

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

Civil Case
No. 24/878 SC/CIVL

BETWEEN: Ben Kai
Claimant

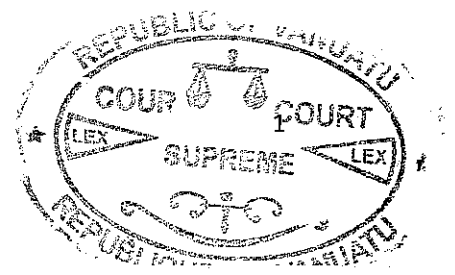
AND: Simeon Malachi Athy
First Defendant

AND: Republic of Vanuatu
Second Defendant

Date: 16 April 2024
Before: Justice V.M. Trief
Counsel: Claimant – Mr E. Molbaleh
First Defendant – Mr W. Kapalu
Second Defendant – Mr T. Loughman

**DECISION AS TO CLAIMANT'S URGENT APPLICATION FOR EX PARTE
RESTRAINING ORDERS**

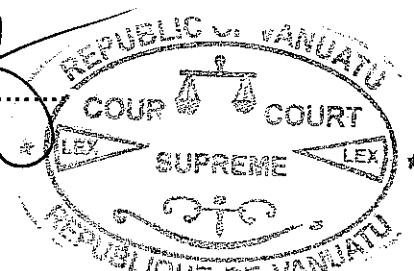
1. This was a contested Urgent Application for *Ex Parte* Restraining Orders filed on 21 March 2024 (the 'Application').
2. I now determine the Application.
3. By the Application, the Claimant Ben Kai seeks orders restraining the First Defendant Simeon Malachi Athy from contacting him and his family, and that Mr Athy remove his fence from the sea coast so that Mr Kai can have access to the sea coast and main road. The grounds for the Application are that Mr Kai and Mr Athy are joint proprietors of lease title no. 12/0714/001 (the 'lease'), Mr Kai is residing on the lease and is prevented from accessing the main road and sea coast by Mr Athy's fence constructed between July and December 2023. Further, that despite demand, Mr Athy has not responded positively to their letters of complaint.
4. Also filed on 21 March 2024 were an Undertaking as to Damages, Sworn statement of Urgency and Sworn statements of Ben Kai and Ginny Kai in support.



5. Mr Athy filed the following on 3 April 2024 in opposition to the Application: First Defendant's Reply to Application for Restraining Orders and Sworn statements of Simeon Malachi Athy, Lester Wilson, Jimmy Matai and Tane Kalorib.
6. On 21 March 2024, the Claim was filed alleging fraud in obtaining the registration of the lease. Particulars of para. 15 of the Claim, that is, of the fraud alleged, were filed on 27 March 2024. I am uncertain that the particulars if proved would constitute fraud in the obtaining of the registration of the lease however for the purposes of the Application, I consider that Mr Kai has a serious question to be tried: rule 7.5(3)(a) of the *Civil Procedure Rules* (the 'CPR').
7. It is accepted that Mr Kai and Mr Athy are the joint proprietors of the lease.
8. The evidence of Mr Athy, Mr Wilson and Mr Matai is that Mr Kai has never resided inside the lease. However, he runs cattle inside part of the lease.
9. It is also accepted that Mr Athy erected a fence on the leased land. However, the evidence of Mr Athy and his witnesses – with photographs attached – is that well before filing the Claim in the present matter, in January 2024, Mr Kai and his family had already cut the wire of Mr Athy's fence to gain access to the sea coast. This evidence is not contradicted.
10. In the circumstances, I am not satisfied that Mr Kai would be seriously disadvantaged if the orders sought were not made: rule 7.5(3)(b) of the CPR and therefore **decline and dismiss** the Application.
11. There is no order as to the costs of the Application.

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

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Justice V.M. Trief

The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The text 'REPUBLIC OF VANUATU' is written along the top inner edge, and 'REPUBLIQUE DE VANUATU' along the bottom inner edge. In the center, the words 'COURT' and 'COURT' are positioned on either side of the scales, with 'SUPREME' below them. The word 'LEY' appears on two small banners flanking the central text. There are small stars on the left and right sides of the seal.