

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

Civil
Case No. 20/250 SC/CIVL

BETWEEN: Ngwele Willie Toa
Claimant

AND: Lizzie Sablan
Defendant

Date: 7 December 2020
Before: Justice V.M. Trief
Counsel: Claimant – Mr J. Vohor
Defendant – Mr W. Kapalu

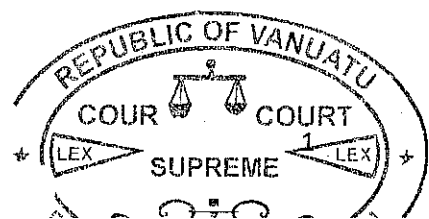
JUDGMENT

A. Introduction

1. The Claimant Ngwele Willie Toa is the registered proprietor of leasehold property title no. 12/09112/365 (the 'property'). The Defendant Lizzie Sablan is a lessor and Mr Toa's former wife. Mr Toa alleges that Ms Sablan trespassed onto the lease and seeks damages and costs.
2. Ms Sablan did not file any evidence and did not object to either of the sworn statements filed by Mr Toa. Counsel agreed that written submissions be filed and that the Court make its decision on the papers. Having considered counsel's submissions, I now determine the Claim.

B. Statements of the Case

3. Mr Toa alleges that Ms Sablan trespassed onto the property in 2016 and without his consent removed the roofing of his dwelling on the subject land and fenced the yard. Further, that without his consent Ms Sablan subdivided several portions of land within the property. Ms Sablan's Defence denies trespass as alleged and that Mr Toa has suffered any loss or damage.
4. In the Reply, Mr Toa alleges that the Defendants' brothers were the one who removed the corrugated iron roofing of his dwelling.
5. The issues arising are:



- a) Did Ms Sablan remove the roofing from Mr Toa's dwelling on the subject land? **[Issue 1]**
- b) Did Ms Sablan fence the yard without Mr Toa's consent? **[Issue 2]**
- c) Did Ms Sablan subdivide several portions of land within the subject land? **[Issue 3]**
- d) Is Ms Sablan liable in trespass to Mr Toa? **[Issue 4]**

C. Issue 1: Did Ms Sablan remove the roofing from Mr Toa's dwelling on the subject land?

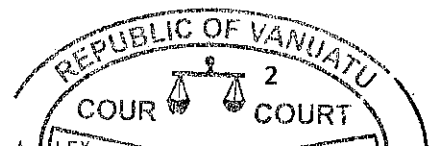
- 6. It is undisputed that Mr Toa is the registered proprietor of the property, since registration of the lease on 20 May 2005 and that he had a dwelling house on the property.
- 7. Mr Toa evidenced that in June 2016, a Reginald Aqua told him that he had driven his bus past the property and saw two people removing the corrugated iron roofing ("copper roof") of Mr Toa's house. Mr Toa said he immediately went in Reginald's bus to the property. On arrival he saw Francois Vuta Sablan and Nono Sablan, Ms Sablan's brothers. He asked them why they were removing the roofing. They replied that Ms Sablan had sent them to remove the roofing.
- 8. There is no evidence to the contrary.
- 9. I accept and find that Ms Sablan directed her brothers to remove the corrugated iron roofing from Mr Toa's dwelling.
- 10. It is sufficient in an action for trespass to land that the Claimant prove that the Defendant entered the land indirectly (eg. by propelling a third party onto the land) – see *Mamelin v Republic of Vanuatu* [2015] VUSC 1 at para. 24; *Bob v Stettin Bay Lumber Company Ltd* [2008] PGNC 120. The Claimant has done so.

D. Issue 2: Did Ms Sablan fence the yard without Mr Toa's consent?

- 11. There is no evidence that Ms Sablan fenced the yard without Mr Toa's consent. This aspect of the Claim fails.

E. Issue 3: Did Ms Sablan subdivide several portions of land within the subject land?

- 12. Mr Toa alleges that Ms Sablan and her daughter Eva Sablan subdivided the property. He relies on attachment "NWT3" which is a letter dated 12 April 2016 from the Department of Lands' Senior Cartographer to the Surveyor General. In the letter, the Senior Cartographer states that the survey plans of the property and 2 other lease titles appear to overlap. He recommends that the Department's surveyors verify through a field inspection whether there is an overlap and if there is, that the lease of the property be cancelled and the survey plans corrected.
- 13. I am unable to construe "NWT3" as being evidence that Ms Sablan or any other person subdivided portions of land within the subject land. This aspect of the Claim fails.



F. Issue 4: Is Ms Sablan liable in trespass to Mr Toa?

14. The Claimant having proved that Ms Sablan directed her brothers to remove the corrugated iron roofing from Mr Toa's house, Ms Sablan is liable in trespass to Mr Toa.
15. I accept Mr Toa's evidence that he spent VT167,372 at Vate Industries Ltd and VT43,842 at Wilco Hardware on roofing materials. Accordingly, I award special damages in the sum of VT211,214.
16. There is no evidence of emotional distress suffered. I decline to make an award of general damages.

G. Result and Decision

17. I accept and find that Ms Sablan directed her brothers to remove the corrugated iron roofing from Mr Toa's dwelling **[Issue 1]**.
18. There is no evidence that Ms Sablan fenced the yard without Mr Toa's consent. This aspect of the Claim fails **[Issue 2]**.
19. I do not find any evidence that Ms Sablan or any other person subdivided several portions of land within the subject land. This aspect of the Claim fails **[Issue 3]**.
20. Ms Sablan is liable in trespass to Mr Toa **[Issue 4]**. The Defendant is to pay the Claimant special damages in the sum of VT211,214.
21. Interest on the judgment sum in the preceding paragraph is to run at 5% per annum from the date of judgment until payment in full has been completed.
22. Costs should follow the event. The Defendant is to pay the Claimant's costs summarily assessed at VT150,000 within 21 days.

H. Enforcement

23. Pursuant to Rule 14.3(1), I now schedule a Conference **at 8.45am on 28 January 2021** to ensure the judgment has been executed or for the judgment debtor to explain how it is intended to pay the judgment debt.
24. For that purpose, this judgment must be served on the Defendant.

DATED at Port Vila this 7th day of December 2020

BY THE COURT

.....
Viran Molisa Trief
Judge

