

BETWEEN: Edward Crowby

Claimant

AND: Charley Molitaikwa

Defendant

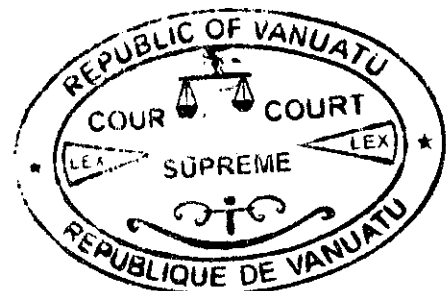
Date of CONFERENCE: 5th day of June, 2017 at 8:30 AM
Before: Justice Oliver Saksak
In Attendance: Christina Thyna for the Claimant
No appearance for the Defendant (Jack Kilu)

Date of Hearing: 5th June 2017
Date of Judgment: 5th July 2017

SUMMARY JUDGMENT

Background Facts and Claims

1. The Claimants filed a Supreme Court claim on 19th August 2016. The claimants are registered proprietors of land comprised in leasehold title 12/0632/013 (the property). It is an agricultural lease duly registered on 20th February 2013. The claimants discovered the defendant is also occupying the property. They served a Notice to Quit on 7th October 2013. But the defendant has continued to occupy the property illegally as a trespasser. In doing so the defendant is causing loss and damage to the claimant.
2. The claimants therefore seek the following reliefs-
 - a) An Order to restrain the defendant and his servant or agents and any other person claiming through him from remaining or continuing in occupation of their property.
 - b) Possession of Lease Title 12/0632/013
 - c) Damages for trespass at a monthly rate to be assessed, and
 - d) Costs



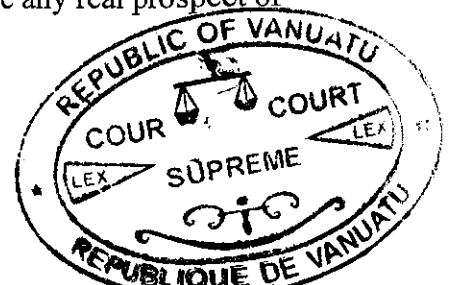
3. Leasehold title 12/0632/013 was originally leasehold title 12/0643/007 registered on 7th August 1996. However it was surrendered and subdivided to create leasehold title 12/0632/013.

Defence and Counterclaim

4. The defendant filed a defence and counter-claim on 18th October 2016. He says that-
- a) Late Chief Alick Soalo who died in April 2007 is the declared custom owner of all lands comprised in Leasehold Titles 12/0643/007 and 12/0632/013.
 - b) Since his passing, Chief George Soalo (the Son of Chief Alick Soalo and brother-in-law of the defendant) has assumed those customary land rights.
 - c) The lands comprised in the two leasehold titles was given by the late Chief Alick Soalo to the claimants specifically for gardening and nothing else.
 - d) Without the knowledge of the deceased the claimants obtained the two leasehold titles.
 - e) By way of a counter-claim the defendant says the two leasehold titles were obtained by fraud and claimed for their cancellation and rectification.
 - f) He is not a trespasser.
 - g) No premiums were paid by the claimants.
 - h) In the alternative, that he be paid VT 15.759.156 being value of his improvements on the land.
 - i) Civil Case 52 of 2015 between the claimants and the defendants is still pending before the Magistrates Court for hearing.
 - j) Interests on VT 15.759.156 at 5% per annum
 - k) Exemplary damages of VT 1.000.000 be paid by the claimants.
 - l) Costs of the proceeding be paid by the claimants.

Discussions

5. The claimants filed an application for summary judgment on 5th June 2017 together with a sworn statement pursuant to Rule 9.6 of the Civil Procedure Rules. The claimants believe the defendant does not have any real prospect of defending the claims.



6. The defendant was ordered on 2nd February 2017 to file and serve evidence by sworn statements in support of their defence and counter-claim. He has not done so to date. Therefore he has no evidence at all in support of his defences and counter-claims.
7. George Soalo is named by the defendant as a second defendant in his defence but is not named by the claimant as such. The inference from that is perhaps that if the defendant has any claims, they should be against George Soalo and not the claimants.
8. The defendant is not the land owner of the lands comprised in Leasehold Titles 007 and 013. Therefore he cannot invoke section 100 of the land leases Act [CAP.163] to counter-claim for cancellation and rectification of the lease on the basis of fraud or mistake.
9. The sworn statement of Edward Crowby dated 5th June 2017 shows a copy of the Judgment of the Magistrate Court in Civil Case No.10 of 1998. Edward Crowby is the claimant and the late Chief Alick Soalo and others were the defendants.

10. The Magistrates Court found among other things that-

"a) The claimants herein are the legal proprietors of land title 12/0643/007 (now 12/0642/013).

b) The defendants are now illegally occupying the property."

