

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

Civil
Case No. 23/2468 SC/CIVL

BETWEEN: Aaron Bongmial Hanghangkon
Claimant

AND: Hermon Hanghangkon
First Defendant

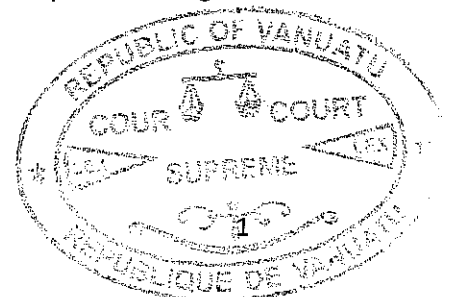
AND: Republic of Vanuatu
Second Defendant

Date of Hearing: 27 May 2024
Before: Justice V.M. Trief
In Attendance: Claimant – in person, ph 761-3962
First Defendant – no appearance (in person)
Second Defendant – Mrs N. Robert
Date of Decision: 30 May 2024

JUDGMENT

A. Introduction

1. This is a dispute between two brothers over leasehold property – lease title no. 11/OB22/067 located at Nambatu area in Port Vila (the '067 lease') – previously owned by their father Aaron Hanghangkon (deceased). The Claimant Aaron Bongmial Hanghangkon alleged in the Claim in the present proceedings that the transmission of the 067 lease to his brother the First Defendant Hermon Hanghangkon was 'illegally' made. This matter proceeded to formal proof hearing as no defence has been filed by Hermon Hanghangkon.



2. No allegations were made in the Claim against the second defendant State. It will abide the order of the Court.

B. The Claim

3. It is alleged in the Claim filed on 20 September 2023 that on the dissolution of the Claimant and First Defendants' parents' marriage, that their father was obligated to settle their mother's entitlements as per the judgment in Civil Case No. 12 of 2008 ('CC 2008/12') and Enforcement Case No. 1145 of 2020 ('EnfC 2020/1145'). However, instead of settling those debts, their father transferred the 067 lease (in his sole name) to himself and Hermon Hanghangkon as joint proprietors.

4. It is also alleged that in 2021, their father died. Subsequently, there was a transmission of the 067 lease to Hermon Hanghangkon. It is alleged that the 067 lease is part of their father's estate and that its transmission to Hermon Hanghangkon is illegal because of the unpaid judgment debt from CC 2008/12 and EnfC 2020/1145.

C. Evidence

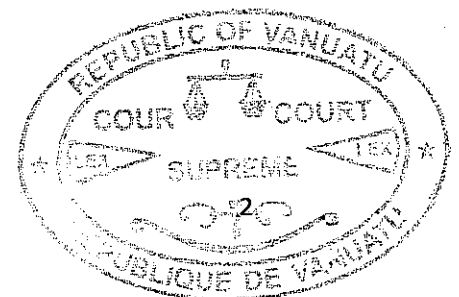
5. The Claimant's sworn statements include the following:

- a) Sworn statement in Support of Illegal Transfer of Leasehold Title no. 11/OB22/067 (i.e. location: No. 2 area, Port Vila, Efate) filed on 18 January 2024;
- b) Additional Sworn statement in support of Illegal Transfer of Leasehold Title no. 11/OB22/067 (i.e. location: No. 2 area, Port Vila, Efate) filed on 22 January 2024;
- c) Sworn statement in support of the Submissions to Show Cause as to why the Claim should not be Struck out, filed on 28 March 2024; and
- d) Sworn statement in Support of the Claim filed on 24 April 2024.

6. On 22 March 2024, the State filed the sworn statement of Gordon Willie, the Director of Lands, disclosing the registered dealings in respect of the 067 lease.

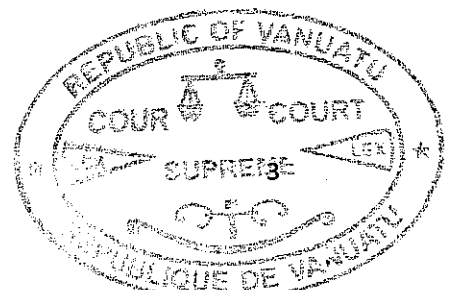
D. Consideration

7. The Claimant Aaron Bongmial Hanghangkon is the administrator of his and the First Defendant's father Aaron Hanghangkon's estate – Letters of Administration granted to the Claimant by Orders dated 17 April 2023 in Probate Case No. 2678 of 2022 [Claimant's Sworn statement filed on 28 March 2024 – Annexure "ABH1"] and [Sworn statement of Gordon Willie – Attachment "GW9"].



