

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

**Civil**  
**Case No. 21/2043 SC/CIVL**

**BETWEEN:** Family Jarawari represented by  
Patrick Jarawari  
First Claimant

**AND:** Joseph Edward Tamata  
Second Claimant

**AND:** Joseph Toa and Joseph Esau  
First Defendants

**AND:** Republic of Vanuatu  
Second Defendant

**AND:** Family Sohe represented by George  
Tavuti  
First Interested Party

**AND:** Peter Talivo  
Second Interested Party

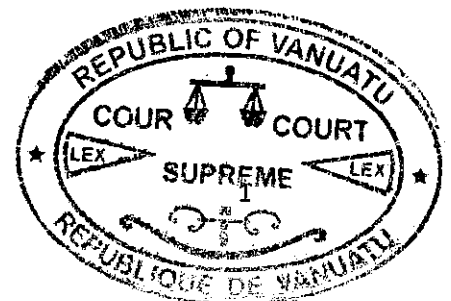
*Date of Trial:* 3 March 2025  
*Before:* Justice V.M. Trief  
*In Attendance:* First Claimant – Mr E. Nalyal, via video link from Port Vila Registry  
Second Claimant – Mr J. Tari  
First Defendants – Mr L. Tevi  
Second Defendant – Mr L. Huri, via video link from Port Vila Registry  
First Interested Party – Mr C. Leo  
Second Interested Party – no appearance (Mr T.J. Botleng)

*Date of Decision:* 7 April 2025

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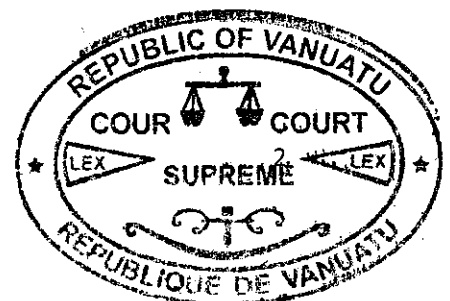
**JUDGMENT**

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A. Introduction

1. The First Claimant Family Jarawari represented by Patrick Jarawari and the Second Claimant Joseph Edward Tamata filed the Amended Claim on 10 September 2021 seeking the eviction of the First Defendants Joseph Toa and Joseph Esau from lease title no. 04/3314/001 located on Malo island (the 'lease'). The lease between Jarawari Jackson Vuti and Family (lessors) and Joseph Edwards Tamata (lessee) for a term of 75 years was registered on 29 August 2011 [**Exhibit C1 – Attachment "JET1"; Exhibit D5 – Attachment "GW2"**]. The Claimants filed the affirmed statement of Joseph Edward Tamata on 25 June 2021 [**Exhibit C1**] and Mr Tamata's sworn statement on 7 July 2023 [**Exhibit C2**].
2. The Claim is disputed. On 8 July 2022, the First Defendants filed the Further Amended Defence alleging rights pursuant to s. 17 of the *Land Leases Act* [CAP. 163] (the 'Act') and that part of the lease encroaches onto their custom land but that they have never consented to the lease. The First Defendants filed the sworn statement of Joseph Esau on 13 July 2021 [**Exhibit D1**] and the sworn statements of Joseph Toa on 14 June 2023 [**Exhibit D2**], 2 July 2021 [**Exhibit D3**] and 14 June 2023 [**Exhibit D4**].
3. On 19 October 2021, the Second Defendant the State filed its Defence that it will abide the order of the Court except as to costs. On 1 November 2022, it filed the Sworn statement of Gordon Willie, Director of Lands disclosing relevant records from the Land Leases Register [**Exhibit D5**].
4. The First Interested Party Family Sohe represented by George Tavuti ('Family Sohe') filed its Defence on 5 September 2022 alleging that the registration of the lease was obtained by fraud or mistake. It alleged that the lease covers a large area of land including Namorumoru custom land as well as overlapping onto other custom land which is under custom ownership dispute. They claimed rights under s. 17 of the Act and that the lease was created without their knowledge (or consent).
5. On 13 October 2023, Family Sohe filed its Counter Claim alleging that on 28 December 2005, the Malo Island Land Tribunal ('MILT') declared the custom ownership of Namorumoru custom land to Family Jarawari, Family Sohe and 4 other families. It is alleged that according to the MILT decision, the custom owners have equal rights over Namorumoru custom land. Further, that an application for review to the Island Court (Land) has been pending since October 2017 therefore the custom ownership of Namorumoru custom land is still to be determined. Alternatively, that the lease was obtained by fraud as the consent of all the declared custom owners was required for the lease but the lease was created without Family Sohe's knowledge and that Family Sohe have never consented to the lease. The



orders sought are that the registration of the lease be cancelled pursuant to s. 100 of the Act, costs and any other order deemed just.