11. The Court made orders that-

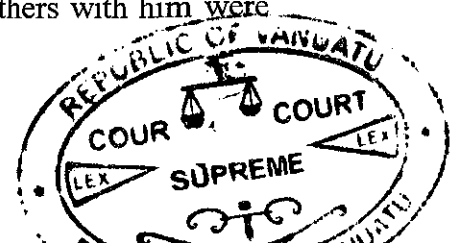
" a) The defendants and their dependents and children vacate the properties within 2 months,

b)The defendants pay the costs of the proceedings, and

c)Compensation for damages and rents be reserved."

12. It appears those orders have not been complied with by the defendants whom I presume include this defendant because he pleads in his defence (paragraph 4 (f)) that his occupation on the property was had since 2003 and the claimants did not resist it. But Civil Case No. 10 of 1998 predates 2003, therefore there is no merit in that argument.

13. Again in paragraph 4 of his counter-claims the defendant says that late Chief Alick Soalo was declared in 1994 by the Efate Island Court as custom-land owner. However in Civil Case No. 10 of 1998 the late Chief Alick Soalo did not use that judgment in his defence. As such he and others with him were



declared illegal occupiers. Therefore that claim and defence cannot be tenable.

14. Finally Charlie Molitaikwai has counter-claimed for compensation of VT 15.759.156. This is a vexatious and frivolous claim.

In my view his claim is and should be against George Soalo, the representative of Chief Alick Soalo, deceased who may have allowed him onto the land. This claim and all the others sought in the counter-claim are not likely to succeed.

Late Filing of Reply and Sworn Statement By Defendants

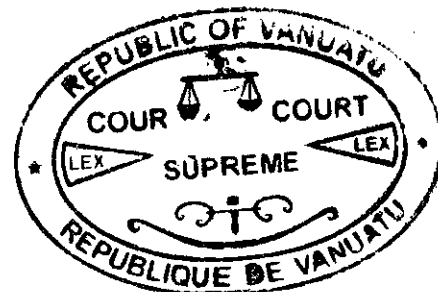
15. The defendant filed a reply to the Claimant's application for summary judgment on 26th June 2017. Three days earlier on 23rd June the defendant filed a sworn statement of George Soalo in support of the defence and counter-claim and of the defendant himself. He was directed on 2nd February 2017 to file sworn statements. He did not comply so on 28th April 2017 Ms Thyna accepted that an extension of 14 days be given. Still the defendant did not comply. Only after an application for summary judgment was filed and the Court is in the process of determining it, sworn statements have been filed. In my view this is an abuse of Court process. I therefore reject those statements as evidence.

16. I have considered the defendants reply filed on 26th June. For the reasons given earlier in the judgment I must reject all arguments raised.

17. The defendant is obviously trying to get George Soalo to cover for him as a party to the proceeding. There are 2 obstacles: First they must show that George Soalo has obtained Letters of Administration over the estate of his late father. Second, his late father passed in 2007 and on the same limitation period Mr Kilu is arguing under paragraph 2 (k), (m) and (o) why did he not take proceedings to challenge the lease of the Claimants back then but waited this long to do so? For this reason it will not be possible to join George Soalo to this proceeding in the event an application is made.

The Result

18. Under these circumstances the application for summary judgment is allowed. And judgment is entered summarily in favour of the claimants.



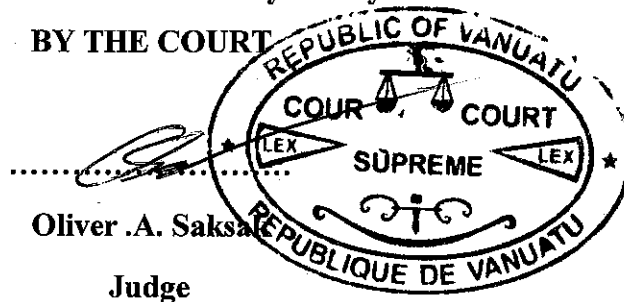
Orders

19. The following orders are granted:-

1. The Defendant by himself, his agents, servants, relatives, families and any other person claiming through him are hereby restrained from remaining on or continuing to occupy Leasehold Title 12/0643/007.
2. The Claimants are granted possession of Leasehold Title 12/0643/007 and entitled to final eviction order if and when the defendant has not voluntarily vacated the property within the next 28 days.
3. The Defendant, his agents, servants, relatives and families must vacated the property within 28 days (on or before Friday 28th July 2017 failing which a final eviction order will issue.
4. The Claimant's claims for damages for trespass be declined and dismissed.
5. The defendant pays the claimant's costs of and incidental to this action on the standard basis as agreed, or be taxed by the Master.

DATED at Port Vila this 5th day of July 2017

BY THE COURT



Judge