

IN THE COURT OF APPEAL OF  
THE REPUBLIC OF VANUATU  
(Civil Appellate Jurisdiction)

Civil Appeal  
Case No. 25/1692 COA/CIVA  
[2025] VUCA 31

**BETWEEN: JACOB GARAE and FAMILY**  
*First Appellant/First Cross-Respondent*

**AND: DOROTHY NANUA and FAMILY**  
*Second Appellant/Second Cross-Respondent*

**AND: CHRISTIAN CRANOIS**  
*Respondent/Cross-Appellant*

**Date of Hearing:** 7<sup>th</sup> August 2025

**Before:** Hon. Chief Justice Vincent Lunabek  
Hon. Justice Mark O'Regan  
Hon. Justice Anthony J Besanko  
Hon. Justice Dudley Aru  
Hon. Justice Vira M Trief  
Hon. Justice Edwin P Goldsbrough  
Hon. Justice Maree M Mackenzie

**Counsel:** Eric Molbaleh for the Appellants  
Respondent in person

**Date of Decision:** 14<sup>th</sup> August 2025

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**JUDGMENT OF THE COURT**

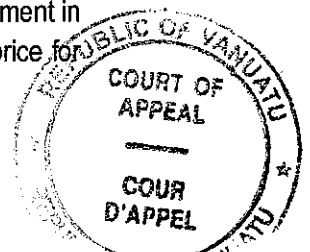
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**Introduction**

1. This is a cross-appeal from orders made by a Judge of this Court. There was an appeal against the Judge's orders but that appeal was discontinued shortly before it was listed for hearing.
2. Mr Christian Cranois was the claimant in the Court below and the cross-appellant in this Court. Jacob Garae and Family and Dorothy Nanua and Family are the cross-respondents. They were defendants in the Court below. There was another defendant in the Court below, but it is not a party to the appeal or cross-appeal.

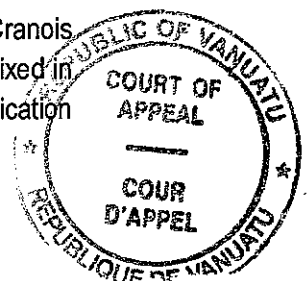
**The course of events**

3. In October 2024 Mr Cranois and Ms Colette Prats executed a Sale and Purchase Agreement in respect of Lease Title No. 12/0943/045 ("the Lease" or "the property"). The purchase price for



the Lease was VT7 million. Mr Cranois and Ms Prats executed another agreement involving the assignment by Ms Prats to Mr Cranois of any legal right she may have against the squatters on the property on 28<sup>th</sup> February 2025.

