

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

Civil Case No. 303 of 2022

BETWEEN: LAWI KALFABUN Representing TOARA
MANGAWAI
Claimant

AND: FRANCOIS LAUTO AND UNICE LAUTO
First Defendants

AND: SAM KAPALU AND INGRID PALA
Second Defendants

AND: JENNY CHEVAL, ERIC CHEVAL, KITU PALA,
ALICK PALA AND PATRICIA PAKOA
Third Defendants

AND: ELIO BALLA AND STEPHAN BALLA
Fourth Defendants

AND: WORWOR ISSAC
Fifth Defendant

AND: ROSAN CHARLIE AND CELIN CHARLIE
ANIES CHARLIE
Sixth Defendants

AND: JOSEPH CHARLIE AND ROSE CHARLIE
Seventh Defendants

Coram: Justice Oliver A. Saksak

Counsel: Mr Henzler Vira of Public Solicitor's Office for the Claimant
Mr Edwin Macreveth of Cornerstone Lawyers for the Defendants

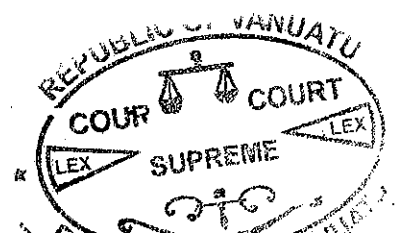
Date of Hearing: 17th February 2023

Date of Judgment: 17th May 2024

JUDGMENT

Introduction

1. This is a claim for eviction against all the named defendants from Lease title 12/0633/438 A (the Lease), for damages and cost.



Background

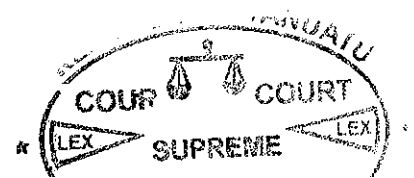
2. The initial claim was filed by Toara Mangawai on 14 February 2022 but became ineffectual due to non-service within 3 months as required by the rules. It contained 8 paragraphs of pleadings.
3. The claimant sought for a renewal and leave was granted on 27 June 2022. Subsequently an amended claim was filed on 19 August 2022. This amended claim had 10 paragraphs of pleadings. Nase Mangawai became the claimant representing Toara Mangawai. The reliefs sought remained unchanged.
4. The claimant however sought leave to file a further amended claim. Leave was granted and a further amended claim was filed on 20 July 2023. In this further amended claim Lawi Kalfabun was the claimant representing Toara Mangawai. The claim became shorter with 4 paragraphs, but with the same reliefs.
5. The claimant alleged that all the named defendants are trespassers on the Lease of Toara Mangawai and that their continued occupation of the Lease have caused him loss and damages. He claims for damages to be assessed and for eviction orders against the defendants to vacate the Lease.

Defence

6. The defendants filed defences denying that they are trespassers and denying any losses by the claimant.
7. The defendants assert that they have been residing on the demised land for 49 years since 1973 pursuant to an arrangement made between late Dolcy Pala and Joe Pala and Chief George Kalpilelu as custom land-owner of the land.

Evidence

8. The claimant relies on the evidence by sworn statement of Lawi Mangawai filed on 20 July 2023.
9. The defendants rely on the defence statement of the 7th Defendants, Joseph and Rose Charlie and the evidence by sworn statements of Etul Worwor, Ellio Pala, Francois Wardo, Jenny



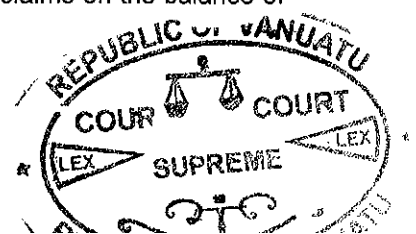
Cheval, Edward Kalpildu, Rose Charlie, Sam Kapalu and Anies Charlie. These were filed in July and August 2023.

The Issues

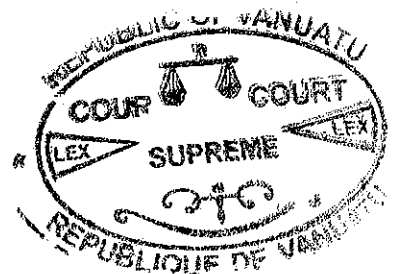
10. The common issues raised by Counsel for the parties are –
 - (a) Whether the defendants occupy the Lease pursuant to Section 17 (g) of the Land Leases Act prior to the claimant obtaining the Lease? And
 - (b) Whether the defendants are protected under Section 17 (g) of the Land Leases Act?

Discussion

11. This case was managed since June 2022 and it was to have gone for a trial hearing on 20 February 2023, the parties having paid trial fees. However, it transpired that Counsel agreed to file and serve written submissions instead to assist the Court formulate its decision determining the two legal issues on the papers.
12. The claimant filed his submissions on 4 December 2023 and the defendants filed their submissions on 7 December 2023.
13. I now deal with the two issues raised on the papers before me.
14. First, the two issues raised for determination are not the correct and proper issues to be determined in this case. The reason is simple. The defendants did not plead Section 17(g) of the Land Leases Act specifically in any of their defences or by way of a Counter Claim. As such they are not worthy or relevant for determination by the Court.
15. The real issues that should have been raised by the claimant following his pleadings are-
 - (a) Whether the defendants are trespassers on the Lease?
 - (b) Whether the defendants have caused Losses and damages to the claimant during their occupation of the Lease?
 - (c) Whether the claimant is entitled to an eviction order and to damages?
16. As a civil matter the burden of proof rests on the claimant to prove his claims on the balance of probabilities by admissible, relevant and credible evidence.



17. In this case Toara Mangawai has not filed any evidence in support of his claims as per the Further Amended Claim. Only Lawi Kalfabun filed a short statement on 20 July 2023 which contains 5 paragraphs. None of his evidence shows the defendants are trespassers or that the claimant has any losses or damages for which he could sue the defendants over.
18. There is therefore simply no evidence by the claimant proving his allegations against the defendants that they are trespassers or that they have caused him loss and damages by their occupation since 1973 to date.
19. For the claimant to succeed on the trespass issue he had to show to the satisfaction of the court that he is the declared custom land owner of the land contained in the Lease of which Toara Mangawai is the registered proprietor. Further if he is not the custom owner but only a sublessee of the Lease, he had to show that the persons named as sublessors of the Lease have a proper and valid declaration of custom land ownership by a competent court or land tribunal set up by the Custom Land Tribunals Act (repealed) or the current Custom Land Management Act.
20. The claimant simply has no such evidence therefore a claim in trespass is not available to the claimant. He has no cause of action.
21. For the defendants, the evidence of Edward Kalpilelu dated 12 September 2022 is directly in support of their defence and evidence that they had previous arrangement with Dolcy and Joe Pala with his father, the late Chief George Kalpilelu since 1973.
Furthermore, in paragraph 5 this deponent questions, the claimant's right as custom owner to obtain the Lease. That indicates that the Lease is under challenge either on the basis of fraud and or mistake. That may be a separate proceeding issued under Section 100 of the Land Leases Act.
22. In any event the defendants defences are good and strong against the claims of the claimant.




Result

23. For the reasons given, the claims of the claimant fail and are hereby dismissed.

24. The claimant has put the defendants to unnecessary expenses and costs. I order that the claimant pays all costs of the defendants on the standard basis as agreed or taxed.

DATED at Port Vila this 17th May 2024

BY THE COURT


Hon. Oliver A Saksak

Judge

