

BETWEEN: HELEN SIGERI
Appellant

**AND: JENIFER VIRA (AS TRUSTEE for
GYANNENDRA VIRA)**
First Respondent

AND: THE REPUBLIC OF VANUATU
Second Respondent

Hearing: 29th May 2018
Before: Justice Chetwynd
Counsel: Mr Molbaleh for the First Respondent
No appearance by or for the Appellant

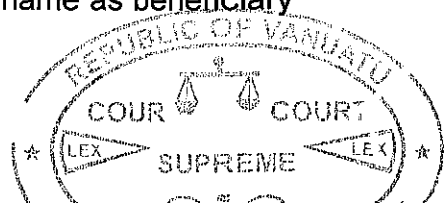
JUDGMENT

1. This is an appeal from the Master. On the 12th of December, 2017 she heard an application from the first respondent to strike out the claim in civil case 16/2560. The appellant did not appear at the hearing of the application to strike out. It also appears from the notes made by the Master that the appellant filed very little by way of documents in opposition to the strike out.

2. The Master considered the submissions and the application by the first respondent. She found that the question of who the legitimate proprietor of title number 11/0H34/005 had been decided in civil case 87 of 2014. The claim in 2160 of 2016 was found by the Master to be an abuse of the process and she struck the claim out.

3. The claim in civil case 2560 of 2016 was apparently for rectification of the title. The relief claimed is for the register to be amended to identify the claimant's (the appellant in this case) registered interests or alternatively the register to be amended to identify the first defendant (the respondent) as "the only trustee for Gyannendra Vira the claimant".

4. The claim seems to be a nonsense. The claimant is not Gyannendra Vira. He is the son of the first defendant/respondent. The earlier civil case 87 of 2014 found that the lease was held in trust by the claimant/appellant **and** the first defendant/respondent as trustees for Gyannendra Vira. As he had reached the age of majority he was entitled to have the title transferred into his name as beneficiary of the trust and an order was made to that effect.

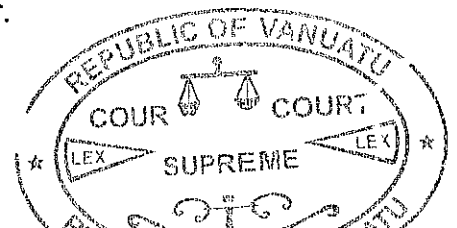


5. In the rectification matter there is some suggestion that when the appellant signed the lease as trustee for Gyannendra Vira she did not know what she was doing. There is a vague allegation the details of the first defendant/respondent and Gyannendra Vira as handwritten on the lease were added at some later stage. It is said in the claim in civil case 2560 of 2016 the appellant spoke to an officer in the lands department before signing the lease. This would seem to contradict the suggestion by the appellant she knew nothing of what was going on. All in all the claim is a rehash of the defence in civil case 87 of 2014. The claimant has raised nothing new and has not given details of the fraud which led to the title being registered in the claimant's and the first defendant's name as trustee for Gyannendra Vira. There is no information as to how the claimant was misled into signing the Transfer as trustee.

6. The decision in civil case 87 of 2014 was handed down on the 24th of August, 2015. The claim in civil case 2560 of 2016 was not filed until nearly a year later on the 2nd of August, 2016. No appeal was lodged against the decision in civil case 87 of 2014. It is quite apparent that the 2016 case was only filed when steps were taken to enforce the decision in that earlier case. That is why the file for 2560 of 2016 ended up with the Master as she was the one who was managing the enforcement process. The filing of the case 2560 of 2016 seems to be nothing more than a delaying tactic because the appellant and her family had quite blatantly refused to comply with the order made in August 2015.

7. Turning to the application to strike out, as stated by the Master the appellant did virtually nothing to prosecute the claim. The application itself seems to have been lodged in the early part of 2017. The file was then passed to another judge in June 2017. The "new" judge became aware of the enforcement proceedings in civil case 87 of 2014 and quite sensibly passed the file to the Master who was dealing with those enforcement proceedings. There is evidence of service of submissions in respect of the application by the first defendant/respondent on the appellant's lawyer in July 2017. There are some submissions on the file from the appellant's counsel which show that he either misunderstood what had happened in civil case 87 of 2014 or chose to misrepresent what went on in that case. He was counsel in that case and yet he says in the submissions it was only an eviction case. Whilst it is true an eviction order was made in the enforcement process in that case it was made because ultimately the entries in the property register were conclusive evidence that Gyannendra Vira was entitled to have the property registered in his name. There was nothing new being put to the Master in civil case 2560 of 2016 which would change that. As set out above, even if the relief claimed was granted the claimant/appellant would still only be a trustee. There might have been a variation of the trusts and beneficiaries but, again for the reasons explored above, that would not, as the claimant/appellant seems to think, entitle her to remain in the property. The appellant has not established that master was wrong to strike out the claim in that respect.

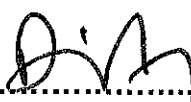
8. At the end of the day, and as is made clear by the Master, the appellants counsel did not turn up at the hearing of the application to strike out nor did he give any reason why he could not or did not attend. The Master was not provided with any real evidence or support of the claim and opposition to strike out. The ground of appeal suggesting no reasons were given is not tenable either.



9. The appeal is dismissed. The appellant shall pay the respondent's costs of the appeal. I will make an order that if any taxation is required then the costs will be taxed on a standard basis. However, the appellant came very close to being told to pay costs on an indemnity basis.

DATED at Port Vila this 11th day of June, 2018.

BY THE COURT



David Chetwynd
Judge

