

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

Civil  
Case No. 24/603 SC/CIVL

**BETWEEN: Jimmy Nauauhit**

**Claimant**

**AND: Anthony H. Iaris**

**First Defendant**

**AND: Director of Lands**

**Second Defendant**

**Date of HEARING: 16th day of October, 2024 at 9:30 AM**

**Date of Judgment: 17th day of October 2024**

**Before: Justice Oliver Saksak**

**In Attendance: Mr Roger Tevi for the Claimant**

**No appearances for First and Second Defendants**

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## JUDGMENT

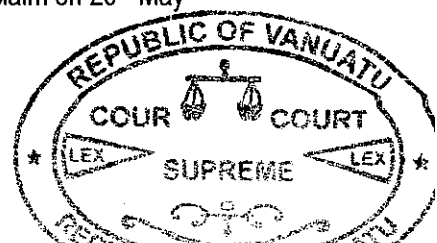
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### Introduction

1. This matter proceeded by way of a formal proof hearing after the First and Second Defendants (the Defendants) despite service and directions to file and serve their responses and/or defences, did not do so.
2. As a consequence, the claimant filed a request for default judgment on 12<sup>th</sup> August 2024.

### Background

3. By way of background, the claimant filed an initial claim on 1<sup>st</sup> March 2024 alleging fraud and/or mistake under section 100 of the Land Leases Act. He sought an Order of cancellation of the lease title in issue, damages, compensation based on market value, payment of rents, Interest of 5% per annum and costs.
4. The claimant sought leave to amend the claim as he had not joined the Director of Lands as a defendant and leave was granted. He filed an amended claim on 20<sup>th</sup> May

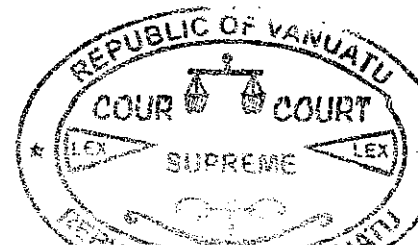


2024 but made a mistake of naming Anthony H Iaris twice as both First and Second Defendants.

5. He sought leave to further amend the claim to rectify the position and leave being granted, the claimant filed the further amended claim on 1<sup>st</sup> July 2024 naming the Director of Lands as the Second Defendant.
6. The claimant filed statements as to service of the initial claim, the amended claim and the further amended claim.
7. The claimant filed statements as to service of the initial claim, the amended claim and the further amended claim.
8. The claimant submitted that because the defendants have been served and have not responded or filed any defences within the periods required under the Civil Procedures Rules, judgment should be entered in his favour and the orders or reliefs sought in the claim should be granted.

### **Discussion**

9. First, for the claimant to be successful in his application or request for judgment on a formal proof hearing where damages are sought and cancellation of leases are sought on the basis of fraud and/or mistake under section 100 of the Land Leases Act, I must be satisfied there was proper service effected on the defendants.
10. From the sworn statements as to service filed by Martha Bebe, service was done on Parliament House and not individually on the First Defendant. Similarly for the Second Defendant, service was done on the Attorney General and not on the Director of Lands himself. Rule 5.8 (1)(a) of the Civil Procedure Rules requires that service is to be personally effected on an individual.
11. I therefore find that service of the claim, initial and amended are not properly or sufficiently served on the named defendants. It explains why there were no responses or defences filed despite directions from the Court.



12. It is for this reason alone that no judgment can be and should be issued against the defendant at this stage. And the application seeking judgment by default should be and is hereby dismissed.
  
13. The claimant has a further difficulty and that is that his claim may now be ineffective because it has not been served within 3 months as required under Rule 5.3(1) and (2) of the Rules. The amended claim was filed on 1<sup>st</sup> July 2024 therefore it is well over 3 months and therefore this claim is no longer of any effect.
  
14. For those reasons the Court declines to enter judgment in favour of the claimant and the application is dismissed. There is no order as to costs.
  
15. Mr Tevi must inform the Court within 14 days from the date of this order what he and his client intend to do next.

**DATED at Port Vila this 17<sup>th</sup> day of October, 2024.**

**BY THE COURT**

  
.....  
**Hon. Oliver Saksak**

**Judge**

