

(Civil Jurisdiction)

**BETWEEN: VICTOR RON**

First Claimant

**AND: MOSES MOLI**

Second Claimant

**AND: ESLINE TURNER**

First Defendant

**AND: JAMES NGWANGO**

Second Defendant

**AND: ZEBEDEE MOLVATOL & MORRIS  
MOLVATOL**

Third Defendants

**AND: THE MINISTER OF LANDS**

Fourth Defendant

**AND: THE DIRECTOR OF LAND RECORDS**

Fifth Defendant

Mr Justice Oliver A. Saksak  
Mrs Anita Vinabit – Clerk

Mr Saling Stephens for the First and Second Claimants  
Mr George Nakou for the First Defendant  
No Appearance by the Second Defendant  
Third Defendants in persons unrepresented  
Mr Justin Ngwele for the Fourth and Fifth Defendants

Dates of Hearing: 23<sup>rd</sup> July 2009, 19<sup>th</sup> – 20<sup>th</sup> August 2009

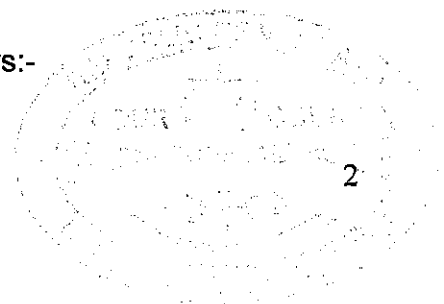
Date of Oral Decision: 20<sup>th</sup> August 2009

Date of Reasons: 4<sup>th</sup> September 2009

### REASONS FOR DECISIONS

1. This judgment provides reasons for the Decisions pronounced orally and issued in writing on 20<sup>th</sup> August 2009 at 2 O'clock in the afternoon. The Decision is attached and forms an integral part of this judgment.

2. On 26<sup>th</sup> January 2009 the First Claimant filed claims against all the defendants named herein. He applied on 29<sup>th</sup> January 2009 seeking some restraining orders against the First and Third Defendants. Those orders were granted including an order that the Republic be removed as a party and that Moses Moli be made as a party.
3. Subsequently, the Claimant filed an Amended Claim on 25<sup>th</sup> February 2009 effecting the changes as ordered. Those changes are found on the cover page and underlined in paragraphs 2, 6, 7 10 and 25. In the relief a change is found in paragraph 2.
4. The Claimant alleges and claims the following –
  - (a) That he has a Section 17(g) right under the Land Leases Act Cap. 163 in respect of the title no. 04/3024/043 which is currently occupied by the Claimant himself.
  - (b) That the purported registration of leasehold title 04/3024/043 by the Fourth Defendant in favour of the First Defendant was obtained or made by fraud or mistake and therefore was null and void and of no legal effect.
  - (c) That the Lease Register be rectified by canceling title no. 04/3024/043 and restoring it in favour of the Claimant.
  - (d) That in the alternative, an order for damages and improvements (to be later assessed) against all the Defendants jointly and severally.
  - (e) Costs of and incidental to the proceeding.
  - (f) Such further or other orders deemed fit.
5. Responses and defences were filed as follows:-



(a) By First Defendant –

- (i) Response on 9<sup>th</sup> February 2009.
- (ii) Defence on 31<sup>st</sup> March 2009 to Original claims.
- (iii) Defence to Amended Claim on 1<sup>st</sup> April 2009.

(b) By Second Defendant –

- (i) Response on 24<sup>th</sup> March 2009 indicating he would dispute all the claim and objected to the proceeding being dealt with in Luganville.
- (ii) No Defence to the original claims.

(c) By Third Defendants –

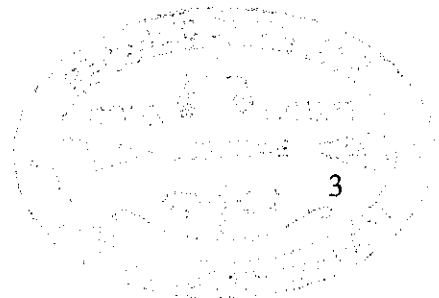
- (i) No known response.
- (ii) Defence to Amended claims on 10<sup>th</sup> July 2009.

(d) By Fourth and Fifth Defendants –

- (i) No known Response.
- (ii) Defence dated 6<sup>th</sup> July 2009.

The State Law Office as Counsel for Fourth and Fifth Defendants wrote several letters –

- On 28<sup>th</sup> January 2009 complaining of non-service and non-compliance with the Government Proceedings Act.
- On 5<sup>th</sup> February 2009 complaining of still not being served with claims or application and indicated they did not intend to take part in the proceeding until service.
- On 15<sup>th</sup> April 2009 complaining about still not being served with the original claim, the amended claim or any other documents and reiterated they did not intend to participate in the proceeding unless and until served properly.
- On 4<sup>th</sup> May 2009 they referred to their previous letters (as above) and maintained their previous positions on the matter.



