

BETWEEN: Family Tangraro

Claimant

AND: Bellevue Estates Limited

First Defendant

AND: The Government of the Republic of Vanuatu

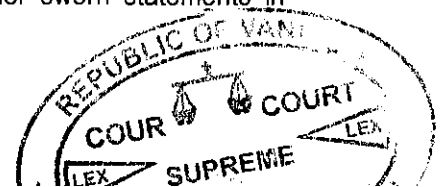
Second Defendant

Date of HEARING: 2nd July 2020
Date of Judgment: 16th July 2020
Before: Justice Oliver. A. Saksak
In Attendance: Mr Jack Kilu for the Claimants
Mrs So' Oletaua Motuliki for the First Defendant
No appearance for the Second Defendant

JUDGMENT

Applications

1. I heard Counsel in relation to 2 separate applications on 2nd July 2020. The first application was filed by Mr Kilu on behalf of Family Tangraro. He seeks orders to remove Kalsaf Simeon Tangraro and Kalsef Kalosil Tangraro and to add 9 new members to the proceeding. These are Annie K Tangraro, Kaloris Tangraro, Toutek Tangraro, Kaltong Tangraro, Takau Tangraro, Matei Tangraro, Jerry K Tangraro, Delwyn Tangraro and Dorah N Tangraro.
2. The second application was filed by the First Defendant. It seeks an order to strike out the Claimant's claim and proceeding.
3. The basis of the Claimant's application was the Minute of a Family meeting held on 3rd August 2018 that decided Kalsaf Simeon Tangraro and Kalsef Kalosil Tangaro be removed as the Family's representatives and be replaced by the 9 named persons in paragraph 1 above. The claimant relies on the sworn statements of Annie K Tangraro filed on 1st July 2020, 8th May 2020, 20th May 2020 and 12th June 2020. The Claimant filed further sworn statements in



support of their claims by Dorah Tangraro filed on 14th May 2020 , by Matei Tangraro, Delwyn Tangraro, Annie Tangraro (x 2) , Takau Tangraro and Kaltong Tangraro. All of these statements were filed on 29th April 2020. And finally the Claimants rely on the sworn statements of Annie Tangraro and Jerry Tangraro filed on 8th March 2020.

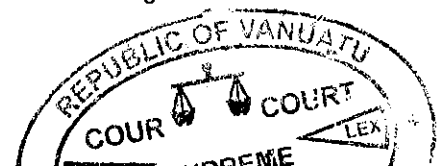
4. I heard Mr Kilu in relation to the Memorandum he filed on 23rd June 2020 and in relation to the written submissions filed on 1st July 2020.
5. In relation to the second application, I heard Mrs Motuliki in relation to her written submissions filed on 4th May 2020 and the response filed also on 4th May 2020. The First Defendant relied on the sworn statement of David Russet dated 13th February 2020 and the defence filed on 4th February 2020, and on the statement of Kupa Turis filed on 3rd March 2020.

Submissions

6. Mr Kilu submitted basically that Kalsaf Simeon and Kalsef Kalosil Tangraro should be removed as representatives of the Family Tangraro and be replaced by the 9 named members of the family on grounds that there are acting in a conflict of interest and acting not in the best interest of the Family. Further, that the decision of the Family made on 3rd August 2018 could be effected to facilitate the Family's challenge to the validity of 2 leases registered in favour of the First Defendant, on the basis of fraud and/or mistake.
7. Mrs Motuliki opposed the application by the Claimant, first on the basis the 9 named persons sought to be joined as Claimant have no standing. Secondly as to the challenge of the First Defendant's leases, they have no standing. Thirdly, that the Claimants simply have no evidence showing fraud and/or mistake.

Discussion

8. I consider first the Claimant's application. The first issue is whether or not the Court should remove Kalsaf Simeon Tangraro and Kalsef Kalosil Tangraro as representatives of the Family Tangraro from this proceeding.
9. For the claimant to succeed, they must first show by evidence that these 2 persons were not validly authorised and appointed pursuant to section 6G of the Land Reform Act [CAP 123] as amended by Act No. 31 of 2013 (the LRA). As things stand there is no challenge to their



appointments. Their removal is advanced on the ground that they are not acting in the best interest of the Family Tangraro. But that is not sufficient ground to have them removed.

10. Second, in order for the Claimant to succeed in the variation of the names of their representatives in the Certificate of Registered Interest, they must comply with section 6H of the LRA which states:-

*"6H.Variation of the names of representatives
(1) All representatives of the custom owner group are appointed by the custom owners and must not act without the consent of the custom owners.*

(2) Custom owners may at any time meet and pass a resolution by consensus to vary their representatives. All members of the custom owner group or all members listed as descendants if original members have died must be present at a meeting to vary the representatives of the custom owners.

