

BETWEEN: Joseph Joel
Appellant

AND: Director of Lands
First Respondent

AND: Republic of Vanuatu
Second Respondent

AND: Stephen Joel Busai & Ors.
Third Respondents

Coram: *Hon. Chief Justice Vincent Lunabek
Hon. Justice John von Doussa
Hon. Justice Oliver Saksak
Hon. Justice John William Hansen
Hon. Justice Daniel Fatlaki
Hon. Justice Stephen Felix
Hon. Justice Gus Andrée Wiltens*

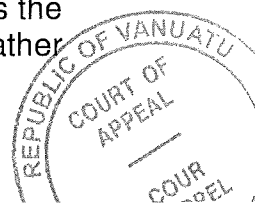
Counsel: *Mr. Colin Leo for the Appellant
Ms. Adeline Bani and Mr. Lennon Huri for the First and Second Respondents
Mr. Less Napuati for the Third Respondents*

Date of Hearing: *15th February 2019*

Date of Judgment: *22nd February 2019*

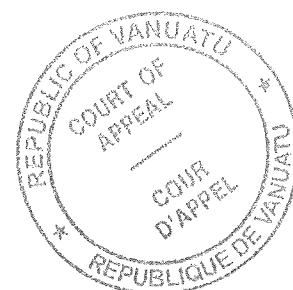
JUDGMENT

1. The appellant seeks to set aside orders of the Supreme Court directing the rectification pursuant to section 100 of the Land Leases Act, of the leasehold title 11/OX21/068 to record the lessees as Joseph Joel and Stephen Joel Busai (as administrator of the estate of the late Joel Busai) as proprietors in common in equal shares, and otherwise dismissed the claims made by the appellant in Supreme Court civil claim 15/107.
2. The following background facts which gives rise to this litigation are not in dispute:
 - (a) On 10 October 1995 the leasehold title was registered in the name of the appellant, Joseph Joel, and Joel Busai (the deceased). Joel Busai was the biological father of the respondent Stephen Joel Busai and the step-father

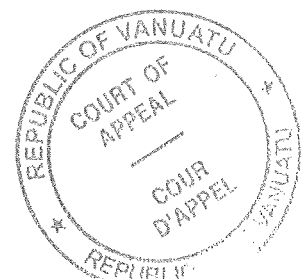


of the appellant. The appellant and the deceased were registered as joint proprietors of the lease;

- (b) On 31 July 2013 the deceased died;
 - (c) On 13 August 2013 the appellant lodged an application for transmission of the lease upon the death of the deceased;
 - (d) On 28 August 2013 the Land Registry noted the death of the deceased and registered the appellant, the surviving joint-tenant, as the sole registered proprietor;
 - (e) In 2014 Stephen Joel Busai (the deceased's biological son) applied for letters of administration of the estate of the deceased. Letters of administration were granted to him on 26th June 2014;
 - (f) In August 2015 the appellant issued proceedings in the Supreme Court, Civil Claim 15/107, seeking an order to evict the respondents who had resided on the leasehold land with the deceased until his death, and were continuing to do so thereafter.
 - (g) The amended defence and counterclaim denied the appellant's claims and made allegations which the trial judge construed (rightly in our opinion) as a plea that the deceased did not intend to sign the lease as a joint-tenant. Rather he intended that he and the appellant would have interests as tenants in common. The defence and counterclaim pleaded that the respondents had contributed to the purchase of the leasehold interest through their deceased father. The counterclaim sought rectification of the lease to reflect the deceased's interest as a tenant in common, and to have the registration of the appellant as sole proprietor declared null and void.
3. Regrettably the pleadings are very confused and at trial the essential nature of the defence and counterclaim raised by the appellant seems to have been misunderstood. Issues were canvassed at trial as to the correctness of forms used to bring about the registration of the deceased's death, and over sections of the Land Leases Act which in the end were found to be non-issues by the trial judge.
4. The trial judge heard much evidence from the parties and their witnesses about the relationship of the parties and about disputed contributions which each asserted they had made over the years to the costs of obtaining and maintaining the leasehold interest.



