



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

Civil Appeal
Case No. 21/3418 SC/CIVA

BETWEEN:

**Obed Makeke, Elder Ishmael, Peter Kaule,
Edwin Jack, Isaac Walu, James Narueng,
Jimmy Nambas, Joe Tauaha, Joel Paku,
Moses Lamai, Nauka Philip, Tasi Graham,
Tom Grems, Malcolm Mo, Moses Lamai,**

First Appellants

**Joe Kawanu Narua, Sale Iawia, Faina
Lasap, Gideon Ikapus, Helen Nasu, Jack
Mark, James Kara, Johnny Iawakel,
Johnny Nasiap, Kami Nako, Kuwau tuta,
Maxsin Kwanu, May Nawong, Nawia
Kami, Sam Kwanu, Tened Nasuwei, Tom
Namal**

Second Appellants

Presbyterian Church of Mele/ Waisisi

Third Appellants

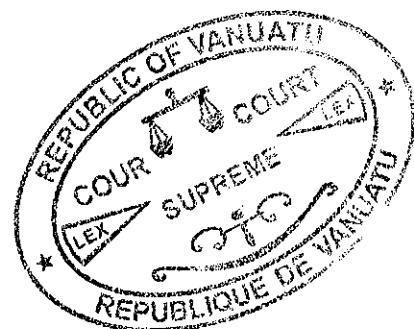
AND:

Dataka Holding Limited

Respondent

Date of HEARING: 25th November 2021
Date of Decision: 7th December 2021
Before: Justice Oliver Saksak
In Attendance: Mr Roger Rongo for First Appellants
No appearance for Second Appellants (Mr Eric Molbaleh)
Mr Philip Fiuka for Respondent

JUDGMENT

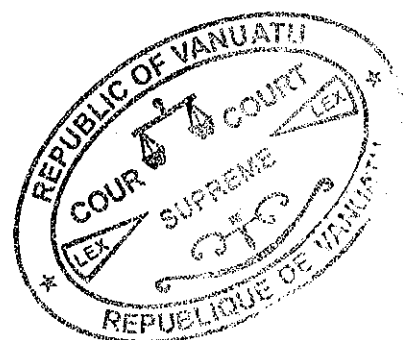


Introduction

1. This is an appeal against the eviction order issued by the Magistrates Court on 21st May 2021.
2. The appellants challenge the jurisdiction of the Magistrates Court on three grounds-
 - a) That the Senior Magistrate had no jurisdiction to issue eviction orders over a leasehold title of 31 hectares where the value exceeded VT 1.000.000.
 - b) That the Senior Magistrate failed to take account of section 1 of the Magistrates Court Act [Cap.130] which provides for the jurisdiction to try all civil proceedings involving monetary values of not exceeding VT 1.000.000.
 - c) The Senior Magistrate should have transferred the matter to the Supreme Court.
3. Mr Fiuka opposed the appeal and submitted it should be dismissed with costs.

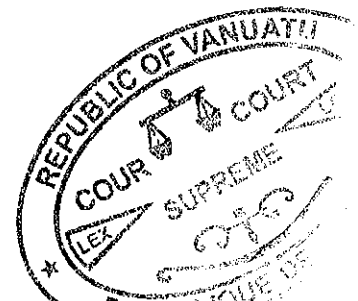
Discussion

4. This is a long standing proceeding going back to 2014.
5. The respondent was and is the registered proprietor of Leasehold Title 12/0822/107 (Lease 107). Chief Poilapa and Dataka Holdings are declared the custom owner of all the land contained in Lease 107.
6. The first appellants have not at anytime in the past challenged the validity of Lease 107 within which they all reside illegally.
7. In or about 9 April 2014, the respondent issued appropriate notices to vacate Lease 107 to all the appellants.
8. Despite receiving the notices, the appellants failed to vacate.
9. The respondent filed proceeding in the Magistrates Court on 15th October 2014 as Civil Case 125 of 2014 seeking simply an eviction order against all the named appellants.
10. No defences or counter-claims were filed by the appellants or any of them resulting in the respondents seeking default judgment on 28th May 2015.



11. On 22nd June 2015 the Magistrates Court issued default Judgment in favour of the respondent in the following terms”
 - “ 1. Judgment is entered for the claimant (respondent).
 2. First and Second Defendants must vacate the claimant’s property located in Leasehold title 12/0822/107 at Mele Golf Area, Efate, in three (3) months from the date of this order.
 3. The claimant is gracious to the Third Defendant (the Presbyterian Church of Mele/Waisisi) and permits it to remain on the leasehold title, therefore is not affected by the order.
 4. Cost awarded to claimant to be taxed failing agreement
 5. claimant has liberty to seek enforcement if this order of defendants fail to comply.”
12. Earlier on 29th May 2015 the Senior Magistrate issued orders that among others, striking out the appellant’s application to strike out the respondent’s claim for eviction.
13. Paragraph 5 of the order records as follows:

“The application also challenges jurisdiction of the Court in dealing with this case because the lease title 12/0822/107 is valued exceeding one million vatu.”
14. This indicates the Senior Magistrate did turn his mind to the jurisdiction of the Court but for the appellants failures to attend Court on 22nd May 2015 to prosecute their application and to assist the Magistrate further with submissions and case law as to the jurisdiction issue, their application was dismissed
15. The appellants filed an application seeking leave to appeal out of time against the decision of 22nd May 2015. Justice Aru struck out the application as an abuse of process on 4th November 2015, with costs of VT 20,000.
16. The appellants rely on the case authority of NHC v Okau [2013] VUCA 21 in support of their submissions that the Senior Magistrate did not have jurisdiction to issue an eviction order against them.
17. Regrettably that case does not assist the appellants. The law is clear: in cases where the value of property is less than VT 1000,000 the Magistrates Court has clear jurisdiction to issue eviction. See Joel Tawi & Steven Joel v Republic and Pacific Autronic Limited CC 23 of 2011 and Peter Kapen & Ors v DD Investments Limited CC No. 7 of 2012 as endorsed by the Court of Appeal in Remy v Palaud [2005] VUCA 23.
18. The Court of Appeal Cases of Remy and Okau establish clearly that where a claim is for an eviction order, mesne profits and interests, and the legality of the title is not



challenged by defendants, the Magistrates Court has jurisdiction to issue an eviction order.

19. The appellants in this case did not challenge the claimant's title at the time. They did not file any defence, resulting in a default judgment being entered, leading up to the enforcement warrant being issued.
20. The appellants have appealed the eviction order rather than the enforcement order. They have produced new evidence showing a couple of leases to the value in excess of VT 1,000,000. They could have filed a defence and their evidence in 2014 but did not. They slept on their rights and have come some 7 years later after the claimant has had their judgment. The claimant has been denied the enjoyment of the fruit of their judgment for a period of almost 8 years now since 2014.

The Result

21. The appeal fails on all 3 grounds raised and is hereby dismissed.
22. To remedy the situation the case is uplifted to the Supreme Court to reissue the enforcement warrant to regularise it, and to remove the Presbyterian Church of Mele/Waisisi from the warrant.
23. There is no order as to costs. Each party bears their own costs.

DATED at Port Vila this 7th day of December 2021

BY THE COURT


OLIVER.A.SAKSAK

Judge

