

**BETWEEN: CHURCH OF MELANESIA (VANUATU)
TRUST BOARD**
Claimant

**AND: PILIMON LOY, PAULINE LOY &
SALOME LOY**
First Defendants

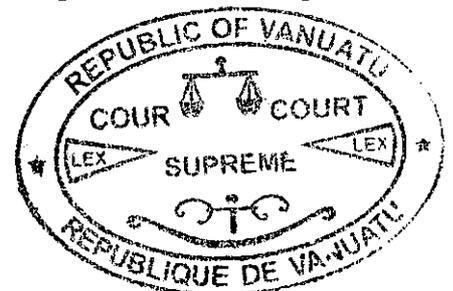
**AND: TOM LOY, JOSEPH LOY, HARROLD
LOY, JOSIAH LOY, RUSSEL LOY AND
FAMILY SAUL LOY**
Second Defendants

Date: 28 August 2025
Before: Justice M A MacKenzie
Counsel: Claimant – Mr L Tevi
First and Second Defendant – Mr J Mesao

DECISION AS TO STRIKE OUT APPLICATION

The application

1. The Defendants apply to strike out the claim. In the application, the Defendants contend that the claim has no reasonable prospect of success and does not disclose any viable cause of action. This is on the basis that:
 - a. The Claimant acted unlawfully and in bad faith by obtaining an execution warrant through misleading representations, and;
 - b. The Claimant was in breach of its obligations under the lease agreement, including a failure to pay land rent.



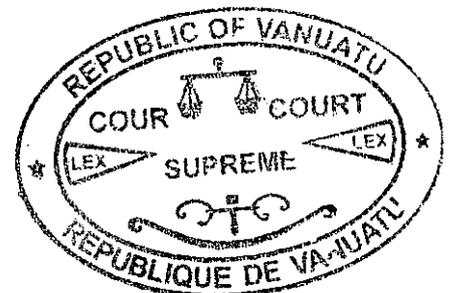
2. In written submissions, the Defendant's position is that the Claimant has no legal basis to bring an eviction claim while allegedly in breach of the lease and cannot expect to enjoy leasehold rights without complying with leasehold duties. Then, in oral submissions, the Defendants' position was that there was no cause of action because the Claimant has not produced any evidence that the Defendants have sold pieces of the lease title, or any evidence of sale and purchase agreements.
3. The Claimant opposes the application to strike out the claim, on the basis that the Claimant is the registered proprietor of the lease and as such, has indefeasibility of title, and can bring a claim that the Defendants are trespassing onto their lease title, and seek eviction.

Result

4. After hearing oral submissions, I refused the application to strike out the claim and said I would give written reasons. These are my reasons.

The pleadings

5. This is a claim for trespass and eviction. The Claimant is the registered proprietor of leasehold title 04/2643/013 ("the lease title"). By way of background, there was an earlier eviction claim in relation to an unrelated matter. Following eviction, the Claimant was able to access the lease title and found that the Second Defendants had entered onto and were occupying, the lease title. Further, the Claimant alleges that the Defendants divided up the property into smaller parcels of land and sold them without the Claimant's consent. The Second Defendants have refused to leave the property, even after a notice to vacate was given to them.
6. With respect, the claim as pleaded is unfocussed. The claim refers to a previous eviction and a dispute with the First Defendants as to payment of land rent, after a change of lessor, which the Claimant denies knowledge of until 2024. These matters are irrelevant to the eviction claim, which hinges on whether the Claimant has a right to possession. As the Court of Appeal said in *Warput v Santo Veneers Ltd [2004] VUCA 18*, "...the question of trespass is not about ownership but is about possession".
7. Mr Tevi accepted during the hearing that the First Defendants are not trespassers, and that they should be removed as a party. It would seem they were named as a Defendant because they are now the lessor of the lease title. However, it is not pleaded in the claim, and nor is there any evidence that the First Defendants have entered onto the lease title and are in occupation. Thus, there is no cause of action against them and I made an order removing the First Defendants as a party to the eviction claim. The order



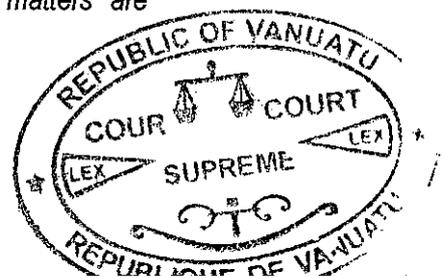
is made pursuant to rule 3.2(2) of the Civil Procedure Rules ("CPR"). The order is made because there is no cause of action in trespass against the First Defendants. A Defendant who is improperly included as a party ought to be removed: *Vacher v London Society of Compositors* [1911-3] ALL ER 241 at 245.

