

BETWEEN: LORIN SOLOMON & ORS
Claimants

AND: REPUBLIC OF VANUATU
First Defendant

AND: THOMPSON WELLS
Second Defendant

Coram: Justice Oliver A. Saksak

*Counsels: Felix Laumae for the claimants
Christine Lahua for the First Defendant
No appearance by the Second Defendant*

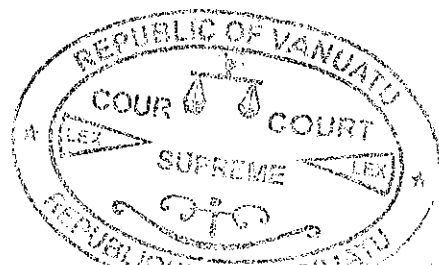
Hearing: 20 February 2015

Judgment: 24 June 2016

JUDGMENT

Claim and Background

1. This is a claim filed by the claimants under section 100 of the Land Leases Act [Cap. 163] (The Act). The Director of the Department of Lands (The Director) had rectified the register pursuant to his powers under section 99 of the Act the name of Lessor of Titles 03/1644/001 and 04/3022/005 into the name of Thompson Wells (Second Defendant). The Second Defendant was purportedly declared as custom land owner of lands within the Titles (001) and (005) by the Supenatavuitano Island Council of Chiefs in or about 5 November 2001. However that declaration was nullified by the Supreme Court in Civil Case No. 204 of 2004. Despite this nullity and the claimants opposition to the rectification, the Director proceeded to effect rectification. The Claimants allege therefore that the rectification by the Director was done through mistake and/or fraud.
2. When the matter was listed for the first conference on 29 April 2014, Mr Colin Leo appeared for the Second Defendant and alleged he had not been served. The Court then directed service by the Claimant to serve the second defendant within 2 days

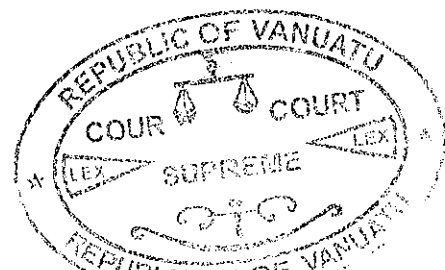


and the matter was returnable on 26 May 2014. On that date, Mr Leo did not attend. And Counsel did not make any appearances at any subsequent hearings.

3. On 3 July 2014 Mr Laumae and Mr Huri appeared before me and agreed the facts but sought time to file and serve written submissions on the legal issues. The Court gave 7 days to the claimant and 14 days thereafter to the first and second defendants. These were not complied with resulting in Counsel seeking extensions on 20 February 2015 for the same periods of 7 days and 14 days.

Discussions

4. The Claimants did not file written submissions until 19 May 2015. And the State filed their written submissions on 18 February 2016. The second defendant has not filed any written submissions to date despite a clear reminder by the Court by email dated 28 January 2016 to do so within 14 days by 9 February 2016. The Court dispenses with the submissions by the second defendant.
5. The failure and/or omission by the second defendant is clear indication that the second defendant has no defence to the allegations made against him.
6. As for the First Defendant they raised only one issue; whether the actions of the First Defendant in rectification of the name of Lessor of Titles 001 and 005 into the second defendant's name constitutes fraud and/or mistake? Counsel for the State submitted the answer should be in the negative relying on Articles 52, 73, 74, 75 and 76 of the Constitution, Section 10 of the Island Courts Act, Section 6 of the Customary Lands Tribunals Act and the Land Leases Act, Sections 9 and 99. They placed reliance on the case laws of Turgoise v. Kalsuak [2008] VUCA 22 and Family Valele v. Touru [2002] VCUA 3. They conceded that the decision of the Supenatavuitano Island Council of Chiefs is not binding but argued that the Director's rectification of the register was made in good faith based on the information supplied to him at the time.
7. Mr Laumae argued and submitted to the contrary relying on the nullity of the Supenatavuitano Island Council of Chiefs (which is conceded), and Section 99 of the Land Leases Act and the case law of Nitchiku (Vanuatu) Ltd v. Republic [2012] VUCA 13. Counsel raised three issues namely :-
 - (a) Whether the Director wrongly invoked his powers under Section 99 of the Act?
 - (b) Whether the wrongful acts of the Director constituted fraud and/or mistake? (This is the same issue raised by the second defendant.)
 - (c) Whether the First and Second Defendants are liable for damages suffered by the claimants for wrongful rectification?
8. The third issue raised by the Mr Laumae is dependant upon these first and second issues being found and answered in the affirmation.



9. There are basically only three issues. In relation to the first issue, I am satisfied the Director of Lands wrongly invoked his powers under Section 99 of the Act and answer the issue in the affirmation. In Civil Case 204 of 2004 the Supreme Court had nullified the decision and declaration of the Supenatavuitano Island Council of Chiefs. For the Director to rely on that decision and rectify the register was an ignorance of the law. Ignorance of the law can be no excuse or defence to his actions. That is the first point. The second point is that Section 99 of the Act places a duty on the Director to take “... ***such steps as he thinks fit to bring the notice to any person shown by the register to be interested his intention so to do, and giving such person an opportunity to be heard, ...***” (my emphasis). There is no evidence such opportunity to be heard was given to the Claimants. When the Director received an objection by the Claimants through Counsel, despite they had been late by failing to comply with the 30 days notice. The notice was not given to the Claimants but rather to the State Law Office which are not required to be served that notice. It is clear to me that the Director had made a mistake in invoking his powers under Section 99 of the Act.
10. As for the second issue, fraud requires some degree of dishonesty. I am not satisfied the Director had committed any fraudulent actions and that is sufficient.
11. As regards the last issue, it is answered in the affirmative, but the claimants are not entitled to any damages as they have not established those damages. And they are not entitled to any indemnity damages under section 101 of the Act.

The Result

12. The Claimants are only partly successful in their claims against the first and second defendants and are entitled to the following orders –
- (a) An order directing the Director to rectify the Register by cancelling the name of Thompson Wells as Lessor of title 04/2644/001 and 04/3022/005 and replacing them in the names of Boetara Family, Tura Family and Valele Family.
- (b) The First and Second Defendants pay the Claimants’ costs of and incidental to this action on the standard basis as agreed or be taxed by the Master.

DATED at Port Vila, this 24th day of June 2016

BY THE COURT


OLIVER SAKSAK
Judge

