

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

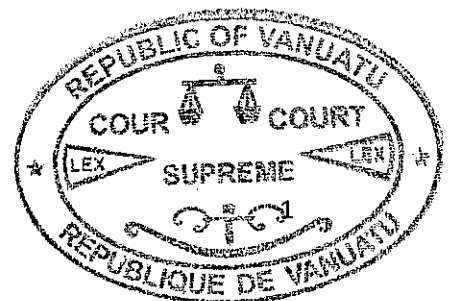
AND: Republic of Vanuatu
Fourth Defendant

Date: 21 July 2025
Before: Justice V.M. Trief
Counsel: Claimant – Ms A. Sarisets
First & Third Defendants – Mr B. Bani
Second Defendant – Mrs M.N. Ferrieux Patterson
Fourth Defendant – Mrs N. Robert (then excused from further
appearance)

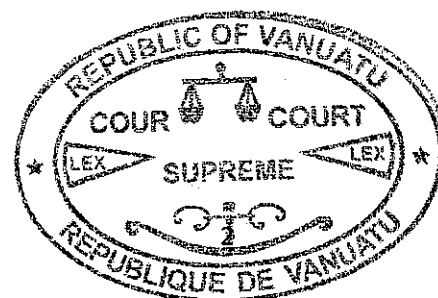
DECISION AS TO STRIKE-OUT FOR WANT OF PROSECUTION

A. Introduction

1. The Amended Claim was filed on 30 August 2022 alleging fraud or mistake in certain leasehold dealings. Particulars of its para. 14 were provided in the Claimant's Memorandum filed on 3 November 2022.



2. 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 commenced this proceeding in her capacity as administrator of the estate.
3. On 29 August 2023, Ms Mariango died. The trial therefore could not proceed on 12 September 2023 given her passing away and that time must be given for a new administrator of Mr Schuler's estate to be appointed.
4. 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.
5. 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 Chausseblance (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.
6. 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.
7. 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.
8. By Decision dated 9 January 2024, I ruled that the Amended Claim is not statute-barred and can proceed in respect of the four leases contended to still be in Mr Kanegai and the SMTSL's names.
9. At the conference on 13 September 2024, Ms Sarisets stated that application had been made in both the estates of Mr Schuler and Ms Mariango. She had expected probate orders to have already been made but none yet received. I scheduled the next conference at 1pm on 19 February 2025.



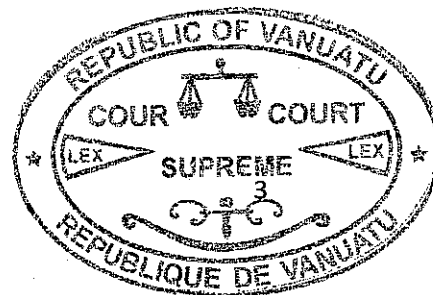
10. On 19 February 2025, there was no appearance for the Claimant. Mrs Ferrieux Patterson stated that she was aware of a probate order dated 1 November 2024 for Ms Mariango's estate, but was not aware of one for Mr Schuler's estate. I required the Claimant to appear at 8.30am on 20 March 2025 to show cause why the proceeding should not be struck out for want of prosecution.
11. On 14 March 2025, the Claimant filed Reply to Show Cause and Sworn statement of Pierre Chanel Hecten in support. This evidence and submissions did not address why there was no appearance on 19 February 2025, nor explain why application was made for appointment of administrator of only one estate, not both estates.
12. At the show cause hearing on 20 March 2025, Ms Sarisets stated her view that her client needed only to apply for appointment of administrator of S. Mariango's estate in order to administer Mr Schuler's estate (and thus to act as the Claimant in the present matter). I required the parties to file submissions as to whether only one administrator appointment was required or administrator appointment for Mr Schuler's estate was also required.

B. Submissions

13. On 10 April 2025, the Claimant filed Submissions on Goods Non-Administered. It is submitted that the *Succession, Probate and Administration Regulation* 1982 (UK) has no specific provision for "*de bonis non administrates*" however cited three case precedents by the High Court of Fiji. It is submitted that that Suzanne Mariango died leaving Mr Schuler's estate unadministered therefore Mr Hecten applied for probate *de bonis non administrates* in respect of the goods that were not administered by Ms Mariango.
14. On 28 April 2025, the First and Third Defendants filed submissions in response. Mr Bani reiterated that as per the Decision dated 4 January 2024, there are only 4 leases still in the names of Mr Kanegai and SMTSL. However, importantly, the proprietors are *bona fide* purchasers for value. Finally, that there must be an end to any litigation and the Court and parties cannot be held at the whim of the Claimant by numerous amendments to the claim and change of parties as has been evident in this case.

C. Consideration

15. First, the applicable law is the *Succession, Probate and Administration Regulation* 1982 (UK). There is no provision in the Regulation for "*de bonis non administrates*."
16. Second, three Fiji High Court decisions are cited. It is clear that Fiji legislation provides for *de bonis non administrates*. Accordingly, those decisions are distinguishable and do not assist the Court in the present matter.



17. Third, the Claimant is alleging by the Amended Claim fraud or mistake in respect of leasehold dealings. The Decision dated Decision dated 9 January 2024 makes clear the Amended Claim can proceed only in respect of four leases. I fail to see how this claim for fraud or mistake, seeking the cancellation of registered leasehold dealings, is a claim in respect of "goods" which are "unadministered."
18. Fourth, the Claimant has had ample time to seek the necessary orders for appointment of administrator of Mr Schuler's estate. He has not, instead relying on a *de bonis non administrates* which I do not understand has any application in the present matter to allow the Claimant as administrator of Ms Mariango's estate to act as the claimant in the present matter.
19. In short, I consider that an administrator appointment for Mr Schuler's estate was also required.
20. Finally, the Claimant has not shown any cause for the failure to appear at the conference on 19 February 2025.
21. For the foregoing reasons, I consider that the Claimant has not shown cause why the proceeding should not be struck out for want of prosecution.

D. Result and Decision

22. The proceeding is **struck out** for want of prosecution.
23. The Claimant is to pay the costs of the Defendants as agreed or taxed by the Master.
24. The balance of the Claimant's Application to Remove Clement Chausseblance and Add Ernestine Kavick is **declined and dismissed**.

DATED at Port Vila this 21st day of July, 2025
BY THE COURT

VM Trief
Justice Viran Molisa Trief

