

IN THE MAGISTRATES' COURT  
OF THE REPUBLIC OF VANUATU  
(Civil Jurisdiction)

Case No.21/1925 CVL

BETWEEN: **KALSUAKI JAMES**  
Claimant

AND: **HARRY JAMES**  
Defendant

Date of Hearing & Oral Decision: 18<sup>th</sup> of November,  
Date of Written Decision: 26<sup>th</sup> November, 2021.

Coram: Fsam

Appearances: Mr Wingy\_T for the Claimant  
Mr Rongo\_R for the Defendant

DECISION ON LEGAL SUBMISSIONS

Introduction & Background

1) The claimant and defendant are biological brothers. The subject matter in question being the estate title 11/OG31/006 (the property) was initially a leasehold property owned by the late father of the claimant and defendant, Mr Jio James. After his death, their mother Lucy James was appointed administrator of the estate. By Transmission she became the registered proprietor of the lease on 2008. She died in 2012 leaving behind four children including the claimant and defendant.

2) Prior to Lucy James' death she had signed a will indicating for the property to be transferred to her daughter Maturine James. Upon her passing, in 2012, Maturine applied for and was granted administrator over the estate in 2013. However the order of administration was challenged by the claimant, wherefrom letters of administration granted to Maturine was revoked and the claimant Kalsuaki James was granted administrator instead.

3) Having being granted the letters of administration, the claimant then filed an urgent application for restraining orders in this court against the defendant. The grounds advanced by the claimant in his application are:

*1) That the claimant was granted probate administration of the estate of Late Lucy James on the 3<sup>rd</sup> of September, 2020 by the Supreme Court of Vanuatu*



2) The applicant wrote letters to the tenants of the kava bars and apartments to pay rent to the applicant however, the defendant threatened them saying "paper ya hemi paper nating" referring to the grant of probate administration.

3) Some tenants have left the apartments because of the constant nuisance caused by the respondent.

4) The respondent drinks alcoholic liquor every weekend and has the habit of knocking at the tenants doors during odd hours, kicking toilet doors and playing loud music disturbing tenants.

5) One particular female tenant does not feel safe anymore as her husband is overseas on seasonal work.

4) Apart from being granted the orders sought, he also sought the following reliefs in his claim:

1) An order that the defendant vacate the property title 11/OG31/006 within 30 days from the date of Judgement;

2) Any orders deem fit by the court.

5) The defendant filed an initial defence and later an amended defence and counterclaim from which they sought the following reliefs:

1) The defendant's share of the property at the amount of VT VT4, 300,000.

However in their submission, the amount was amended to VT 2,150, 000.

2) That the value of the property being VT 8,600,000, exceeds VT 1,000,000 and that the matter be dismissed with cost.

### Submissions

6) This court considered both submissions from counsels and relevant authorities cited, as well as sworn statements filed by both sides as evidence.

7) There is no dispute that prior to obtaining letters of administration, an agreement was made between the claimant and defendant for the defendant to collect the rental payments for 2 rooms and 4 windows nakamal.

8) The claimant submitted that the defendant was to make repairs and maintain the the 2 rooms, and the nakamal or kava bar, however, the 2 rooms have deteriorated and without tenants because they are in need of repairs including the kava bar.



9) Upon being granted letter of administration, the claimant asked the defendant to stop collecting rent monies and for the tenants to pay the claimant instead so he can use the money to maintain the property as administrator.

10) The defendant however submitted that upon obtaining administration, the claimant had never approached him to discuss the issue of land rent or repair of the property, and he continued to rely on the original agreement by collecting land rent from the properties in question. He further submitted that the claimant is taking advantage of the power of administrator granted to him to evict the defendant and take over the property for his own benefit. In his defence he denies demanding money or disturbing and scaring the tenants, and says the claimant has no right of ownership and or personal benefit as administrator.

11) And given the counter-claim by the defendant raising issue of jurisdiction of this court, I am of the view that it is important to consider this foremost in order to determine the claim.

#### Issue

12) The issue before me then appears to be whether or not this court has jurisdiction to order eviction against the defendant from the estate property?

