

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

Civil

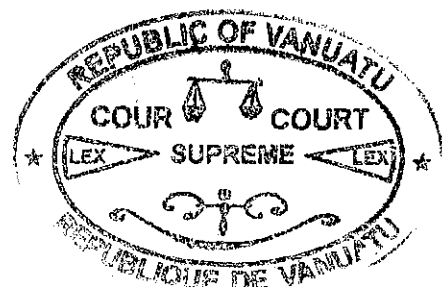
Case No. 07/44 CVL/Civil

BETWEEN: **Simeon Athy**
Claimant

AND: **Watson Charlie Mala**
First Defendant
The Minister of Lands
Second Defendant
The Director of Land Records
Third Defendant
Teouma Holdings Limited
Fourth Defendant
ANZ Bank (Vanuatu) Limited
Interested Party

Date: 6 April 2021.
Before: Justice G.A. Andrée Wiltens
In Attendance: Mr E. Nalyal for the Claimant
No appearances by or for the Defendants
Mr A. Kalmet for the ANZ Bank (Vanuatu) Limited

Judgment



A. Introduction

1. This is a long-standing matter.
2. Mr Athy, the Claimant, challenged the validity of Leasehold Title No. 12/0411/003, alleging fraud on the part of the First and Fourth Defendants.
3. In the course of that litigation, there was an application for restraining orders designed to maintain the status quo by preventing further development of the land and dealings with the land by way of divestment pending the outcome of the litigation. Justice Fatiaki granted the restraining orders by judgment dated 16 November 2010.
4. Subsequently, Justice Fatiaki struck out Mr Athy's Claim on 28 November 2011, effectively for want of prosecution of the Claim. I note that there has been no further steps taken by any of the parties to the litigation since that time.
5. In the meantime, on 11 February 2013, in Civil Case No. 11/225, ANZ Bank (Vanuatu) Limited was granted the power of seizure and sale of the property. However, the continuing effect of the restraining orders has rendered the power of seizure and sale nugatory.

B. Application

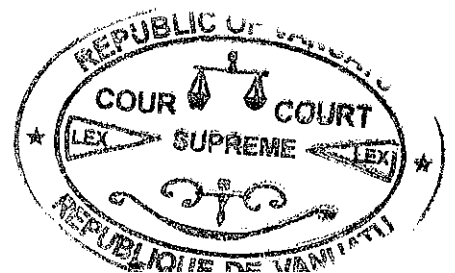
6. Accordingly Mr Kalmet has made application to join ANZ Bank (Vanuatu) Limited as an Interested Party to this current litigation and further sought to amend the restraining orders so as to give efficacy to the power of seizure and sale orders of 11 February 2013.

C. Discussion

7. Had there been an application for joinder made prior to February 2013, there is little doubt the Court would have dealt with this issue at the time.
8. The application has merit and makes absolute sense. There is nothing to gainsay it.
9. The lack of steps taken by Mr Athy since 2011 is a clear indication that his allegations had little if any substance. Further, it means this matter can be dealt with without re-agitating the various parties previously involved. ANZ Bank (Vanuatu) Limited should not be prevented or further delayed from access to the fruits of their judgment by the restraining orders.

D. Result

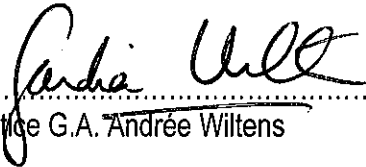
10. The application is granted in terms. ANZ Bank (Vanuatu) Limited is joined as an Interested Party to this litigation.
11. The restraining orders of 16 November 2010 are varied as follows:



- By virtue of its registered mortgage over leasehold Title No. 12/04111/003, and pursuant to the orders of this Court dated 11 February 2013 in Civil Case No. 11/225, ANZ Bank (Vanuatu) Limited is authorised to exercise its power of seizure and sale of the property; and
- The Director of Lands is authorised to register a transfer of the Lease as a result of ANZ Bank (Vanuatu) Limited so exercising its power of sale.

12. There is no order as to costs.

Dated at Port Vila this 6th day of April 2021
BY THE COURT


.....
Justice G.A. Andrée Wiltens

