

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

Civil
Case No. 22/883 SC/CIVL

BETWEEN: Family Vemol represented by
Frank Molvatol
Claimant

AND: Family Sangary
First Defendant

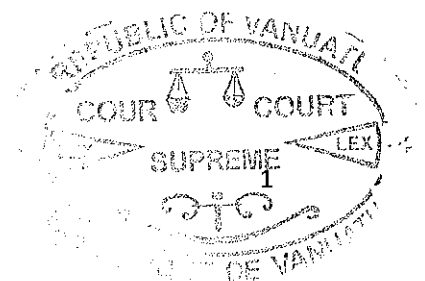
AND: Republic of Vanuatu
Second Defendant

Date: 3 May 2024
Before: Justice V.M. Trief
Counsel: Claimant – Mr L. Tevi
First Defendant – in person
Second Defendant – Ms J.E. Toa (excused from further appearance)
Copy to: Mr R. Tevi

JUDGMENT

A. Introduction

1. This matter was listed for trial today. No appearance was made for the Claimant Family Vemol represented by Frank Molvatol, and no explanation why. I had previously excused counsel for the Second Defendant the State from further appearance.
2. The First Defendant Family Sangary's counsel Mr R. Tevi appeared. He stated that Family Sangary had not complied with the Orders of the Court dated 29 August 2023 to file and serve sworn statements. He stated that his difficulties communicating with his client and to ensure compliance with the Orders of the Court had led him to file

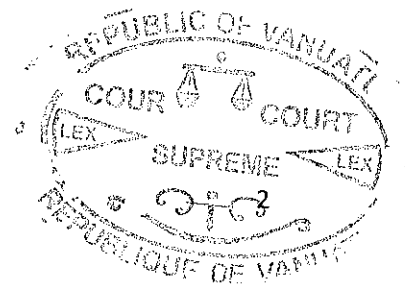


Notice of Ceasing to Act on 29 April 2024. He sought the leave of the Court to cease acting. I accepted the explanation given and **granted** Mr Tevi leave to cease acting.

3. This is the judgment in this matter.

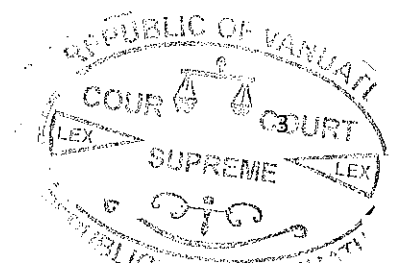
B. The Pleadings

4. By the Claim filed on 10 May 2022, Family Vemol alleged that they together with the First Defendants Family Sangary are disputing claimants for Buoro custom land on Aore island. That dispute is pending before the Area Land Tribunal pursuant to the *Custom Land Management Act* No. 33 of 2013 (the 'CLM Act'). They alleged that the custom ownership of Buoro custom land has not yet been determined however Family Sangary have created leases and other dealings including subdivision of that custom land. It is also alleged that the State knows that Family Sangary are not declared custom owners yet has registered, and continues to register, leasehold dealings for them. Finally, Family Vemol alleged that as a disputing claimant for the custom land, they have suffered from the Defendants' actions to register leasehold dealings and collect money from those dealings.
 5. The relief sought included an order that Family Sangary account for all monies had and received on behalf of the custom owners since 2 February 1982, an order that pending declaration of the custom ownership of Buoro custom land, that all land rentals and other income from the leases be paid into a trust account established by the State, that no funds be paid from that account without further Order of the Court, orders restraining Family Sangary from any further dealings, and costs.
 6. By the First Defendant's Defence and Counter Claim filed on 17 May 2022, Family Sangary alleged that they created leases over Buoro custom land before the land dispute commenced, that Family Vemol do not have standing to challenge the creation of the leases, that they have revoked their licence given to Family Vemol to reside on Buoro land and that therefore Family Vemol are now trespassers on the land. The relief sought included dismissal of the Claim, an order evicting Family Vemol from Buoro custom land and costs.
 7. By the Claimant's Defence to the Counter Claim, Family Vemol denied that Family Sangary can give anyone a licence as they are not declared custom owners, said that they have a right to occupy the land as they are also claimants to it, that as disputing claimants they have brought the Claim to protect the land from the leasehold dealings by Family Sangary, and that the Counter Claim should be dismissed with costs.
 8. The State has not filed a Defence. It abides the Order of the Court.
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C. Evidence

