



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

Civil
Case No. 21/3485 SC/CIVL

BETWEEN: Family Minnie Laumanu represented by
James Kalkaua Laumanu, Donald James
Aromalo Laumanu & Kalmatak James
Aromalo Laumanu
Claimants

AND: Karl Kalsev
First Defendant

AND: Karmelu Marimelu, Kaltu Ivoky, Ataviau,
Morris Tonglemanu & Edward Matokoala
Second Defendants

AND: Goodies Limited
Third Defendant

AND: Director of Land Records
Fourth Defendant

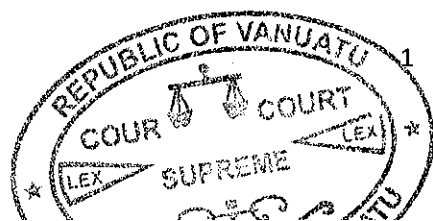
AND: Republic of Vanuatu
Fifth Defendant

Date of Hearing: 11 November 2021
Before: Justice V.M. Trief
In Attendance: Claimants – Mr P. Fiuka
First-Third Defendants – Mr N. Morrison
Fourth & Fifth Defendants – Ms J.E. Toa, excused
Date of Decision: 13 December 2021

DECISION AS TO STRIKE-OUT APPLICATION

A. Introduction

1. The Claimants Family Minnie Laumanu by the named representatives ('Family Laumanu') are suing the Defendants for alleged fraud or mistake in the registration of leasehold title no. 12/0522/001 (the 'lease') and the transfer of the lease from the First Defendant Karl Kalsev to the Third Defendant Goodies Limited.



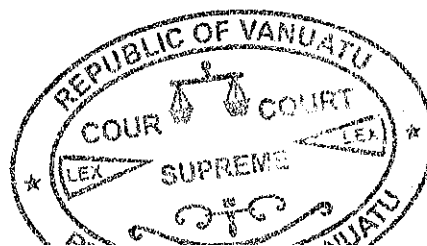
2. This is the decision as to the First-Third Defendants' Application to Strike out the Claim.
3. The State will abide the order of the Court. Accordingly, I excused Ms Toa, counsel for the Fourth and Fifth Defendants from the hearing.

B. The Application

4. By the Application, Family Laumanu sought orders striking out the Claim and for indemnity costs on the grounds that:
 - a) Family Laumanu has no standing to bring the Claim;
 - b) Alternatively, the lease is a lawful and valid lease and there was no restraint upon issuance of the lease as alleged or at all.
5. The second ground is a triable issue therefore I cannot determine it on an interlocutory application.
6. Accordingly, the sole ground for the Application is that Family Laumanu does not have standing to bring the Claim.
7. Mr Morrison submitted that Family Laumanu has no standing to bring the Claim as they rely on a Siviri mo Sunae Joint Village Customary Land Tribunal ('SSJVCLT') decision dated 9 January 2008 as to their custom ownership of Udaone land, including Esema land, but such decision has been set aside by the Court of Appeal in *Saipir v Siviri/Sunae Joint Land Tribunal*; CAC 25 of 2014 therefore Family Laumanu have not shown a sufficient interest in Esema land to bring the Claim. Secondly, the lease is located on Esema land and that Udaone and Esema lands are separate pieces of land which must be considered separately when considering any interest of Family Laumanu.
8. The Application was opposed. It is accepted that the lease is located on Esema land. However, Mr Fiuka submitted that Esema land is a small piece of land within Udaone custom land and Family Laumanu are declared custom owners of Udaone and Esema land pursuant to the SSJVCLT's decision dated 9 January 2008. He submitted that the Court of Appeal has not set aside the 9 January 2008 SSJVCLT decision. There was also no evidence that the SSJVCLT decision had been appealed. Therefore Family Laumanu have sufficient interest and standing to bring the Claim.
9. Counsel requested the opportunity to file further written submissions. Submissions were filed for the Claimants on 18 November 2021 and for the First-Third Defendants in reply on 22 November 2021.

C. Discussion

10. As already stated, Family Laumanu accepts that the lease is located on Esema customary land.



11. By the SSJVCLT decision dated 9 January 2008, Family Laumanu (and others) were declared custom owners of Udaone customary land, including Esema land.
12. There is no evidence that that decision has been appealed.
13. Mr Morrison submitted that the Court of Appeal in CAC 25 of 2014 set aside the SSJVCLT decision. I have read the Court of Appeal's judgment and do not see that the Court set aside the SSJVCLT decision. What it did was allow the appeal and set aside the Supreme Court judgment which struck out the proceeding. Further, the Court noted that the parties before the Court were agreed that the disputing parties would have to have their dispute heard under the *Custom Land Management Act 2013*.
14. In the circumstances, Family Laumanu have a sufficient interest and standing to bring the Claim.

D. Result and Decision

15. For the reasons given, the First-Third Defendants' Application to Strike out the Claim is **declined and dismissed**.
16. Costs must follow the event. The Claimants and First-Third Defendants are to file and serve submissions as to the quantum of costs **by 4pm on 15 February 2022**.
17. This matter is listed for Conference **at 8.40am on 30 March 2022**.

DATED at Port Vila this 13th day of December 2021
BY THE COURT

UMTriel
Justice Viran Molisa Triel

