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

Civil Appeal
Case No. 25/1878 COA/CIVA
[2025] VUCA 33

BETWEEN: GEORGE LAPI
Appellant

AND: IFIRA TRUSTEES LIMITED
Respondent

Date of Hearing:	***8th August 2025***
Coram:	***Hon. Chief Justice Vincent Lunabek*** ***Hon. Justice Mark O'Regan*** ***Hon. Justice Anthony Besanko*** ***Hon. Justice Oliver Saksak*** ***Hon. Justice Dudley Aru*** ***Hon. Justice Viran Molisa Trief*** ***Hon. Justice Maree Mackenzie***
Counsel:	***Mr Eric Molbaleh for the Appellants*** ***Mr Sakiusa Kalsakau for the Respondents***
Date of Decision:	***14th August 2025***

JUDGMENT OF THE COURT

Introduction

1. On 27th August 2012, the Appellant and Respondent entered into a sale and purchase agreement for a leasehold interest in land that was, at that time, leasehold title 12/0911/043 ("the lease title"), situated at Malapoa. The terms and conditions of the sale and purchase agreement were:

    1) The agreed purchase price was VT 5,500,000.

    2) A deposit of VT 500,000 was to be paid.

    3) The agreement was subject to approval of the Valuer General for forfeiture of the lease title and the issue of a new lease by the Minister of Lands, which was to be issued to the Appellant. If not issued, the deposit was to be refunded, and the Appellant would vacate the lease title.

4) A finance condition. In the event the Appellant was unable to obtain finance within 60 days of the issue of a new title, the deposit was forfeited.

5) The Appellant was permitted to enter the premises for the purposes of cleaning and clearing and protecting the property from further vandalism. Permission for entry was not to be construed as possession.

2. The Appellant paid the VT 500,000 deposit, and soon after that, took possession of the property and undertook repairs and renovations to a dilapidated dwelling on the property. As at 2020, the lease title was valued at VT 17,500,000. The valuation included the value of the land and the dwelling, which had been renovated by the Appellant. While lease title 12/0911/043 was forfeited, the Appellant did not tender the balance of the purchase price and the Respondent did not make any effort to obtain a new lease title. This situation has continued until the present proceedings which commenced in December 2022.

3. The Respondent was initially willing to honour the sale and purchase agreement, even though the value of the lease title had increased, so made attempts to resolve matters with the Appellant, given he had occupied the property for several years but had not completed the purchase. None of these attempts were successful. The Appellant was unwilling to pay the balance of the purchase price. A notice to quit was served on the Appellant, when negotiations failed. However, the Appellant remained living on the property. So, eventually, the Respondent filed a claim seeking eviction.

4. The Appellant filed a defence and counterclaim. Relevantly, the defence pleaded was that the Appellant was not a trespasser and was permitted to enter and clean the vandalised property and also occupy the property until he paid the purchase price. The counterclaim was for VT 5,000,000, for the value of the improvements. No defence was filed to the counterclaim.

5. By judgment dated 13 June 2025,[1] an eviction order was made requiring the Appellant to give vacant possession. The Appellant succeeded in the counterclaim. An award of VT 5,000,000 was made to the Appellant for improvements to the property, less a deduction of VT 600,000 for unpaid land rent. The Appellant appeals these findings.

The Appeal

6. A number of grounds were advanced in the notice of appeal. However, the grounds advanced at the hearing of the appeal were that:

1) The primary Judge erred in making an eviction order.

[1] *Ifira Trustees Limited v Lapi* [2025] VUSC 154

2) The primary Judge erred in awarding the Appellant VT 5,000,000, and not VT 12,500,000 for the improvements to the property.

3) The primary judge erred in ordering that land rent be deducted from the sum awarded to the Appellant for improvements to the property.

Issue One: Did the primary Judge err in making an eviction order?

7. The primary Judge held that because the Appellant did not complete the sale and purchase agreement, he was not entitled to continue to occupy the lease title. He observed there was no defence to the eviction claim.

8. Under the agreement for sale and purchase, the Appellant had a limited right to enter the property to clean and clear it and protect it from further vandalism. It was an express term of the agreement that the right to do work at the property was not to be construed as possession. During the hearing of the appeal, Mr Molbaleh confirmed that shortly after the sale and purchase agreement was signed, and the deposit was paid, the Appellant moved in and took possession of the property. The Appellant then undertook improvements to the property.

