

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

Civil  
Case No. 23/49 SC/CIVL

**BETWEEN:** Rogen Morris Moldovo  
Claimant

**AND:** Matevulu College  
First Defendant

**AND:** Tangis Sisi, James Tangis and Family  
Tangis  
Second Defendants

**AND:** Joseph Riri and Family Riri  
Third Defendants

**AND:** Republic of Vanuatu  
Fourth Defendant

*Date of Trial:* 27 February 2025  
*Before:* Justice V.M. Trief  
*In Attendance:* Claimant – Mr L. Tevi  
First and Fourth Defendants – Mr L. Huri, via video link from Port Vila Registry  
Second and Third Defendants – Mr P. Fiuka  
*Date of Decision:* 17 March 2025

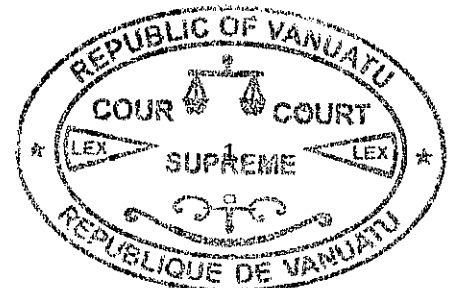
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## JUDGMENT

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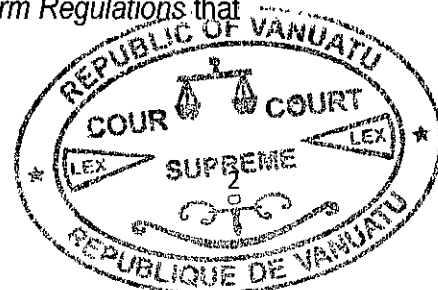
### A. Introduction

1. The Claimant Rogen Morris Moldovo, the Second Defendants Tangis Sisi, James Tangis and Family Tangis, the Third Defendants Joseph Riri and Family Riri are some of the competing claimants in Land Case No. 5 of 1992 in the Santo Malo Island Court



for the custom ownership of land which includes the land subject to leasehold title no. 04/2612/003.

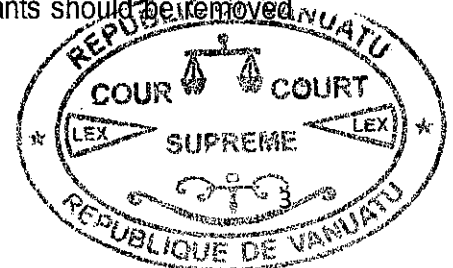
2. The lease title no. 04/2612/003 between Chief Tangis Sisi, James Tangis and Simeon Tangis (lessors) and the Government of the Republic of Vanuatu c/o Ministry of Education and Sport (lessee) for a 75-year term was registered on 21 August 1986 (the 'lease').
3. The First Defendant Matevulu College is the occupier of the leased land.
4. Mr Moldovo filed the Claim on 27 January 2023 alleging that the custom ownership of the leased land is under dispute hence he and the other parties to Land Case No. 5 of 1992 are disadvantaged as the State is paying land rents for the lease to the Second and Third Defendants but they are not declared custom owners of the land.
5. Mr Moldovo is seeking a declaration that there is not yet a declared custom land owner of the leased land, an order that the Fourth Defendant State rectify the lease to remove the Second and Third Defendants as the lessors of the lease, an order that Matevulu College pay land rents to a trust account kept by the State, and an order that the State keep in trust all payments received until a binding custom ownership declaration has been made. Costs were also sought. Mr Moldovo relied on his sworn statement filed on 12 October 2023 [Exhibit C1].
6. By decision dated 30 October 2023, I ruled that Mr Moldovo had standing to bring the Claim and declined to strike out the Claim: Moldoro v Matevulu College [2023] VUSC 209.
7. The First and Fourth Defendants' case is that the lease was registered in good faith based on the information supplied and will abide the Order of the Court except as to costs. They filed the sworn statement of Gordon Willie, Director of Lands on 20 February 2025 [Exhibit D1]. He was not required for cross-examination.
8. The Second and Third Defendants' case is that on 14 November 1985, the Minister of Lands declared them as the authorised representatives of the custom owners pursuant to subs. 6(2) of the *Land Reform Regulations 1980* (which after Independence became the *Land Reform Act* [CAP. 123]). In addition, that although the custom ownership of the leased land has yet to be determined, the lessors were lawfully registered and that the lease can only be rectified if fraud or mistake is proved. They denied any fraud or mistake in the obtaining of the lease registration.
9. The Second and Third Defendants filed the sworn statement of Joseph Riri on 31 August 2023 [Exhibit D2]. Attached was a copy of the Minister of Lands' declaration dated 14 November 1985 pursuant to subs. 6(2) of the *Land Reform Regulations* that



James Tangis, Semion Tangis and Joseph Riri were the representatives of the custom owners of the land including the leased land [Exhibit D2 – Annexure “JR1”].

