

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

Civil Case  
No. 21/3171 SC/CIVL

**BETWEEN:** **Susanne Mariango as Administrator of  
the Estate of Bernard Schuler  
(deceased)**  
Claimant

**AND:** **Jean Claude Kanegai**  
First Defendant

**AND:** **Clement Chausseblance**  
Second Defendant

**AND:** **Saint Michel Transport Services  
Limited**  
Third Defendant

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

*Date of Trial:* 12 September 2023  
*Before:* Justice V.M. Trief  
*In Attendance:* Claimant – Ms A. Sarisets  
First & Third Defendants – no appearance (Mr S. Kalsakau)  
Second Defendant – Ms V. Muluane  
Fourth Defendant – Mrs N. Robert (then excused from further appearance)  
*Date of Decision:* 9 January 2024

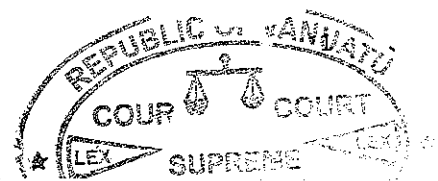
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**DECISION AS TO SECOND DEFENDANT'S APPLICATION TO STRIKE OUT CLAIM  
AND FOR INDEMNITY COSTS**

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A. Introduction

1. This was a contested application by the Second Defendant Clement Chausseblance to strike out the Amended Claim by Susanne Mariango as Administrator of the Estate of Bernard Schuler (deceased) and for indemnity costs.

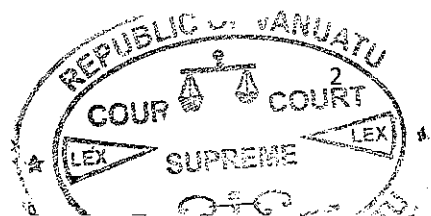


B. Background

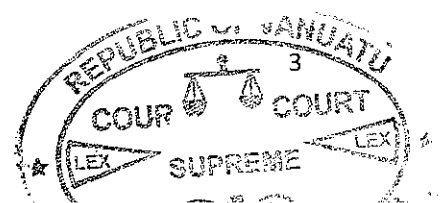
2. The Amended Claim was filed on 30 August 2022. Particulars of its para. 14 were provided in the Claimant's Memorandum filed on 3 November 2022.
3. It is alleged in the Amended Claim that the Claimant Ms Mariango was married to Bernard Schuler (deceased) who died on 15 August 2002. On 19 May 2016, she was appointed as administrator of Mr Schuler's estate. She has brought this action in her capacity as administrator of the estate.
4. Ms Mariango herself died on 29 August 2023. The trial therefore could not proceed given her passing away and that time must be given for a new administrator of the Estate of Mr Schuler (deceased) to be appointed.
5. It is alleged in the Amended Claim that Mr Schuler was the sole proprietor of lease title no. 12/0914/013 at Club Hippique area on Efate (the 'head lease'), and that in March 2002, he authorised Harry Ouchida trading as Laho Limited by way of a Power of Attorney to surrender the head lease and subdivide it. In August 2002, Mr Schuler died. In 2003, the head lease was surrendered and derivative leases created. In July 2005, Mr Ouchida died.
6. It is alleged that subsequently, the First Defendant Jean Claude Kanegai (a former employee of Laho Limited and the director of the Third Defendant Saint Michel Transport Services Limited ('SMTSL')) and the Second Defendant Mr Chausseblanche (a friend of Mr Schuler and Mr Ouchida) fraudulently transferred the leases to themselves and/or the SMTSL and/or to third parties without a Court order granting them probate and based on a Power of Attorney which did not have any legality after the death of both Mr Schuler and Mr Ouchida.
7. The relief sought is rectification of the Land Leases Register by cancelling all transfers of the leases and transferring them into the Claimant's name.
8. The Amended Claim is disputed. By their Defence filed on 21 October 2022, the First, Second and Third Defendants alleged that they are all *bona fide* purchasers of the titles for valuable consideration without notice of any fraud or mistake, and that the Claim is statute barred by s. 3 of the *Limitation Act* [CAP. 212]. The Fourth Defendant State by its Defence filed on 19 September 2022 alleged that the Director of Lands acted in good faith in registering the leasehold dealings.

C. The Application and Submissions

9. On 9 August 2023, the Second Defendant filed his Application to Strike out Claim and for Indemnity Costs (the 'Application') seeking orders that the Claim be struck out pursuant to s. 14 of the Limitation Act, that Ms Mariango and/or her lawyer pay the costs on an indemnity basis and any other orders deemed fit. The Sworn statement of Clement Chausseblanche was filed in support.



