

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil Case No. 289 of 2013

BETWEEN : DAVIDSON ESAU, PHILEMON ESAU, JIMMY BEN
ESAU, WILLIE DANIEL, KARIE CHARLIE & CHEW
DICK

First Claimants

AND: BOB SUL KALFAU, ELVIS KALFAU, BOB
KALSAOPA, FRANCIS KALFAU, SUPU KALANGIS
& DAVID BANI

First Defendants

AND: FREDDY BOBLANG, WILLIE KALFATAK, WILLIAM
KALSAUPA, ALBERT KALANGIS, PAUL KALSKAR,
HARRIS KALSKAR, JOEL KALANGIS, WALTER
KALSAUPA, KALO KALSES & GEORGE SAMSEN

Second Defendant

AND: THE GOVERNMENT OF THE REPUBLIC OF
VANUATU

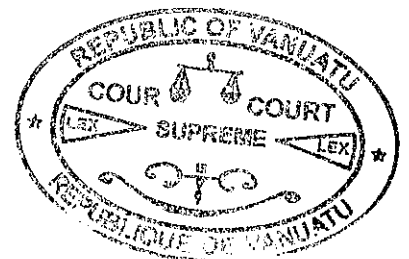
Third Defendant

Coram: Justice Aru

Counsel: Mr. J. Kilu for the Claimants
Mr. D. Yawha for the First and Second Defendants
Mr. L. Huri for the Third Defendant

REASONS FOR DECISION

1. On 2 December 2015 after hearing the First and Second defendants Application to strike out the claim in this proceedings I made the following orders:-



(1). The First and Second Defendants' Application to Strike Out is granted.

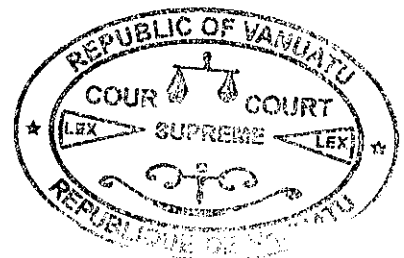
(2). This matter is now struck out.

(3) the claimant's cross Application is dismissed.

(4). The Claimants to the First, second and Third defendants costs on a standard basis to be taxed failing agreement.

(5). Reasons to be provided

2. I now provide my reasons for making the above orders.
3. The Claimants allege that they are Ni-Vanuatu who claim customary ownership of land at Forari bay South Efate and bring their action under section 100 of the Land Leases Act [CAP 163] to seek rectification of the register by cancellation of lease titles 12/0741/007 (007 lease) and 12/0741/008 (008 lease). They allege that when the old lease titles (12/0741/004 and 12/0741/005) were cancelled, they applied for and obtained a registered negotiator certificate in February 2011 and were in the process of negotiations for new leases when the 007 and 008 leases were granted to the First and Second Defendants.
4. The First and Second Defendants applied to have the claim struck out on the basis that the claim has no cause of action and is frivolous and vexatious. Secondly that it is unlawful and marred with fraud and deceit as it is the same claim that this Court struck out in Civil Case 185 of 2011 and Civil Case 235 of 2011. The Application was supported by a sworn statement deposed by Kalo Kalses.
5. On the other hand the Claimants also filed a response and Cross Application. The orders sought on the Cross Application are that there be no dealings in respect of the 007 and 008 leases pending determination of the true custom owners and secondly that these proceedings be stayed pending final determination of the true custom owners of the land comprising the two leases.



6. A preliminary point raised by the Applicants which is accepted was that the claimants simply do not have standing to bring the claim under section 100 of the Land Leases Act. First the Claimants are not the custom owners as custom ownership is yet to be determined and secondly, despite the Claimants' claim that they have a certificate of registered negotiator, it is quite clear on the face of the document (Annexure 'DEA' to the sworn statement of Davidson Esau) that the certificate was issued to a Richard Rory as registered negotiator for La Bay South East Efate and Richard Rory is not a party and not even a claimant in these proceedings. This is confirmed by Mr. Kalo Kaleses at paragraph 2 of his sworn statement filed on 22 October 2015.
7. This point was conceded by Mr. Kilo on behalf of the claimants that they do not have standing to bring the claim.
8. It was also submitted by the Applicants that the same claim was brought under the name of Chief Tariwer in Civil Case 235 of 2011 **Chief Tariwer v. Freddy Boblang & Ors** which was struck out by this Court on 23 May 2013. This was not disputed or denied by the Claimants. Having considered these submissions, I was satisfied that the claim should be struck out.

DATED at Port Vila this 11 day of February, 2016.

BY THE COURT



.....
D. ARU
Judge

