

**BETWEEN: Anderson Wells, Patrick Wells, Edwin
Wells, Norris Wells**
Claimants

**AND: Remo Waen, Thomas Ngisa, Kenny Ngisa,
Yanke Colen**
Defendants

Date of Judgment: 11th day of August, 2022 at 11:00 AM
Before: Justice Aru

In Attendance: G Takau – claimant
Defendant – no appearance

JUDGMENT

Introduction

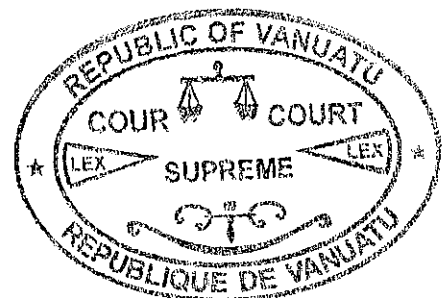
1. This is an application for Summary Judgment.

Background

2. The claimants namely Patrick Wells, Edwin Wells, Norris Wells, including Henry Wells are the registered proprietors of lease title 04/1832/001. This is an agricultural lease which was registered with the Land Records Department on 18 January 2016. The lessor is Anderson Wells Varso.
3. The claimants allege that in May 2020 the defendants trespassed onto their lease property and caused disturbances by threatening their servants and placing namele leaves on the property. A statement of claim was filed on 2 June 2020 with an ex parte application for interlocutory orders.
4. Restraining orders against the defendants were issued on 3 June 2020.

Claim

5. In their claim, the claimants claim they suffered damages and seek the following relief:
 - a) VT 250,000 for trespass
 - b) VT 250,000 for threatening their servants
 - c) VT1,500,000 for financial loss
 - d) General damages VT200,000
 - e) Interest at 5% per annum
 - f) Costs



Defence

6. The defendants filed a defence to the claim on 2 June 2021. In their defence, the defendants plead that there was no declaration of custom ownership of the area covered by the lease. They assert that a declaration of custom ownership must first be made to enable a green certificate to be issued. Whoever is issued with the green certificate will be entitled to apply for a lease.

Discussions

7. The claimants rely on a sworn statement of Anderson Wells filed on 2 June 2020. Mr Wells deposed that they are the proprietors of the lease and annexed a copy as **Annexure A**. He states that the defendants have never challenged their lease in any Court but continue to disturb their developments on the land by disturbing their servants who look after their cattle farm, commercial root crops and trees planted to be harvested for timber. On 7 May 2020 the defendants approached their servants and threatened to assault them with coffee branches if they did not stop work.
8. On 8 May 2020 the same thing occurred with the defendants going further to plant namele leaves inside the lease property, a customary practice to prevent the claimants accessing their property.
9. Rule 9.6 (7) of the Civil Procedure Rules provides:

“ ...

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,

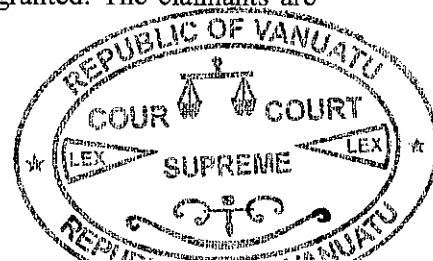
the court may:

 - (c) give judgment for the claimant for the claim or part of the claim; and
 - (d) Make any other orders the court thinks appropriate.

....”
10. The claimants submit that the defendants have no real prospects of defending the claim on the basis that there is no challenge to their lease. The defendants have not raised any challenge to the lease in their defence and neither have they filed any counterclaim. Section 15 of the Land Leases Act [CAP 163] (the Act) gives the claimants perfect title which can only be defeated by a challenge in accordance with the provisions of the Act. No such challenge is pleaded in the defence.

Result

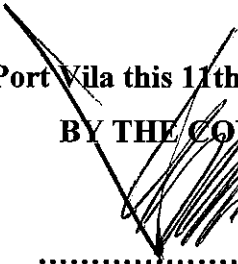
11. Accordingly, the application for Summary judgment is granted. The claimants are also entitled to costs to be agreed or taxed by the master.



12. An enforcement conference is listed for 830am on 14 September 2022.

DATED at Port Vila this 11th day of August, 2022.

BY THE COURT



Dudley Aru
Judge