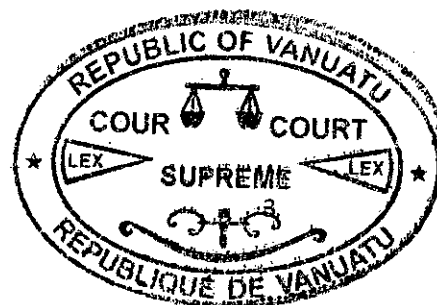
6. On 20 February 2024, the Second Claimant Mr Tamata filed his Defence to Family Sohe's Counter Claim. He alleged that the other custom owners' consent was not required as the MILT decision is pending review in the Island Court (Land) therefore custom ownership has not yet been finally determined. He also alleged that Family Sohe has no standing as it is not a lessee nor a declared custom owner of the leased land.
7. Family Sohe filed the sworn statement of George Tavuti on 29 July 2021 [Exhibit IP1] and the further sworn statement of Mr Tavuti on 14 June 2023 [Exhibit IP2]. The last sworn statement of Mr Tavuti was filed on 27 February 2024 [Exhibit IP3]. He attached a report dated 2 September 2021 by registered surveyor James Ngwango written following Mr Ngwango's walk on the leased land. However, Mr Ngwango did not swear a statement himself hence his report attached to Mr Tavuti's sworn statement is hearsay and inadmissible. I have no further regard to it.
8. The Second Interested Party Peter Talivo has not filed a Defence to the Amended Claim nor sworn statements following the close of pleadings. There was no appearance for the Second Interested Party at trial.

B. Issue 1: Does Family Sohe have standing to bring its Counter Claim pursuant to s. 100 of the Act?

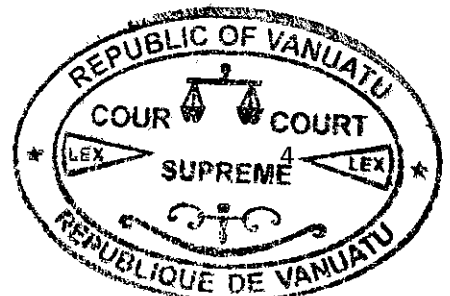
9. Section 100 of the Act provides as follows:

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.*

10. It is common ground that on 28 December 2005, the MILT declared Family Jarawari, Family Sohe and 4 other families as the custom owners of Namorumoru custom land on Malo island [Exhibit IP2 – Attachment "GT1"]. Indeed, Family Jarawari and Mr Tamata relied on this declaration of Family Jarawari's custom ownership of Namorumoru custom land for Family Jarawari to be the lessor of the lease.

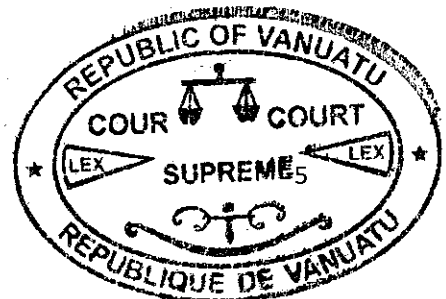


11. In cross-examination by Mr Leo, Mr Tamata agreed that he is aware that 6 families have been declared as the custom owners of Namorumoru custom land. He agreed that he already knew this before commencing the present proceedings.
12. Accordingly, I find that Mr Tamata knew of the 28 December 2005 MILT decision as to the custom owners of Namorumoru custom land.
13. On 14 May 2018, a judicial review challenge to the MILT decision was dismissed [Exhibit IP2 – Attachment “GT2”].
14. On 16 August 2018, the Island Court (Land) ruled that in July/August 2017, Mr Tavuti lodged an application for review of the MILT decision dated 28 December 2005 [Exhibit IP3 – Attachment “GT1”]. It is common ground that that application for review has not yet been determined.
15. There are two points to make here.
16. First, there is no evidence that the MILT has been stayed pending the determination of the application for review in the Island Court.
17. Secondly, there is no principle of law that the filing of an application for review in the Island Court (Land) stays or nullifies the decision of the land tribunal under review.
18. Accordingly, even though there is a pending application for review in the Island Court (Land), the 28 December 2005 MILT decision stands (until an order of the Court states otherwise). Therefore, there are six declared custom owners of Namorumoru custom land, as set out in that MILT decision, including the First Claimant Family Jarawari and the First Interested Party Family Sohe.
19. As Family Sohe is a declared custom owner of Namorumoru custom land, it has standing to bring its Counter Claim pursuant to s. 100 of the Act: *Mataskelekele v Bakokoto* [2020] VUCA 31; *Ratua Development Ltd v Ndai* [2007] VUCA 23 at [31]-[32].
20. My answer to **Issue 1** is, “Yes.”
- C. **Issue 2: What custom land is covered by the lease?**
21. The lease covers an area of land comprising 516 hectares 83 acres 81 centi acres, a large area of land [Exhibit D5 – Attachment “GW2”].
22. It is undisputed that the lease covers Namorumoru custom land. The Claimants rely on Family Jarawari’s declared custom ownership of Namorumoru custom land for it



