

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

Civil
Case No. 23/1974 SC/CIVL
Case No. 23/1976 SC/ CIVL

BETWEEN: Family Manai Johnny

Claimant

AND: Dandrum Longaa

First Defendant

AND: Republic of Vanuatu

Second Defendant

AND:

Civil Case No. 23/1974 SC/CIVL

BETWEEN: Family Manai Johnny

Claimant

AND: Freddie Moti, Jacob Naus, James Bebe & Nali Sapply

First Defendants

AND: Republic of Vanuatu

Second Defendant

Before: Justice Oliver A. Saksak
Counsel: Ms Anna Sarisets for Mr Molbaleh Lawyers for the Claimant in both cases
Mr Tom J Botleng for First Defendants in CC 23/1974
Mr Tom Loughman for Republic as Second Defendants in both cases

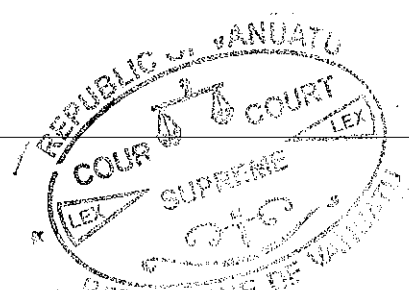
Date of Hearing: 3rd November 2023

Date of Decision: 24th June 2024

JUDGMENT

Introduction and Background

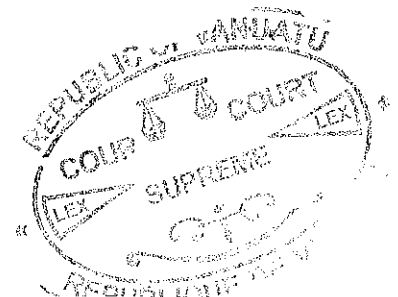
1. The claimant in both cases are the same Family Manai Johnny. They filed both proceedings on 27th July 2023 at 10:30am.



2. In CC 23/1976 the claim is against Dandrum Longaa, First Defendant and Republic as Second Defendant. This claim is in relation to a rural Agriculture Lease Title No. 09/0714/001.
3. In CC 23/1974 the claim is against Freddie Moti and three others, First Defendants and the Republic as Second Defendant. This claim relates to a rural Agriculture Lease Title No. 09/0911/001. Both leases are situated within Niverver and Louni Custom Lands, Sarmette, Malekula Island.
4. The claims are founded on section 99 of the Land Leases Act [Cap.163] and Section 8 of the Land Reform Act [Cap 123].
5. In both cases the claimant claims-
 - a) An Order directing the Director of Lands to rectify Leases 09/0911/001 and 09/0714/001 to substitute the Government as Lessor pending determination of the rightful custom owners,
 - b) Alternatively, for an order directing the Director of Lands to rectify the leases under section 8 of the Land Reform Act to substitute the Government as Lessor pending determination of rightful custom owners. The claimant relied on the case of Alick Akati Manasakau v Sul Kalfau & others (CC 22/3408)

The Defence

6. The Republic has filed a defence denying the claimant has any standing to file those proceedings and have filed an application seeking a strike out of both proceedings with costs.
7. Mr Botleng for the First Defendants in CC 22/1974 also filed a defence with an application for security for costs. They say the claim is an abuse of process and that it should be struck out.
8. Both the Republic and Mr Botleng have filed sworn statements and written submissions in support of their defences and applications.



9. The First Defendants in CC 23/1976, Dandrum Longaa has not filed any response, defence, submissions or documents of any kind. It appears Mr Roger Tevi is the lawyer on record for this defendant.

Discussion

10. In CC 23/1974 it appears Mr Edwin Macreveth also is on record as solicitor for the First Defendants. It is noted that Mr Botleng is also acting for these same defendants but there appears to be no formal notice of him acting. Both Counsel will need to clarify their positions at some point.

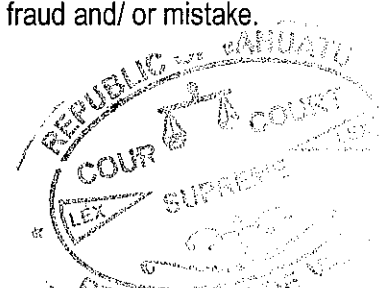
11. The claimant raised 3 issues for determination by the Court which are:-

- a) Whether or not the claimants can bring a claim under section 99 of the Land Leases Act Cap 163?
- b) Whether or not the Minister of Lands can exercise his power under section 99 of the Land Leases Act?
- c) Whether or not there is a difference between the case of Alick Akati Manasakau v Sul Kaltau & others and the present case?

