

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

Civil
Case No. 24/343 SC/CIVL

BETWEEN: Lesley Longleo Tarigui
Claimant

AND: Rexly Nathanson Toa
Defendant

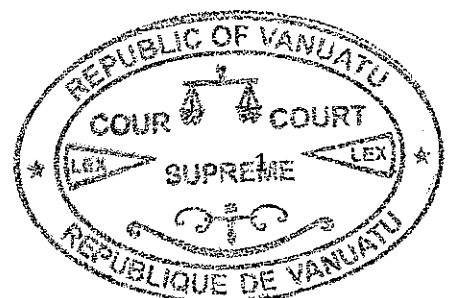
Date: 1 April 2025
Before: Justice V.M. Trief
Counsel: Claimant – Mr J. Boe
Defendant – Ms B. Taleo

**DECISION AS TO CLAIMANT'S APPLICATION FOR LEAVE TO AMEND CLAIM,
AND AS TO DEFENDANT'S APPLICATION FOR THE CLAIM TO BE STRUCK OUT**

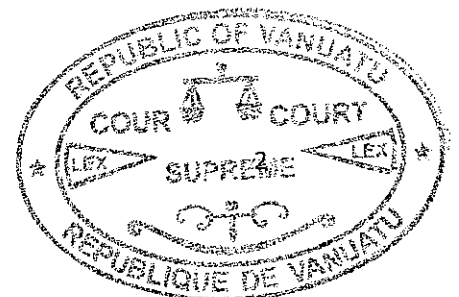
1. Claim filed on 13 February 2024. Defence filed on 21 May 2024.

Claimant's Interlocutory Application to Seek Leave to file an Amended Claim

2. On 12 February 2025, the Claimant Lesley Longleo Tarigui filed the following:
- a) Mr Boe's Notice of Beginning to Act;
 - b) Interlocutory Application to Seek Leave to file an Amended Claim (the 'Claimant's Application');
 - c) Amended Claim; and
 - d) Sworn statement of Jerry Boe in support of the Claimant's Application.
 - e) Sworn statement of Undertaking to Damages in support of the Amended Claim and the Claimant's Application, by Jerry Boe.

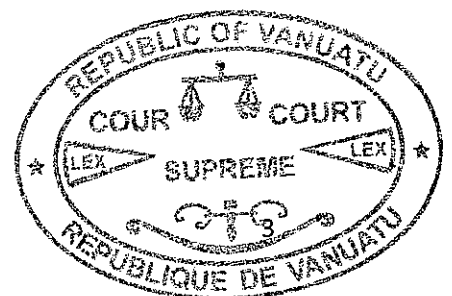


3. I previously declared the sworn statement at para. 2(e) above **ineffectual**.
4. On 27 February 2025, the Claimant filed an Undertaking as to Damages sworn by counsel Mr Boe. However, counsel is not competent to give an undertaking as to damages. Only the Claimant can because he is party to the proceeding therefore if the Court orders any costs or damages in relation to the Claimant's Application, he will be bound by the Court's Order. Accordingly, the Statement of Undertaking to Damages by Jerry Boe, filed on 27 February 2025, is **declared ineffectual** pursuant to rule 18.10(2)(c) of the *Civil Procedure Rules* ('CPR').
5. On 28 February 2025, the Claimant filed an Undertaking as to Damages that he swore.
6. On 27 February 2025, Ms Taleo stated that she had not been served with any of the documents filed on 12 February 2025. Despite my recording that in the Minute and Orders dated 27 February 2025, the Claimant has not filed any proof of service of those documents.
7. I note that the Defendant Rexly Nathanson Toa has not filed any submissions in response to the Claimant's Application. I can only assume that is due to the Claimant not having served him the documents filed on 12 February 2025.
8. In any event, I now determine the Claimant's Application.
9. By the Claimant's Application, he is seeking leave to amend the Claim. The grounds of the application are that the Court has jurisdiction to 'entertain' the application and that the Claimant has the right to seek amendment of the Claim pursuant to rule 4.11 of the CPR.
10. Rule 4.11 of the CPR provides for amendment of, say, a claim to better identify the issues between the parties, to correct a mistake or defect, or to provide better facts about each issue. However, there is no ground advanced in the Claimant's Application as to which of these matters the proposed amendment is sought for. The Sworn statement in support also does not say which of the matters in rule 4.11 the proposed amendment is sought for.
11. It is pleaded in the Amended Claim that the action is seeking equitable relief under the principles of constructive trust, unjust enrichment and proprietary estoppel arising from his financial contributions towards the mortgage repayments and improvements to leasehold title no. 03/O92/006 situated at Chapuis 1 area at Luganville, Santo (the 'property'). However, the only agreement pleaded is an oral



