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

Civil Appeal
Case No. 22/2770 SC/CAC

BETWEEN: Simeon Malachi

Appellant

AND: Charlie Mala

Respondent

Date of Hearing: 27th February 2023
Date of Judgment: 22nd March 2023
Before: Justice Oliver Saksak
In Attendance: Appellant in person unrepresented
Ms Anna Sarisets for the respondent

JUDGMENT

1. This is an appeal against the decision of the Magistrate's Court dated 2nd December 2022 whereby the Magistrate allowed the respondent's application to strike out the appellant's claim's with costs.
2. The appellant argued and submitted the Magistrate was wrong to have struck out his claims.
3. On 12th December 2022 the appellant filed an Appeal Book annexing among other documents his Amended Magistrates Court claim.
4. The Amended Claim contains 28 paragraphs of pleadings. Paragraphs 12, 13, 14, 15 and 16 make references to leaseholds 12/0413/008 and 12/0411/095 and the allegation that the respondent had not consulted and had no authority to sell those leasehold properties.
5. Paragraph 19 refers to leaseholds 12/0411/00, 12/0413/095 and loan agreements executed in relation to those leases by the respondent without consultation and permission.
6. Paragraph 25 of the Amended Claim pleads unjust enrichment by the respondent in selling those leases. Paragraph 25 (c) pleads the respondent signed and transferred those leases at over VT 3 million.
7. Paragraph 26 pleads for damages and paragraph 27 pleads nuisance with its particulars.



8. Paragraph 28 pleads for damages alleging the respondent's actions were unreasonable interference by signing and executing transfer of the leases.
9. The Magistrate had to consider three issues in determining the strike out application first: whether the claim was futile baseless, frivolous and vexatious. Second, whether it was re judicata and third, whether the Magistrates Court had jurisdiction.
10. The Magistrate accepted the claim was futile. In respect of the second issue the Magistrate considered the claim was not res judicata but in respect of the third issue the Magistrate accepted the Court had no jurisdiction to hear the appellant's claims. And the Magistrate struck out the claims with costs.
11. The issue before me is whether the Magistrate was wrong in doing so?
12. At paragraph 16 of the Judgment the Magistrate said:
"The monies that the claimant demands the defendant to account for are tied to those leases."
13. I agree entirely with the Magistrate.
14. The claims made in the Amended Claim of the appellant were beyond the jurisdiction of the Magistrate Court. The claims could have been properly filed in the Supreme Court and not in the Magistrate's Court.
15. The reliefs sought went beyond just seeking a declaration of whether the appellant as claimant is the authorized authority and representative of N'tain Kanas to seek the additional orders in paragraphs 3 and 4.
16. In my opinion the Magistrate was entirely correct in striking out the claim with costs.
17. No error has been demonstrated or made by the Magistrate. The judgment and orders are upheld.
18. The appeal is therefore dismissed. The appellant will pay the respondent's costs of the appeal in this Court, fixed at VT 70.000, payable within 28 days from the date hereof.

DATED at Port Vila this 22nd day of March 2023

BY THE COURT

Oliver Saksak

Judge