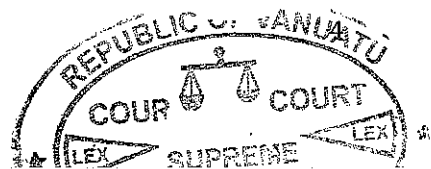
10. The grounds for the Application are that the claim is statute-barred and that Ms Mariango does not have standing to bring the claim because under the Court order dated 19 May 2016 appointing her as administrator of Mr Schuler's estate, she was only authorised to deal with lease title no. 12/0914/034 and she was not married to Mr Schuler therefore had no standing to apply for probate of his estate. Further, that the claim has no prospect of success and a reasonable competent lawyer would have advised her not to bring the proceeding, and that indemnity costs should be ordered as the Claimant and her lawyer deliberately and without cause prolonged the proceeding even after being put on notice resulting in more costs.
11. On 5 September 2023, the Claimant's submissions in response (titled "Reply to Application to Strike Out Claim and for Indemnity Costs") and Sworn statement of Pierre Chanel Hocten (appointed as Litigation Guardian for Ms Mariango on 7 June 2022) were filed. It was submitted as to each ground of the Application as follows:
  - a. That Ms Mariango did not find out that there was fraud involved in the leasehold dealings until April 2021 and then she filed the Claim on 27 September 2021 therefore the claim was not statute-barred;
  - b. That the decisions relied on are distinguishable on their facts: *Silver Holdings Ltd v Director of Lands* [2018] VJUSC 201 and *Laumanu v Kalsev* [2022] VJUSC 224;
  - c. That the sole lease named in the Schedule to the probate order was transferred to Mr Kanegai's name and that Ms Mariango is the sole heir-at-law to the whole of Mr Schuler's estate therefore she can pursue other assets of his estate including the leasehold titles the subject of these proceedings; and
  - d. Seeking indemnity costs against Mr Chausseblanche and/or his lawyers.
12. On 8 September 2023, the Second Defendant's Response to the Claimant [sic] Reply to the Application to Strike Out Claim and for Indemnity Costs was filed repeating that the Claim was filed outside the limitation period.
13. On 12 September 2023, I heard the Application and then required further assistance from counsel as to the second ground of the Application limited to whether or not Ms Mariango has standing to bring a claim under s. 100 of the *Land Leases Act* [CAP. 163] (the 'Act'): Minute and Orders dated 12 September 2023.
14. On 19 September 2023, the Second Defendant (without leave) filed Amended Application to Strike out Claim and for Indemnity Costs adding further grounds of the Application namely that there is no remedy possible against Mr Chausseblanche as the three leases registered in his name do not belong to him anymore having been either surrendered, subdivided and/or the leases transferred to third parties. In addition, all the other subject leases have been transferred to third parties except for four leases still in the names of Mr Kanegai and the SMTSL but none of the third parties are party to the present proceedings and no action can lie against them as they are *bona fide* purchasers for value of the leases.



15. On 20 September 2023, the Claimant filed Reply to Second Defendant's Amended Application to Strike out Claim and for Indemnity Costs. I agree with counsel's submissions that the 'Amended Application' was filed without the leave of the Court however despite the heading, it was not an amended application but sought to add further grounds of the Application. The Claimant has taken the opportunity to respond to these grounds by way of written submissions therefore I have also considered those additional grounds and the submissions made in response.
16. On 21 September 2023, the Second Defendant filed Submission[s] as to whether the Claimant has Standing to bring the Claim under Section 100 of the *Land Leases Act*. It was submitted that Ms Mariango has standing, that is, a registrable interest, to bring the Claim under s. 100 of the Act however all the leases have been transferred to third parties except for four leases which are still in the names of Mr Kanegai and the SMTSL (12/0914/038, 12/0914/039, 12/0923/0945 and 12/0923/034). Further, that there is no remedy available against Mr Chausseblanche as the three leases registered in his name do not belong to him anymore having been surrendered, subdivided and/or transferred to third parties.
17. Also on 21 September 2023, the Second Defendant's Response to Claimant's Reply dated 20.09.23 was filed including a submission that the Claimant was not deprived of the right to reply to the further grounds submitted if she wished to.
18. On 26 October 2023, the Claimant filed Submission[s] as to whether the Claimant has Standing to bring the Claim under section 100 of the *Land Leases Act*. It was submitted that as pointed out by Mr Chausseblanche's counsel, Ms Mariango has standing to bring the claim under s. 100 of the Act. Further, that third parties have not been named as parties to this proceeding because they are *bona fide* purchasers without knowledge of any fraud or mistake, and that it will be a triable issue whether or not any remedy lies against Mr Chausseblanche but that the claim should be allowed to proceed in respect of the four leases still registered in the names of Mr Kanegai and the SMTSL.
19. On 8 November 2023, the Second Defendant's Reply to the Claimant's Submission[s] as to whether the Claimant has Standing to bring the Claim under section 100 of the *Land Leases Act* were filed. The Sworn statement of Saphy Jeffrey filed on 8 November 2023 was referred to for evidence that the three leases registered in Mr Chausseblanche's name do not belong to him anymore.

