

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

Civil
Case No. 23/74 SC/CIVL

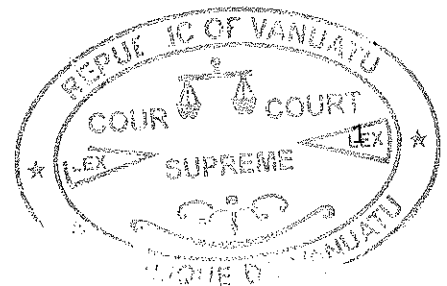
BETWEEN: Florence Vira
Claimant
AND: Esther Tari
Defendant

Date of Trial: 28 February 2025
Before: Justice V.M. Trief
In Attendance: Claimant – in person
Defendant – Ms B. Taleo
Date of Decision: 7 March 2025

JUDGMENT

A. Introduction

1. The Claimant Florence Vira filed the Claim on 2 February 2023 seeking an order for the eviction of the Defendant Esther Tari from leasehold title no. 04/2243/025 at East Santo (the '025 lease'). Damages, interest and costs are also sought. Ms Vira filed her sworn statements on 2 February 2023 [**Exhibit C1**] and 9 September 2024 [**Exhibit C2**].
2. Mrs Tari disputes the Claim: Amended Defence filed on 21 December 2023. She alleged that she has lived on the 025 lease for more than 25 years. She and her late husband Tom Tari were engaged by the custom owner Joseph Tangis to subdivide the land which the 025 lease is a part of. However, the land was leased to Robert Houston without their knowledge. At the completion of the subdivision, her husband was never compensated but in exchange he was allocated land on the 025 lease to



live on with his family. In 2019, Mr Houston told her that if she refunded him the VT400,000 that he had paid to the land owner, that he would transfer the 025 lease to her. However, she has never been able to refund Mr Houston because shortly after that, he passed away. Finally, Mrs Tari alleged that if Ms Vira agrees, she is willing to refund her VT400,000 and have the title transferred to her as initially proposed by Mr Houston. Mrs Tari filed her sworn statement on 18 February 2025 [Exhibit D2]. Mrs Tari adduced into evidence a copy of the 025 lease between James Tangis (lessor) and Robert Houston and Annie Damne (lessees) for 75 years which was registered on 20 June 2005 [Exhibit D1].

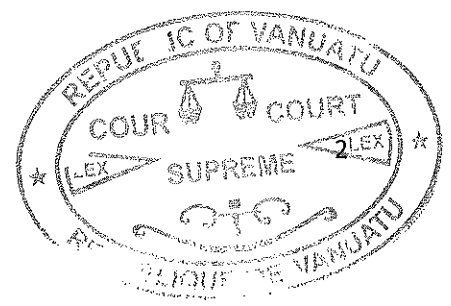
3. I will deal with the following issues between the parties:
 - a) **Issue 1:** Is Ms Vira the registered proprietor of the 025 lease?
 - b) **Issue 2:** Whether or not Mrs Tari has an overriding right to occupy the 025 lease?
 - c) **Issue 3:** Did Ms Vira give Mrs Tari a notice to vacate the 025 lease?

B. Representation of the Claimant at trial

4. By Orders dated 28 August 2024, I listed the present matter for trial at 1.30pm on 28 February 2025. The Defendant was present and ready for trial at 1.30pm. Ms Vira did not arrive until 2pm. The day before, Ms Vira had told Ms Taleo that she no longer had a lawyer which led to Ms Taleo serving a number of documents on her personally. However, when Ms Vira arrived at 2pm, she said that Mr James Tari who is on the record as her lawyer was still acting for her.
5. Mr Tari had apparently been waiting at the Port Vila Court Registry to connect to the Luganville Court House by video link. We were then advised that the video link could not work and to use a phone link. Mr Tari had to be called back to the Registry. We briefly connected with Mr Tari via the phone then the call dropped and the Registry staff informed me that he had left the Registry. I had not vacated the trial. Both parties were present for the trial. I stated that the trial should proceed. Ms Vira stated that she wanted the trial to proceed and she would present her own case in person. The trial proceeded with Ms Vira in person.

