

BETWEEN: Bellevue Estates Limited

Applicant/ Respondent

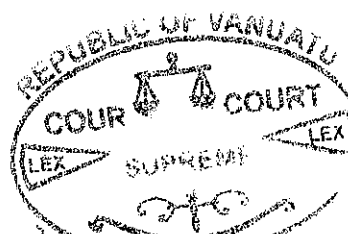
AND: Ailo Tasso, Annie Joel, Augustino Jean Marie, Auser Bae, Avock Mahit, Bob Claude, Bule Janick, Clera Mele, Clement Tabi, Daniel Rukei, Dickson Rosan, Elish James, Enos Turiovo, Esau Andrews, Eva Bule, Fabien Wersets, Fabrice Manuvo, Francois Tebi, Francois John, Francois Levu, Fred Moses, Fred Natonga, Freddy Nasulesule, Georgy Ginette Betuel, Grace Bongran, Harrison Mele, Harry Nako, Hellena Hapi, Herve Rori, Isso Saloki, Jack Marang, Jack Seule, James Naura, James Tabi, Janrine Tambe, Jean Alain Vavaharu, Jeandrin Vao, Jeffrey Bigbay, Jimmy Jacob, Job James, Johnsen Harry, Juda Ruth, Kalmara Sibidi, Kalmet Valivu, Kasten Vavaharu, Kalsef Kalosil, Guillaume Bule, Korin Walter, Lilian Leu, Livo Lele, Malaoso Loitape, Marcel Deborah, Marie Iawiko, Marie Noel, Martin Yapatu, Jack Talipo, Martino Kakoi, Mika Aru, Morgan Nato, Morrison Natonga, Nia Job, Patrick Ala, Pierre Suriette, Peter Namu, Pierre William, Poby Ulas, Robert Stanely, Robyn Jimmy, Rodolf Nuspren, Rose Kerry, Roteh Gure, Roy Niptik, Ruth Takes, Salatiel Vavak, Samson Tabi, Charlot Bule, Simon Voiasusu, Tari Elten, TAvaiMaliumerei, Thomas Tabi, Timothy Tabi, Tiro Matavua, Tom Lather, Tommy Alick, Vanua Timbat, Wendy Jack and Wobu Maliwen
First Respondents

AND: Wilson Iauga and Peter Arthur
Second Respondents/ Applicants

Date of Hearing: 6th July 2023
Date of Decision: 7th July 2023
Before: Justice Oliver A. Saksak
In Attendance: Mrs Mary Grace Nari for Applicants
Ms So'oletaua Motuliki for Respondents

DECISION

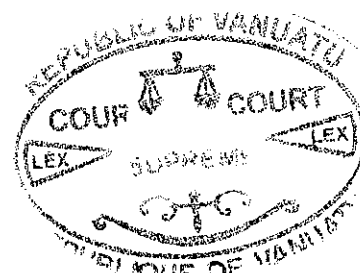
1. The application by Wilson Iauga and Peter Arthur and their immediate family members to be added as Second Defendants to this proceeding is allowed.
2. Their application to suspend the Enforcement Order in this proceeding is declined and refused.



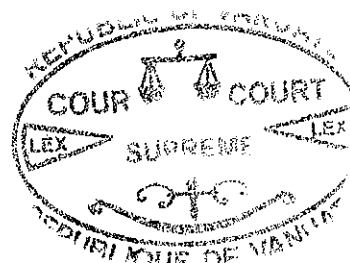
3. Their request for an Order to be given liberty to challenge the legality of Leasehold Titles No. 12/0942/742 and 12/0912/077 under section 100 (1) of the Land Lease Act [CAP 163] on the basis of fraud and mistake within 7 days is declined and refused.
4. As both parties are partly successful, there will be no order as to costs but each party will bear their own costs of the application.

