

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

Civil
Case No. 21/3550 SC/CIVL

BETWEEN: Taura Songi Harry Takurua

Claimant

AND: Willie John Sasamaki

First Defendant

AND: Guan Kai

Second Defendant

AND: The Republic of Vanuatu

Third Defendant

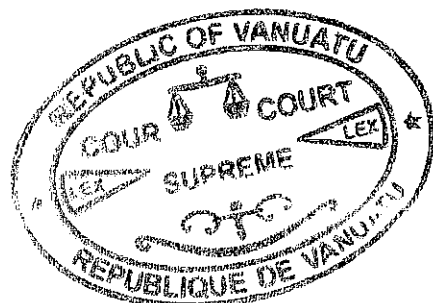
Date of Hearing: 23rd August 2022
Date of Judgment: 29th September 2022
Before: Justice Oliver Saksak
In Attendance: Mr Daniel Yawha for the Claimant
Mr Jack Kilu for First Defendant
Mr Sakiusa Kalsakau for Second Defendant
Mr Sammy Aron for Third Defendant

DECISION

1. The application by the Republic, Third Defendant to have this claim and proceeding struck out is declined and dismissed with costs.

Background

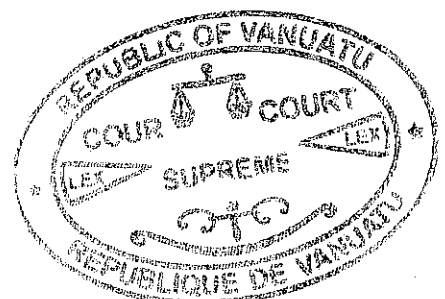
2. The claimant filed an original claim on 28th October 2021 and an amended claim on 4th February 2022.
3. The claimant claimed in the main an order that the Second Defendant's lease be cancelled for fraud and/or mistake under section 100 of the Land Leases Act [CAP 163].



4. In the first alternative, if he fails under section 100, that he should be awarded damages for deprivation of his and his family livelihood and right of use of their customary land assessed at VT 50,000,000, and for demolition and removal of 5 residential buildings, water pump and systems, assessed at VT 23,200,000.
5. In the second alternative, that he be substituted as lessor of the said lease.
6. He claims interests at 5% per annum and costs.
7. The relevant lease title under challenge is 12/0522/009 (Lease 009).
8. Lease 09 was first registered in Willie John Sasamaki's name as lessee on 30th April 2007 for consideration of VT 768,000 with yearly rentals of VT 11,520.
9. The lessor was the then Minister of Lands Mr Maxim Korman Carlot.
10. The Second Defendant transferred Lease 009 to Guan kai, Second Defendant on 14 July 2015 for consideration of VT 40,000,000.

Grounds of Application

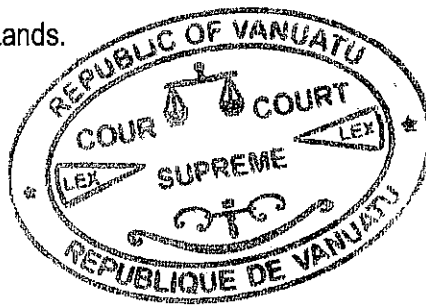
11. The Republic advanced the following grounds-
 - a) That Lease 009 is located within the customary boundary of Udaone Custom land which is still in dispute and the claimant being one of the disputing parties is not yet declared as land owner.
 - b) That the claimant is neither the lessor nor the lessee of Lease 009 and is not entitled to lodge this claim for fraud or mistake under section 100 of the Act.
 - c) That the Court of Appeal cases of Frank Ishmael v Karl Kalsev & Ors CC 220/2012 and CAC 27 /2014 lend support for this ground that the claimant has no standing.



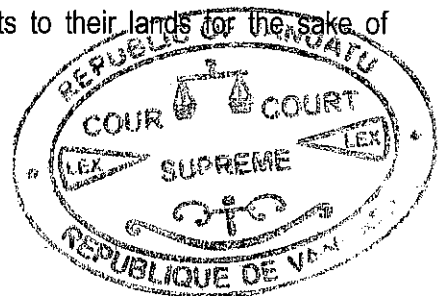
12. The Republic submitted the claim should be struck out with costs of VT 250,000.
13. Mr Kilu supported the application. Mr Kalsakau also supported the application by the Republic relying also on the Court of Appeal case of Kalkot Mataskelekele v Georgie Bakokoto & others CAC 20/870.