to be the lessor of the lease. Attached to Mr Willie's sworn statement is a copy of the certificate of registered negotiator granted to Mr Tamata which refers to the land for which he has the right to negotiate a lease as, "*Part Namorumoru/Title 676 on West Malo island.*"

23. The First Defendants' case is that the lease covers both Namorumoru custom land and other custom land which is still under custom ownership dispute. Mr Esau [Exhibit D1], Mr Toa [Exhibit D3] and Mr Tavuti [Exhibit IP1] gave uncontradicted evidence to this effect.
24. However, I make no finding as to whether the lease covers other custom land whose custom ownership has not yet been determined as I do not need to determine that.
25. I answer **Issue 2**, "Namorumoru custom land."
- D. **Issue 3:** What portion of Namorumoru custom land was allocated to each declared custom owner of that land?
26. By the terms of the 28 December 2005 MILT decision, the 6 declared custom owners should divide Namorumoru custom land into 6 pieces and the appointed family leaders must make sure that the 6 declared custom owners have an equal share [Exhibit IP2 – Attachment "GT1"].
27. Mr Tavuti was firm in cross-examination by Mr Tari that since the MILT decision on 28 December 2005, no one has ever informed the declared custom owner families what portion of the Namorumoru custom land belongs to each of them.
28. This evidence is uncontradicted.
29. I find, therefore, that Namorumoru custom land has not been divided up between the 6 custom owner families hence the declared custom owners of Namorumoru custom land have equal rights to the land.
30. I answer **Issue 3**, "Each declared custom owner of Namorumoru custom land has equal rights to the land as there has not been any allocation of a specific portion of the land to them."
- E. **Issue 4:** Was the lease registration obtained by fraud or mistake?
31. As set out above, the declared custom owners of Namorumoru custom land have equal rights to the land as there has not been allocation of any specific portion of the land to each custom owner, be that by agreement or by further decision of the MILT.

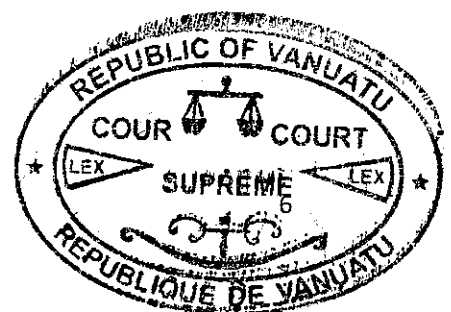


32. Mr Tavuti gave evidence for the First Interested Party that Family Sohe was not aware of the creation of the lease and it never gave its consent to the lease [Exhibits IP1 and IP2]. His evidence was not contradicted.
33. Accordingly, I find that the Claimants did not seek Family Sohe's consent to the lease and that Family Sohe has never consented to the lease.
34. As there has not been any allocation or division of Namorumoru custom land amongst its declared custom owners, any leasehold dealing with the land must have the consent of all the declared custom owners: Lal v Ati [2017] VUCA 47 at [40]; and Mormor v Republic of Vanuatu [2018] VUSC 123 at [41] per Aru J.
35. Accordingly, I find that there was a mistake and fraud in the obtaining of the registration of the lease as the declared custom owner Family Sohe's consent was not sought or obtained for the lease.
36. The Court of Appeal held as follows in Rogara v Takau [2005] VUCA 5:

*For a party seeking rectification under s.100 of the Land Leases Act, it is not sufficient to prove that a mistake occurred in the course of a transaction which ultimately concluded in registration of the interest which it is sought to have removed from the register. In terms of s.100, the Court must be satisfied that the "registration has been obtained, made or omitted by fraud or mistake". The section imposes a causal requirement. The mistake must lead to the impugned registration being made. The onus is on the party seeking rectification not only to establish a mistake, but also to satisfy the Court that it caused the registration to occur.*