9. No evidence has been filed in support of the First Defendant's Defence and Counter Claim.
10. The Claimant filed the **Sworn statement of Frank Molvato** on 12 September 2022. Mr Molvato deposed that Family Vemol is a disputing claimant for Buoro custom land on Aore island, which dispute is pending pursuant to the CLM Act. He deposed that the Custom Land Management Office ('CLMO'), by letter dated 3 March 2017, wrote to Family Sangary that their leasehold dealings under a Ministerial declaration needed to stop and all monies from the leases be paid into a trust account pending the determination of the custom ownership dispute [**Attachment "FM2"**]. He deposed that the letter had been ignored and that leasehold dealings continue to be made and registered.
11. Mr Molvato also deposed that Family Vemol were disadvantaged as nearly all of Buoro custom land was now leased without declared custom ownership and if the Court did not intervene, all of the land could be destroyed and any declared custom owner would lose the benefit of enjoying the land and its environment. He and his family believe that monies received from the leases should be kept in a trust account for any future declared custom owners.
12. On 12 April 2023, the State filed the **Sworn statement of Gordon Willie**, the Director of Lands, to assist the Court. Mr Willie deposed that by "Deklereson blong Representative blong ol Kalsom Owna" (Declaration of the Representatives of the Custom Owners) dated 2 June 1982, the Minister of Lands declared Edsen Sagari as the representative of the custom owners of Pre-Independence titles 939, 1199 (Van Nerum), 435, 897, 898 (Charpentier), 940, 385, 3750 (Giozzi), 388, 386 and 390 (French Gavman) [**Attachment "GW2"**].
13. Mr Willie deposed that by a second "Deklereson blong Representative blong ol Kalsom Owna" (Declaration of the Representatives of the Custom Owners) dated 15 September 1982, the Minister of Lands declared Edsen Sagari and Sarki Robert as the representatives of the custom owners of Pre-Independence titles 391, 3586, part of 396 and 398 [**Attachment "GW3"**]. He deposed that leases were created and registered based on the Ministerial declarations.
14. Mr Willie also deposed that by a Statement of Declaration dated 16 June 2011, Edson Sagari authorised his sons Wilson Sangar, Nelson Sangar, Charlieson Sangar and Raxon Sangar to execute all instruments and do acts necessary on his behalf [**Attachment "GW4"**]. On 18 March 2013, the Director of Lands registered in the Land Leases Register (lease title no. 04/3023/053) a Change of Name of Lessor to the names in **Attachment "GW4"** [**Attachment "GW6"**]. Mr Willie deposed that the Director of Lands has continued to register leasehold dealings with Edson



Sagari's sons as lessors giving consents for such dealings in the absence of any declaration of custom ownership.

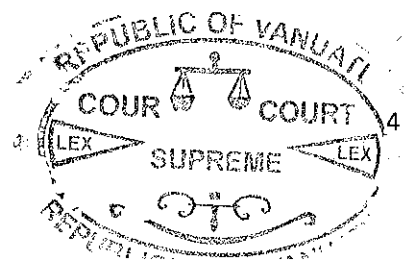
15. There is no evidence contradicting Mr Molvatol and Mr Willie's evidence. I accept their evidence.

D. Consideration

16. There is no evidence to prove the First Defendant's Defence and Counter Claim. Accordingly, the Counter Claim must be dismissed with costs.
17. On the evidence, I find that there has not been any declaration of custom ownership of Buoro custom land on Aore island. Further, that Family Vemol and Family Sangary are disputing claimants for the custom ownership of that land.
18. I also find that members of the First Defendant have been registered as the lessor of leases over Buoro custom land including over the lands covered by the Pre-Independence titles referred to in **Attachments "GW2" and "GW3"**. The Ministerial declarations relied on for Family Sangary acting as lessor on those leases appointed their ancestor Edsen Sagari as a representative of the custom owners and others having interests in the land. Those Ministerial declarations did not and could not constitute any title as custom owners: *Valele Family v Touru* [2002] VUCA 3 at p. 9.
19. Accordingly, there is no question that Family Vemol have standing to bring the Claim and that there is no lawful basis for members of Family Sangary to be the registered lessors of leases over Buoro custom land on Aore island. The registered lessor of the subject leases must be changed to remove the names of members of Family Sangary and to substitute the Minister of Lands as registered lessor on behalf of the disputing custom owners pursuant to s. 6Z of the *Land Reform Act* [CAP. 123].
20. It is fundamental that monies received from the leases be kept for any future declared custom owners in a trust account established by the State.
21. For the reasons given, the Claimant has proved the Claim on the balance of probabilities. Judgment will be entered for the Claimant.