#### Discussion

13) While the defendant is not specifically challenging the validity of the administration, it seems he is challenging the way the claimant is exercising his powers of administrator over the estate.

14) The Magistrate's Court (Civil Jurisdiction) Act [Cap 130], sections 1 and 2 set out the court's jurisdiction as follows:

#### ***"1. Jurisdiction of the Magistrates' Court in civil matters***

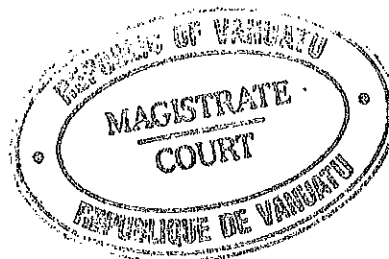
*The Magistrates' Court established pursuant to section 12 of the Judicial Services and Courts Act [Cap. 270] shall have jurisdiction to try all civil proceedings –*

*(a) in which the amount claimed or the value of the subject matter does not exceed VT 1,000,000 except claims relating to permanent physical damage to a person;*

....

#### ***2. Restriction on jurisdiction of the Magistrates' Court in civil matters***

*The Magistrates' Court shall not have jurisdiction to try a suit concerning wardship, guardianship of minors and persons of unsound mind, interdiction,*



*appointment of a conseil judiciaire, adoption, civil status, succession, wills, bankruptcy, insolvency or liquidation of corporate bodies."*

15) According to Section 1 (a) of the Act, there is no evidence as to the current value of the property in question. The defendant relied on the sworn statement of Richard Dick in support of his amended defence filed on the 13<sup>th</sup> October, 2021, wherefrom a 2019 valuation report of the estate property was at the amount of VT 8, 600, 000. I do not agree with the defence's submission that by this year, the value of the property will be much higher. While I am no expert, I am of the view that there are certain factors to take into consideration to determine the value of a property, including the deteriorating state of the property, and without a current value of the estate property in evidence, it is obvious there may be a change in the current value, but I doubt it would be much higher as stated by defence.

16) Therefore without a current value of the estate property before me, I cannot consider the question of jurisdiction under this section.

17) Section 2 of the Act on the other hand, provides for restriction of this court on certain claims, including succession. And it is of this court's view that while the claim before us is for eviction from an estate property under administration, with the defendant challenging the claimant's power of administration in refusing to be evicted, and challenging his rights to the estate property, I see this as a case concerning succession and therefore this court has no jurisdiction and therefore cannot issue eviction orders.

18) The claim is dismissed accordingly.

19) If I am wrong, I am in no doubt that the claimant has not provided supporting evidence to support his allegations of disturbances and interferences from the defendant towards his exercise of administration, and the claim must fail on that basis as well.

20) Having so ordered, the restraining orders issued must also be set aside.

21) I consider also the cases of *Yakeula v Ake* [2017] VUCA 2 and in *Re Estate of Mollivono* [2007] VUCA 22 cited by the claimant in his sworn statement filed on the 6<sup>th</sup> of August, 2021, as well as the case of *National Housing Corporation v Okau* [2013] VUCA 21 cited by the Defence, and these are useful authorities for consideration by this court.

22) However the difference with the case before us is that the defendant, as a beneficiary to the estate property, had been a resident all along in the property in question, and had benefitted from the property based on an oral agreement, before the claimant was granted probate administrator. But I accept the view shared in *Yakeula*, however on a slightly different note, that while the defendant is a beneficiary, it is no defence to say he can only be evicted once he is being paid his share of the value of property in question.



23) As aforementioned, he has not provided evidence to ascertain the current value of property, or to support his claim for his share of the property in question.

24) And having sorted out the issue of jurisdiction, I do not see how the defendant's counterclaim can stand, therefore I dismiss this as well.

Result

25) The Claim is dismissed.

26) Restraining orders are set aside.

27) The Counterclaim is dismissed.

28) No order as to costs.

Dated at Port Vila this 26<sup>th</sup> day of November 2021.

BY THE COURT