8. Mr Mesao, for the Defendants, contended that the Court ought not to make such an order; rather the Claimant should make an application for removal of the First Defendant. I did not accept that contention. If there is no cause of action against the First Defendants, it is axiomatic that they must be removed as a party. And as was also said in *Warput v Santo Veneers Ltd*, the appellant was entitled to choose which tortfeasor he wished to sue. It is for the Claimant to decide who to sue, and filing a written application will not alter that.
9. In the defence, the Defendants admit that lease title 04/2643/013 was transferred to the Claimant. The defence as pleaded is that the Claimant unlawfully obtained the execution warrant in relation to the earlier eviction and that the Claimant has failed to comply with its mandatory obligations under the Land Leases Act [CAP 163] to pay land rent. Mr Mesao, in his submissions, relies on ss 40 and 41 of the Land Leases Act, which set out the implied agreements of both lessors and lessees.
10. The defence, as pleaded, responds to the claim, so I can see why matters that do not appear to be relevant, are pleaded. The First and Second Defendants also filed a counterclaim alleging that the failure to pay land rent and the unlawful execution of the warrant in the unrelated eviction have caused damage to the Defendants. They do not seek payment of the asserted outstanding land rent, but rather seek damages of VT 600,000.

Approach to a strike out application

11. The jurisdiction to strike out a proceeding should be exercised sparingly, and only in clear cases where the Court is satisfied that it has both the material and the assistance from the parties to reach a definite conclusion.
12. The relevant principles are discussed by the Court of Appeal in *Hocten v Wang* [2021] VUCA 53. The Court of Appeal said (at paragraphs 11-13);

"11. There is no jurisdiction to strike out a Claim in the Civil Procedure Rules, apart from a narrow provision in rule 9.10. However, pursuant to s 28(1)(b) and s 65(1) of the Judicial Services and Courts Act [Cap 270], the Supreme Court has jurisdiction to administer justice in Vanuatu, and such inherent powers as are necessary to carry out its functions. Rules 1.2 and 1.7 of the Civil Procedure Rules give the Supreme Court wide powers to make such directions as are necessary to ensure that matters are



determined in accordance with natural justice. The jurisdiction to strike out is essential and must exist to enable the Supreme Court to carry out its business efficiently, so that hopeless or vexatious claims, causing unreasonable costs, do not prevent the Court from hearing proper claims. Such jurisdiction was recognised by this Court in *Noel v Champagne Beach Working Committee* [2006] VUCA 18.

12. The basis for striking out a proceeding is recognised in jurisdictions throughout the Pacific; see the New Zealand High Court Rules, r15.1, and *McNeely v Vaai* [2019 WSCA 12]. A pleading will be struck out:

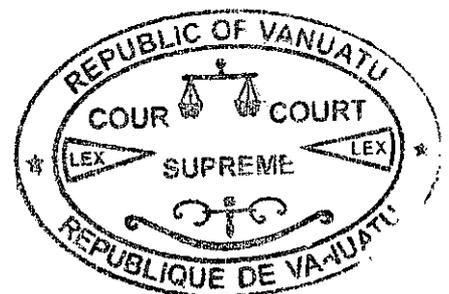
- a) if there is no reasonably arguable cause of action;
- b) the claim is frivolous or vexatious;
- c) it is otherwise an abuse of the process of the court.

13. The jurisdiction should be exercised sparingly, and only in clear cases where the Court is satisfied that it has both the material and the assistance from the parties required to reach a definite conclusion. A claim should only be struck out when despite this material and assistance, and the chance to amend the pleadings to reflect that material, it cannot possibly succeed”.

13. Striking out any statement of a case have been described by the Supreme Court as a “draconian remedy”. In *Hungtali v Kalo* [2024] VUSC 136, Hastings J said at paragraph 15;

“Striking out any statement of a case is a “draconian remedy” (*Asiansky Television plc v Bayer Rosen* [2001] EWCA Civ 1792). Although striking out a claim is not inherently contrary to the Constitution’s guarantee of protection of the law, and equal treatment under the law or administrative action, in Article 5, the Court must nevertheless be cautious to ensure its exercise of discretion to strike out a claim does not violate those guarantees. A claim will not be suitable for striking out if it raises a serious factual issue which can only be properly determined by hearing oral evidence (*Bridgeman v McAlpine-Brown* [2000] LTL January 19, CA). Nor should a claim be struck out unless the Court is certain that the claim is bound to fail (*Hughes v Colin Richards & Co* [2004 EWCA Civ 266). In short, if a pleading raises a serious contested issue, then it should not be struck out and the issue should be determined after trial”.

