

BETWEEN: Remy Usua Kuanuan, Willie Naven,
Jimmy Namtengas, Misiwaran
Karaoie, Salanaie Daniel and Silas
Yatan

First Claimants

Yang Qingkun, Cheng Guo, Deng
Yunfei, Tong Jiaming, Jean Frank
Calo and Itonga Developments
Limited

Second Claimants

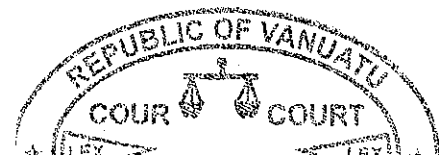
AND: Iata Nesam Reva, Magau Iata Riva,
Brung Riva, Kalaanga Neweu,
Iaritan Riva, Estella Riva, Peter
Riva, and Narou Riva and family

Defendants

Date: 2nd September 2022
Before: Justice C.N. Tuohy
Counsel: Mr J. Kilu for the Claimants
Mr W. Kapalu for the Defendants

Judgment

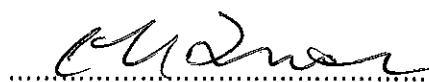
1. This is a claim for trespass in respect of three separate areas of land in South East Tanna. Two of those areas are the subject of registered leases 14/2522/001 and 14/2522/002. The third area is the subject of an unregistered lease, 14/2344/004. At the end of the trial, Mr Kilu indicated that he is not pursuing the claim in respect of the land held under the unregistered lease.
2. The first claimants are alleged to be the lessors named in the three leases. The second claimants are alleged to be the lessees named in the three leases. The defendants are people who it is alleged are living on and using the leased land without any legal entitlement to do so.
3. The primary evidence in support of the claim was given by the first claimant, Remy Usua Kuanuan who was cross-examined on his sworn statement at the trial. Supporting sworn statements were provided by three chiefs from the area whose evidence related to the history of "Enkahi Land", which all the claimants' witnesses say is the custom name of the land which is subject to the leases. The defendants provided no evidence to support the defence filed.



4. The law of trespass is part of the English law which became part of Vanuatu law pursuant to Article 95(2) of the Constitution. A person who wrongly enters or remains on land is liable as a trespasser. The only person who can make a claim against a trespasser is the person who is entitled to immediate and exclusive possession of the land.
5. In respect of land held under a registered lease the person entitled to immediate and exclusive possession of the land is the lessee. The evidence of the identity of the lessees of leases 14/2522/001 and 14/2522/002 is flimsy. Mr Remy's statement annexed a copy of lease 14/2522/002 which named Jean Franck Gallo as the lessee but a copy of lease 14/2522/01 was not in evidence. Nor was the register in evidence in respect of either lease. So the evidence did not disclose by direct evidence the identity of the current registered lessee of either of those leases.
6. A greater problem for the claimants is that neither Jean Gallo nor any of the Chinese persons who are said to be the lessees of lease 14/2522/001 provided any evidence to confirm that they do not consent to the presence of the defendants on their land. This cannot be assumed simply from the fact that they are named as claimants.
7. A claim for trespass like this one is a very serious matter. If established, it could result in the eviction of defendants from their homes. Before a claim for trespass is upheld it must be properly proven. This claim is not properly proven. There needs to be direct proof that the claimants are the persons entitled to immediate and exclusive possession of the land and that the defendants have wrongly entered or remained on the land without their consent. Proof of those matters is not to be found in the evidence presented at trial.
8. The claim is dismissed. As the successful party, the defendants are entitled to costs but at a very reduced rate. The defendants filed no evidence in support of their defence and the trial was short. I award costs to the defendant in the sum of VT30,000.

Dated at Port Vila this 2nd day of September 2022

BY THE COURT



Justice C.N. Tuohy

