

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

Civil

Case No. 21/1880 SC/Civil

**BETWEEN:** Leah Bani  
Claimant

**AND:** Elizabeth Bani  
Defendant

*Before:* Justice Oliver A. Saksak  
*Counsel:* Mrs Vire for the Claimant  
Mr Colin Leo for the Defendant  
*Date of Hearing:* 13<sup>th</sup> July 2023  
*Date of Judgment:* 18<sup>th</sup> December 2023

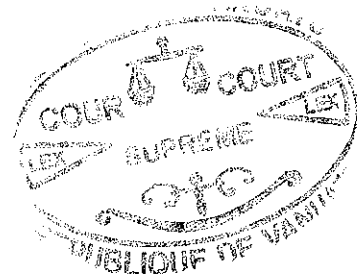
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**RESERVED JUDGMENT**

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**Introduction and Background**

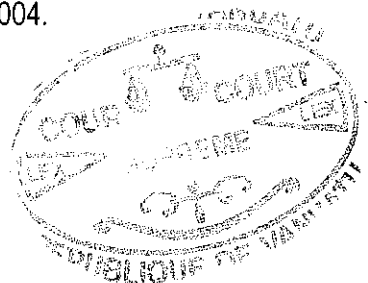
1. This is a claim made by the claimant as beneficiary under a will left by her father, the late Abel Bani, deceased.
2. The defendant is the widow of the deceased and step-mother of the claimant.
3. On 3<sup>rd</sup> November 2008 the deceased and the defendant as husband and wife then caused the registration of Lease Title 03/0194/004 (the Lease) as joint proprietors of the leasehold property.
4. The deceased died in July 2020. At his death on 7<sup>th</sup> July 2020 the deceased made a will in favour for the claimant:



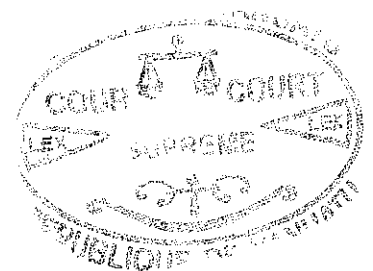
- (i) Land Lease Title 03/0194/004 including all fixtures, household and personal items and all other things located thereon, and
  - (ii) All moneys held at the deceased's bank account held at the BRED Bank.
5. On 9<sup>th</sup> June 2021 after seeking leave to renew the claim, the claimant filed this proceeding seeking to validate her late father's will and to have the Lease transferred into her name.
  6. On 25<sup>th</sup> February 2022 Andree' Wiltens, J heard Counsel in relation to two issues (a) who is to administer the estate of the deceased?, and (b) what the effect of the deceased's will is as to the transfer to the claimant a property ( and still is) the joint registered proprietor?
  7. The judge decided the first issue but found there was issue with the purported intention of the deceased to transmit the whole lease to his daughter, the claimant.

### **Discussion**

8. When the matter was called on 13<sup>th</sup> July 2023 and as recorded in the Minute the only remaining issue concerns the will of the deceased to be considered in light of the fact that the defendant, as a result of domestic issues arising between herself and the deceased at the time, she left their matrimonial home with her personal properties and requested the Magistrate's Court to order the removal of her name from the register as joint proprietor of the Lease
9. Counsel agreed the facts were not in issue and agreed to file written submissions to assist the Court determine the issue.
10. Mrs Vire filed her written submissions on 4<sup>th</sup> September 2023 and Mr Leo filed written submissions on 15<sup>th</sup> September 2023.
11. The first and the only issue is whether the defendant has any rights on the property?
12. The claimant submitted that the defendant has relinquished her rights in the Magistrate's Court in paragraph 30 to remove her name from Title 03/0194/004.



13. The defendant further at paragraph 29 of her statement requested for an order to give her the right to remove her properties and leave the property.
14. The Magistrate's Court granted the second order sought but declined the first order sought on grounds the Court has no jurisdiction to make such order.
15. That being the case the claimant cannot rely on that statement in this Court. The reason is simply that the position has changed. Despite the fact the defendant has removed her properties including the children of the marriage and has left the property to live elsewhere, that fact has not changed her legal right to the property as a joint proprietor.
16. With the passing of her late husband the property passed by transmission to the defendant as the sole proprietor. And the defendant has not made any similar request to this Court at any time for an order to have her name removed from the Lease Title.
17. The defendant's name remains on the Lease Title as the proprietor. Her legal rights are preserved under sections 14 and 15 of the Land Leases Act [ CAP 163].
18. Section 75 of the Land Leases Act provides that where a registered interested is vested in joint proprietors, they shall hold on the statutory trusts, and that on the death of one of them, the interest shall vest in the surviving proprietor.
19. Section 92 of the Land Leases Act provides for transmission on death of joint proprietor:-  
*" On proof of the death of any person registered as the joint proprietor of a registered interest, the director shall register the survivor or survivors as proprietor or proprietors of the interest and he or they shall thereupon become the transferee or transferors of such interest."*
20. From those legal provisions the defendant is the legal proprietor of Lease Title 03/0194/004. The answer to the issue is therefore in the affirmative.



21. As for the will made in favour of the claimant, it is in doubt. Section 3 of the Wills Act [ CAP 55] provides for device of land:-

*“ A will under the provisions of this Act may only dispose of any estate inland vested in the testator of which he is competent to dispose on death in accordance with custom or of any interest in land registered in his name done.”*

22. The will is dated 7<sup>th</sup> July 2020. On that date the Lease was still in the joint names fo the deceased and the defendant. And it still is.

23. Given section 3, the will relied upon is therefore invalid.

24. I therefore accept the submissions made by Mr Leo for the defendant and reject the submissions of the claimant.

### **The Result**

25. The claim by the claimant is dismissed with costs payable to the defendant on the standard basis as agreed or taxed.

**DATED at Port Vila this 18<sup>th</sup> day of December 2023**

**BY THE COURT**

  
**Hon. Oliver A Saksak**

**Judge**