4. On the 31<sup>st</sup> of October 2024 Mr Cranois served a notice to vacate the property within 10 days. The first and second cross-respondents (*"the cross-respondents"*) did not vacate the property. The third cross-respondent did vacate the property.
5. On the 7<sup>th</sup> of November 2024 Ms Prats donated a general power of attorney to Loic Bernier of Caillard & Kaddour Real Estates (C & K) in relation to the sale of the interest in the property. The power of attorney was certified by Mr Hernandez on the 5<sup>th</sup> of November 2024. On the 12<sup>th</sup> of December 2024 stamp duty on the agreement of Sale and Purchase in the amount of VT5,000 was paid. On the 17<sup>th</sup> of February 2025 the power of attorney was registered in Port Vila.
6. On 6<sup>th</sup> December 2024 Mr Cranois issued an urgent application in the Court for an order that the police be permitted to enter the property and remove the defendants. On 11<sup>th</sup> December 2024 that application was withdrawn.
7. On the 18<sup>th</sup> of February 2025 C & K issued a settlement statement in the sum of VT7,546,221. Six days later, C & K issued a final settlement statement from Mr Cranois to Tropical Properties in relation to Mr Cranois' lease titles 12/0943/037 and 12/0943/038 situated at Narpow Point for the price of VT50 million.
8. On the 25<sup>th</sup> of February 2025 C & K issued a final settlement sale statement confirming the sale of the Lease had been completed. The net amount paid to Ms Prats was VT6,498,603. On the 25<sup>th</sup> of February 2025 Loic Bernier of C & K issued a certificate of land ownership confirming ownership of the property to Mr Cranois. On the 18<sup>th</sup> of March 2025 Ms Prats transferred the Lease to Mr Cranois for a consideration of VT7 million before Mrs So'olaetaua Motuliki of Geoffrey Gee & Partners, Solicitor-Barrister duly witnessed by Mr Tom Bethuel as Commissioner for Oaths. On the 28<sup>th</sup> of March 2025 the transfer of the Lease was duly registered at the Department of Land Records. An Advice of Registration of Dealing was issued by the Department of Lands on the same date.
9. Mr Cranois' claim in the court below was that he is the proprietor of the Lease and that the cross-respondents were trespassers and squatters on the property as from 31<sup>st</sup> October 2024 or from 7<sup>th</sup> December 2024. He was entitled to have them evicted from the property and an order that they should pay damages for overstaying on his property.
10. At the close of evidence from both parties and during the period allowed to Mr Cranois to file his written and closing submissions, Mr Cranois filed an application on 3<sup>rd</sup> April 2025 seeking an order that he be permitted to re-open his case. The purpose of the application was to seek leave for Mr Cranois to present further evidence in relation to the transfer and registration of the Lease. The application to re-open was listed for hearing on the 25<sup>th</sup> of April 2025. On that day Mr Cranois opted to withdraw the application. He was ordered to pay the cross-respondents' costs fixed in the amount of VT250,000. On the 2<sup>nd</sup> of May 2025 Mr Cranois sought to *"retrieve"* the application

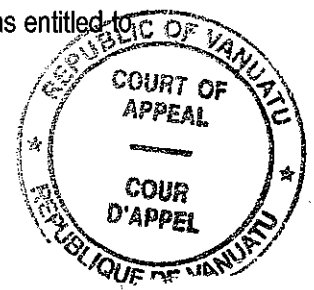


to present further evidence which he contended he did not have at time of trial. The application was allowed by the primary judge. Two further sworn statements of Mr Cranois were received into evidence.

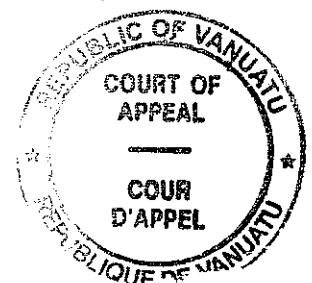
11. At the trial, Mr Cranois submitted that on the balance of probabilities he had shown by credible evidence that he was the registered proprietor of the Lease and that he was entitled to an eviction order. He also sought damages against the cross-respondents. He relied on Section 15 of the Land Leases Act [CAP. 163] and the decision in *Manaon v Pakoa* [2018] VUCA 5 to support his asserted rights as a proprietor under Section 15 of the Act because he had purchased the lease for a valuable consideration of VT7 million.

### **The primary judge's reasons**

12. In the primary Judge's reasons he said that by reason of "*overwhelming evidence*" produced by Mr Cranois and his witnesses, he was satisfied to the required standard of proof of the following six matters:
13. First, the primary Judge was satisfied that Mr Cranois purchased the Lease for valuable consideration of VT7 million and that he was a bona fide purchaser.
14. Secondly, the primary Judge was satisfied that the Lease was duly transferred from Ms Prats to Mr Cranois. The sale of the Lease was duly made pursuant to the lawful power of attorney given by Ms Prats to Loic Bernier of C & K Real Estates duly executed in accordance with Sections 77, 78, 79, 80, 82 and 83 of the Land Leases Act.
15. Thirdly, the primary Judge was satisfied that the Lease was duly executed under the power of attorney given by Ms Prats to Mr Cranois on 17 January 2025 to deal with all things necessary in relation to the Lease including taking eviction proceedings or action against squatters and their families and unlawfully occupying the lease.
16. Fourthly, the primary Judge was satisfied that pursuant to the power of attorney dated 17th January 2025 Mr Cranois and Ms Prats executed an agreement as to the assignment of rights of action against squatters on the property dated 25 February 2025.
17. Fifthly, the primary Judge was satisfied that the agreement dated 25 February 2025 was taken to Ms Prats and presented personally for her signature by Mr Eric Laroche.
18. Sixthly, the primary Judge was satisfied that the Lease has been duly registered in the Lands Records Office on the 28th of March 2025 and duly entered in the Register.
19. The primary Judge said that Mr Cranois and his witnesses were reliable and credible. He found that Mr Cranois was the registered proprietor of the Lease and that Mr Cranois was entitled to an eviction order against the cross-respondents.