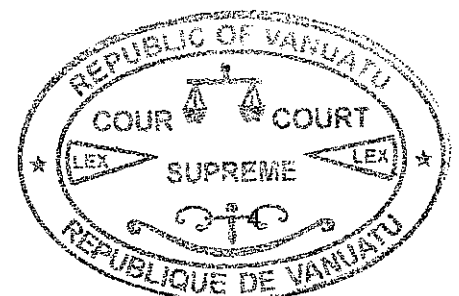
agreement between Mr Tarigui and the Defendant's deceased mother Rachel Toa. Then it is pleaded that prior to Mrs Toa passing away, she transferred the property to Mr Toa. Further, that she did not leave a will and no administrator has been appointed for her estate.

12. There is no pleading in the Amended Claim as to why it is that Mr Toa would be responsible for an alleged liability of Mrs Toa's estate. It is insufficient to plead in respect of constructive trust that, "*It would be unconscionable for the Defendant to retain full ownership of the property without recognising the Claimant's equitable interest.*" (para. 11(b)). Whether or not that is unconscionable is a conclusion for the Court to draw. The Claimant must, however, plead facts in the Amended Claim alleging a constructive trust on Mr Toa's part.
13. By the Claimant's own admission in the Amended Claim, Mrs Toa passed away without leaving a will, and there is no administrator appointed for her estate. As there is no will and Mr Toa has not been appointed the administrator of Mrs Toa's estate, it is difficult to see (particularly in the absence of pleaded facts), how Mr Toa is liable for an alleged representation or promise made by Mrs Toa prior to her passing away. The proper course, with respect, is to sue Mrs Toa's estate.
14. As for the unjust enrichment and proprietary estoppel, the only alleged misrepresentations were on the part of Mrs Toa. There is no allegation that Mr Toa made any misrepresentation to Mr Tarigui. In addition, there is no pleading of facts that make Mr Toa liable for Mrs Toa's alleged misrepresentation.
15. For the foregoing reasons, I consider that there is no reasonable cause of action disclosed in the Amended Claim.
16. Accordingly, the Interlocutory Application to Seek Leave to file an Amended Claim filed on 12 February 2025 is **declined and dismissed**.
17. No leave having been granted prior to the filing of the Amended Claim on 12 February 2025 or since, that Amended Claim is **declared ineffectual** pursuant to rule 18.10(2)(c) of the CPR.
18. There is no order as to the costs of this Application.