14. Disputed issues of fact should be decided at trial not on an application to strike out which is normally dealt with on the basis that the facts pleaded in the claim can be proven: *Iririki Island Holdings v Ascension Limited* [2007] VUCA 13.



Discussion

15. The Defendants accept that the Claimant is the registered proprietor of the lease title. A lease is defined in the interpretation section of the Land Leases Act as follows:¹

"lease" means the grant with or without consideration, by the owner of land of the right to exclusive possession of his land, and includes the right so granted and the instrument granting it, and also includes a sublease but does not include an agreement for lease.

16. Further, by virtue of ss 14 and 15 of the Land Leases Act, the Claimant has an indefeasible title. Sections 14 and 15 say:

PART 4 - EFFECT OF REGISTRATION

14. Interest conferred by Registration

Subject to the provisions of this Act, the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease together with all implied and expressed rights belonging thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease.

15. Rights of proprietor

The rights of a proprietor of a registered interest, whether acquired on first registration or subsequently for valuable consideration or by an order of the Court shall be rights not liable to be defeated except as provided in this Act, and shall be held by the proprietor together with all rights, privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject-

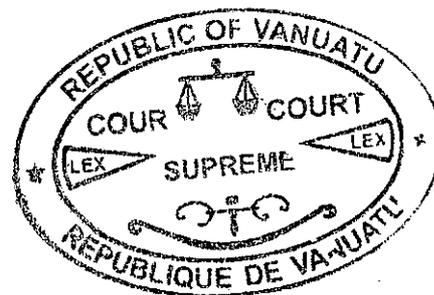
(a) to the encumbrances and to the conditions and restrictions shown in the register;

(b) unless the contrary is expressed in the register, to such of the liabilities, rights and interests as are declared by this Act not to require registration and are subsisting:

Provided that nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as trustee.

17. The starting point is that the Claimant has a right to exclusive possession of the lease title, given the provisions of the Land Leases Act I have set out. Therefore, the Claimant has the right to decide who can occupy the property. As such, it is difficult for the

¹ Section 1 of the Land Leases Act



Defendants to assert that there is no cause of action. What is pleaded in the claim is that the Claimant is the registered proprietor of the lease title and that the Defendants are unlawfully occupying the property and thus, trespassers who should be evicted.

18. The issue raised by the Defendants regarding the prior eviction is irrelevant. At best, it is background context and has no bearing on whether the Second Defendants are trespassers.
19. The other aspect of the defence as pleaded is that the Claimant has breached its obligations under the lease by not paying the land rent. I make the following points about this.
20. Firstly, the evidence demonstrates that there is squarely a factual dispute about this. The Defendants assert that the Claimant has failed to pay land rent since 2021.² On the other hand, the Claimant asserts that it had no knowledge of the transfer of the lessor until 2024, and that once it became aware, it tried to pay the land rent but that the Defendants refused to accept the outstanding land rent payments.³ These are dispute issues of fact. As I have already said, disputed issues of fact should be decided at trial and not on an application to strike out which is normally dealt with on the basis that the facts pleaded in the claim can be proven: *Iririki Island Holdings v Ascension Limited* [2007] VUCA 13. Mr Mesao is asking the Court to resolve disputed facts in the Defendants favour without the merits being considered. I cannot do this. Factual findings will be needed.
21. Secondly, what the Defendants must be asserting is that a failure to pay land rent means that the Claimant, as the lessee, has lost its right to exclusive possession of the lease title. I accept that there are implied agreements in a lease relating to both the lessor and lessee, as set out in ss 40 and 41 of the Land Leases Act, which say:

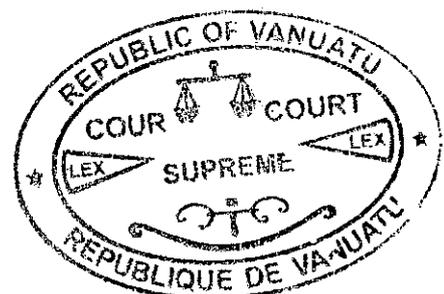
40. Agreements implied in leases on the part of the lessor

Save as otherwise expressly provided in the lease and subject to any written law there shall be implied in every lease the following agreements by the lessor with the lessee binding the lessor-

(a) that, so long as the lessee pays the rent and observes and performs the agreements and conditions contained or implied in the lease and on his part to be observed and performed, the lessee shall peaceably and quietly possess and enjoy the leased land during the period of the lease without any interruption from or by the lessor or any person rightfully claiming through him; ...

