

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Civil jurisdiction)

Civil
Case No. 13/299 SC/Civil

BETWEEN: **Kalsua Momo Masaai**
Claimant

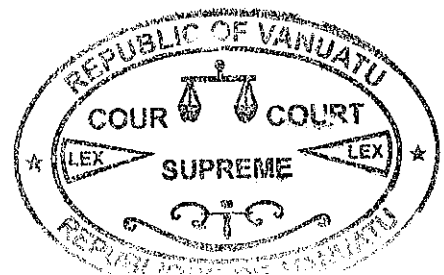
AND: **Chief Poilapa IV and Dataka Holdings
Limited**
First Defendant
Republic of Vanuatu
Second Defendant
Director of Lands
Third Defendant

Date: 24 and 25 September 2020
Before: Justice G.A. Andrée Wiltens
Counsel: Mr S. Kalsakau for the Claimants (recently instructed)
Mr P. Fiuka for Mr J. Tari for the First Defendant
Mr L. Huri for the for the Second and Third Defendants

JUDGMENT

A. Introduction

1. This matter deals with land. The Claim seeks to rectify a registered Lease, which is then to be replaced by a new Lease in the name of the Claimant. Rectification is sought on the basis of fraud and/or mistake being involved in the registration which occurred.
2. Damages and costs were also sought.



B. Background

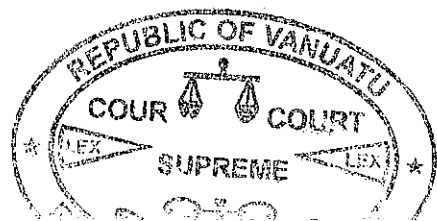
3. The land in question is in the Mele area of Efate. It is more particularly described in Lease Title No. 12/0822/107.
4. In 1987, the Mele Land Committee determined customary ownership of the land to belong to Mr Masaai.
5. That determination was challenged in 1993, with a resultant Island Court decision being released in 2004. The Custom owners were then declared to be family Mariki Langa. The First Defendant is the family representative.
6. Mr Masaai challenged that 2004 determination, and succeeded in that the Supreme Court remitted the case back to the Island Court for reconsideration. In 2011, the Island Court confirmed the customary owners to be the family Mariki Langa.
7. Mr Masaai again challenged that determination, but did not succeed in upsetting the decision.
8. It follows that post the appeal decision being published in February 2016, Mr Masaai has no claim to any legal interest in the land, he having exhausted all avenues of challenge.

C. Claim

9. In November 2007, Mr Masaai made an application to register a lease. A copy of the application was attached to his sworn statement as appendix "MM1". It records that Mr Masaai is to be the lessor, and a brother of his was to be lessee. Mr Masaai maintains that at that point in time he had a registrable interest in the land, and indeed that he was the rightful customary owner of the land.
10. Mr Masaai alleges that the Director of Lands wrongly declined to register the lease. Instead a subsequent application to register a lease by Dataka Holdings Limited was registered by the Director of Lands – that remains the present position. Mr Masaai alleges the registration was made as a result of fraud and/or mistake.
11. Mr Masaai seeks to redress the situation by rectification of the title and removing the current registered lease and instead going back in time to register his lease as per his 2007 application.

D. Discussion

12. Three witnesses were called for the Claimant, and each was cross-examined. Effectively, the brief background earlier set out was established. The matter was adjourned over-night to hear the defence cases the following day.
13. However, on reflection, at the resumption of the trial I sought assurance from Mr Kalsakau that his client has the necessary standing to bring the Claim; and if so, on what basis the relief sought could possibly be granted given the protections set out in the Land Leases Act in favour of the lease currently registered.

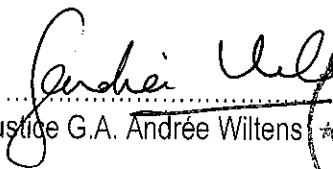


14. Mr Kalsakau submitted that his client had standing throughout this proceeding until February 2016, albeit on the basis of varying circumstances.
15. Mr Kalsakau conceded that his client has no current interest in the land, and has no ability to resurrect any challenge to attempt to make such claim in the future.
16. Effectively, Mr Masaai, with no rights in respect of this land, sought to interfere with the rights of others who currently have certain protections under the Land Leases Act. When the matter was put in this way, Mr Kalsakau was at a loss to further press his case.
17. Given those circumstances, the utility of proceeding further was questionable. It may be that Mr Masaai had standing at earlier times during this litigation, but that has all expired in 2020. He is no longer, in law, able to prosecute his claim.
18. Further, Mr Kalsakau took instructions from his client and withdrew the second aspect of the Claim seeking for this Court to re-instate the 2007 registration of lease application and instruct the Director of Lands to proceed to register the same. The relief sought was futile. The Court is in no position to undermine a registered owner's rights in that way.

E. Result

19. The Claim was dismissed in its entirety.
20. Mr Fiuka sought VT 3 million in costs. Mr Huri was more restrained in seeking VT 150,000 - 200,000. Mr Kalsakau sought to advance the proposition that costs should lie where they fell – an extremely unattractive argument, and one that was doomed to fail.
21. Mr Masaai is to pay costs to the First Defendant of VT 150,000 within 28 days. Mr Masaai is to also pay VT 150,000 costs to the Second and Third Defendants within 28 days. For the avoidance of doubt, the costs total VT 300,000.

Dated at Port Vila this 25th day of September 2020
BY THE COURT


Justice G.A. Andrée Wiltens

