

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

Civil
Case No. 23/2145 SC/CIVL

BETWEEN: Lovite Simaima Kalsong
Claimant

AND: Mark Tarinu, Leipako Tarinu, Telwin
Olive, Lena Olive, Michel Toara, Lewi
Toara, Mark Paul, Marie Paul, Moses
Naliu, Reijim Naliu, Peter Tom Naliu,
Iasimut Naliu
Defendants

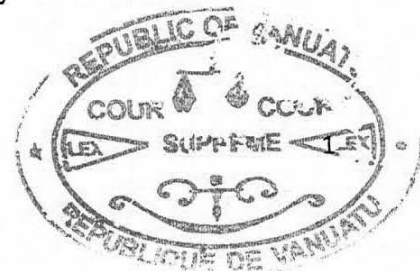
Date: 16 July 2024
Before: Justice V.M. Trief
Counsel: Claimant – Mr D.K. Yawha
Defendants – Mr R. Tevi

DECISION AS TO APPLICATION TO STRIKE OUT DEFENCE AND COUNTER CLAIM

1. By the Claim filed on 14 August 2023, the Claimant Lovite Simaima Kalsong is seeking orders to evict the Defendants from lease title no. 12/0644/001 (the 'lease') and for mesne profits.
2. On 27 February 2024, the Defendants filed Defence and Counter Claim. On 8 March 2024, the Claimant filed Defence to Counter Claim and an Application to Strike out the Defence and Counter Claim on the ground that the Defendants lack standing (*locus standi*) to bring a counter claim under s. 100 of the *Land Leases Act* (the 'Application').
3. On 2 June 2024, the Defendants filed submissions in response to the Application. On 4 July 2024, the Claimant filed submissions in reply.

Discussion

4. The only ground of the Defence and in turn, the only particular of fraud or mistake in the Counter Claim, is that the lease was registered by fraud or mistake or both



contrary to an order in a decision of the Efate Island Court in Civil Case No. 85/94 that prohibits further development of the customary land boundary under dispute. Further, that the Island Court decision is under appeal in Land Appeal Case No. 71 of 2006 ('LAC 2006/71').

5. The Claimant seeks by way of the Application an order striking out the Defence and Counter Claim on grounds including that the Defendants are not the custom owners of the leased land but are squatting on the land without the Claimant's consent, that they are not claimants for the custom ownership of the land nor party to the Efate Island Court Civil Case No. 85/94, and that there is no pleading that the Claimant had knowledge of the Efate Island Court order which is essential for a pleading of fraud. Finally, that the leased land is outside the boundary of the land subject to the Efate Island Court Civil Case No. 85/94.
6. It was submitted in the Defendants' submissions in response to the Application that they are authorised by the custom owners who are members of the Eratap Land Committee to settle the land therefore are agents of the custom owners and have standing to bring the counter claim for fraud or mistake. It was also submitted that they have an arguable defence and counter claim as the lease was registered contrary to the order of the Efate Island Court.
7. It is clear from the Defendants' own pleadings in the Defence and Counter Claim that they allege that the leased land is within the boundary of the land subject to the Efate Island Court Civil Case No. 85/94 and that there is not yet a final declaration as to the custom ownership of the leased land. In the circumstances, neither the Defendants or the Eratap Land Committee can be the agent of any custom owners (as none have been declared) and the Defendants do not have standing to bring a counter claim under s. 100 of the *Land Leases Act: Mataskelekele v Bakokoto* [2020] VUCA 31 at [26] and *Kalsrap v Republic of Vanuatu* [2023] VUCA 11.
8. The Claimant submitted that the land is outside the boundary of the land subject to the Efate Island Court Civil Case No. 85/94. That is a factual dispute that cannot be determined on this interlocutory application. However, the Defendants have not pleaded that they were authorised by or represent any other declared custom owners therefore even if the land were outside that boundary, they do not have standing to bring the Counter Claim that they have.
9. Without standing (*locus standi*), the Defendants cannot bring any counter claim under s. 100 of the *Land Leases Act*. The sole ground that the Defendants have pleaded in defence and as the particular of the alleged fraud or mistake in the registration of the lease is that it was registered contrary to an Efate Island Court order but they cannot raise this in a counter claim under s. 100 of the *Land Leases Act* because they do not have standing to bring any claim under that provision. I



therefore cannot agree that the Defendants have an arguable defence or counter claim.

Result and Decision

10. For the reasons given, the Application is **granted** and it is ordered that the Defence and Counter Claim are **struck out**.
11. The costs of the Application are reserved.
12. This matter must now proceed to Hearing for formal proof of the Claim, **at 3pm on 25 July 2024**.

DATED at Port Vila this 16th day of July 2024
BY THE COURT


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Justice V.M. Trief