D. Discussion

20. It is common ground between the parties that Ms Mariango has standing to bring the Claim under s. 100 of the Act challenging the registration of the derivative leases created after the head lease owned by Mr Schuler was surrendered, for fraud or mistake.
21. It is also accepted that most of the subject leases have been transferred to third parties who are *bona fide* purchasers for value therefore no action lies against them. Accordingly, the Claimant cannot be criticised for filing an Amended Claim which has



not named any of those third parties as defendants in these proceedings as no action can lie against those third parties; this ground of the Application lacks merit.

22. The Amended Claim can proceed, however, in respect of the four leases contended to still be in Mr Kanegai and the SMTSL's names.
23. It was accepted for Mr Chausseblanche that three leases were registered in his name but no longer belong to him. I cannot make a finding of fact as to this in determining the Application which is an interlocutory application. It is a triable issue whether or not there were leases registered in Mr Chausseblanche's name, if they have been transferred to third parties and whether or not there is any possible remedy against him.
24. As to the ground of the Application that the Claim is statute-barred, subs. 3(1) of the *Limitation Act* provides as follows:

3. (1) *The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say -*
  - (a) *actions founded on simple contract or on tort;*
  - (b) *actions to enforce a recognizance;*
  - (c) *actions to enforce an award, where the submissions is not by an instrument under seal;*
  - (d) *actions to recover any sum recoverable by virtue of any Act, other than a penalty or forfeiture or sum by way of penalty or forfeiture:*

*Provided that -*

- (i) *in case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any Act or independently of any contract or such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years; and*
- (ii) *nothing in this subsection shall be taken to refer to any action to which section 5 applies.*

25. Subsection 3(1) of the *Limitation Act* prescribes a six-year limitation period in respect of actions founded on simple contract or on tort, actions to enforce a recognizance or award, or to recover a sum. An action under s. 100 of the Act is a statutory cause of action therefore is not an action founded on simple contract or on tort nor indeed on any of the other matters prescribed in subs. 3(1) of the *Limitation Act*. Accordingly, the Claim (now, Amended Claim) is not statute-barred by s. 3 of the *Limitation Act*.
26. Section 14 of the *Limitation Act* provides as follows:

14. *Where, in the case of any action for which a period of limitation is prescribed by this Act, either -*
  - (a) *the action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent; or*



- (b) *the right of action is concealed by the fraud of any such person; or*
- (c) *the action is for relief from the consequences of a mistake,*

*the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it:*

*Provided that nothing in this section shall enable any action to be brought to recover, or enforce any charge against or set aside any transaction affecting, any property which –*

- (i) *in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud has been committed; or*
- (ii) *in the case of mistake, has been purchased for valuable consideration, subsequently to the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake had been made.*

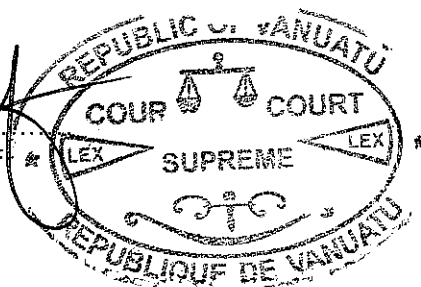
- 27. The opening words of s. 14 of the *Limitation Act* make clear that s. 14 applies “*in the case of any action for which a period of limitation is prescribed by this Act.*” There is no period of limitation prescribed in subs. 3(1) of the *Limitation Act* as to actions under s. 100 of the Act therefore s. 14 of the *Limitation Act* does not apply.
- 28. Counsel cited the decisions in *Silver Holdings Ltd v Director of Lands* [2018] VUSC 201 and *Laumanu v Kalsev* [2022] VUSC 224. Both are distinguishable on their facts.
- 29. For the reasons given, the claim is not statute-barred, Ms Mariango has standing to bring action under s. 100 of the Act and the matters raised in the further grounds of the Application are matters for determination at trial.

E. Result and Decision

- 30. The Second Defendant’s Application to Strike out Claim and for Indemnity Costs filed on 9 August 2023 is **declined and dismissed**.
- 31. The costs of the Application are reserved.

DATED at Port Vila this 9<sup>th</sup> day of January 2024  
BY THE COURT

*VM Trief*  
Justice Viran Molisa Trief

The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The words "REPUBLIC OF VANUATU" are written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, the words "COURT" appear on either side of the scale, and "SUPREME" is written below it. The word "LEX" is written on two banners flanking the central text.