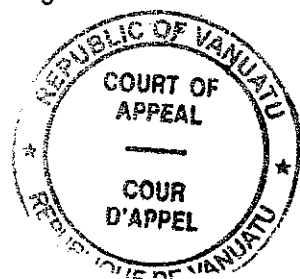
20. The primary Judge then addressed the question of whether Mr Cranois was entitled to damages for loss, overstaying and anxiety.
21. The primary judge said that he found no formal evidence of any proper notice to quit or vacate issued to the cross-respondents. He referred to Mr Cranois' assertion that he served a 10 days notice letter on the 31st of October 2024 to vacate the Lease. The primary judge said that the letter was in a statement which was not in evidence before the Court and even if it was, it falls short of being a proper notice to vacate the lease. It was not specifically addressed or issued to the cross-respondents as it should have been. It was not a notice to quit and was not evidence in support of Mr Cranois' claim for damages, loss or anxiety.
22. The primary Judge noted that in October 2024 the Lease had not yet been purchased by Mr Cranois and/or transferred into his name as the registered proprietor. The Judge said that an effective notice to quit should and could only have been issued after 25 February 2025 or 18 March 2025 and not earlier. No such notice was issued. The significant events which took place on those dates are identified above. The primary Judge noted that there was no medical evidence produced by Mr Cranois showing that he had suffered anxiety and mental stress.
23. Having regard to these findings, the primary Judge said that Mr Cranois was not entitled to damages and that part of his case was dismissed.
24. The first and second defendants (cross-respondents in this Court) had made money claims against Mr Cranois. The primary Judge said that they had no money claims against Mr Cranois. That matter was in fact conceded in their evidence. The primary Judge noted that the claim of the first and second defendants appeared to be against Ms Prats who was not a party to the proceedings. The primary Judge noted that that evidence is inconsistent with the evidence by sworn statement of Jacob Garae dated 11th December 2024 in support of the Defence and Counterclaim.
25. The primary Judge said that the Defence filed on the 3rd of March 2025 was a bare defence without any Counterclaim. The Defence consisted of three paragraphs. It did not plead any previous employment of Mr Garae by Mr Cranois. It did not plead any non-payments of severance, VNPF contributions or any monthly salaries. After making a number of other observations the primary Judge said that he found that the cross-respondents had no money claims against Mr Cranois.
26. The primary Judge then turned to consider whether the cross-respondents had an authorisation from Mr Cranois and/or Ms Prats to live on the property comprised in the Lease. The cross-respondent's case was that they had an oral agreement. The primary Judge noted that the onus was on the cross-respondents to prove on the balance of probabilities that they had such authorisation. The primary Judge noted that Ms Prats was not a party to the proceeding and therefore the claim was misconceived and without any basis. It could not be determined by the Court at that point.