E. Result and Decision

22. Judgment is **entered** for the Claimant and it is ordered as follows:
- a. The First Defendant is to give an account for all moneys had and received on behalf of the custom owners from 2 June 1982 to date;
 - b. The Second Defendant through the Director of Lands is to register a Change of Name of Lessor removing as a registered lessor Edson Sagari,



Wilson Sangar, Nelson Sangar, Charlieson Sangar and Rexon Sangar and/or any other person acting in reliance on a Ministerial declaration, and substitute as registered lessor the Minister of Lands on behalf of the disputing custom owners pursuant to s. 6Z of the *Land Reform Act* [CAP. 123], in respect of all lease titles over Buoro custom land on Aore island, including but not limited to the following:

04/3014/004	04/3023/063	04/3023/100	04/3023/190
04/3014/005	04/3023/064	04/3023/115	04/3023/191
04/3014/006	04/3023/065	04/3023/116	04/3023/192
04/3014/007	04/3023/066	04/3023/117	04/3023/193
04/3014/008	04/3023/067	04/3023/118	04/3023/194
04/3014/009	04/3023/068	04/3023/119	04/3023/195
04/3014/010	04/3014/069	04/3023/159	04/3023/196
04/3014/011	04/3014/070	04/3023/160	04/3023/303
04/3014/012	04/3023/071	04/3023/161	04/3023/304
04/3014/013	04/3023/072	04/3023/162	04/3023/306
04/3014/014	04/3023/073	04/3023/163	04/3032/007
04/3014/015	04/3023/074	04/3023/164	04/3032/008
04/3014/016	04/3023/075	04/3023/165	04/3032/009
04/3014/017	04/3023/076	04/3023/166	04/3032/010
04/3014/018	04/3023/077	04/3023/167	04/3032/011
04/3014/019	04/3023/078	04/3023/168	04/3032/012
04/3014/020	04/3023/079	04/3023/169	04/3032/013
04/3014/021	04/3023/080	04/3023/170	04/3032/014
04/3014/022	04/3023/081	04/3023/171	04/3032/015
04/3014/023	04/3023/082	04/3023/172	04/3032/016
04/3014/024	04/3023/083	04/3023/173	04/3032/017
04/3014/025	04/3023/084	04/3023/174	04/3032/018
04/3014/034	04/3023/085	04/3023/175	04/3032/019
04/3023/031	04/3023/086	04/3023/176	04/3032/020
04/3023/032	04/3023/087	04/3023/177	04/3032/021
04/3023/033	04/3023/088	04/3023/178	04/3032/022
04/3023/052	04/3023/089	04/3023/179	04/3032/023
04/3023/053	04/3023/090	04/3023/180	04/3032/024
04/3023/054	04/3023/091	04/3023/181	04/3032/025
04/3023/055	04/3023/092	04/3023/182	04/3032/026
04/3023/056	04/3023/093	04/3023/183	04/3032/027
04/3023/057	04/3023/094	04/3023/184	04/3032/028
04/3023/058	04/3023/095	04/3023/185	04/3032/029
04/3023/059	04/3023/096	04/3023/186	04/3032/030
04/3023/060	04/3023/097	04/3023/187	04/3041/002
04/3023/061	04/3023/098	04/3023/188	04/3041/005

04/3023/062	04/3023/099	04/3023/189	04/3041/011
04/3041/012	04/3041/021	04/3041/039	04/3041/048
04/3041/013	04/3041/022	04/3041/040	04/3041/049
04/3041/014	04/3041/023	04/3041/041	04/3041/050
04/3041/015	04/3041/024	04/3041/042	04/3041/051
04/3041/016	04/3041/034	04/3041/043	04/3041/052
04/3041/017	04/3041/035	04/3041/044	04/3041/053
04/3041/018	04/3041/036	04/3041/045	04/3041/054
04/3041/019	04/3041/037	04/3041/046	04/3041/117
04/3041/020	04/3041/038	04/3041/047	

- c. That all land rentals and all other income in respect of the lease titles set out in the table in the preceding paragraph be paid by the lessees to the Custom Owner Trust Account;
 - d. That no funds are to be paid from the Custom Owner Trust Account in respect of the lease titles set out in the table above until further Order of the Court;
 - e. That the First Defendant and its members are **restrained** from entering any agreement and any sale or other leasehold dealing in respect of Buoro custom land on Aore island or any leasehold title over that land until further Order of the Court; and
 - f. That the First Defendant and its members are **restrained** from issuing or otherwise being party to any Forestry Licence in respect of Buoro custom land on Aore island or any leasehold title over that land until further Order of the Court.
23. The First Defendant's Counter Claim is **dismissed**.
24. Costs shall follow the event. The First Defendant is to pay the Claimant's costs of the proceeding fixed at VT150,000 **by 4pm on 3 June 2024**.
25. The Claimant is to serve this Judgment on the Defendants and file proof of service.

**DATED at Port Vila this 3rd day of May 2024
BY THE COURT**

VM Trief
Justice Viran Molisa Trief

