this conclusion it is neither necessary nor appropriate that we should consider in detail the arguments posed by the facts of this case about the construction of the Agreement. We simply note that the

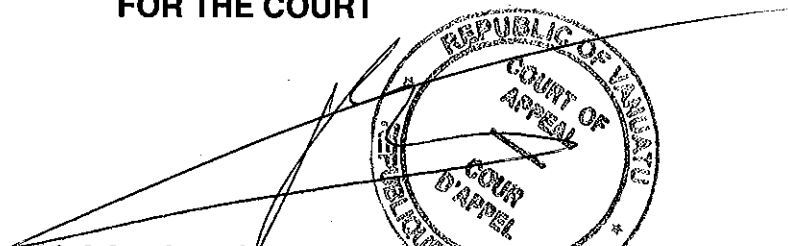


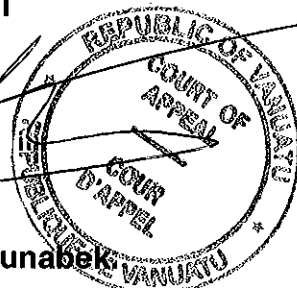
simplistic claim for an order for eviction made in the Magistrates Court by NHC encounters difficulties under the terms of the Agreement that specifically recognizes in clause 1.2 that the benefits of the Agreement extend to the executors, administrators and permitted assigns of the deceased, and under the terms that require due notice under the various clauses that permit termination which do not seem to have been observed in this instance.

32. For these reasons the appeal is dismissed. The appellant must pay the respondents costs of this appeal on the standard basis.

**DATED the 26<sup>th</sup> day of July 2013**

**FOR THE COURT**

  
**Chief Justice Vincent Lunabe**



The seal is circular with the text "REPUBLIC OF VANUATU" around the top edge and "COURT OF APPEAL" and "COUR D'APPEL" in the center. The seal is partially obscured by the signature lines.