27. The primary Judge then considered whether the cross-respondents were trespassers and squatters on the property. He decided that they were. He referred to the power of attorney granted to Mr Cranois on 17 of January 2025 and the Agreement dated the 25<sup>th</sup> of February 2025 and noted that they were documents between Ms Prats and Mr Cranois recording their stance on the continued occupation of the property by the cross-respondents. The primary Judge found that as at the 17<sup>th</sup> January 2025 or the 25<sup>th</sup> of January 2025 the cross-respondents were trespassers and squatters on the property.
28. The primary Judge said that Mr Cranois was successful on part of his claim. The primary Judge made an order for eviction in favour of Mr Cranois. However, his claims for damages were dismissed. The formal orders made by the primary Judge were as follows:
- 1) The First and Second Defendants (the cross-respondents), by themselves, their family members and relatives be hereby required to remove themselves and all their belongings and possessions from Lease 045 within a period of 14 days from the date hereof, on or before the 11<sup>th</sup> of June 2025;
  - 2) An Enforcement Warrant will be issued on 11<sup>th</sup> of June 2025 for the removal of any defendants who do not comply with the order in ((a) above);
  - 3) In the circumstances of this case, there will be no orders as to costs and each party will bear their own costs.

### Chronology

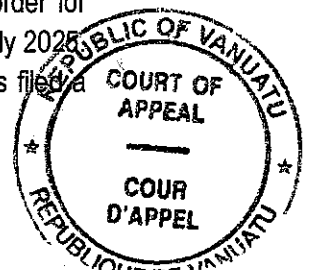
29. The primary Judge delivered his judgment on the 28<sup>th</sup> May 2025. As we have said, the primary judge made an order evicting the cross-respondents from the property.
30. On 16<sup>th</sup> June 2025 the cross-respondents filed a notice of appeal. The grounds of appeal are notably deficient in particulars. Those grounds are as follows:
- (1) "His Lordship erred in facts and law by issuing judgment in favour of the respondent;
  - (2) His Lordship erred in facts and law by not considering and giving weight to the evidence of the appellants;
  - (3) His Lordship erred in facts and law by not considering and accepting that the trial was not fair;
  - (4) His Lordship erred in facts and law by re-opening the trial when it was already closed making it unfair on the appellants by having a chance to amend (sic) their defence against the respondents' new position in the claim"
31. As can be seen, there is no particular ground addressed to the primary Judge's order evicting the cross-respondents from the property.



32. On 12<sup>th</sup> June 2025 Mr Cranois filed an application for enforcement warrant for possession of the property.
33. On 20<sup>th</sup> June 2025 a Judge of the court made directions with a view to progressing the matter to a hearing on the appeal. The directions included a direction that the appellants' submissions be filed and served by 11<sup>th</sup> July 2025 and the respondents' submissions be filed and served by the 18<sup>th</sup> July 2025. The appellants (cross-respondents) did not file any submissions with respect to their appeal.
34. On 24<sup>th</sup> June 2025 Mr Cranois filed an notice of cross-appeal.
35. On 14<sup>th</sup> July 2025, Mr Cranois' application for an enforcement warrant for possession of property was deferred pending the determination of the appeal and cross-appeal. That decision was made by the primary Judge in circumstances where the hearing of the appeal and cross-appeal was about three weeks away.
36. On 26<sup>th</sup> June 2025, Appeal Book A was filed and served.
37. On 1<sup>st</sup> August 2025 the cross-respondents filed a notice of discontinuance in relation to the appeal. On 6<sup>th</sup> August 2025 the cross-appellants filed submissions in relation to the cross-appeal. Those submissions consist of three paragraphs as follows:
- "1) The appellants have discontinued the appeal.  
2) the cross-appeal remains on foot.  
3) the appellants concedes that the issue of costs of the cross-appellant be remitted back to the Supreme Court for assessment.
38. The cross-appeal came on for hearing on the 7<sup>th</sup> August 2025 Mr Cranois appeared in person. The cross-respondents were represented by counsel. Mr Cranois had representation before the primary Judge, but by the time he filed this notice of cross-appeal he was acting for himself.