- On 28<sup>th</sup> July 2009 they wrote requesting the listing of the matter on a day during a government business week and be notified so someone could attend.
- On 13<sup>th</sup> July 2009 they wrote to the Court enclosing a defence and sworn statement of Jean Marc Pierre filed on behalf of Fourth and Fifth Defendants.
- On 15<sup>th</sup> July 2009 they wrote to Mr Nakou giving notice of their intention to cross-examine the First Defendant and all her witnesses. A second letter on the same date to Mr Nakou advising him of service of their documents on all parties on 13<sup>th</sup> July 2009, and informing Counsel of their readiness to proceed with the hearing on the date set for the trial of the matter.

6.1. The Claimant relied on his sworn statements dated 19<sup>th</sup> January 2009, 26<sup>th</sup> January 2009 and of 21<sup>st</sup> July 2009 in support of his claims. These are marked "C1", "C2" and "C3". His witness was Robinson Toka who deposed to three statements –

- On 20<sup>th</sup> March 2009 in support of the Claimant – Marked "C4".
- On 23<sup>rd</sup> July 2009 in response to First Defendants' – Marked "C5".
- On 23<sup>rd</sup> July 2009 in response to Third Defendants' – Marked "C6".

Both the Claimant and his witness confirmed those statements on oath and were cross-examined by Mr Nakou and Mr Ngwele.

6.2. The First Defendant relied on her statements and Annexures –

- Of 27<sup>th</sup> April 2009 – Marked "D1".
- Of 17<sup>th</sup> July 2009 – Marked "D2".
- Of 17<sup>th</sup> July 2009 – Marked "D3".
- Of 15<sup>th</sup> May 2009 – Marked "D4" (including statements as to service). She confirmed these statements on oath and was crossed examined by Mr Stephens and Mr Ngwele.

6.3. The Third Defendants relied on their sworn statements –

- Zebedee Molvatol dated 22<sup>nd</sup> July 2009 – Marked "D6".

- Morris Molvatol dated 22<sup>nd</sup> July 2009 – Marked “D8”.

Both of them confirmed these statements on oath and were cross examined by Mr Stephens, Mr Nakou and Mr Ngwele. Mr Molvatol also tendered a letter of 12<sup>th</sup> August 2009 Marked “D7”.

- 6.4. The Second Defendant did not file any sworn statements by himself or any witnesses. He did not pay any fees in relation to the hearings and did not appear at the hearings.
- 6.5. The Fourth and Fifth Defendants relied on the sworn statement of Jean Marc Pierre Marked “D5”. It was confirmed and agreed as read into evidence without cross-examinations.
- 7.1. The Second Claimant deposed to a sworn statement on 18<sup>th</sup> March 2009. At the hearing on 19<sup>th</sup> August he was not present to confirm the statement and be cross-examined on it by Counsels for the First, Fourth and Fifth Defendants. Mr Stephens advised the Court this Claimant was physically incapacitated by sickness and that was the reason for his unavailability. There was no medical certificate to confirm this but the Court was prepared to accept that was a valid excuse.
- 7.2. Mr Stephens sought to have Mr Moli’s statement accepted and be read into evidence. Mr Nakou raised strong objections and Mr Ngwele submitted that if it were admitted, no weight should be placed on it. The Court preferred the latter submission by Mr Ngwele.
- 7.3. The decision of the Court issued on 20<sup>th</sup> August does not include any ruling and decision with respect to the Second Claimant’s claims. However, it is apparent that he was directed to be made a party to the proceeding by the orders issued on 29<sup>th</sup> January 2009. Pursuant to these, Mr Stephens filed an amended claim naming Mr Moli as Second Claimant and also removing the Republic of Vanuatu as the sixth Defendant.



7.4. In any event, the pleadings do not disclose any reasonable cause of action against any of the named Defendants. For this reason it follows that his claims fail and should be dismissed and I so rule.

7.5. The claims of the First Claimant were considered and decided on the basis of the evidence and the submissions made by Counsels on 20<sup>th</sup> August 2009. On that date, Mr Stephens handed up the Claimants closing submissions which were in written form. Mr Nakou handed up a Book which contained his written submissions containing some 27 pages. It is dated 17<sup>th</sup> August 2009. It was not filed. It includes copies of –