Discussion

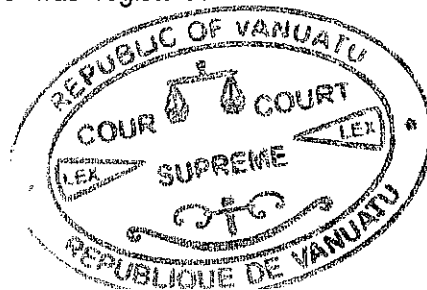
14. The defendants filed defences on 24th March 2022 by the Attorney General, by the Second Defendant on 11 May 2022 and by First Defendant on 27th June 2022.
15. As for evidence, only the Third Defendant filed a sworn statement by Mr Paul Gambetta on 8th June 2022. Neither the second nor the First Defendant have filed any evidence by sworn statements despite being directed to do so on 3rd June 2022.
16. The claimant's evidence is contained in his sworn statement filed on 1st November 2021 in support of his application for suspension of enforcement warrant.
17. There is one main issue of whether or not the claimant has standing.
18. The claimant's evidence which remains unrebutted by the defendants is that he was the 8th Claimant in Land Case No.1 of 2006 involving Udaone Customary Land. In his Annexure "TSHT7" he discloses the judgment of the Siviri and Sunae Joint Village Customary Land Tribunal Decision dated 9th January 2008. In the declarations in paragraph 3, page 39 the Tribunal declared custom ownership of Udaone Custom land in favour of Chief Andrew Popovi as the custodian of the Community Land on behalf of his family, including Family Popovi, Obed Pakoa, Harry Gilbert and Minnie Laumanu.
19. Subsequently the Tribunal issued Orders 1-7 inclusive. The First Order required Andrew Popovi as the declared custodian of Udaone Land to consult at all times with Family Popovi, Pakoa, Harry and Minnie concerning any dealing and development inside the Udaone/Esema customary Lands.



20. In its defence the Third Defendant pleads that Udaone Land is still undisputed. However there is no evidence as to who are the disputing parties. There is no evidence regarding the decision of the Tribunal of 9th January 2008 as to whether it has been quashed or set aside by any other Court or Tribunal. There is no evidence that the decision was appealed by any parties. There is no evidence of any orders of a Court staying the enforcement of the Tribunal's decision.
21. As such, unless and until set aside or quashed and/or stayed pending an impending decision, the decision and declarations and orders of the Tribunal stand. That decision gives standing to the claimant as one of the declared custom owners having a direct interest to Udaone Custom Land to file this claim and proceeding.
22. His declaration distinguishes his case from Frank Ishamael's Kalsev's and the Kalkot Mataskelekele's cases which have no application to this case.
23. Willie John Sasamaki, First Defendant was a party to Land Case No.1 of 2006. Yet in the defence of the Republic it is pleaded at paragraph 13 (g) it was him who gave consent to transfer as a disputing custom owner to transfer Lease 009 to the Second Defendant. How could that have been possible when he was not a declared land owner to Udaone Land? The appropriate persons who were declared by the Tribunal to give consent did not do so. Was it therefore a mistake or a fraudulent act? That is what remains to be determined.
24. Mr Kilu pleaded to paragraph 13 of the claimant's claim that the declarations made in Land Case No. 1 of 2006 are under appeal. However there is no evidence by his client showing the appeal case and its registered number and/or any stay orders staying the effect of the declarations or orders.
25. If there is an appeal on foot and pending, it has been some 14 years since 2008. Why is there such a delay? Why are the families declared as owners or persons having beneficial interests being denied the fruit of their judgment at the expense of the privileged few who ignore our legal procedures to deprive rightful customary and indigenous land-owners of their constitutional rights to their lands for the sake of money?



26. The claimant may not in the end succeed in his claim under section 100 of the Act but he may stand a good chance of success in his alternative claim to damages or compensation under section 17 (g) of the Act, which is currently not specifically pleaded by the claimant in his claims.
27. The claimant has alleged that Lease 009 was registered in favour of the First Defendant by fraud. Annexure PG1 to Mr Gambetta's statement shows a clearance checklist. In step 2 Lease Execution section at the Bullet point down, it is shown that if the land is rural and is disputed, the disputing claimants had to agree. The evidence is that only the First Defendant was consulted and agreed But what about the 8 other disputing claimants? The checklist shows "yes". That is incorrect. Isn't that a dishonest act?
28. Finally on 24th October 2006 the North West Efate Area Kastomary Land Tribunal issued interim orders. Paragraph 5 of the orders states:
- " 5. That any claimant and or their family, relatives, agents and or associates having possessed and or in the process to acquire any Negotiators Certificate and or surveying o any land within the customary Land of Udaone is immediately suspended until another order is directed accordingly...."*
29. Paragraph 6 states:
- " 6. That the relevant Government institutions and or Private Sector firms, Lawyers, Real Estates, sub-agents and relevant Lessees, are so Ordered to comply with points (4) and (5) respectively."*
30. Paragraph 4 states:
- "4. That all financial transactions is immediately suspended, being that of rents, premiums and or any other monetary and or fixed assets from leases within the Udaone Customary Land Area, until another order is directed accordingly."*
31. From the evidence of Mr Gambetta a survey plan was made on 16th October 2006. Based on that survey plan Lease 009 was registered in favour of Willie John Sasamaki on 30th May 2007.



32. Those actions appear to me to be clearly in breach of the Tribunal's interim orders dated 24th October 2006.
33. If therefore those acts and actions were wrong in the beginning then subsequent acts and actions were tainted with illegality.
34. For those reasons this Court is hesitant in exercising its inherent jurisdiction to strike out this claim at this point.
35. The application is therefore dismissed. The defendants have put the claimant to costs. I accept the claimant's submission that he is entitled to his costs fixed at VT 150,000 to be shared equally between all the three defendants and be paid within 28 days from the date of this Decision.

DATED at Port Vila this 29th day of September 2022.

BY THE COURT