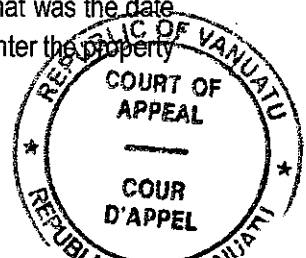
#### **The issues on the appeal and the orders to be made**

39. As we have said the primary Judge made an order evicting the cross-respondents from the property. The cross-respondents were ordered to leave the property by 11<sup>th</sup> June 2025. The primary Judge further ordered that an enforcement warrant be issued on 11<sup>th</sup> June 2025 for the removal of any defendants who do not comply with the first order.
40. The dates in the first order are no longer relevant. The cross-respondents asked the Court to make an order that they have three months from the date of the court's order to vacate the Lease. We consider that a period of 10 days from the date of the Court orders is appropriate. The primary judge made orders evicting the cross-respondents from the lease on 28<sup>th</sup> May 2025. That is at least two months before the date on which the cross-respondents discontinued their appeal. The cross-respondents have known for some time that the primary Judge had made an order for eviction. The cross-respondents were required to file and serve submissions by 11<sup>th</sup> July 2025. As we have said they did not file submissions on their appeal. The cross-respondents filed a



notice of discontinuance on 1<sup>st</sup> August 2025 so that the 10 day period from the date of the court orders will mean that the cross-respondents have and have had 24 days notice that they are required to leave the property. It may well be appropriate to work back by reference to the earlier date of 11<sup>th</sup> July 2025 in determining when the cross-respondents have known that they will have to vacate the property. At all events, we consider that the cross-respondents ought to be required to vacate the property within 10 days. It follows that in addition to making an order that the cross-respondents leave the property within 10 days, we will make a further order that an enforcement warrant will be issued on 24<sup>th</sup> August 2025 for the removal of any defendants who do not comply with the first order.

41. By application dated 12<sup>th</sup> June 2025 Mr Cranois sought to enforce the eviction order. The primary judge noted that there was an appeal and cross-appeal on foot and refused to issue an enforcement warrant pending the outcome of the appeal and cross-appeal.
42. The cross-respondents accept that it is appropriate that they be ordered to pay damages to Mr Cranois from the date upon which the Lease was registered, that is, 28 March 2025 or at least from the date upon which the Judge deferred Mr Cranois' application for an enforcement warrant, that is, 14<sup>th</sup> July 2025. It is not clear to us which of these dates was the subject of the cross-respondents' concession.
43. We consider that the appropriate date is the earlier date of 28<sup>th</sup> March 2025. In terms of quantum, Mr Cranois suggested an amount of VT15,000 per day, whereas the cross-respondents suggested an amount of VT8,000 per day. We consider an amount of VT10,000 per day to be appropriate and we will make an order that the cross-respondents pay Mr Cranois an amount of VT10,000 per day for the period from 28<sup>th</sup> March 2025 to the date of these orders.
44. As we have said, Mr Cranois was represented by counsel at the trial. The cross-respondents appear to accept that they must pay Mr Cranois' costs of the trial in that they concede that the issue of costs of the cross-respondents be remitted back to the Supreme Court for assessment. We think that it is appropriate that we deal with the matter and that there be an order that the cross-respondents pay Mr Cranois' costs of the proceedings in the Supreme Court fixed in the amount of VT160,000.
45. Mr Cranois pressed other claims which he submits he made in the court below.
46. First, Mr Cranois sought a sum of VT500,000 for stress and anxiety. The primary Judge refused to make an order to this effect. The primary Judge rejected this claim for a number of reasons including the fact that there was no medical evidence produced by Mr Cranois showing proof of anxiety and mental stress. Although Mr Cranois before this Court asserted that the process associated with evicting the cross-respondents from the land had been difficult and stressful, we see no reason to interfere with the judge's conclusion that among other things no medical evidence had been adduced in support of a finding of anxiety and stress.
47. Mr Cranois also sought damages stretching back to the 6<sup>th</sup> December 2024. That was the date on which he brought his application for an order that the police be permitted to enter the property

