

BETWEEN: YASITU NALAU

Claimant

AND: HELEN NAURAI AND JEFFERY NAURAI

Defendants

Before: Chief Justice Vincent Lunabek
In Attendance: Mr. John Less Napuati for the Claimant
Defendants not attend nor represented

Date of Hearing: 20 August 2020
Date of Decision: 20 August 2020

JUDGMENT

A. Introduction

1. This is a claim against the defendants for eviction and damages on Leasehold property title 11/0124/065 – called lease “(065)”.

B. The claim

2. The Claimant is a Ni-Vanuatu from Tanna Island and is the lessee of the lease (065) and resides at Melektree, Port Vila, Efate.
3. The Defendants are also Ni-Vanuatu who reside on lease title (065) without lawful authorisation of the Claimant.
4. The Defendants have unlawfully build rent houses inside the Claimant’s lease (065) without the Claimant’s consent.
5. The Claimant has since 2010 not been able to enter his lease property (065) due to the Defendants unlawful presence and occupation and is now residing outside his lease property (065).



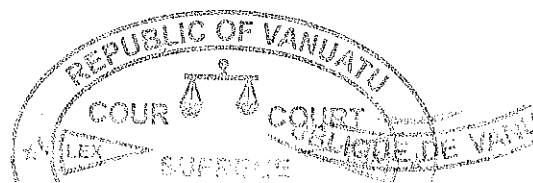
6. The Claimant has approached the Defendants several times to leave his property but they refused to vacate the property (065).
7. Until the filing of this claim, the Claimant cannot live inside his lease and build in it.
8. As a result of the Defendants continuous unlawful occupation of the property (065) the Claimant has suffered loss and damages in that: (a) He could not construct his own rent house and make money and (b) he has been deprived of quiet enjoyment of his property (065).

C. The Relief Sought

9. The Claimant, therefore claims for:
 - i. An order for eviction of the Defendants and removal of their rent houses on lease title (065).
 - ii. An order for damages in the sum of 1,200,000 Vatu.
 - iii. An order for the Defendants to pay the legal costs of this proceedings.
 - iv. Such other orders as the Court deems fit.

D. Process before Hearing

10. The claim was filed on 22 November 2018 with a sworn statement of the Claimant in support of the claim. The claim and the sworn statement of the Claimant were served on the Defendants on the same date of 22 November 2018. A Mr. George Busy filed a sworn statement of service with a proof of service annexed to his statement to his effect.
11. No response and defence were filed in accordance with the Civil Procedure Rules.
12. A request for default judgment was filed by Mr. Napuati on behalf of the Claimant on 13 July 2020 which was the date the Court set for a conference in this matter.
13. At the conference of 13th July 2020, Mr. Napuati appeared for the Claimant and there was no appearances for the Defendants. I discuss with Mr. Napuati of the difficulty of issuing the evictions orders on the land as sought and understandably, Mr. Napuati withdrew his request for a default judgment in this case. I indicated to Mr. Napuati to file and serve the balance of the sworn statements of the Claimant and have them served on the Defendants.
14. On 13 July 2020, I also direct that the Defendants shall find themselves a lawyer to assist them in their defence in this case and that the Defendants shall file and serve their defence to the claim and sworn statements in support by 3rd August 2020.
15. I also directed that the matter was listed for hearing at the Civil Hearing Room 1 on Thursday 20th August 2020 at 8.00am o'clock in the morning. I further provided a liberty provision to the Defendants to apply before the trial date if there is a need for it.



16. On 17 July 2020, The Claimant caused to serve on the Defendants directly his further sworn statements but the Defendants refused to receive the said sworn statement. [See sworn statement of service of Yasitu Nalau – filed 19th August 2020].

E. Hearing of the Claim on 20 August 2020 at 8.30am o'clock and Evidence

17. Mr. Yasitu Nalau gave evidence. He filed his claim. He filed two sworn statements in support of his claim on 22 November 2018 and 13 July 2020.

18. Mr. Yasitu provided the details of the leasehold title 11/0124/065 as follows:

1. The Advice of Registration of a dealing affecting Registered Land

- Application number: 131/2011
- Name of Registered Proprietors:
 1. Freshwind Limited
 2. Yasitu Nalau
- Title affected: 11/0124/065
- Transfer of Lease: - Dated 10th December 2010,
 - From: (1) Freshwind Limited
 - To: (2) Yasitu Nalau
 - Consideration value: VT 450,000

19. A copy of the Transfer of lease of the subject Title No.11/0124/065 was attached to his sworn statement of 13 July 2020 between the Transferor:- Freshwind Limited PO Box 112 Port Vila and the Transferee: Yasitu Nalau PO Box 30, Port Vila for a consideration of VT450,000. The consent of the Minister of Lands for the transfer of leasehold title (065) was given on 13th August 2020. The transfer was registered on 27th April 2011.

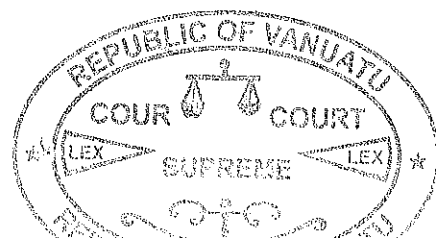
F. Findings

20. The Claimant is the lessee of the leasehold title (065). He has a good title against the Defendants and anyone else on leasehold title (065).

G. Pre-Decision considerations

21. Mr. Napuati informed the Court of the following:

- a) The Claimant abandoned his claim for damages.
- b) The Defendants constructed temporary buildings on the Claimant's land title (065) and so would allow the Defendants a period of 2 months to remove their temporary rent houses (if the Court made orders in his favour).



22. The Court is satisfied that the Claimant has made out his claim on the balance of probabilities.

H. Decision


23. The Court makes the following orders:

ORDERS

1. That an order for eviction of the Defendants from the leasehold title No. 11/0124/065 is granted.
2. That an order that the Defendants shall remove their temporary house and rental constructions built on the leasehold (065) within 2 months from the date of this judgment that is by 20 October 2020.
3. That the Defendants shall pay the Claimant's costs of this proceeding assessed in the amount of VT80,000 within 14 days that is by 7 September 2020.
4. That I set a costs review conference of this matter before me on Thursday 10 September 2020. The purpose of this conference is to see whether the costs of 80,000vt was paid as ordered or whether the Defendants need to indicate to the Court how they wish to pay this costs of 80,000vt.

Dated at Port Vila this 20th day of August 2020

BY THE COURT



**Vincent Lunabek
Chief Justice**

