

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

Civil
Case No. 17/2053 SC/CIVL

BETWEEN: **Leiwi Kalpoi**
Claimant

AND: **Kalkot Kaltabang**
First Defendant

AND: **Yuiwene Nimbwen**
Second Defendant

AND: **Director of Land Records**
Third Defendant

AND: **The Republic of Vanuatu**
Fourth Defendant

AND: **National Bank of Vanuatu**
Fifth Defendant

AND: **Sand and Salt Limited**
Sixth Defendant

Date: 2 June, 2020 @ 8:00am

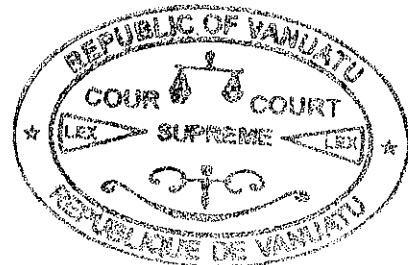
Before: Chief Justice Lunabek

In Attendance: Mr Yawha for the Claimant
Mr Kalkot Kal Kaltapang in person
2nd Defendant – no appearance
Mr Sammy Aron for the 3rd and 4th Defendants
Mr Abel Kaimet for the 5th Defendant
Mr Michael Thompson in person (6th Defendant)

STRIKE OUT ORDERS

INTRODUCTION AND BACKGROUNDS

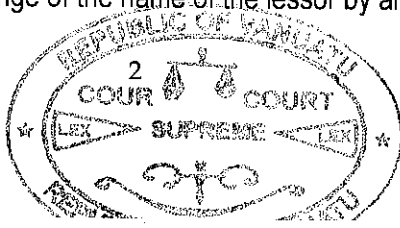
1. This is a claim under Section 100 of the Land Leases Act.



2. Mrs Leiwi Kalpoi, Claimant, claimed and sought cancellation of the register of the land leasehold title 12/0844/229 ("lease 229") located at Pango Point, Efate, and allegedly to be part or inside the customary land Efarpau.
3. Efarpau customary land ownership was determined by the Efate Island Court in favour of Jack Kalotiti Kalotrip and his family on 3rd March 1989.
4. On 26th October 2009, the Claimant had used the Efate Island Court judgment of Efarpau customary land (as a lessor) with the creation and registration of land leasehold title dealings allegedly inside Efarpau customary land (see leasehold titles numbers 12/0844/227 ("lease 227") & 12/0844/228 ("lease 228") to her daughter (Nadia Kalpoi) as lessee.
5. On 5th December 2009, the Claimant and her daughter (Nadia Kalpoi) transferred those two leases to the Sixth Defendants [Sand & Salt Limited] as lessees.
6. The survey records provided by the Third and Fourth Defendants showed that leasehold titles ("lease 227") and ("lease 228") are located outside the boundary of Efarpau customary land as determined by the Efate Island Court on 3rd March 1989.
7. On or about 8 July 2013, the Third and Fourth Defendants registered a new lease title 12/0844/229 ("lease 229") in the name of the First Defendant as the lessor and the Second Defendant as the lessee.
8. The survey records showed that the land leasehold title ("lease 229") is also outside the boundary of the customary land of Efarpau.
9. On 7th October 2014, the Claimant obtained a certificate of registered interest pursuant to the declaration of the Efate Island Court on Efarpau customary land of 3rd March 1989 ("the Certificate").
10. On 12 May 2017, based on the certificate, the Claimant requested and applied for the Third Defendant to rectify the register and to have the name of the Claimant as lessor in ("lease 229"); the Third Defendant failed or refused to rectify the lease ("lease 229") into the Claimant's name as lessor.
11. On 9th August 2018, the claimant, thus, filed this claim for cancellation of the Lease Register on the basis of fraud or mistake pursuant to section 100 of the Land leases Act.

CONCLUSION

12. This claim is misconceived. Section 100 of the Land Leases Act is only concerned with the leasehold interest on the basis of fraud or mistake, that is, the interest of the lessee. Section 100 of the Act is not concerned with the interest of a lessor.
13. The decision or failure or refusal of the Third Defendant under attack or challenge was about the interest of the Claimant as lessor. The substance or interest in the leasehold "lease 229" is not affected in the register by the change of the name of the lessor by another lessor.



14. Section 100 is not the appropriate or not correct venue or claim for the refusal for or failing to change the name of a lessor by another lessor. Judicial review type claim may be the appropriate action against the failure or refusal decision of the Director of Land Records to that effect.
15. All counsel, including Mr Daniel Yawha, agrees for the claim to be struck out.
16. The court, therefore, issues the following orders:

ORDERS

- (a) The claim is struck out as it is misconceived. No proper legal cause of action is shown;
- (b) The Third and Fourth Defendants are entitled to wasted costs ordered by this Court against the Claimant on 29 April 2020 and VT20,000 costs ordered today (2 June 2020) against the Claimant – making a total of VT25,000 in favour of the Third and Fourth Defendants;
- (c) The Fifth Defendant (NBV) is entitled to wasted costs ordered against the Claimant on 29 April 2020;
- (d) The general total costs of VT30,000 (VT25,000 for the Third and Fourth Defendants and VT5,000 for the Fifth Defendant) shall be paid by the Claimant to the Third and Fourth and Fifth Defendants respectively by 14 days ie. 2 July 2020;
- (e) A review date is set for 6 July 2020 at 8:30am.

DATED at Port Vila, this 2nd day of June, 2020

BY THE COURT


Vincent LUNABEK
Chief Justice.