*[emphasis added]*

37. I find that this mistake and act of fraud led to the impugned registration being made or obtained as the Claimants intended that they be the only parties to the lease and achieved the registration of the lease between only Family Jarawari as the lessor and Mr Tamata as the lessee.
38. Mr Tamata accepted in cross-examination by Mr Tevi that he was aware of the MILT declaration dated 28 December 2005 of the custom owners of Namorumoru custom land. Despite this knowledge, Mr Tamata applied for and obtained the registration of the lease involving only Family Jarawari as the lessor.
39. Accordingly, I find that Mr Tamata is not a *bona fide* purchaser for value in terms of subs. 100(2) of the Act as he had first-hand knowledge of the mistake and fraud in consequence of which the rectification is sought and substantially contributed to it as he knew there were 6 declared custom owners of Namorumoru custom land but chose to deal only with one of them, namely Family Jarawari, to enter into the lease and obtain the registration of the lease.



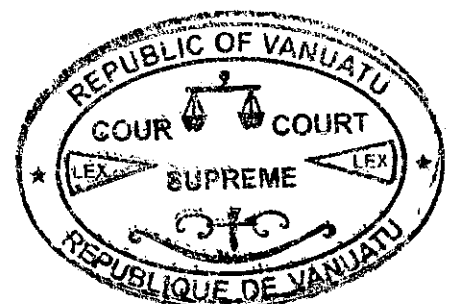
40. Mr Tamata alleged in his Defence to Family Sohe's Counter Claim that the MILT decision is pending review in the Island Court (Land) therefore the custom ownership of Namorumoru custom land has not been finally determined hence the consent of all the declared custom owners is not required.
41. The custom ownership of Namorumoru custom land may not have been finally determined as it is pending review in the Island Court (Land) however for the reasons set out above, the MILT decision stands as it has not been stayed nor has it been nullified by the lodgement of the application for review in the Island Court (Land).
42. Therefore, even though the custom ownership of Namorumoru custom land may not have been finally determined, the consent of all declared custom owners was required for the lease.
43. That disposes of Mr Tamata's defence to the Counter Claim.
44. For the reasons given, Family Sohe has proved its Counter Claim on the balance of probabilities. An order will be made for the cancellation of the registration of the lease.
45. For the foregoing reasons, I answer **Issue 4**, "Yes."
46. In the circumstances, I need not consider whether or not the First Defendants and Family Sohe have rights under s. 17 of the Act.

F. **Issue 5: Have the Claimants proved their claim in trespass?**

47. As the registration of the lease must be cancelled, the Second Claimant will be removed as the registered proprietor of the lease therefore the Claimants' claim in trespass must fail. The Claim will be dismissed.
48. Even if the lease remained, Mr Tamata accepted in cross-examination that the Claimants never gave the First Defendants notice to vacate. It was essential for the trespass claim that notice to vacate was given; without it, the trespass claim must fail: Harry v Tulili [2019] VUCA 14; Vira v Tari [2025] VUSC 40 at [17] per Trief J.

G. **Result and Decision**

49. The Claim is **dismissed**.
50. Judgment is **entered** for the First Interested Party on its Counter Claim and it is **ordered** that the Second Defendant by its Director of Lands is to rectify the register



for leasehold title no. 04/3314/001 forthwith by cancellation of the registration of the lease.

51. The restraining orders dated 19 November 2024 are **discharged**.
52. Costs must follow the event. I will now hear the parties as to the quantum of costs sought. The Defendants and Interested Parties are to file and serve submissions as to the quantum of costs sought against the Claimants **by 4pm on 21 April 2025**, and then the Claimants are to file and serve submissions in response **by 4pm on 12 May 2025**. Any submissions in reply **by 4pm on 26 May 2025**.
53. The Court will determine quantum of costs on the papers after that.

H. Enforcement

54. Pursuant to rule 14.37(1) of the *Civil Procedure Rules*, this matter is listed for Conference **at 1pm on 2 May 2025**, to ensure the judgment has been executed or for the Second Defendant to explain how it is intended to comply with the Court's Orders. For that purpose, this judgment must be personally served on the Second Defendant and proof of service filed.

DATED at Port Vila this 7<sup>th</sup> day of April 2025  
BY THE COURT

  
Justice Viran Molisa Trief