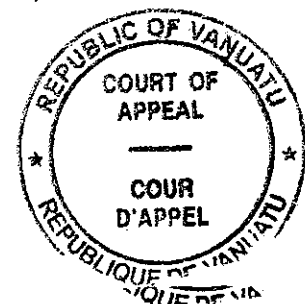


and remove the defendants. There are a number of difficulties with that claim. The first difficulty is that the evidence before the primary Judge was that the transfer under the sale and purchase agreement was not registered until 28<sup>th</sup> March 2025. The second difficulty is that Mr Cranois has not produced any evidence upon which the Court could assess the damage suffered by him before the transfer was registered. Thirdly, in his notice of cross-appeal Mr Cranois only seeks damages from the 25<sup>th</sup> February 2025 or 18<sup>th</sup> March 2025. Finally, we note that the application was withdrawn and at the time Mr Cranois' counsel acknowledged that the application was premature as Mr Cranois was not the registered proprietor.

48. On the hearing of the appeal Mr Cranois sought damages extending back for a period of 6 years from the time he became the registered owner of the Lease. He identified the 6 year period as the limitation period. That claim was made late in the piece. The claim must be rejected for the same reasons as his claim for damages from the 6<sup>th</sup> December is rejected.
49. Mr Cranois pointed to the assignment from Ms Prats dated 28<sup>th</sup> February 2025 Ms Prats was not called as a witness at the trial and the document assigned such rights as Ms Prats has without identifying the precise nature of these rights. The document has some features which are unclear. In any event, the absence of proof of loss upon which an assessment of damages might be based is fatal to Mr Cranois' claim. Mr Cranois said he thought the matter would go back to the Supreme Court for an assessment of damages. An examination of the primary Judge's reasons and the matters he dealt with make it clear that there is no basis for Mr Cranois' belief.

### **Conclusion**

50. We observe that the two defendants (cross-respondents) are each an identified individual and a family. The authorities of this Court are to the effect that a person could not be evicted by a court order from land unless they were named and served with the application seeking the eviction order: *laus v Noam* [2017] VUCA 40 at [12]; *Iapatu v laus* [2018] VUCA 50 at [22]; *Willie Lop v Family Kaukare* [2025] VUCA 10 at [14-17]. Neither party raised this matter. Despite this, the matter goes to the jurisdiction of the Court and cannot be ignored. We will frame our orders accordingly.
51. We will make the following orders:
- (1) The orders of the primary Judge made on 28<sup>th</sup> May 2025 be set aside;
  - (2) In lieu of those orders, the Court makes the following orders:
    - (a) Jacob Garae and Dorothy Nanua be hereby required to remove themselves and all their personal belongings and possessions from the Lease (Lease Title 12/0943/045) within a period of 10 days from the date hereof, on or before 24 August 2025;

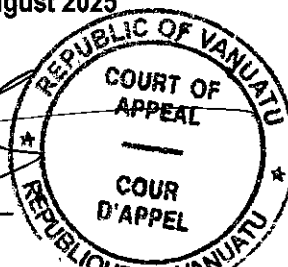
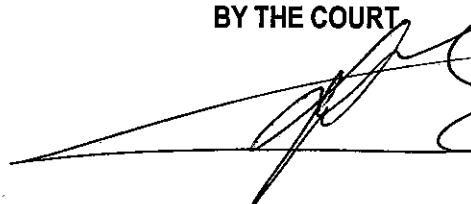




- (b) An enforcement warrant will be issued on 24<sup>th</sup> August 2025 for the removal of any of the persons described in Order (a) above who do not comply with Order (a) above;
- (c) Jacob Garae and Dorothy Nanua pay the claimant the amount of VT10,000 per day from 28<sup>th</sup> March 2025 to the date of these orders; and
- (d) Jacob Garae and Dorothy Nanua pay the claimant the costs of the proceeding in the Supreme Court fixed in the amount of VT160,000.

**DATED at Port Vila, this 14<sup>th</sup> day of August 2025**

**BY THE COURT**



**Hon. Chief Justice Vincent Lunabek**