

**BETWEEN:** Berry Kalopong  
Claimant

**AND:** Asael Wayane Kalopong Jimmy Joseph, Peris Kalopong,  
Mangau Samuel Kaltak, Chief Kalomtak Kalsaur  
Defendants

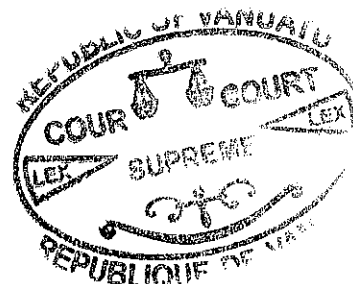
**Date of Hearing:** 9<sup>th</sup> October 2023  
**Date of Summary Judgment:** 17<sup>th</sup> October 2023  
**Before:** Acting Chief Justice  
**In Attendance:** Mr Colin Leo for the Claimant  
Mr Jack Kilu for the Defendants

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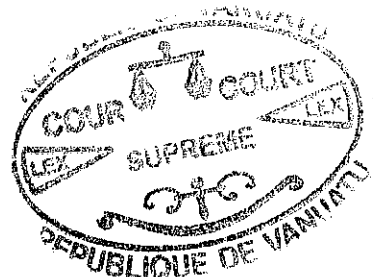
### SUMMARY JUDGMENT

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1. The claimant sought summary judgment pursuant to Rule 9.6 of the Civil Procedure Rules by filing an application on 1<sup>st</sup> August 2023.
2. The claimant filed a supporting sworn statement also on the same date deposing to his belief that the defence filed by the defendants on 13<sup>th</sup> September 2022 does not demonstrate a positive defence having any real prospect of success.
3. The claimant relied on the evidence contained in his sworn statement dated 14<sup>th</sup> July 2022 in which he annexes as "BK1" a copy of the Advice of Registration kept at the Lands Department showing that he is the registered proprietor of Leasehold Title 12/0912/601.
4. Further, as part of annexure "BK1" the claimant annexed a copy of his residential lease showing him as the lessee and John Maklin Wayane as the lessor of Leasehold Title 12/0912/601.
5. The claimant filed his claim on 14 July 2022 pleading at paragraph 1 that he is the registered proprietor of Lease 12/0912/601. In paragraph 3 of the claim the claimant alleges that the defendants attended his property and threatened his quiet enjoyment and his tenants to leave the property.



6. The claimant claims in paragraphs 4, 5, and 6 of the claim that the defendants namely Asael Wayane, acting on the advice of the other defendants, wrote letters on 25<sup>th</sup> April 2022 to one Willie Bong and a Pastor of the Apostolic Church demanding that they leave the property because they are occupying without the consent of the defendants.
7. The claimant alleges in paragraph 9 of his claim that the actions of the defendants amounted to trespass.
8. The claimant seeks in paragraph 10 the following reliefs:-
  - I. Damages to be assessed at VT 4 million;
  - II. Such further orders as deemed fit by the Court;
  - III. Costs at VT 2 million.
9. In the defendant's defence filed on 14 July 2022 the defendants admit that the claimant is the registered proprietor of Lease 12/0912/601. They also admit they sent letters as alleged in paragraph 3 of the claim, demanding the tenants to leave their property.
10. In regard to the claim for damages at VT 4 million the defendants say the claim has no basis and/or it is too excessive.
11. The defendants claim in paragraph 2 (f) and (4) of their defence that they were never aware of the claimant's lease and allege it was obtained by fraud, and indicate they would file separate proceeding to cancel the lease.
12. Mr Kilu opposed the application and argued the Court should decline it and allow the case to be heard fully, relying on Rule 9.6 (a) which provides that if there is a dispute between the parties about a substantial question of fact or a difficult question of law, the Court must decline to give judgment against the defendants.
13. The defendants have admitted clearly that the claimant is the registered proprietor of Lease Title 12/0912/601. That is the end of the matter. There is now no substantial question of fact or any difficult question of law to require a full hearing.
14. Although the defendants raised in their defence the issue of fraud, they have not properly pleaded it as a counter-claim. They merely indicated their intention to file separate proceeding to challenge the lease. However it has been more than one year since filing their defence on 14 July 2022 and there is no evidence the defendant have filed any proceeding challenging the claimant's lease on the basis of fraud and/or mistake.
15. Unless and unless a successful challenge is made under section 100 of the Land Leases Act, the claimant is recognised in law as the lawful proprietor of the leased land. And as such he and any tenants occupying any part of his lease on his expressed authority have a right to quiet enjoyment of the land without any interference from the defendants.



Sections 14 and 15 of the Land Leases Act CAP 163 provide security over the claimant's interest which is recognised by registration and which right and interest is not liable to be defeated except as provided under the Act.

16. Therefore enter judgment as to liability against the defendants and reserve the issue of damages pending further evidence before assessing the quantum.
17. Costs are to be in the cause.

**DATED at Port Vila, this 17<sup>th</sup> day of October 2023**

**BY THE COURT**

  
**Hon. OLIVER A SAKSAK**  
**Acting Chief Justice**

