

BETWEEN: LEWIA KALTABANG
Claimant

**AND: THE DIRECTOR OF LANDS, LAND SURVEY AND
LAND RECORDS DEPARTMENT**

Defendant

Coram: Judge Tuohy

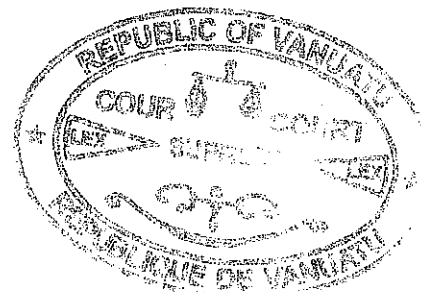
**Counsels: Mr. Nakou for Applicant
Ms. Harges for Respondent**

Date of Hearing: 23 July 2007

Date of Decision: 23 July 2007

RULING

1. On 23rd July 2007 I heard argument in chambers on the respondent's application to strike out this appeal under section 106 of the Land Leases Act. I granted the application after giving brief reasons and indicated that I would reduce these reasons to writing. I now do so.
2. Section 106 empowers any person aggrieved by a decision of the Director given pursuant to his powers under the Act to appeal to the Court which may confirm, quash vary the decision as it thinks just and may under section 100 order rectification of the register.
3. The appeal in this case is effectively against the decision of the Director to refuse to register leases made between Lewia Kaltabang as Lessor and



Frank Kalpoi as Lessee over certain land described in a survey plan as 12/0844/112 and 12/0844/113. The reason why the Director has refused to register the leases is because the applicant Lewia Kaltabang is not the custom owner of the land, and therefore has no right to grant a lease over it to anyone.

4. Custom ownership of the land has been established by a decision of Efate Island Court dated 3rd October 2003. There has been no appeal against this decision and an appeal is no longer possible because the time for appealing has long past. An application for Judicial Review was made in respect of the Island Court decision which was struck out by the Supreme Court and the striking out was upheld by the Court of Appeal.
5. In its decision, the Island Court made a declaration that Family Sope are the customary owners of the land and made a further declaration that certain persons including the appellant had no right in the land. Thus it is not difficult to see why the Director of Land Records made the decision to decline to register a lease over the land under which the appellant purported to be the lessor and therefore the customary owner of the land.
6. Nevertheless, the appellant brought this present appeal and through her counsel Mr. Nakou has vigorously opposed the strike out application. It is difficult to fully understand the basis of the opposition. It was explained orally by Mr. Nakou and was also set out in the sworn statement of the appellant dated 3rd July 2007. It appears to be based on a reading of the Island Court decision that the declaration made was in favour of her clan and that Sope Kalorib, the representative of family Sope who presented its case in the Island Court, is a member of her clan.
7. It was recognized by the Court of Appeal in **Noel & Others -v- Champagne Beach Working Committee and Toto CAC 24 of 2006** that



although there is no specific provision in the Civil Procedure Rules to strike out a proceeding on the grounds that there is no reasonable course of action or that it is frivolous, vexatious or an abuse of process, such a power does exist. It is a necessary and commonly used procedure for dealing with cases justly in terms of Rules 1.2 and 1.7. There is no reason why such a power should not be exercised in an appeal under section 106 of the Land Leases Act.

8. The principles on which the jurisdiction should be exercised are well known. The power should be exercised sparingly and only in a clear case where the Court is satisfied that it has the required material. The claimant's case must be so clearly untenable that it cannot succeed. I approach the application bearing those principles in mind.
9. Apart from the Minister of Lands in certain circumstances, the only persons able to grant leases of land are the custom owner or owners of the land. Here there can be no dispute about who the custom owner or owners of this land are. It is family Sope. Their custom ownership has been declared by the Island Court which is the process Parliament provided at that time for ascertaining and declaring custom ownership of land. The Island Court went further than usual and went on to declare that the appellant had no right with regard to the land. That is the end of the matter.
10. It may be that the appellant can establish that she is a part of the group on behalf of whom the custom owner or owners own this land. That however, does not give her a right to grant leases of it which is what she has attempted to do and what the Director of Land Records has refused to register



11. I am satisfied that this is one of those clearly untenable cases where there is no reasonable ground of appeal. Indeed, in view of the clear terms of the Island Court order and the failed attempts to attack it, this appeal borders on vexatious and an abuse of process. The appeal is therefore struck out.
12. The respondent applied for costs on an indemnity basis. The respondent is entitled to costs which are to be agreed for or will be fixed by the Court on application made within thirty days. Such an application for costs should contain the usual itemized bill of costs. At that time if it is necessary the Court will decide the basis on which an award of costs is to be made.
13. A further application was made by the respondent under Rule 18.12 of the Civil Procedure Rules for an order that the appellant be declared a vexatious litigant. Under Rule 18.12 (3) the Court is required to refer this matter for the Registrar to provide the information mentioned in Rule 18.12 (3) (b). In view of the destruction of the Supreme Court's records by fire that will be a difficult task for the Registrar and if the respondent wishes to continue with this application, the respondent must give the necessary assistance to the Registrar. No further action on this application will be taken by the Court until the Registrar has provided the information required by Rule 18.12 (3) (b).

Dated at Port Vila, this 25th day of July, 2007

BY THE COURT



C.N. TUOHY
Judge

