

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**

*(Civil Jurisdiction)*

**Civil Case No. 38 of 2012**

**BETWEEN: KALSAKAU NARU KALBEAU**  
*Claimant*

**AND: KALFAU KALSAKAU**  
*First Defendant*

**MILDRID KALSAKAU**  
*Second Defendant*

**THE REPUBLIC OF VANUATU**  
*Third Defendant*

**Hearing:** *27 August 2012*  
**Before:** *Justice Robert Spear*  
**Appearances:** *Pauline Kalwatman for the claimant*  
*No appearance by or on behalf of the first and second defendants*  
*Kevin Nathan for the third defendant*

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**JUDGMENT OF THE COURT**  
**(Ex Tempore)**

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1. This is a claim for rectification of the Land Register pursuant to s. 100 of the Land Leases Act by the removal of lease 12/0633/1233 from the Register. That lease relates to part of Tamau land in Port Vila.
2. The claim and response form were duly served on the first and second defendants as well as the third defendant. At the first conference, Mr Salings Stephens appeared for the first defendant and indicated that he understood he was also likely to be instructed by the second defendant. The first and second defendants are husband and wife.

3. At the second conference on 13 August 2012, there was no formal appearance by or on behalf of the first and second defendants although Mr Stephens attended as a courtesy to the Court and indicated that he had not received the instructions that he had anticipated he would receive. Mr Stephens was granted leave to withdraw.
4. The first and second defendants had, however, each filed a statement of defence which Mr Stephens thought had been prepared for them by Mr Silas Hakwa although Mr Hakwa's name does not appear anywhere on the documents.
5. The statements of defence appear to have been filed personally by the first and second defendants although it is noted that neither the response nor the defence of the second defendant Mrs Kalsakau has been signed by her.
6. As matter were left following the conference on 13 August 2012, a copy of the minute relating to that conference was provided both to Mr Stephens and to Mr Hakwa and they were requested by the Court to use their best endeavours to forward a copy of the minute to Mr and Mrs Kalsakau. I have received a copy of a letter from Mr Hakwa that was sent to Mr Kalsakau and it is indeed noted as having been hand delivered to Mr Kalfau Kalsakau at 8.30am on 22 August 2012. It is copied both to Mr Stephens and also to the Chief Registrar. It attaches a copy of the minute dated 13 August 2012 and urges Mr Kalfau Kalsakau either to instruct legal counsel urgently but in any event ensure that there was representation at the hearing on 27 August 2012 (today).
7. The case is in a most unsatisfactory state which has been caused by the first and second defendant Mr and Mrs Kalsakau not complying with the Civil Procedure Rules in relation to the filing of documents and generally frustrating all attempts by the claimant Mr Naru Kalsakau from advancing his claim. Of course, Mr Naru Kalsakau remains at risk in relation to his claim to custom ownership of the land.

8. The case must be advanced and that can only happen now by hearing the claim. The seeming disinclination on the part of the first and second defendants Mr and Mrs Kalsakau from taking proper of steps in the proceeding should not operate as barrier to the claim been determined.
9. The defences is filed by the first and second defendants are not informative and do not provide a sufficient answer to the claims made by the claimant in his Supreme Court claim.
10. Mr Nathan indicates that every attempt made by the State Law Office to obtain instructions from the Department of Lands as to the background to the registration of this lease has been completely unsuccessful. That is the reason why a defence is not yet been filed for the Republic.
11. The claim relates to part of Tamau land in the Smeth area of Port Vila. The claimant Mr Naru Kalsakau has been residing on that particular block of land at the corner of the road since 1960. He explains that in the 1970s, he allowed the first and second defendants (who are related to him) also to reside on that land.
12. Tamau land was the subject of a decision of the Efate Island Court on 13 March 1995 with three different families being declared the custom owners. Neither the claimant Mr Naru Kalsakau nor the first and second defendants Mr Kalfau and Mrs Mildred Kalsakau were declared custom owners and indeed the first and second defendants were not even parties to the Island Court case in any event.
13. The claimant Mr Naru Kalsakau has appealed the 1995 decision of the Efate Island Court with leave being granted in 2000 to bring the appeal out of time. That appeal is still in progress before another Judge of this Court.
14. On 6 March 2000, the Director of Lands acknowledged that the Department of Lands was aware of the appeal proceedings and the Director confirmed that the Minister

- would protect the interests of the disputing land owners pursuant to s.8 of the Land Reform Act [CAP 123] until the appeal proceeding was finally determined and the position as to custom ownership clarified.
15. One 16 February 2006, the Efate Island Court stayed its earlier decision of 13 March 1995 pending consideration of the appeal. That Island Court order also prohibits the declared custom owners from undertaking any development over Tamau land pending the appeal determination.
  16. On 1 October 2008, the first and second defendants Mr Kalfau Kalsakau and Mrs Mildred Kalsakau, purportedly as the custom owners and lessor of the land, granted a commercial lease to the first defendant Mr Kalfau Kalsakau over that particular part of Tamau Land with the title reference being lease 12/0633/1233.
  17. The claimant Mr Naru Kalsakau asserts that this particular lease is over the land on which is situated not only his home of approximately 50 years but also the Tamau store which he operates.
  18. The absence of any explanation from the Director of Lands as to how this lease came to be registered is of particular concern. In paragraph 23 of his sworn statement in support of the claim, Mr Naru Kalsakau says that the registration of the commercial lease appeared to be undertaken at “*an unusual speed*”.
  19. The simple position is that, on the evidence before me, neither the first nor the second defendants had any right to grant a commercial lease of the land to anyone much less to the first defendant. It is well understood that a lease of this nature requires a formal process to be undertaken so that a certificate of registered negotiator is issued by the Minister of Lands and which permits the negotiator to enter into discussions with the custom owners towards the creation of the lease. That could not have happened here as neither the first or second defendants were ever the custom owners. Indeed, they were never any in contemplation of being custom owners.

20. The only conclusion, therefore, that this Court can reach is that the registration of that lease has come about as a result of either fraud or mistake. The case for rectification of the Register is over-whelming.
21. I do not consider that the risk run by the claimant Mr Naru Kalsakau in respect of land on which he has resided for approximately 50 years and on which he has established a business should be allowed to contain.
22. There will accordingly be judgment entered for the claimant against the defendants with the following orders:-
- a. The Republic of Vanuatu by the Director of lands is to cancel the registration of commercial lease 12/0633/1233 forthwith;
  - b. The Republic of Vanuatu by the Director of lands is not to permit the registration of any instrument of lease except pursuant to the Land Leases Act and the Land Reform Act with appropriate notice being given to all those parties to the Supreme Court appeal.
20. The highly suspicious circumstances relating to the registration of this lease, and the fact that it has caused the claimant to have to engage a solicitor to have his legal position protected, requires an order for costs on an indemnity basis from the first, second and third defendants jointly and severally.

**BY THE COURT**

A handwritten signature in black ink, appearing to be 'R. J.', written in a cursive style.