

**BETWEEN: Phillip Pasu**  
*Claimant*

**AND: Roel Obed, Bilwar Obed, Peter Obed and Ken Obed**  
*Defendants*

**Before: Justice Aru**

**Counsel: Mr. E. Nalyal for the Claimant**  
**Mr. S. Stephens for the Defendants**

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**JUDGMENT**

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Introduction

1. This is an application for summary judgment. The application is supported by a sworn statement of the claimant filed on 16 April 2018.
2. Such an application may be made under Rule 9.6 of the Civil Procedure Rules. Rule 9.6 1), 2), 7), 8) and 9) provides:-

*"9.6 Summary judgment*

(1) *This rule applies where the defendant has filed a defence but the claimant believes that the defendant does not have any real prospect of defending the claimant's claim.*

(2) *The claimant may apply to the court for a summary judgment.*

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(7) *If the court is satisfied that:*

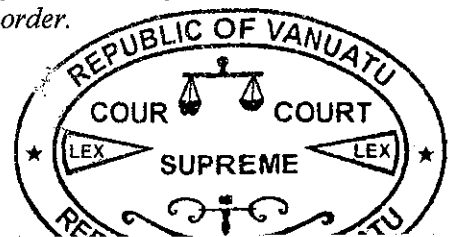
a) *the defendant has no real prospect of defending the claimant's claim or part of the claim; and*

b) *there is no need for a trial of the claim or that part of the claim, the court may:*

c) *give judgment for the claimant for the claim or part of the claim; and*

d) *make any other orders the court thinks appropriate.*

(8) *If the court refuses to give summary judgment, it may order the defendant to give security for costs within the time stated in the order.*



(9) *The court must not give judgment against a defendant under this rule if it is satisfied that there is a dispute between the parties about a substantial question of fact, or a difficult question of law.*"

### Background

3. On 6 July 1987, the claimant was declared by this Court to be the custom owner of part of the area of Champagne Beach in Land Appeal Case No L6/85 **Obed Toto v Philip Pasvu** (LAC L6/85).
4. He later applied to create a lease over the land declared to him and on 7 February 2013, lease title 04/1433/004 (the 004 Lease) was registered in his name as the lessor and Janet Iercet and Lenghan Iercet as lessees.

### Claim

5. In brief, the claimant asserts that he is the declared custom owner of the portion of champagne beach covered by the 004 Lease. He pleads his claim at paragraph 9 and 10 of the claim as follows:-

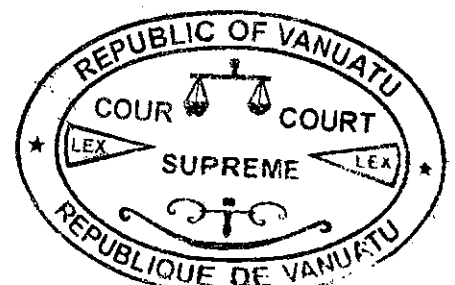
*"9. The defendants have trespassed onto the lease and erected cement posts for a cattle fence and put cattle there which remain to this day and despite written request from the claimant to the defendants to remove their fence posts and cattle they have refused to do so.*

*10. The defendants without any lawful right and despite the judgment trespassed onto the lease and the claimant's portion of champagne beach and collects to this day, rent from shops erected within the lease and from vehicles taking tourists onto land under the lease."*

6. The remedy sought in the claim are:-

- a) an order for the defendants to remove their fence posts, their cattle and the champagne beach bar within 14 days from the claimant's lease;
- b) an order that the defendants be restrained indefinitely from entering onto the claimant's lease to demand rent from shop owners and vehicle owners or to do anything else.
- c) costs

7. The relief for orders to account and damages have been abandoned.



## Defence

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8. The basis of the defendants defence is that the claimant is not entitled to any relief sought as he is not the proprietor of the 004 Lease.

## Application

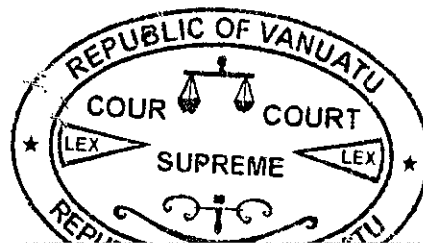
9. The application for summary judgment is made on the basis that the claimant believes the defendant has no real prospects of defending the claim. He says in his sworn statement in support of the application that he is the custom owner of the land and lessor with his wife and son as lessees and the defendants have not produced any evidence to disprove his custom ownership.

## Submissions

10. The claimant in his submissions relies on the decision in LAC L6/85 confirming him as the custom owner of part of the area of Champagne Beach covered by the lease which he has created.
11. The defendants on the other hand submit in response that the application is misconceived and incompetent to succeed. It was submitted that the claimant has transferred his customary interest into a registered lease with another party as the registered proprietor therefore he lacks standing to bring the claim and to make the application.
12. The second limb of their submission is that leasehold interest takes priority over the customary interest in the land and the proprietor of the lease is not the claimant. It was finally submitted that the application for summary judgment should be dismissed.

## Discussions

13. The 004 Lease is annexed as Annexure "PP2" to the sworn statement of the claimant in support of the claim. The lease document identifies the claimant as the lessor and Janet Iercet and Lenghan Iercet as the lessees.
14. Janet and Lenghan Iercet are not parties in this case. The claimant says that it's a family lease as his wife and son are the lessees and he has brought the claim to remove the defendants from being on the lease.
15. Having heard submissions from Counsel, I am of the view that the claimant has misconceived his standing and ability to enforce or prevent the defendants from coming onto the leased land. The land as declared to him is no longer custom land as he has opted to convert it into a registered lease. Once registration of the lease occurs, the



provisions of the Land Leases Act [CAP 163] (the Act) then apply. Part 4 of the Act gives effect to a lease once registered and s 14 of states that:-

*"PART 4 – EFFECT OF REGISTRATION*

*14. Interest conferred by registration*

*Subject to the provisions of this Act, the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease together with all implied and expressed rights belonging thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease. (emphasis added)"*

16. The Act recognises that the leasehold interest in a registered lease is vested in the proprietors of the lease. The proprietors of the 004 lease are Janet Iercet and Lengan Iercet. They are the only persons who have standing to file a claim to enforce or restrain people from trespassing onto their lease but they are not a party in this proceeding.
17. As they are not the claimants nor the applicants for summary judgment, the application for summary judgment fails and is hereby dismissed.
18. The defendants are entitled to costs to be agreed or taxed by the Master.

**DATED at Port Vila this 28 day of August, 2018**

**BY THE COURT**

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**D. Aru**  
**Judge**