² See sworn statement of Marie Loy filed on 12 December 2024

³ see sworn statement of John Siba filed on 12 December 2024



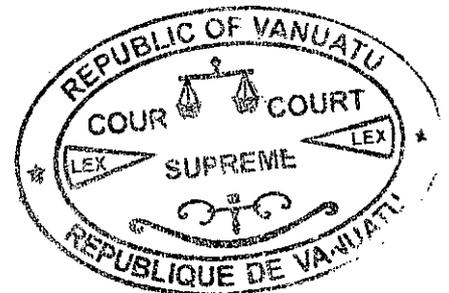
41. Agreements implied in leases on the part of lessee

Save as otherwise expressly provided in the lease and subject to any written law, there shall be implied in every lease the following agreements by the lessee with the lessor binding the lessee-

(a) to pay the rent reserved by the lease at the times and in the manner specified therein;

(b) to pay all rates, taxes and other outgoings which are at any time payable in respect of the leased land during the continuance of the lease unless the same are payable exclusively by the lessor by virtue of any law; ...

22. As can be seen from ss 40 and 41 a lessee has to pay rent, and a lessor cannot interrupt quiet possession and enjoyment of the lease, as long as the lessee pays the rent. But whether the Second Defendants can plead that defence and whether, importantly a lessee loses a right to possession because of a failure (if established) to pay land rent are triable issues. Notably, Mr Mesao provided no legal authorities to support that contention. But fundamentally, as I have explained factual findings will be required before any legal issue on that issue can be considered.
23. As noted, Mr Mesao's oral argument in support of the strike out application was different again. He contended that there was no cause of action because the Claimant has not produced any evidence that the Defendants have sold pieces of the lease title, or sale and purchase agreements. This is misconceived. The claim is for eviction. The Claimant must demonstrate a possessory right, and that the Defendants are trespassers. The Defendants will be trespassers if they have no right to occupy the lease title.
24. Thus, whether or not there is any evidence that the Defendants have sold pieces of land is of no moment in considering whether to strike out the claim. The Claimants do not need to prove that pieces of the lease title have been sold to succeed in their claim. They need to prove on the balance of probabilities that there is a possessory right, and that the Defendants have no right of occupation. The Claimant relies on the fact that it is the registered proprietor of the lease title, and so is entitled to exclusive possession. The Claimant also asserts that the Defendants have entered onto the land and taken possession, without any right to do so. The Court proceeds at a strike out hearing on the basis that the Claimant can establish the facts as pleaded. If these facts are established to the required standard, then there would be no basis to resist an eviction order.
25. There is no basis to strike out the claim. There is a reasonable cause of action. This is an eviction claim. On the face of it, the Claimant has a right to possession, because it is the registered proprietor of the lease title, which entitles the Claimant to exclusive possession of the lease title. The Claimant asserts that the Defendants are unlawfully occupying the lease title and are therefore trespassers.



26. As I have said, there is a factual dispute as to whether the land rent has been paid, and whether the Defendants refused to accept it. Further, there is a legal issue as to whether a failure to pay land rent, if proved, means that the Claimant has lost its possessory right to the lease title. These are triable issues.
27. Given the matters I have set out in the preceding paragraphs, this was a strike out application lacking in any merit, and is declined and dismissed.

Further Orders / Directions

28. After advising counsel that the strike out application was refused, I made the following further directions to progress the claim:
- a. For the reasons set out above, the First Defendant is removed as a party to the proceeding. The intituling of all further documents is to reflect that order.
 - b. The Claimant is to file and serve an amended claim and sworn statement by 11 September 2025.
 - c. The Defendant is to file and serve an amended defence and sworn statement by 16 October 2025.
 - d. The Defendant is to pay costs of VT 30,000 to the Claimant within 14 days.
 - e. There is to be a **pretrial conference at 8.30am 30 October 2025.**

**DATED at Port Vila this 29th day of August 2025
BY THE COURT**

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Justice M A MacKenzie