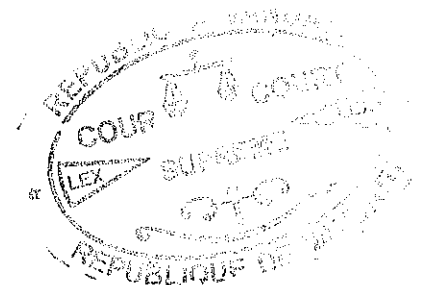
12. Section 99 of the Land Leases Act provides for the powers of the Director of Lands to rectify the register however, the exercise of the power is made subject to section 100(2) which states:

"The register shall be rectified so as to affect the title of a proprietor who is in possession and acquired the interest of valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequences of which the rectification is sought or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default"

13. This provision requires that before the power is exercised, the claimant must challenge the Leases by formal proceeding in the Supreme Court on the basis of fraud and/ or mistake.



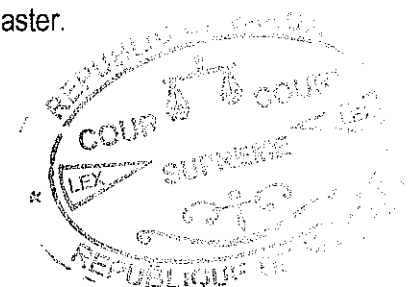
14. In these proceedings the claimant Family have not challenged the existence and invalidity of the 2 leases in question. Rather the claimant is seeking rectification on the basis that no rightful custom landowner has been determined and that as such the land over which the leases are granted are still in dispute.
15. I accept and agree with the submissions by the Attorney General for the Republic and Mr Botleng for the First Defendants in CC 23/1974 that-
- a) The claimant family has no cause of action and therefore no standing to bring these 2 proceedings, and
 - b) The proceedings and claims are misconceived, without foundation and are an abuse of the lawful process.
16. Section 99 of the Land Leases Act therefore has no assistance to the claimant.
17. Similarly section 8 of the Land Reform Act does not assist the claimant either because the lands over which the 2 Leases exist do not fall within the 3 circumstances specified in subsection 1 (a), (b) or (c).
18. The claimant places reliance on the sworn statements of Nango Manai and Bong Manai filed on 4th December 2023 where there are disclosures of a public notice in relation to a dispute over Neverver Custom Land boundary which is currently pending determination by the nakamal.
19. Be that as it may, the reality of the matter is that since 12 September 1984 when the Village Court decided custom ownership in favour of Family Longaa, Family Jacob and Family Morres, and 14th August 1984 when Lease 09/0911/001 was registered in favour of the First Defendants in CC 23/1974 and from 3rd July 1992 when the Lease was transferred from Ballande Vanuatu Limited to Mapest Plantation Limited, the claimant did nothing to challenge the issue and registration of the Lease, and/or appeal against the decision of the Village Court.



20. Section 58 of the Custom Land Management Act No. 33 of 2013 recognises the Single Village Court decision as an existing decision made before the Act coming into force and where no challenge to it was made within 12 months after the Act came into force.
21. The claimant should have challenged that decision within 12 months after the Custom Land Management Act came into force on 20th February 2014. Instead they have initiated another litigation before the Nakamal some 9 years after the Act came into force. That is an abuse of process.
22. For the reasons given, I therefore answer the issues raised by the claimant as follows-
- a) In relation to issue (a) whether the claimants can bring a claim under section 99 of the Land Leases Act, the answer is " No" , because the claimants have no cause of action and are without standing to do so.
- b) In relation to issue (b) whether the Minister can exercise his power under section 99 of the land Leases Act, the answer is " No" Section 99 of the Land Leases Act gives power to the Director of Lands only and not the Minister, however that power is exercised only after a Court has determined a challenge to a lease after a finding of fraud and/or mistake. The claimant has not instituted any proceeding challenging the existence of the 2 leases on the basis of fraud/ or mistake.
- c) In relation to issue (c) whether there is a difference between Alick Akati Manasakau's case and this case, the answer is definitely "Yes".

The Results

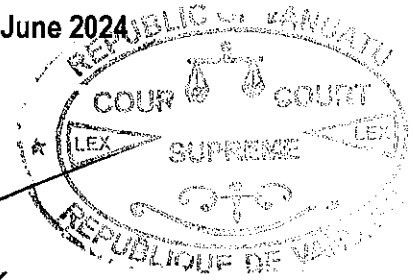
23. The strike out application by the Republic as supported by the First Defendants in CC 23/1974 is allowed. Accordingly CC 23/1974 is struck out as well as CC 23/1976 with costs.
24. The application for security for costs by Mr Botleng's clients is declined. However both the First Defendants in CC 23/1974 and Second Defendant, the Republic are entitled to their costs of the proceedings on the standard basis as agreed, or taxed by the Master.



25. Both CC 23/1974 and CC 23/1976 are to be removed from the system and the files be closed as complete.

DATED at Port Vila this 24 day of June 2024

BY THE COURT




Hon. OLIVER A SAKSAK
Judge