

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

Civil
Case No. 21/885 SC/CIVL

BETWEEN: Richard Solzer and Elizabeth Prasad
Claimants

**AND: Dr Andrina KL Thomas, Margareth
Peato and Alice Pipite**
Defendants

Date: 26 October 2021
Before: Justice V.M. Trief
Counsel: Claimants – Mr R. Willie
Defendants – Mrs C.T. Gesa

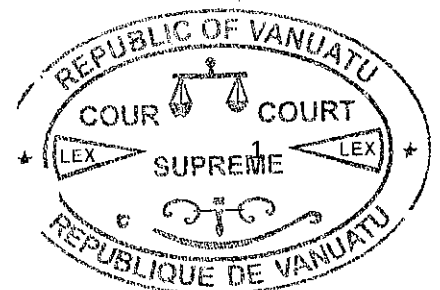
DECISION AS TO STRIKE-OUT APPLICATION

A. Introduction

1. The Claimants Richard Solzer and Elizabeth Prasad are suing the Defendants, Ms Prasad's siblings, in trespass and seek an order for the Defendants' eviction from leasehold title no. 03/O172/047 situated at Sarakata area, Luganville, Santo (the 'lease').
2. This is my decision on the Defendants' Application to strike out the Claim filed on 10 November 2020.

B. Pleadings

3. By the Claim, the Claimants allege that they have legal interests in the lease and are the intended proprietors of the lease.
4. The Claim is opposed. By the Defence and Counter Claim, the Defendants alleged that they and the Claimants are the joint owners of the lease and deny trespassing onto the lease. Further, that the lease has never been transferred from their parents to the Claimants and that the Claimants have no standing to bring the Claim.



C. Discussion

5. In a claim for trespass, the claimant must establish either ownership or occupation of the subject land. The Claim alleges only that the Claimants are 'the intended proprietors of the property'. It does not set out what rights they have to ownership of the lease nor whether or not they occupy the subject land.
6. Mr Willie's submissions in the Response to Application to Strike Out Claim filed on 18 February 2021 did not assist me. On 14 October 2021, Mr Willie sought a further opportunity to file submissions in response to the Application. Despite the opportunity given, no submissions have been filed.
7. In the circumstances, the Claim does not disclose a cause of action and must be struck out.

D. Result and Decision

8. The Defendants' Application to Strike Out filed on 10 November 2020 is **granted**.
9. The Claim filed on 29 May 2020 is **struck out**.
10. The Claimants are to pay the Defendants' costs of defending the Claim as agreed or taxed by the Master. Once set, the costs are to be paid within 21 days.
11. This matter will proceed to trial only on the Counter Claim.

**DATED at Port Vila this 26th day of October 2021
BY THE COURT**


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Justice Viran Molisa Trief