9. Mr Molbaleh conceded there was no right to possession of the property under the sale and purchase agreement, and that the Appellant had no right to move in and take possession of the property. After making that concession, Mr Molbaleh attempted to argue that payment of the deposit gave the Appellant a possessory right. That contention is devoid of any merit, and we reject it. Payment of the deposit did not give the Appellant a possessory right.

10. There was no right to possession in the sale and purchase agreement, and the Appellant did not complete the purchase. The Appellant was given notice to quit but continued to occupy the property, when there was no legal basis for him to do so. Further, Mr Molbaleh rightly conceded during the hearing that the Appellant had no right to possession of the property. In such circumstances, there was no basis to resist an eviction order. The primary Judge did not err in making the eviction order.

Issue Two: Did the primary Judge err in the quantum of the award for improvements to the property?

11. The primary Judge awarded the Appellant VT 5,000,000 for the improvements he undertook to the property, being the relief sought in the counterclaim. He noted that the Appellant had not adduced any evidence as to the cost of the improvements. However, the Respondent made a concession during the trial that the Appellant had made improvements to the property, and that the Respondent was willing to pay for the improvements, although they were not able to quantify the value of the improvements. The primary Judge also made the point that without that concession, the counterclaim was not made out.

12. The Appellant contends that the primary Judge erred in not awarding the Appellant Vt 12,500,000 being the difference between the value of the lease title when the sale and purchase agreement was entered into, and the current value of the lease title, VT 17,500,000, as evidenced by a 2020 valuation. The Appellant contends that the increased value of the lease title is attributable solely to the improvements made by the Appellant.

13. As we now explain, we do not accept the Appellant's contention that the quantum awarded under the counterclaim should have been VT 12,500,000.

14. The Appellant adduced no evidence at all to substantiate the claim for improvements. There was no evidence as to the actual costs expended to improve the property. There was no expert valuation evidence to support the argument that the improvements alone contributed to the increase in value of the property. As the primary Judge said, there are various reasons for the value of a property to increase. Improvements may contribute to an increase in value, but there are other factors that may also contribute, including inflation, a general increase in value of properties in Port Vila over time, and general improvements in the Malapoa area. Without expert evidence, we are unable to determine the extent to which the improvements contributed to the increase in value of the property.

15. The primary Judge correctly identified that without the concession made by the Respondent that improvements had been made, and that they were willing to compensate the Appellant, the counterclaim would not be made out. The primary Judge had no evidence to assess quantum once the concession had been made, so awarded the Appellant the amount claimed. The relief sought in the counterclaim for improvements was VT 5,000,000, and not VT 12,500,000. It is inexplicable that the Appellant continues to seek an award greater than claimed, particularly as the primary Judge said that the Appellant could never be awarded more than he claimed. Given the lack of evidence to substantiate the claim for improvements, the quantum awarded was arguably generous, but it is not challenged in this Court by the Respondent.

16. As we have said, there was no evidence to establish the counterclaim. The primary Judge was clear that the only basis for an award for improvements was the concession made by the Respondent. The quantum of the award was based on the amount claimed by the Appellant. Accordingly, we see no error in the quantum awarded.

Issue Three: Did the primary Judge err in ordering that land rent be deducted from the sum to be paid to the Appellant?

17. The primary Judge made an order that VT 600,000 in unpaid land rent be deducted from the VT 5,000,000 awarded under the counterclaim. The Appellant contends that the primary Judge erred in making that order as the Respondent did not pursue a claim for land rent at trial. Mr Kalsakau, for the Respondent, accepted that there was not an extant claim before the Court for land rent.

18. We agree that the primary Judge erred in ordering that land rent of VT 600,000 be deducted from the sum awarded under the counterclaim, given there was not an extant claim before the Court for land rent.

Disposition of the appeal

19. We make the following orders:

a) The appeal is allowed in relation to the deduction of land rent. In all other respects, the appeal is dismissed.

b) The eviction order is confirmed. The Appellant must vacate leasehold title 12/0911/043 and give vacant possession to the Respondent within 7 days of the date of this order.

c) The order that VT 600,000 land rent be deducted from the VT 5,000,000 awarded under the counterclaim is set aside.

d) The award of VT 5,000,000 under the counterclaim is confirmed.

e) There is no order as to costs. Mr Kalsakau did not file written submissions as directed. In the circumstances, the Respondent is not entitled to costs.

Dated at Port Vila this 14th day of August 2025

BY THE COURT

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Hon. Chief Justice Vincent Lunabek

REPUBLIC OF VANUATU COURT OF APPEAL COUR D'APPEL REPUBLIQUE DE VANUATU