Reasons

5. I arrived at my decision having read and considered the submissions made by Mrs Nari orally and the written submissions filed on 4th July 2023, the supporting sworn statements (as evidence) by Wilson lauma of 28/07/2023 and Peter Arthur and Kaloris Tangraro both of 23/06/2023, and the oral submissions from Mrs Motuliki and the sworn statement (as evidence) of David Russet filed on 05/07/2023.
6. The gist and thrust of the applicant's complaints was that they were not included as defendants in this proceeding or in earlier proceedings to enable them the opportunity to be heard, therefore they should be added as defendants
7. Further they argued that as they are in actual occupation of the land within the two leasehold titles in question, they have equitable rights under section 17 (g) of the Land Leases Act, to be heard and to seek to enforce their rights. They relied on the cases of Faina Pakoa & Family and others v Guan Kai & Others CAC 20/3605 and William v William VUCA 16 [2004] and upon a Sale and Purchase Agreement.
8. The applicants on filing their application on 26/06/2023 sought a hearing date to be heard. They have today been given an opportunity to be heard through their counsel Mrs Nari. The Court accepts that they were not included or named with the group of defendants in this proceeding or in earlier and previous proceedings. It is for this reason their request that they be added as Interested Parties and/or Defendants is proper and is allowed.



9. As for their claim for section 17 (g) rights, only Peter Arthur has annexed to his sworn statement a Sale and Purchase Agreement dated 13th June 2023 (the Agreement) as " PA1". Wilson lauma does not have such an agreement in his evidence.
10. I am a little suspicious about the date on the Agreement as they appear to be placed in a rush. But more importantly the Agreement lacks the signature of Kalsef Tangraro, the other named and authorised representative of the Tangraro Family. Further if this Agreement is to have any force and weight, it should, I agree with Ms Motuliki that the Tanmalus Family should also be a signatory to it, but are not. Further Kaloris Tangraro who filed a sworn statement in support of the applicant's application is not the authorised representative of the Tangraro Family. Furthermore the Green Certificate annexed as " KT2" to the statement of Kaloris Tangraro shows Kalosil Tangraro and Kalsef Tangaro and Kalton Kalon as representatives of the Tangraro Family and they have not made any statements giving support to this application by the applicants.
11. From paragraph 3 of the Agreement it is stated that Lease Title 12/0912/077 has been surrendered. But that is only half of the story. The evidence of David Russet shows that following that surrender, two new lease titles were created and registered in the name of Bellevue Estates Limited, the respondent. They are the current and registered proprietor of these titles.
12. As such the Agreement was entered into over existing leases held by Bellevue Estates Limited. The validity of that Agreement is therefore questionable and it cannot be a valid basis to claim an equitable right under.
13. Furthermore the applicants do not have any evidence to show that (a) they are custom-landowners, (b) that they are lessors or (c) that they are lessees of the lands they now occupy with the leases registered in the name of Bellevue Estates Limited.
14. According to the Court of Appeal Case of Kalkot Mataskelekele v Georgie Bakokoto and others, CAC 20/870 (July 2020) unless the applicants establish they are the custom owners, a lessor or a lessee of the lands they now occupy, they have no right to challenge the validity of a lease under section 100 of the Land Leases Act. That is the reason why the Court declines their request for an opportunity to challenge the leases of the respondent. They have no standing.



15. Much was said to me from both Counsel in their oral submissions and I am greatly indebted to Counsel for their help and assistance. But I think the reasons I have given above are sufficient to determine the application of the applicants.

16. The final orders therefore are:-

- a) The application to be added as Interested Parties and Defendants is allowed. The applicants are now added and named as Second Defendants.
- b) The application for orders to stay the eviction order in this proceeding and to challenge the validity of the respondents leases under section 100 of the Land Leases Act [CAP 163] is declined; refused and dismissed.
- c) As both parties are partly successful, each party will have to bear their own costs of the application.
- d) At the end of the hearing Mr Russet offered a grace period of two (2) months to the applicants now the Second Defendants, to remove themselves and their immediate family members and their properties from the lands they now occupy. They are hereby Ordered to do so by 6th September 2023. In the event they do not comply, the respondent may apply for an enforcement warrant to evict them from these lands.

DATED at Port Vila this 7th July 2023

BY THE COURT


OLIVER.A.SAKSAK

Judge

