

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

CIVIL CASE No.183 OF 2006
CIVIL CASE No. 56 of 2006

CIVIL CASE NO. 183 of 2006

BETWEEN: IFIRA TRUSTEES LIMITED of Port
Vila, Efate
Claimant

AND: KALPOKOR KALSAKAU and
others
Defendants

CIVIL CASE 58 of 2006

BETWEEN: NARU KALPEAU KALSAKAU
Claimant

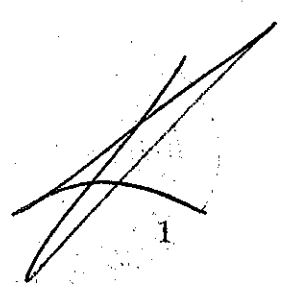
AND: FAMILY KALSAKAU WARAKALI
Represented by IAN KALSAKAU,
JOSEPH KALSAKAU, STEPHEN
KALSAKAU, JOSHUA KALSAKAU
First Defendants

AND: KALPOKOR KALSAKAU, EPHRAIM
KALSAKAU, YOAN KALSAKAU &
SERETANGI KALSAKAU
Second Defendants

AND: THE GOVERNMENT OF VANUATU
Third Defendant

Mr James Tari for the Ifira Trustees Limited
Mr Edward Nalyal for the Family Kalsakau
Mr Stephen Joel for Naru Kalsakau – not present
Mr Tom Joe Botleng of the State Law Office for the Government

JUDGMENT



This is an application by Family Kalsakau, represented by Mr Edward Nalyal, seeking to strike out the Supreme Court claim of Ifira Trustee Limited dated 9 October 2006 and refiled on 11 July 2007 (after the fire of 7 June 2007) on the grounds of the doctrine of res judicata.

In CC 183 OF 2006, Ifira Trustees Limited seeks the following relief:-

- (1) An order for rectification of the registry by cancelling the registration of lease Title 12/0911/332 pursuant to Section 100 (1) of the Land Leases Act [CAP 163];
- (2) An Order that the Second Defendant cancel the registration of lease title 12/0911/332;
- (3) The First Defendant to pay the costs of the Applicants in these proceedings;

All parties were present with their counsel during the hearing of this case, except, Mr Naru Kalsakau and his counsel Mr Joel Tari.

Counsel for the Government, Mr Tom Joe, informs the Court that he has no submissions to make on behalf of his client but he has an application which is yet to be filed.

The parties concede that the resolution of the application in 183 of 2006 would not affect the outcome of CC 56 of 2006. The Court proceeds to hear the application of Family Kalsakau in the absence of Mr Joel Tari and his client, Mr Naru Kalpeau Kalsakau, Claimant in CC 56 of 2006.

The striking out application is more directly about CC 183 of 2006.

The grounds of the application to strike out the claim are, among other matters, that the issues raised in CC 183 of 2006 are already dealt with by the Supreme

Court in consolidating proceedings in CC116 of 2005 and CC 154 of 2005. There are, thus, res judicata.

In CC 116 of 2005 the Ifira Trustees Limited issued a claim for Judicial Review seeking an order, that the Director of Lands register lease title No. 12/0911/332 in the name of Ifira Trustees Limited.

In CC154 of 2005, a lease has been issued by the Minister responsible for lands. The lease has not been registered in the land lease register.

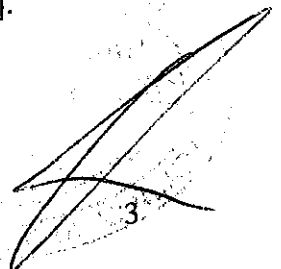
In CC 116 of 2005, Family Kalsakau have followed all the appropriate steps with approvals from relevant authorities. However, the lease was not issued by the Minister and thus no lease was registered in the name of the Family Kalsakau, when the matters were before the Supreme Court.

The Supreme Court judgment and findings of 2nd March 2006 were confirmed by the Judgement of the Court of Appeal of 6 October 2006.

At the time of the appeal, Mr Malcolm advised the Court of Appeal that since the Supreme Court Orders appealed against were issued, the Kalsakau family have become registered in respect to title 12/0911/332. Ifira Trustees Limited have placed a Caution dated 15th March 2006 against that lease.

The purpose of a caution under the land lease Act is to protect their interest in the said land.

The Judgement of the Court of Appeal did not directly raise lease title 12/0911/332. The Court of Appeal (at page 14 of its judgment of 9 March 2006), advised that if there are challenges to either the lease or the caution, the parties will have to pursue alternative actions. That is a matter entirely in the discretion of the parties. At that point in time, CC 183 of 2006 is already filed seeking a relief under Section 100 of the Land Leases Act [CAP.163].

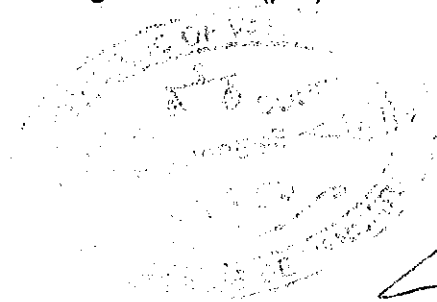
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The applicants advance their application on the basis of the doctrine of res judicata.

The following constitute the law to be applied.

- *The general rule is articulated by Lord Denning Mr in Fedelitas Shipping Co v. V/O Exportchleb [1965] 2 All ER 4, in that "if one party brings an action against another for a particular cause and judgment is given on it, there is a strict rule of law that he cannot bring another action against the same party for the same cause" (p.8).*
- *Additionally, in Reed v. Matailiga [2005] WSSC 1, the Supreme Court of Samoa held that "whether a cause of action is successful or not , once it is determined by a Court of competent jurisdiction, a party cannot, in a subsequent action, bring the same cause of action against the other party to the same cause of action" (p.4).*
- *The application of the general rule as stated in the above cases is qualified by satisfaction of three (3) elements that form the basis of the doctrine of res judicata. Accordingly, in order to succeed, the First Defendant must establish all three elements as defined in Carl-Zeiss-Styftung v. Rayner and Keeler Ltd & Ors (1966) 2 All ER 536, and cited with approval in the Solomon Islands case of Talasasa v. Paia, High Court of Solomon Islands, Customary Land Appeal Case No.2 of 1980).*
- *Thus, adopting the exposition of Daly CJ in Talasasa v.Paia, "for the doctrine of res judicata to operate there must be (a) an earlier case in which the cause of action or point in dispute was really the same, (b) a final determination by a court of that cause of action or point on its merits [and] (c) the raising of the same cause of action, or the same point which has been distinctly put in issue by a party who has had the action or point solemnly and with certainty decided against him" (p.6).*

Application of the law



- (a) Are the application under CC116 of 2005 and CC 154 of 2005 for Orders of Madamus (J.R.) the same as the application in CC183 of 2006 under s.100 of the Land Leases Act for rectification and cancellation of the register. The answer is in the negative. The causes of action in CC 116 of 2205 and CC 154 of 2005 are different from that in CC 183 of 2006.
- (b) Is the rectification of the lease under s.100 of the Land Lease Act sought by the Claimant in CC 183 of 2006 already determined in finally in the consolidated judgment. The answer is in the negative.
- (c) Are the parties the same parties in both cases. The answer is yes.

Conclusion

The application by the First Respondent to have CC 183 of 2006 struck out on the basis of res judicata must fail.

ORDER

The application to strike out the CC 183 of 2006 is dismissed. The Claimant Ifira Trustees Ltd is entitled to his costs to be agreed or determined,

DATED at Port Vila, this 14th November 2007

BY THE COURT


Vincent Lunabek
Chief Justice