

(Civil Jurisdiction)

BETWEEN: **ZAKIAS BATU LIVO of Aore
Island.**

Claimant

AND: **RACHEL VATARUL of Luganville,
Santo.**

First Defendant

AND: **GOVERNMENT OF THE REPUBLIC
OF VANUATU**

Second Defendant

AND: **MATTHEW WOON of Aore Island,
Santo.**

Interested Party

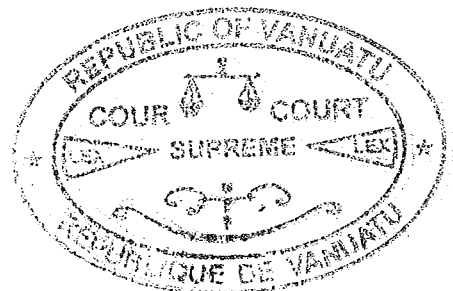
Mr Justice Oliver A. Saksak

Mr George Nakou for the Claimant
Mr Britten Yosef for the First Defendant
Mr Chris Tavoia for the Second Defendant
Mrs Marie Noelle Ferrieux Patterson for the Interested Party

Dates of Hearing: 7th and 17th December 2010
Date of Judgment: 3rd February 2011

JUDGMENT

1. This claim is purported to be made under Section 100 of the Land Leases Act Cap 163. It alleges fraud and mistake on the parts of the First and Second Defendants when they substituted the First Defendant's name in place of the Claimant's father's name in relation to Leasehold Titles 04/3012/003, 04/3033/005, 04/3033/002 and 04/3012/002.



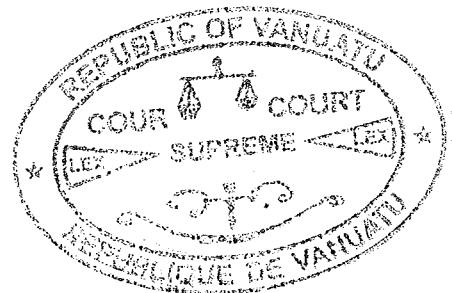
2. The relevant background facts are -

- (a) In or about 1982 the Claimant's father (now deceased), the late David Batu Livo was declared by the then Minister of Lands as Representative of Custom Owners.
- (b) As such the late Mr Livo applied and was registered as leasor in respect of the said leases in 1987 and 2006.
- (c) In or about 27 November 2009 the First Defendant applied for letters of administration and was granted the letters of administration in relation to the estates of the late Mr Livo. This action was instituted by the First Defendant after Mr Livo passed away on or about 23 March 2008.
- (d) Subsequent to obtaining letters of administration the First Defendant applied for registration of transmission in relation to Title 04/3033/005. The transmission was accordingly made on 31 December 2009.

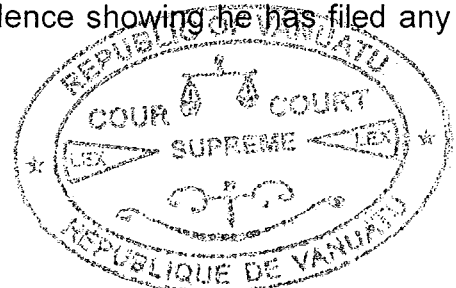
3. It is therefore alleged by the Claimant that the registration of transmission and the subsequent registration of the First Defendant as Leasor was done through fraud and/or mistake.

4. The Claimant seeks the following orders -

- (a) An order that the First Defendant not demand any payment or any benefits arising out of Leasehold Title 04/3033/005 until the Claimant's application to revoke the grant of letters of administration is determined by the Court.
- (b) An order that the First Defendant be prevented from demanding any payment of benefits arising out of any other leasehold titles held by the Claimant's father as leasor until the work of the administrator is completed.
- (c) An order directing the Second Defendant's agents in particular the Director of Land Records to rectify the register in relation to Leasehold Title 04/3033/005 by removing the First Defendant's name and substituting the Claimant's name.



- (d) An order preventing the First Defendant from executing or approving any leases (including strata titles) to Leasehold Titles 04/3033/005 to the Interested Party until further order of the Court.
 - (e) An order directing the Interested Party to disclose (if any) accumulated land rents and other benefits paid unto the BDO Barnett & Partners (on behalf of the Claimant's father to the Claimant.
 - (f) An order directing the Second Defendant to disclose (if any) accumulated land rents and other benefits paid into the Custom Owners Trust Account held by them on behalf of the Claimant.
 - (g) An order directing that all funds held under (a) and (f) above be paid to the Claimant.
 - (h) Costs of the action.
5. The burden of proof rests on the Claimant to prove fraud and/or mistake on the balance of probabilities.
 6. The Claimant relies on the sworn statements of Zakias Batu Livo dated 25 June 2010, of Samson Livo dated 7th December 2010 and of Joseph Livo also dated 7th December 2010.
 7. In none of those statements is there any evidence showing fraud or mistake on the part of the First and Second Defendants.
 8. The Claimant, it appears is attempting to challenge the grant of letters of administration to the First Defendant by resorting to Section 100 of the Land Leases Act. It is, as it were, an appeal in disguise. As such it is an abuse of process.
 9. The First Defendant's application for letters of administration was unopposed by the Claimant. His father died in March 2008. The Claimant, if he was so concerned about his father's leases should have applied. He has not shown any evidence that he did. He has not shown any evidence showing he has filed any



application seeking revocation of the grant of letters of administration, or an appeal. He has not sought to nullify the decision of the Joint Area Land Tribunal dated 20th October 2010 that affirmed the endorsement by Supernatavuitano by Judicial Review.

10. This is where this case ends. The other issues are not worthy of consideration as they are not relevant.

11. The claims of the Claimant fail in their entirety and are accordingly dismissed.

12. The Claimant has no doubt put the defendants to costs. The First and Second Defendants are entitled to their Costs to be agreed or taxed.

13. The Court will hear Counsel in relation to any existing orders issued earlier by the Court (if any).

DATED at Luganville this 3rd day of February 2011.

BY THE COURT


OLIVER A. SAKSAK

Judge.