5. The judge concluded that the parties had not intended to agree to the lease being in the joint names of the deceased and the appellant. The appellant and the deceased intended that they hold their interest in the lease as tenants in common. There had in this respect been a mistake when the lease was executed. Justice required that the land register be rectified so as to correctly reflect the interest which the appellant and Mr Stephen Joel Busai as the administrator of the deceased's estate now hold.
6. The defence and counterclaim made no reference to section 100 of the Land Leases Act as the source of power which the respondents relied on. The judge however went to that section as a way to order rectification. He held that there had in reality been two mistakes. The first, when the lease was executed, and the second, when the transmission was registered. He considered there was a relevant causal connection between both mistakes and the registrations and accordingly orders were made under s.100.
7. The appellant raises several grounds of appeal which again canvass issues that are not central to the reasoning process of the Supreme Court. The appellant contends that the trial judge erred in his interpretation of sections 75 and 92 of the Land Leases Act. As we understand the argument the appellant contends that properly understood these sections have the consequence that when the deceased's death was registered, the title by operation of law was transmitted to the appellant solely, and once registered that determined conclusively the leasehold ownership of the appellant. That the judge ordered rectification indicates error in the construction and application of those sections.
8. This argument merges into a further ground of appeal that the judge placed too much weight on the forms used to bring about the transmission, and that the judge confused the legislative schemes for the appointment of the administrator and for the transmission on death of a joint proprietor. Whilst arguments on these issues had been raised at trial and were discussed by the trial judge, he correctly concluded that the transmission had been duly registered in accordance with the Act. However he held that quite apart from the provisions of the Act, the lease from its inception incorrectly recorded the interest of the deceased and the appellant.



9. The judge did not misconstrue Sections 75 and 92, and he did not misunderstand the different legislative schemes for the appointment of an administrator and for the transmission on the death of a joint proprietor. The orders made by the trial judge granting relief indicate that he correctly understood both schemes.

10. The grounds of appeal only briefly touch on the real basis for the judgment against the appellant, which was the finding of fact that the parties never intended that the land should be held in a joint tenancy. Ground two of the notice of appeal states:

“In finding that the registration of the lease as joint proprietors was a mistake, the judge fell into error in concluding that there was a mistake/fraud which is not supported by evidence”.

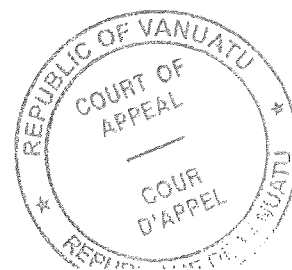
In written submissions this ground was expanded to challenge some of the reasons why the trial judge found that the deceased always intended that the lease be held by him and the appellant as tenants in common so that he retained a one-half interest for the continuing benefit of himself and his family in the event of his death. We have considered the evidence touching the findings of fact made by the judge, and we see no reason to differ from the factual conclusion which he reached which was fully supported by the evidence in the case.

11. Once the conclusion was reached that the deceased and the appellant held their respective interests as tenants in common, we think that the appropriate source of power under the Land Leases Act to rectify the title so that it correctly recorded the interests of the parties was section 99 which provides:

“99. Rectification by the director

(1) Subject to section 100(2), if it appears to the Director that any register does not truly declare the actual interest to which any person is entitled under this Act or is in some respect erroneous or imperfect, the Director after taking such steps as he thinks fit to bring to the notice of any person shown by the register to be interested his intention so to do, and giving every such person an opportunity to be heard, may as from such date as he thinks fit, rectify the register:

Provided that it shall not be necessary for the Director to take steps to bring the rectification to the notice of any person shown by the register to be interested nor to give any such person an opportunity to be heard in formal matters and in the case of errors and omissions not materially affecting the interests of any person.”



12. As all interested parties have been heard in these proceedings there is no need or requirement for the Director to notify them of his intention to rectify the register. He should do so forthwith as directed by this Court.
13. There was no need for the trial judge to explore whether the registrations of the original lease and the transmission had been obtained through mistake within the meaning of s.100.
14. In light of our agreement with the trial judge's finding that the true interests of the deceased and the appellant were as tenants in common, the appeal must be dismissed save for an amendment to paragraph 1 of the Orders of the Supreme Court. We amend that Order to become an Order of this Court as follows:
- "Pursuant to s.99 of the Land Leases Act it is ordered that the registration of Leasehold title 11/OX21/068 be amended to record the lessees of the title as Joseph Joel and Steven Joel Busai (as administrator of the estate of the late Joel Busai) as proprietors in common in equal shares."*
15. The other orders of the Supreme Court will remain.
16. As the appeal in essential respects fails, the appellant must pay the respondents' costs which we fix in the case of the first and second respondents at VT30,000 and in the case of the third respondent at VT30,000.

DATED at Port Vila this 22nd day of February, 2019.

BY THE COURT


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Hon. Vincent Lunabek
Chief Justice.

