

BETWEEN: Family Nalau Niatngel, Family Moukaih, Family Hiwa
Apeng, Family Nauka Nimisa & Family Ialulu represented
by Steve Dan

Claimants

AND: Tom Hiwa

First Defendant

AND: The Republic of Vanuatu

Second Defendant

Before: *Justice Oliver A. Saksak*

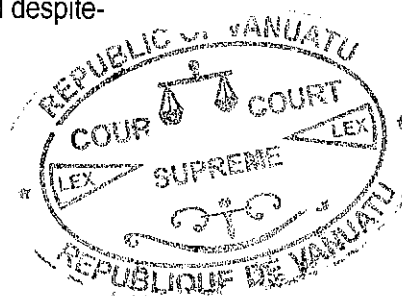
Counsel: *Mrs Mary Grace Nari for the Claimants*
Mr Philip Fiuka for the First Defendant
Mrs Jelinda T Tari for the Second Defendant

Dates of Hearing: *30th June 2023 and 26th September 2023*

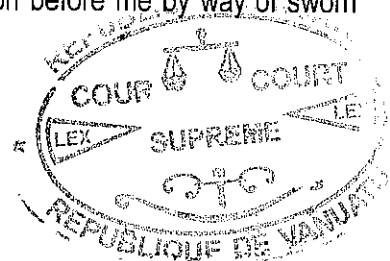
Date of Judgment: *11th June 2024*

JUDGMENT

1. This is a claim filed by the group of claimants on 23rd September 2021.
2. The claimants claim that the Lease Title 14/2412/016 (the Lease) issued by the second defendant in favour of the first defendant should be cancelled on grounds of fraud and/or mistake.
3. The claimants plead in their claims that the Lease was granted despite-
 - a) A pending appeal in the Supreme Court.



- b) The Supreme Court has issued a stay order against the decision of the Tanna Island Court dated 18th May 2007 pending determination of the appeal.
- c) Despite that stay order the Lease was registered in favour of the first defendant.
4. The claimants seek an order from the Court to cancel the Lease and to await the determination of their appeal.
5. The defendants say in their defences amongst others, that without any declaration of custom ownership over land on which the Lease covers, they have no standing to lodge a claim under section 100 of the Land Leases Act.
6. On 30th June 2023 when counsel appeared, Mr Aron put to the Court a preliminary issue for the Court to determine and that is the issue of the standing. Mrs Nari requested for 2 weeks to take instruction and file a memorandum.
7. A memorandum was filed on 6th July 2023 seeking an extension of time to 19th July 2023 to file written submissions.
8. On 26th September 2023 I noted in the Minute that Mrs Nari had filed her submissions on 21 July 2023. I gave Mr Fiuka 14 days to file submissions and the Republic was given liberty only to file any submissions within the same 14 days period. I recorded that if submissions were not forthcoming within the period allowed, the Court would formulate its decision on the papers.
9. Mr Fiuka filed written submissions on 13th October 2023.
10. The Republic has not filed any written submissions.
11. I am indebted to Mrs Nari and Mr Fiuka for the extensive and comprehensive submissions filed with supporting case law to assist me in determining the issues as identified by Mr Fiuka.
12. Whilst the Court was asked by Mr Aron on 30th June 2023 to consider only the preliminary issue of standing of the claimants on the papers, the information before me by way of sworn

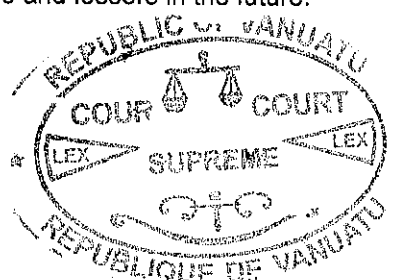


statements filed by the claimants and first defendant permit the determination of the other issues involving fraud and or mistake as well on the papers.

13. It appears the Republic has taken the position that they will abide by orders of the Court which explains why they have not made use of the liberty granted to them in September 2023 by filing any written submissions. The Republic had filed a defence but no sworn statements in support.
14. This judgment is therefore formulated on the papers before the Court as filed by the Parties.

Discussion

15. The first issue is whether the claimants have standing? And I have no hesitation to answer this issue in the affirmative on the basis of the case of Ratua v Ndai & ors [2007] VUCA and what the Court of Appeal said about the remedy of cancellation to a custom owner claiming to be the party who should be the lessor.
16. In this case it is well known to the first defendant that the claimants are the disputing parties to the land over which Lease 016 has been issued. And furthermore the decision of the Tanna Island has been appealed by the parties and is still pending before the Supreme Court since 2007.
17. Further, the Supreme Court has issued stay orders against the execution of that judgment.
18. I have no doubt in mind that the first defendant knows about the appeal and the stay order. Despite his knowledge, he went beyond and negotiated the Lease which is a commercial/ tourism lease.
19. In the Island Court in 2006 Mr Tom Hiwa was the spokesman for Family lamak as the sixth claimants. He was not a claimant to the case yet he become the lessee of Lease 016 through some mysterious ways which can only be taken as dishonest on his part, ahead of the appeal of the parties who could be declared custom-owners and lessors in the future.



20. Further the first defendant's action in registering Lease 016 despite the stay order of the Court was a blatant contempt on his part, amounting to the Lease being registered by mistake.

Findings

21. I am therefore satisfied on the evidence and materials before me that-

- a) The claimant families have standing.
- b) The first defendant obtained Lease 016 by fraud and mistake.
- c) The first defendant had knowledge of his fraud.
- d) The second defendant had contributed substantially to the mistake of the first defendant.
- e) There is no third defendant and so issue (e)is not applicable.
- f) The claimants are entitled to the reliefs sought.

The Results

22. I enter judgment for the claimants and order that:

- a) The second defendant by its Director of Lands cancel Lease 016 within 14 days from the date hereof.
- b) The first defendant will pay costs and legal fees of the claimants fixed at VT 120,000 within 28 days, failing which the claimants shall apply to the Master for taxation of costs, based on an indemnity basis.

DATED at Port Vila this 11th day of June 2024

BY THE COURT


Hon. OLIVER A SAKSAK

Judge