8. I find on the evidence that on 6 October 1992, the Director of Lands registered the 067 lease between the Minister of Lands (lessor) and Aaron Hanghangkon (lessee) [Sworn statement of Gordon Willie – Attachment “GW1”].
9. On 15 May 2013, the Director of Lands registered the transfer of the 067 lease from Aaron Hanghangkon to himself and Hermon Hanghangkon as joint proprietors [Sworn statement of Gordon Willie – Attachment “GW2”].
10. On 14 January 2021, Aaron Hanghangkon died intestate [Claimant’s Additional Sworn statement filed on 22 January 2024].
11. On 11 February 2021, the Director of Lands registered the transmission of the 067 lease to Hermon Hanghangkon as the sole surviving proprietor [Sworn statement of Gordon Willie – Attachment “GW3”].
12. Section 75 of the *Land Leases Act* [CAP. 163] provides as follows:
 75. (1) *Where a registered interest is vested in joint proprietors, the joint proprietors shall hold on the statutory trusts.*
 - (2) *Where two or more persons are joint proprietors of such a registered interest –*
 - (a) *a disposition of that interest shall be made only by all the joint proprietors; and*
 - (b) *on the death of a joint proprietor the interest shall vest in the surviving proprietor or proprietors.*

(my emphasis)
13. On the death of Aaron Hanghangkon in 2021, the registered interest that is the 067 lease vested in the surviving proprietor Hermon Hanghangkon pursuant to para. 75(2)(b) of the *Land Leases Act*.
14. Accordingly, the 067 lease was not part of the Claimant and First Defendant’s father Aaron Hanghangkon’s estate as alleged in the Claim.
15. It has already been held in previous decisions of the Court that the 067 lease was not part of Aaron Hanghangkon’s estate:
 - a) The Supreme Court Orders dated 17 April 2023 in Probate Case No. 2678 of 2022 clearly noted that the 067 lease was not part of the estate of Aaron Hanghangkon (deceased) [Claimant’s Sworn statement filed on 28 March 2024 – Annexure “ABH1”]; and
 - b) The Supreme Court Judgment dated 9 June 2023 in Enforcement Case No. 2696 of 2020 also held that the 067 lease was not part of the estate

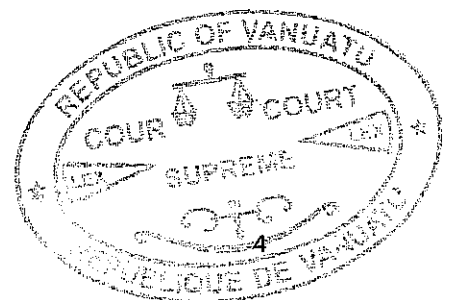


of Aaron Hanghangkon (deceased) [Sworn statement of Gordon Willie – Attachment “GW10”].

16. The Claimant was a party to both proceedings, Probate Case No. 2678 of 2022 and Enforcement Case No. 2696 of 2020. He put a copy of the 17 April 2023 Orders into evidence. He must be presumed to know of the Judgment dated 9 June 2023. Accordingly, it was an abuse of process for him to allege in the Claim filed on 20 September 2023 in the present proceedings that the 067 lease was a part of his father's estate when it has already been made clear in two previous sets of proceedings that it is not.
17. The remaining aspect of the Claim is the allegation that the transmission of the 067 lease to Hermon Hanghangkon is illegal because of the unpaid judgment debt from CC 2008/12 and EnfC 2020/1145. The Claimant's evidence contains bare assertions only that that judgment debt is unpaid. There is no copy of a minute or decision from either CC 2008/12 and EnfC 2020/1145 in evidence to show that that alleged judgment debt is unpaid. There is also no evidence from the administrator of the mother's estate (if there is one) to say that the alleged debt exists and remains unpaid.
18. Even if there was an unpaid debt, it must be enforced in EnfC 2020/1145 or other enforcement proceedings related to CC 2008/12. It cannot be enforced in the present proceedings which are unrelated to CC 2008/12 and EnfC 2020/1145.
19. Even if any judgment debt could be enforced in the present proceedings, no authority or principle of law has been cited as to how an unpaid judgment debt would override and supersede a lawful transmission of the lease.
20. In the circumstances, the Claimant has failed to prove on the balance of probabilities that there is an unpaid judgment debt from CC 2008/12 and EnfC 2020/1145, that it can be enforced in the present proceedings and if so, that that unpaid judgment debt would render illegal the lawful transmission of the 067 lease.

E. Result and Decision

21. For the reasons given, the Claim is **dismissed**.
22. Costs must follow the event. The Claimant is to pay the Second Defendant's costs fixed summarily at VT60,000 **by 4pm on 28 June 2024**.



23. Other costs are to lie where they fall.

**DATED at Port Vila this 30th day of May 2024
BY THE COURT**

VM Trief

Justice Viran Molisa Trief

