

**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 of Trial: 14 June 2022
Before: Justice V.M. Trief
In Attendance: Claimants – Mr R. Willie
Defendants – Mr E. Macreveth
Date of Decision: 26 September 2022

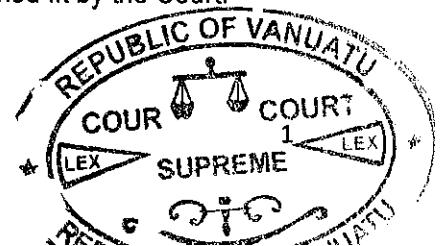
JUDGMENT

A. Introduction

1. On 26 October 2021, the Court struck out the Claim by the Claimants Richard Solzer and Elizabeth Prasad for the eviction of the Defendants Dr Andrina K.L. Thomas, Margareth Peato and Alice Pipite who are Elizabeth Prasad's sisters.
2. This matter then proceeded to trial only on the Defendants' Counter Claim.
3. This is the judgment.

B. Pleadings

4. By the Counter Claim, the Defendants alleged that they and the Claimants are the joint owners of leasehold title no. 03/OI72/047 situated at Sarakata area, Luganville, Santo (the 'lease'). They alleged that Dr Thomas was building her house on the property but that due to the Claimants' interference, the buildings works had stopped thus causing loss and damage to Dr Thomas.
5. The relief sought was an order for loss of business of VT1,000,000, an order for VT1,000,000 general damages, costs and any other order deemed fit by the Court.



6. The Claimants disputed the Counter Claim. They alleged that they had no knowledge of any building works by Dr Thomas and denied that the Defendants were entitled to any relief.

C. Preliminary Matter

7. Much of the evidence focused on whether or not Busin Prasad and Rose Morin Moses (the biological parents of Ms Prasad and the Defendants Mrs Peato and Mrs Pipite) were legally married so that all or only some of their children were entitled to ownership of the lease.

8. However, that was not an issue raised by the pleadings in this matter.

9. In addition, the Supreme Court has already decided the question of whether or not Busin Prasad and Rose Morin Moses were lawfully married in the judgment dated 5 December 2008 in *Prasad v Government of Vanuatu*; Civil Case No. 186 of 2005 <http://www.pacii.org/vu/cases/VUCA/2009/1.html>, in which it was ordered:

1. *Declare that Busin Prasad and Rose Morin Moses were lawfully married under the Pacific Islands Marriage Order in Council 1907 in 7th September 1966 in Luganville.*

10. That judgment was appealed in *Prasad v Prasad* [2009] VUCA 1. The appeal was dismissed: Court of Appeal judgment dated 30 April 2009.

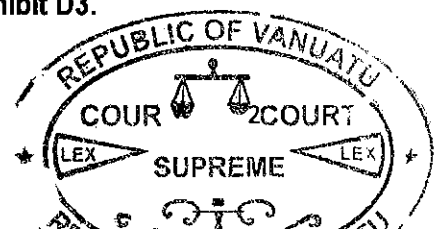
11. In the circumstances, I disregarded all evidence related to the legality of Busin Prasad and Rose Morin Moses' marriage and whether all or only some of their children were entitled to ownership of the lease. The Sworn statement of Margareth Peato [**Exhibit D2**] fell into this category.

D. Discussion

12. Are the Claimants and Defendants the joint owners of the lease as alleged in the Counter Claim? A copy of the lease is attached as **Annexure AKLT 21** to the Sworn statement of Dr Thomas [**Exhibit D2**]. That shows that the lessee is Rose Morine Prasad, now deceased. There has not been transmission of the lease to anyone therefore I find that the Defendants have failed to prove that they are the joint owners of the lease.

13. However, the Defendants could still succeed on the Counter Claim if they can prove that Dr Thomas had a right of occupation.

14. Dr Thomas deposed in **Exhibit D1** that the six children of her father Busin Prasad and Elizabeth Senior (first marriage) and with Rose Morin Prasad (second marriage) agreed to distribute amongst themselves their parents' two properties being the lease at Sarakata and lease title 03/OI74/008 at Side River area in Luganville. Two children and their offspring would reside at the Side River property. The other four including Dr Thomas and their offspring could build and reside at the lease at Sarakata. Mrs Peato also deposed to that effect in her Sworn statement, **Exhibit D3**.



15. The only Sworn statement from the Claimants relied on is the Further Sworn statement of Elizabeth Prasad [**Exhibit C1**]. This did not contain any evidence to the contrary.
16. Accordingly, I accept that Dr Thomas had obtained her siblings' consent, including that of Ms Elizabeth Prasad, to build a house at the lease at Sarakata.
17. The Defendants have proved on the balance of probabilities that Dr Thomas had the right (along with 3 other of her siblings) to occupy the Sarakata property.
18. I also accept as proved that Dr Thomas had commenced building a house on the lease but that due to the Claimants' interference namely their Claim in this matter to evict her and the other 2 Defendants, she stopped the construction works.
19. Now to the question of what relief is to be awarded.
20. The first order sought in the Counter Claim is for VT1,000,000 damages for loss of business. Dr Thomas had hoped to finish the building and rent it out. That has not occurred due to the Claimants' interference. As no business has ever been operated in or using that (partly-constructed) building, no order can be made for damages for loss of business.
21. The other order sought is for VT1,000,000 general damages. General damages will flow where pain and suffering was caused. I accept that Dr Thomas has suffered from having to stop the construction of her house due to the Claimants' eviction claim. Accordingly, I award general damages in the sum of VT100,000.

E. Result and Decision

22. The Claimants are to pay the Defendant Dr Andrina K.L. Thomas general damages of VT100,000.
23. Costs must follow the event. The Claimants are to pay the Defendants' costs as agreed or taxed by the Master. Once set, the costs are to be paid within 28 days.

F. Enforcement

24. Pursuant to rule 14.3(1) of the *Civil Procedure Rules*, this matter is listed for Conference **at 8.30am on 21 October 2022**, including by video link to the Luganville Court House, to ensure the judgment has been executed or for the judgment debtors to explain how it is intended to pay the judgment debt. For that purpose, this judgment must be personally served on the Claimants and proof of service filed.

DATED at Port Vila this 26th day of September 2022
BY THE COURT


Justice Viran Molisa Trief