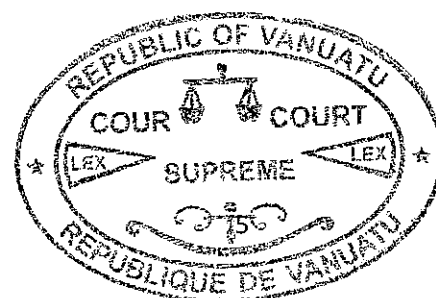


Defendant's Urgent Application to Strike out Claim

19. On 19 February 2025, the Defendant filed Urgent Application to Strike out Claim (the 'Defendant's Application'). On 7 March 2025, the Defendant filed the Sworn statement of Rexly Nathanson Toa in support.
20. By the Defendant's Application, he is seeking an order striking out the Claim filed on 13 February 2024, costs and any other Order the Court deems fit. The grounds of the application are that the Claim is statute barred pursuant to s. 3 of the *Limitation Act* [CAP. 212] and that there is no privity of contract between the Claimant and the Defendant as the only agreement was between the Claimant and Mrs Toa (now deceased). It was submitted that the Defendant was not a party to that agreement and therefore is not liable for any damage caused to the Claimant.
21. In Mr Toa's sworn statement in support, he deposed that he had no knowledge of the agreement between the Claimant and his mother, and was not party to that agreement.
22. In response, the Claimant on 27 February 2025 filed Application to Set aside the Defendant's Urgent Strike-out Application and Defence. On 27 February 2025, the Sworn statement of counsel Jerry Boe was filed in support and on 28 February 2025, an Undertaking as to Damages sworn by Mr Tarigui.
23. By that application, the Claimant sought orders for the strike-out of the Defendant's Application, costs and any Order deemed just. Seeking the strike-out of the Defendant's strike-out application is misconceived – all that was required were submissions in response.
24. The grounds advanced in the Claimant's Application filed on 27 February 2025 are that the Claimant had filed an application seeking leave to amend the Claim as well as an Amended Claim, that the Court should exercise its power to strike out a claim sparingly, that the Claim raises serious factual issues, and that the limitation period does not apply due to it only commencing on the Defendant repudiating the agreement in 2021 after the death of his mother.
25. The balance of the grounds in the Claimant's application filed on 27 February 2025 related to matters pleaded in the Amended Claim. I have already dealt with those above in determining the Claimant's Application filed on 12 February 2025.



26. There was also mention of *quantum meruit* and equitable lien. Neither of these were pleaded in the Claim or the Amended Claim. There is no merit in that ground of the application.
27. As set out above, the Claimant's application seeking leave to amend the Claim has been declined and dismissed. Accordingly, that ground lacks merit.
28. It is well settled that the Court should exercise its power to strike out a claim sparingly. However, where no reasonable cause of action is disclosed in the Claim, the Court may strike out the Claim.
29. Is there a cause of action disclosed in the Claim?
30. The Claim appears first, to relate to the Claimant's repayment of mortgage pursuant to an agreement with the Defendant's mother Mrs Toa (now deceased), following which the subject lease was registered in the Defendant's name. Further, that the Defendant's mother has never repaid the Claimant what he paid towards the mortgage. Secondly, the Claim is stated to be made as a result of the Defendant and his mother's joint negligence.
31. There is no pleading in the Claim that the Defendant was a party to the contract that the Claimant is suing for the breach of. Indeed, that is the second ground for the Defendant's Application – that there is no privity of contract because he was not a party to the Claimant and his mother's agreement.
32. In addition, there are no facts pleaded in the Claim setting out how the Defendant is liable for the debt or other liability alleged on Mrs Toa's part. It is accepted now that no one, including the Defendant, has been appointed by an Order of the Court as administrator of Mrs Toa's estate.
33. Accordingly, I conclude that there is no cause of action in contract disclosed in the Claim.
34. It was alleged in the Claim that it arises from the Defendant and his mother's joint negligence. However, there is no duty of care alleged in the Claim nor any acts or omissions pleaded (and of whom) which might give rise to a duty of care.
35. Accordingly, I conclude that there is also no cause of action in negligence or tort or otherwise disclosed in the Claim.



36. It follows that no serious factual issues have been raised by the Claim. That disposes of that ground of the Claimant's application.
37. A limitation period arises only in respect of a cause of action which has been pleaded in a Claim. In the present matter, there is no cause of action disclosed in the Claim therefore nothing to which a limitation period might apply to. Accordingly, I have no further regard to the parties' submissions as to whether or not the Claim is statute-barred.
38. For the reasons given:
- a) The Claimant's Application to Set aside the Defendant's Urgent Strike-out Application and Defence filed on 27 February 2025 is **declined and dismissed**;
 - b) The Defendant's Urgent Application to Strike out Claim filed on 19 February 2025 is **granted**; and
 - c) The Claim filed on 13 February 2024 is **struck out**.
39. Costs shall follow the event. The Claimant is to pay the Defendant's costs of the Defendant's Application and of the proceeding fixed summarily in the amount of VT75,000 **by 4pm on 9 May 2025**.
40. The Defendant is to serve today's decision and file proof of service **by 4pm on 11 April 2025**.

DATED at Port Vila this 1st day of April 2025
BY THE COURT

VM Trief

Justice Viran Molisa Trief