C. Issue 1: Is Ms Vira the registered proprietor of the 025 lease?

6. **Exhibit D1** consisted of a copy of the 025 lease.
7. Ms Vira produced in evidence a copy of the Advice of Registration of a Dealing affecting Registered Land for the transmission of the 025 lease which was dated

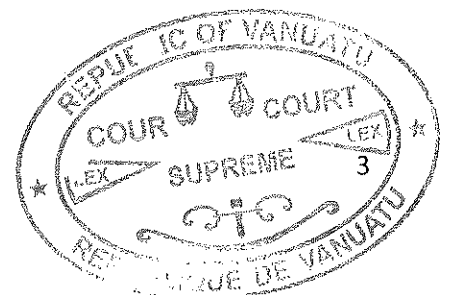


10 September 2020 to her as the Administrator of the Estate of Mr Houston and Annie Damne (deceased) [Exhibit C1 – Attachment “FV1”].

8. Accordingly, I find that Ms Vira is the registered proprietor of leasehold title no. 04/2243/025.
9. It was not pleaded in the Amended Defence but Mrs Tari stated in her evidence that Ms Vira claims that she is the administrator of Mr Houston’s estate but she has never been granted letters of administration nor has she provided proof of grant of administration to her. She stated that in Probate Case No. 1156 of 2019, Ms Vira was granted the administration of her mother Annie Damne’s estate. However, Probate Case No. 1784 of 2019 was about the validity of Mr Houston’s will. She stated that Ms Vira in that case disputed the validity of the will and sought letters of administration of the estate. However, the Court held that the will was valid and did not find any ground to remove the executors of the will [Exhibit D2].
10. By Mrs Tari’s own evidence, Ms Vira is the administrator of her mother Annie Damne’s estate. In cross-examination, Ms Vira agreed that on the death of her mother Annie Damne, all of her property vested in Mr Houston. It appears other persons were the executors of Mr Houston’s will. Ms Vira also agreed in cross-examination that the Court found that Mr Houston’s will is valid and added that she (Ms Vira) is a beneficiary of Mr Houston’s estate so the 025 lease came to her as a beneficiary under the will.
11. However, no Counter Claim was filed in the present matter to challenge the transmission of the 025 lease to Ms Vira. Therefore, there is no issue for the Court to determine in the present matter as to whether or not that transmission of lease was lawfully obtained.
12. Ms Vira has proved her legal entitlement to the land. I therefore answer **Issue 1**, “Yes”.

D. **Issue 2: Whether or not Mrs Tari has an overriding right to occupy the 025 lease?**

13. Mrs Tari’s evidence is that the custom owner Joseph Tangis had a verbal agreement with her late husband Tom Tari for Mr Tari to subdivide the land which the 025 lease is a part of. However, Mr Tari was never compensated so in exchange, he was given a plot of land to live on within the 025 lease [Exhibit D2]. There is no evidence from Mr Tangis or representative of the custom owner to confirm this.
14. In any event, by Mrs Tari’s own evidence, she and her husband’s right to reside on the land was not under any agreement in custom but in exchange for services provided in relation to subdivision of the land.



15. Further, Mrs Tari evidence that in June 2019, Mr Houston told her that if she refunded him the VT400,000 that he had paid to the land owner, that he would transfer the 025 lease to her. But then he returned to Port Vila and passed away so she has never made a payment of refund to Mr Houston [Exhibit D2]. These matters do not give Mrs Tari a right to reside on the land. These are matters to raise with the executors of Mr Houston's will, not Ms Vira.

16. For the foregoing reasons, I answer **Issue 2**, "No".

E. **Issue 3: Did Ms Vira give Mrs Tari a notice to vacate the 025 lease?**

17. It was not pleaded that Ms Vira gave Mrs Tari notice to vacate the 025 lease. There is no evidence that Ms Tari gave Mrs Tari any such notice. It is not procedurally fair to seek eviction orders against Mrs Tari when she has never been given a notice to vacate the 025 lease.

18. Accordingly, I answer **Issue 3**, "No".

19. As no notice to vacate has been given, the Claim must be dismissed.

F. Result and Decision

20. The Claim is dismissed.

21. Costs must follow the event. The Claimant is to pay the Defendant's costs fixed summarily in the sum of VT50,000 **by 4pm on 4 April 2025**.

**DATED at Luganville this 7th day of March 2025
BY THE COURT**


Justice Viran Molisa Trief

