

BETWEEN : CHRISTIAN XOUREL
Claimant

AND: KALORIP POILAPA
First Defendant

AND: REPUBLIC OF VANUATU
Second Defendant

AND: ARVIN LAL
Third Defendant

AND: LIM WEE LI
Fourth Defendant

Date of Judgment: Tuesday 21st March 2018
Before: Justice Aru

Appearances: Mr. J. Tari for the Claimant
First Defendant - no-appearance
Mr. H. Tabi for the Second Defendant
Mr. J. Kilu for the Third and Fourth Defendants

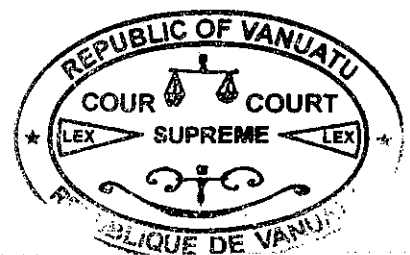
JUDGMENT

Introduction

1. This is a claim for rectification of a lease under s 100 of the Land Leases Act [CAP 163].

Background

2. By way of background the lease concerned was a thirty (30) year lease under lease title No 12/O543/006 (006 lease). Mele Trustees Limited was the lessor



and the claimant's father Loulou Xourel was the lessee. The 006 lease expired on 30 July 2010.

3. A new lease was then created on 6 December 2010 between the custom owners Saki Poilapa as the lessor and Kalorib Poilapa as the lessee. As it was meant to cover the area covered by the expired 006 lease some changes were made to the title and on 3 October 2011, an Agricultural lease title No 12/0543/031 (031 lease) was finally registered between Saki Polapa and Kalorip Poilapa as lessee. On 10 October 2011 a caution filed by the claimant was registered over the 031 lease. On 11 April 2012 an application was made to transfer the 031 lease to the third and fourth defendants. On 17 April 2012 the caution was withdrawn and the transfer of the 031 lease was registered.

Claim

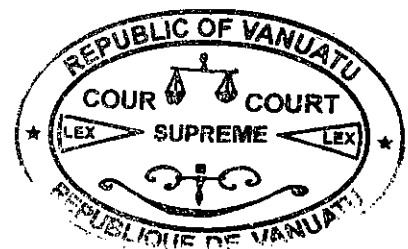
4. The initial claim was filed by the claimant on 12 December 2011 alleging fraud on the part of the first defendant and mistake on the part of the second defendant. The claimant acknowledged in his claim that the lessee to the expired 006 lease was his father, Loulou Xourel not himself. At paragraphs 9 to 13 the claim is pleaded as follows:

"9. Prior to expiration date of land title 12/0443/006 the lessor and claimant have agreed in principal to enter into the new term of the lease over the subject land;

10. Observing normal administrative and legal procedures the claimant applied for the consent to the second defendant on 21 September 2010;

11. Up until this material time the claimant has not received the Negotiators certificate which he has applied for over 12 months ago despite numerus enquiries mad by the claimant;

12. Strangely the lease title 12/0543/03 over this land was issued to the first defendant by the second defendant on 6 december 2011.



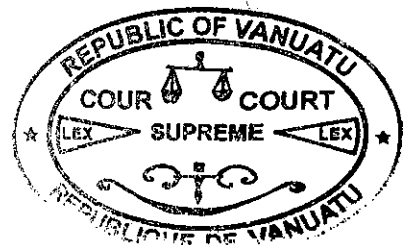
13. Land Lease title 12/0543/03 was processed issued and registered by fraud."

5. The main relief sought is for an order cancelling the 031 lease. On 8 May 2012 the claimant applied for orders that the second defendant cancel registration of the transfer of lease 031. On 3 July 2012 the application was heard and dismissed. The claimant then applied for leave to appeal the interlocutory orders. Prior to listing the application for hearing, the parties consented to leave being granted and leave was granted.
6. I am not aware that an appeal was filed but the claimant subsequently applied to join the third and fourth defendants as parties in the proceeding. An amended claim was thereafter filed on 21 May 2014. It alleged fraud on the part of the first defendant and in the alternative mistake on the part of the second defendant.
7. As against the third and fourth defendants the claimant pleads at paragraph 25 and 26 as follows:

"25. The third and fourth defendants were fully aware that there was a caution lodged against land lease title 12/0543/031 but went ahead and lodged their application to transfer the land;

26. The third and fourth defendants were not currently occupying land lease title 12/0543/031."

8. The relief sought is an order that the 031 lease owned by the third and fourth defendants be cancelled and an order that the second defendant issue a negotiator certificate to the claimant to negotiate a new lease with the Minister on behalf of the custom owners. On the date of trial, counsels informed the Court that no cross examination was required by any of them and that they will proceed by filing written submissions and judgment be issued on the submissions. For the claimant who has to prove his claim, this concession



leaves him with no opportunity to challenge the defendants' evidence as to fraud and mistake in cross examination.