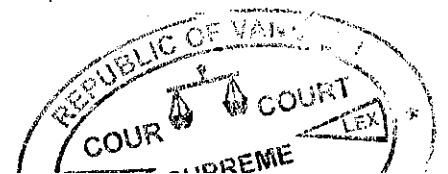
(3) The custom owner group must inform a custom land officer of the date and time of a meeting of the custom owner group to vary the names of their representatives.

(4) The custom land officer must attend the meeting referred to in subsection (3) and record in writing, the resolution to vary the representatives of the custom owners. The resolution must be signed by all the custom owners and by the custom land officer as a witness to the signature of the custom owners.

(5) Any variation made to the names of the representatives of the custom owner group must be filed with the office of the National Coordinator."

(My emphasis)

11. From their evidence the Claimant's rely on the Minutes of the Family meeting held on 3rd August 2018, but there are problems with that Minute. First, this Family appears to have many more members and section 6H (2) of the LRA requires that "all" members listed as descendants of the Tangraro Family "**must be present at a meeting to vary the representatives of the custom owners**". Second, it is clear from the Minutes that Kalsaf and Kalsef Tangraro were not present at the meeting of 3rd August 2018. Third, when there are more than 15 members of custom owners groups, at least 15 names must be stated on the negotiator's certificate and any subsequent lease instrument as representatives of custom owners. In my opinion this includes the Certificate of Registered Interest. Section 6G (2) (b) of the LRA provides for this legal requirement. Fourth, the decision made must be passed by a resolution by consensus. Section 6H (2) requires this and there is an implication that a vote



showing the majority of all members present should support the variation. The Minute of 3rd August 2018 is not a “ **resolution**” in the strict sense of the word. Fifth, the minute is not signed by the Lands Officer as required by section 6H (4). Sixth, the resolution made as to the variation must be filed with the office of the National Coordinator. Section 6H (5) requires this action. The Claimants have no evidence to show a resolution was filed in compliance with the legal requirement.

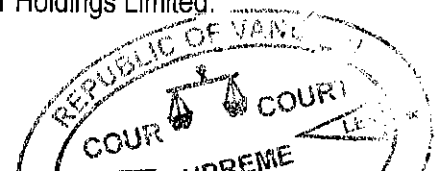
12. Furthermore, to alter the custom owner's list maintained by the National Coordinator under section 50 of the custom Land Management Act (the CLMA), there must be adherence to section 51 (1), (2), (3), (4) , (5), (6) and (7) which adopt the same process as in section 6H of the LRA. Section 50 (3) requires the Coordinator to make variations in accordance with section 6H of the LRA.

13. I therefore find that the Minutes of the Family meeting held on 3rd August 2018 falls short of meeting the legal requirements of section 6H of the LRA and sections 50 and 51 of the CLMA. For this reason alone the application by the Claimant fails and is dismissed.

Application to Strike Out Proceeding

14. I now consider the First Defendant's application to strike out the Claimant's claim. The First Defendant submitted the proceeding and claim should be struck out on the basis it has no evidence showing fraud and/or mistake.

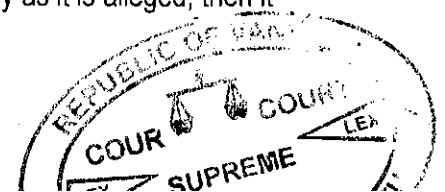
15. In its claim filed on 14th November 2019 the Claimants alleged the First Defendant's registered Lease No. 12/0912/078 (Lease 078) and No. 12/0912/079 (Lease 079) were both obtained and registered by fraud and/or mistake and seek orders that they be cancelled. They allege also that these leases were obtained without valuable consideration. They seek common law and exemplary damages in the sum of VT 90,000,000 with interest of 10% per annum plus indemnity costs. They allege that the lessor of Lease 078 being Erakor Land Trust Committee and the lessor of Lease 079 being Erakor Holdings Limited were not legal entities and lacked the legal capacity to own customary land and be capable of leasing customary land to the First Defendant. They allege that by law only the Minister of Lands could grant leases on behalf of the custom owners and not the Erakor Land Trust Committee or the Erakor Holdings Limited.



