

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

Civil Appeal
Case No. 20/16 CoA/CIVA

BETWEEN: TONY KANEGAI
Appellant

AND: THE REPUBLIC OF VANUATU & OTHERS
First Respondent

AND: JEAN MARC PIERRE
Second Respondent

**AND: VANUATU LIVESTOCK DEVELOPMENT
COMPANY LIMITED**
Third Respondent

AND: SINO-VAN FISHERIES LIMITED
Fourth Respondent

Date of Hearing: 17 February 2020

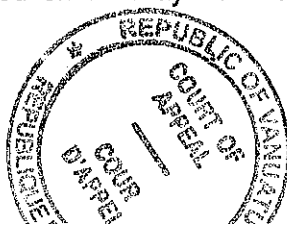
Before: Justice J.W. Hansen
Justice R. C. White
Justice D. Aru
Justice G.A. Andrée Wiltens
Justice V. M. Trief

In Attendance: Silas C. Hakwa for the Appellant
F. Gilu for the First and Second Respondents
J. Malcolm for the Third Respondents

Date of Decision: 20 February 2020

JUDGMENT

1. This is an appeal that can be disposed of quite shortly.
2. In the second amended statement of claim filed on 7th May 2014 the appellant sought, where relevant the following relief:



"63. an order that the second defendant forthwith rectify the registers in relation to lease title No. 12/0633/1081, lease title No. 12/0633/1112; sub-lease title No. 12/0633/1081A and sub-lease title No. 12/0633/1081B by cancelling the registration of these leases and sub-leases;

64. An order that the second defendant forthwith re-instates lease title No. 12/0633/205 onto the lease register which he maintains."

The relief then seeks damages and costs.

3. The appellant claims he has an interest in leasehold property described as lease title number 12/0633/1081 which is situated at Blacksands and Salili on Efate. He says his residential home is currently located on part of the land and he's been living there since he was invited in 1993 by the late Pastor George Kano Chichirua and the late Kaltoi Chichirua to enter upon the land and reside and develop it.
4. George and Kaltoi Chichirua (deceased) were joint lessees of the original lease 12/063/205 set out above. They were two senior members of the family Chichirua of Ifira Tenuku that family claiming custom ownership of the land comprising the property. That customary ownership was in dispute at all relevant times.
5. In 2005 lease 12/063/205 set out above was surrendered and the other leases and sub-leases mentioned above in para 2 came into existence.
6. The appellant claims to have a right protected by s.17 (g) of the Land Leases Act [CAP. 163]. S.17 deals with overriding interests. Where relevant for this appeal, it reads:

"Unless the contrary is expressed in the register, the proprietor of the registered lease shall hold such lease subject to such of the following overriding liabilities, rights and interests as may, for the time being, subsist and affect the same, without there being noted on the register –

(g) the rights of a person in actual occupation of land save where enquiry is made of such person and the rights are not disclosed;"

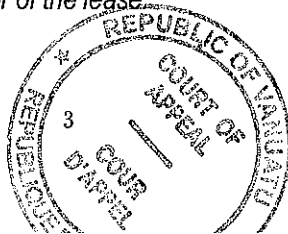
7. Mr Hakwa submitted that the appellant was a person in actual occupation having being invited to reside and develop the land by the late George and Kaltoi Chichirua. If the appellant does enjoy the rights guaranteed by s.17 (g) then the leases set out subsequent to the surrender of lease 12/063/205 are subject to his interests. These proceedings had been brought although no eviction notice has been issued or other



formal request made of the appellant to remove him from the land. We know that the third respondent in particular has no concerns with his presence because this was conceded by Mr Malcolm. No other lessee party took part in the appeal. Normally proceedings of this sort are only brought when a challenge is made to the claim of right of occupation. It is almost as if these proceedings are somehow seen by the appellant as a pre-emptive strike.

8. However, there are two matters that cause immediate difficulties for the appellants.
9. The first is that it is well established that to obtain rights of occupancy the appellant required the consent of all customary owners. It is common ground in this case that at all relevant times there was a dispute as to the customary owners of the property in question. If the appellant had obtained the consent of all those disputing parties he would have obtained a right protected by s.17 (g). But his consent was only from two of the competing customary owners. So he cannot claim a right by consent of all customary owners. Mr Hakwa accepted not all competing customary owners had agreed to the appellant occupying the land.
10. Secondly, pursuant to s.8 of the Land Reform Act [CAP. 123] the Minister of Lands has general management and control over all land where there is disputed customary ownership. He is given power by ss. (2) to conduct transactions, including the granting of leases in the interests of, and on behalf, of the customary owners. Mr Hakwa freely conceded that he did not have the Minister's consent.
11. Mr Hakwa submitted he had one point. That was the appellant was invited to occupy in 1993 by Pastor George and Kaltoi Chichirua. Otherwise Mr Hakwa was unable to advance any submission as to how he could avoid the difficulties confronted by the appellant who did not have the consent of all customary owners or of the Minister.
12. S.17 (g) of the Land Leases Act was considered by this Court in *Williams v. Williams 2004 VUCA 16*. At page 8 of that decision the Court stated:-

"Section 17 (g) operates in respect of 'rights' that is recognised by the law of Vanuatu. A person in actual occupation who is a trespasser will have no 'rights' which are protected by the provision. A right may arise under custom law, or it might be a right that derives from and through the proprietor of a registered lease or the predecessor in title of the lease. The nature of the rights asserted in this case by the appellants are the rights which they say derive from the Ezra William when he was the registered proprietor of the lease."



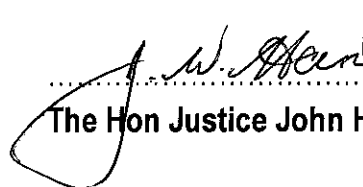
13. These two insurmountable matters mean that the appellant has not established the necessary right of occupation.
14. The appellant faces further problems. Mr Hakwa has not pointed to any fraud or mistake that was made leading to the surrender of lease 12/063/250 and its subsequent replacement by the new leases and subleases. In the absence of proof of any fraud or mistake the Court has no power to invoke the provisions of s.100 to rectify the register.
15. In any event the appellant was put on the land on his own evidence by Pastor George Kano Chichirua and Kaltoi Chichirua in 1983. The ownership of the land was still in dispute. He is not one of the disputing owners. He was merely occupying the land. On that basis, he has no right to claim rectification and the claim was always bound to fail. The appellant should not have launched proceedings until such time as someone challenged his right of occupation.
16. These matter dispose of the appeal and dismiss it. It is unnecessary to address the other matters contained in the Notice of Appeal. For the same reasons the award of indemnity costs in the Court below was correct. The respondents are entitled to standard costs of the appeal.

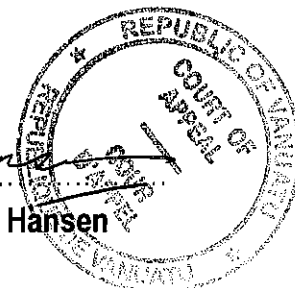
Orders: (i). The appeal is dismissed.

(ii) Costs to the respondents to be taxed if not agreed.

Dated at Port Vila this 20th day of February 2020

BY THE COURT


The Hon Justice John Hansen



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