9. The evidence relied on by each party in support of their case is as follows:-

Claimant's evidence

- Sworn statement of Christian Xourel in support of Application for leave to appeal interlocutory orders filed on 5 August 2012;
- Sworn statement of Christian Xourel in support of Application to cancel registration of transfer of lease titles 12/0543/031 filed on 8 May 2012;
- Sworn statement of James Tari filed on 8 May 2012; and
- Sworn statement of Christioian Xourel in support of claim filed on 12 December 2011.

Second defendant's evdince

- Sworn statement of Peter Pata for the second defendant filed on 3 April 2012; and
- Further sworn statement of Peter Pata filed on 5 June 2012.

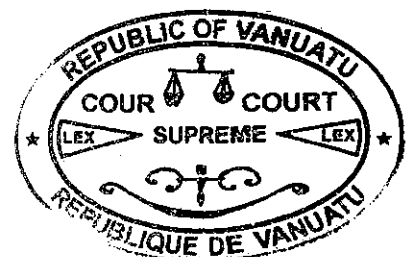
Third and Fourth defendants' evidence

- Sworn statement of Arvind Lal in support of the third and fourth defendants defence filed on 11 August 2015.

Issues

10. The following issues were identified for the Court to address –

- i) whether the claimant has standing to bring the claim;
- ii) whether lease title 12/0543/031 was obtained by fraud and/or mistake; and
- iii) whether the transfer of lease title 12/0543/031 was registered by fraud and/or mistake.



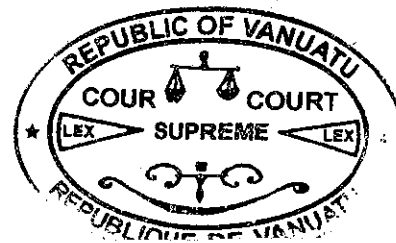
11. I will deal with the issues in the order that they are raised. If the claimant fails on the issue of standing then he lacks a proper basis upon which to argue the remaining issues.

i) Whether the claimant has standing to bring the claim

12. The claimant submits that he has the standing to bring the claim. In his own evidence the claimant says that his father was the lessee to the 006 lease which expired in 2010. His father died in 2000. There is no evidence that the claimant became the administrator of his father's estate or that he applied for transmission of the lease upon his father's death pursuant to s 84 of the Land Leases Act. Once the 006 lease expired the claimant then applied for a new lease to be issued. He submits that he had an agreement with the lessor that a new lease will be issued in his name and the fact that he applied to the LMPC and the LMPC deferred his application is sufficient.

13. There is no evidence filed by the claimant to show that there was an agreement with the lessor as submitted. To the contrary, the second defendant's evidence shows that when the 006 lease expired, on 3 August 2010, Mele Trustees as lessor wrote to the claimant asking him to vacate the property. Then on 12 January 2011, Mele Trustees informed the Director of Lands that there was no extension of the 006 lease and requested the Director not to proceed with any further dealings regarding the lease concerned without their advice. On 3 May 2011 the lease was cancelled from the register.

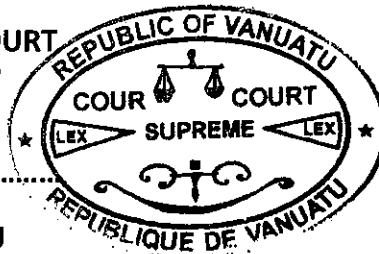
14. In his evidence the claimant says that he filed an application for a negotiator certificate in September 2010. And that was to negotiate a lease covering the same area of the expired lease. This was some eight (8) months after being advised by Mele trustees as lessor to vacate the property. If there was an agreement with the lessor that a new lease would be issued, Mele Trustees would not have issued the letter to him and also to the Director of Lands.



15. As it is, no negotiator certificate was issued to the claimant. An application to the LMPC or a deferment of such an application could not change the fact that Mele Trustees as lessors on behalf of the custom owners have informed the claimant of their intentions before he applied that they are not interested in negotiating a new lease with him. The purpose of applying for the negotiator certificate is defeated by the earlier advice.
16. It was then open to the custom owners to create a lease between themselves over the area concerned. For the above reasons I find that the claimant lacks standing to bring the claim. I need not therefore consider the remaining issues.
17. The claim is therefore dismissed and the defendants are entitled to costs on a standard basis to be agreed or taxed by the Master.

DATED at Port Vila this 21st day of March, 2018

BY THE COURT



D. ARU

Judge