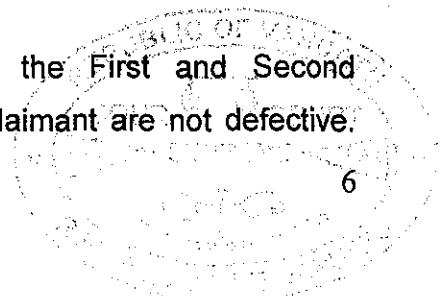
- (a) The Land Reform Act Cap 123.
- (b) The Government Proceedings Act No. 9 of 2008.
- (c) The Law of Mistakes or types of mistake in the United Kingdom.
- (d) Sections 14, 15 and 17 of the Land Leases Act Cap. 163.
- (e) Vanuatu Case Authorities:-
  - (i) Takau v. Carlot [2001] VUSC 134, CC 87 of 1998
  - (ii) Rogara v. Takau [2001] VUSA 15 CC Appeal Case 5 of 2001
  - (iii) Turquoise v. Kalsuak [2008] VUSA 22 CC Appeal Case 21 of 2008
  - (iv) William v. William [2005] VUSC 93 CC 26 of 2003
  - (v) Naflak Teufi Ltd v. Kalsakau [2005] VUCA 15, CC Appeal Case No. 7 of 2004.
  - (vi) Prasad v. Prasad [2009] VUCA 1. CC No. 1 of 2009
  - (vii) Silas v. Melcofee Sawmills Ltd [2003] VUSC 129 CC 29 of 2001
  - (viii) Ifira Trustees Ltd v. Family Kalsakau [2006] VUCA 23 CAC No. 5-6 of 2006.

Mr Ngwele made oral submissions but basically relied upon Mr Nakou's submissions.

9.1. The only relevant issues from Mr Nakou's point of view were –

- (a) Whether the Pleadings were defective?

There are 2 answers. In relation to the First and Second Defendants, the pleadings of the First Claimant are not defective.



And in relation to the Fourth and Fifth Defendants, the Court accepts that pursuant to the Government Proceedings Act No. 9 of 2007 the proper party should have been the Government of Vanuatu instead of the Minister and the Director of Lands.

(b) Whether the First Claimant had Section 17(g) rights?

Section 17(g) states –

***“Unless the contrary is expressed in the register, the proprietor of a 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 their being noted on the register –***

(a) .....

(b) .....

(c) .....

(d) .....

(e) .....

(f) .....

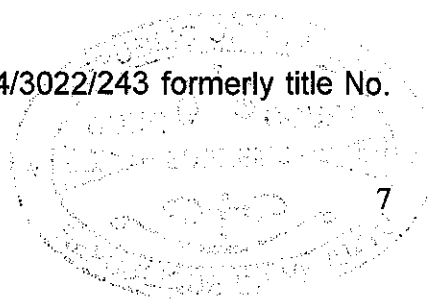
(g) ***the rights of a person in actual occupation of land save where inquiry is made of such person and the rights are not disclosed, and***

(h) .....

9.2. The term ***“interest”*** in relation to land includes a lease, sublease, mortgage, easement, restrictive agreement and profit; and ***“person interested”*** has a corresponding meaning.

10.1. The evidence of the Claimant showed among other things that –

- (a) He engaged the Second Defendant to do a survey plan of the land he applied to obtain a leasehold title over.
- (b) His application was approved by the Land Management and Planning Committee.
- (c) He was allocated leasehold title No. 04/3022/243 formerly title No. 4115.



- (d) The leasehold title has not been registered in absence of an accompanying survey plan.

10.2. The First Defendant's evidence showed among other things that –

- (a) She applied to the Minister for a commercial lease over title No. 04/3024/043.
- (b) She entered into an Agreement with Zebedee Molvatol, the Third Defendant as declared custom owner of the land.
- (c) She gave consideration for the lease in the sum of VT1.000.000.
- (d) The lease was duly registered on 9<sup>th</sup> August 2006.
- (e) The First Claimant is not in actual possession of that of Title 04/3024/043.

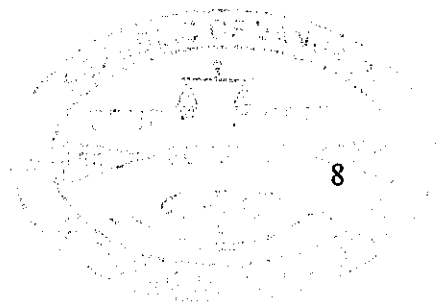
11.1. In his closing submissions, the Claimant conceded that title 04/3024/043 is situated on Belparav land declared in favour of the Third Defendants.

11.2. As such, his unregistered title 04/3022/243 is situated outside of title 04/3024/043 held by the First Defendant.

12. It is therefore clear that the First Claimant does not have any interests on title 04/3024/043 which fall within Section 17(g) to entitle him to lay claims there under. His claims failed on that basis.

13.1. A further issue was raised whether the First Claimant had standing to bring a claim under Section 100 of the Land Leases Act (the Act).

13.2. His evidence has not shown that he was allocated the same title as was allocated to the First Defendant. If he was able to establish that, he would without doubt have standing to invoke Section 100 of the Act. As such the Court held he had no standing.





13.3. And because he had no standing, he simply could not establish any fraud or mistake against the First and Third Defendants. On that basis, his claims against them failed.

14. The First Claimant succeeded against the Second Defendant on the basis that evidence adduced against him were unchallenged. He is entitled to damages against the Second Defendant but these will be assessed pending further sworn statements and evidence.

15. Costs were reserved. Any party wishing to claim costs should make appropriate application.

DATED at Luganville this 4<sup>th</sup> day of September 2009.

BY THE COURT



OLIVER A. SAKSAK

Judge