16. Out of the numerous statements filed by the Claimants the only statement having any relevance is that of Annie Tangraro filed on 14th November 2019. This is the only evidence showing transactions between Erakor Holdings Limited and Erakor Land Trust and the Bellevue Estates Limited which are the subject matter of this proceeding.
17. The first documents annexed are 2 pages of the Lease Register dated 12th September 1996 recording a surrender of Lease on 9th February 2007. The transaction was between Erakor Holdings Limited and Bellevue Estates Limited.
18. The second annexure is the Lease 12/0912/078 dated 27th February 1993, approved on 16th March 1993 and registered on 29th June 1993. The lessor is Erakor Land Trust and the lessees are Bellevue Estates Limited. Next to the reference to the name Erakor Land Trust on the right is written in a handwritten form in bracket" [Rectified on 4th August 2015 to change Lessors to Family Tangraro]".
19. Next is an extract of Lease Register dated 29th June 1993 in relation to Lease 078 between Erakor Land Trust Committee and Bellevue Estates Limited. In the table below it is written in normal handwriting a change of name made on 4th August 2015. The lessors as at 4th August 2015 were now Family Tangraro represented by Kalsaf Simeon Tangraro and Kalsef Kalosil Tangraro pursuant to the Efate Island Court's decision dated 16 December 2011.
20. Next is the Lease 079 showing the lessors as at 13 July 1995 was Erakor Holdings Limited registered on 24th October 1995.

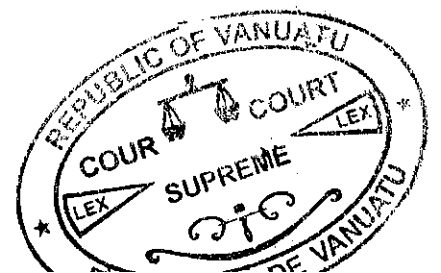
Findings

21. From the evidence I find first that Lease 078 has been legally transferred to the Family Tangraro as at 4th August 2015. They are now the lessors. Erakor Land Trust Committee does not now exist and no dealings between them and Bellevue Estates Limited could be challenged on the basis of fraud or mistake. For Family Tangraro to now challenge Lease 078 would be like challenging themselves. Therefore in my view Lease 078 is no longer an issue.
22. Second, I find that Lease 079 has not changed hands from Erakor Holdings Limited and Bellevue Estates Limited. If it is being challenged by the Tangraro Family as it is alleged, then it



is comprehensible that they do. The First Defendant has no evidence showing that there has been a change of lessor in accord with the declaration of custom-ownership made by the Efate Island Court in 2011. It may be just due to lack of evidence by the Director of Lands because the Republic has not filed any defence and sworn statements to assist the Court. Be that as it may, the Claimants have demonstrated they have a case in relation to Lease 079 in its current status which needs to be formally tried.

23. Next the Claimants are challenging the validity of Lease 472 (Ex- Title 077) and which they say is unregistered. However Mr David Russet deposed to evidence on 13th February 2020 rebutting that claim. He annexes an extract of the Lease Register showing this lease was registered on 13th May 2019.
24. The problem I find from that evidence is that the actual Lease is not disclosed. And a further problem I identify is that the extract shows the Lessors to be Kalsaf Simeon and Kalsef Kalosil representing Family Tangraro and Joseph Obed & Gideon Arsen representing Tanmalus. The Efate Island Court has not declared Joseph Obed and Gideon Arsen as custom owners and therefore their being on the register is questionable.
25. Annie Tangraro's statement of 14th November 2019 annexes the Minute of meeting dated 14th December 2015 in relation to Lease 12/0912/742. It records an admission made by Joseph Obed that there was never a meeting in which they signed a document. That is evidence that may show dishonesty or fraud. But that may be subject to further hearing on the evidence.
26. It may be the solution to Lease 742 is to be found in section 55 of the CLMA which provides for the process of correction of names of lessors of custom lands where purported lessors had no authority to execute a lease. But this is a matter for the Claimants to consider and take further legal advice on. It may be they have taken steps to do this but there is no information to show the Court that is so.
27. Finally Mr Kilu appears to take issue with the inconsistent sworn statements of Kalsaf Simeon and Kalsef Kalosil Tangraro made in favour of the Claimant's case initially and then taking a changed position in their later sworn statements made in favour of the First Defendant.



28. The proper place to raise objections to those sworn statements would be in a trial hearing, where after hearing the objections and responses, the judge would then rule on which statements are admissible and which are not, or it could be both or all. But that should be for another time.

The Result

29. The application to strike out the Claimant's claims and proceeding is declined and is accordingly dismissed. There will be no order as to costs in relation to both applications. Each party bears their own costs.

DATED at Port Vila this 16th day of July 2020

BY THE COURT


OLIVER.A.SAKSAK

Judge