B. Consideration

10. That Mr Moldovo and third parties are disadvantaged by the payment of land rents to the registered lessors of the lease when the custom ownership of the land has not yet been determined does not constitute a cause of action known to law.
11. That is probably the complete answer to the Claim.
12. However, I understood the Claim to be that there is a mistake in the registration of the lease as the Second and Third Defendants are the lessors when the custom ownership of the leased land is still under dispute.
13. I had therefore understood the Claim to be brought pursuant to s. 100 of the *Land Leases Act* [CAP. 163] (the ‘Act’). That section provides as follows:
  100. (1) *Subject to subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is so empowered by this Act or where it is satisfied that any registration has been obtained, made or omitted by fraud or mistake.*
  - (2) *The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the interest for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.*
14. The Court has the power under subs. 100(1) of the Act to order that a lease registration be amended where it is satisfied that its registration, “*has been obtained, made or omitted by fraud or mistake.*”
15. The Second and Third Defendants’ case is that they are the lessors to the lease pursuant to the Minister of Lands’ declaration dated 14 November 1985 declaring them to be the authorised representatives of the custom owners. Mr Fiuka submitted that the lessors were lawfully registered and that the lease can only be rectified if fraud or mistake is proved.
16. In closing submissions, Mr Tevi accepted that the Claimant does not allege that the registration of the lease on 21 August 1986 was obtained or made by fraud or mistake.
17. Mr Tevi submitted that the Claimant’s case is a narrow one – that because there is now a dispute over the custom ownership of the leased land (which arose in 1992, after the registration of the lease), that the Second and Third Defendants should be removed.



as the lessors and be replaced by the Minister of Lands pursuant to s. 6Z of the *Land Reform Act*.

18. Section 6Z of the *Land Reform Act* provides as follows:

- 6Z. (1) *If there is a dispute as to ownership of the land or the land is the subject of a customary or legal proceeding where the custom owners have not yet been determined and there is an application to conduct an initial mortgage or transfer, subdivide, extend the lease instrument or change the lease type, the Minister must consult the parties to the dispute before the Minister grants a consent to a transaction of a lease instrument.*
- (2) *For an application for an initial mortgage, transfer or extension of lease, a lessee must demonstrate the consent of the disputing parties by showing all of the custom owners of each of the disputing groups consent to the instrument being registered as demonstrated by the signing of the representatives of these custom owners on the proposed instrument following the process detailed in sections 6B and 6C.*
- (3) *For an application for a rural subdivision or change of lease type – the Minister confirms that the disputing custom owner groups consent by showing that all the custom owners of each of the disputing groups consent to the subdivision or change of lease type by the signing of these representatives of the custom owner groups on the proposed lease instrument following the process detailed in 6B and 6C.*
- (4) *Evidence that parties to the dispute consent to any rural subdivision or change of lease type under subsection (3), must be shown before a recommendation for approval by the Committee is made followed by a grant of consent by the Minister for such a subdivision or change of lease type.*
- (5) *A custom owner, or an indigenous citizen who is not satisfied that the proper process has been followed in obtaining the consent of the custom owner group for a subdivision or change of lease type for an existing lease, has the right (within 3 months from notification of intent to seek consent of the Minister) to lodge a complaint with the Land Ombudsman in accordance with section 6N.*

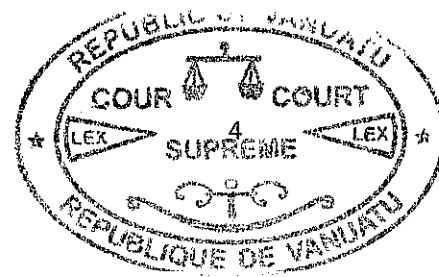
*[emphasis added]*

19. Contrary to Mr Tevi's submission, s. 6Z of the *Land Reform Act* is limited to the Minister of Lands granting a consent to a transaction of a lease instrument in only 4 categories (i) an application to conduct an initial mortgage or transfer; (ii) an application to subdivide; (iii) an application to extend the lease instrument; or (iv) an application to change the lease type "and" there is a dispute as to ownership of the land : see subs. 6Z(1). There is no general power for the Minister of Lands to replace the registered lessors of a lease.

20. Accordingly, I must reject Mr Tevi's submission.

21. Mr Huri referred to s. 100A of the Act, which section provides as follows:

- 100A. (1) *The Director or the Court under section 99 or 100 may after complying with the procedures set out in those sections rectify the register in the manner specified in*



*those sections based on a recorded interest in land provided for under the Custom Land Management Act No. 33 of 2013.*

- (2) *For the purposes of reaching a decision under section 99 or 100, a certificate from the National Coordinator of the names of custom owners and their appointed representatives is evidence of the recorded interest in land.*
- (3) *In addition to subsection (2), the Director or the Court must be satisfied that the certificate provided to them under that subsection has been produced after complying with the provisions of the Custom Land Management Act No. 33 of 2013 in relation to the identification of custom owners.*
22. He submitted that the Act is framed in such a way, with specific reference to s. 100A, that registered lessors will remain as lessors until such time as the custom ownership of the leased land has been determined. Accordingly, land rents and other lease payments will continue to be paid to the registered lessors until such time as they are replaced by custom owners who have a recorded interest in land in accordance with s. 100A of the Act. I agree with that submission.
23. I would add that the registered lessors are the representatives of the custom owners, hence they are receiving land rents and other lease payments on trust for the custom owners. Ultimately, they will have to account to the persons who are finally declared to be the custom owners for all land rents and lease payments received by them as the registered lessors.
24. For the reasons given, the Claim must be dismissed.
- C. Result and Decision
25. The Claim is dismissed.
26. Costs follow the event. The Claimant is to pay the Defendants' costs as agreed or taxed by the Master. Once settled, the Claimant is to pay the costs within 28 days.

**DATED at Port Vila this 17<sup>th</sup> day of March 2025  
BY THE COURT**

*VMC*  
Justice Viran Molisa Trief

