

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

Civil
Case No. 16/4020 SC/CIVL



BETWEEN: Kerry Kaukuarakera
Claimant

AND: Joe Maike, Willie Maike P, Kapara John, Marua Sarairo,
Rauing N, Alick Miss
First Defendants

AND: Joseph Joel
Second Defendant

AND: Republic of Vanuatu
Third Defendant

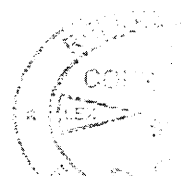
Date of Conference: 7 June 2017

Before: Justice Aru

In Attendance: Mr. H. Vira for the Claimant
Mr. T. Loughman for the Third Defendant
First Defendant-(no appearance)
Second Defendant-(no-appearance)

DECISION

1. The Third Defendant applies to have the claimant's claim struck out. It filed a defence to the claim and also filed an Application to strike out supported by a sworn statement deposed by Paul Gambetta as the Acting Director of Lands.
2. The claim filed on 20 December 2016 is basically a s100 claim under the Land Leases Act [CAP 163]. The relief sought is for rectification of the register by cancelling lease title 14/2521/002 (the 002 lease) on the grounds of fraud or mistake



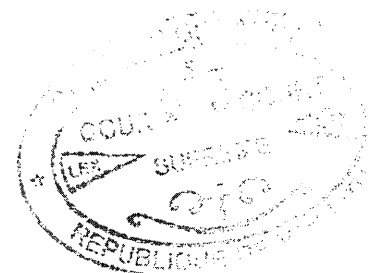
. In addition, the claimant seeks damages in the sum VT 2,000,000. The claim is supported by a sworn statement of the claimant filed on 2 March 2017.

3. The gist of the claimant's claim is set out in paragraph 5, 6 and 7 of the claim .The Claimant alleges that on 12 September 1893 the Joint Court (of the New Hebrides) registered the land comprised in the 002 lease to his ancestor .[see Annex "KK1"]
4. And in 1994 the chiefs of Port Resolution, Tanna declared him as the rightful custom owner of the land. [see Annex "KK2"]
5. Furthermore the Claimant alleges that on 19 October 2009, the 002 lease was registered with the First Defendants as lessors and the Second Defendant as the registered proprietor.
6. The Claimant alleges that the 002 lease was obtained by fraud or mistake

Application

7. The Application to strike out is made on the basis that the Claimant does not have standing (locus standi) to bring the claim as the 1893 Application to the Joint Court is ambiguous and does not provide a specific description of the area or land concerned. Furthermore, it is submitted that the 1994 chief's declaration is not a decision of a competent Court and even so, the decision only relates to land called Warkon not Yanatoka.
8. The claimant submits that he has standing to bring the proceedings as his name connects to the 1893 Application for Registration and that is the area covered by the 002 lease. It was further submitted that the Claimant's land is Warkon land which was not surveyed but only Yanatoka land was surveyed. Furthermore the Claimant submits that Warkon land is as confirmed by the Chiefs' Declaration of 1994.
9. The 1893 Application is headed Application for Registration in the Joint Court . The first paragraph states:

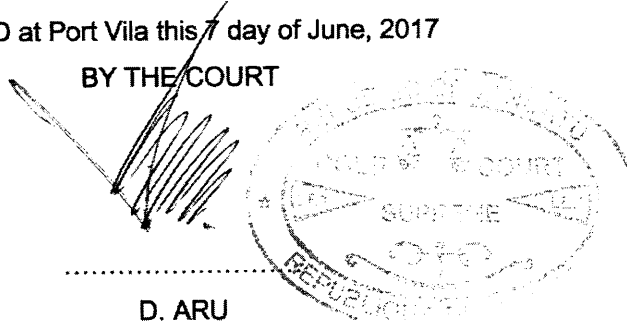
"Name and Situation of Property – Portion 15, Tanna"



10. On the face of the document, it is clear that the Application relates to Portion 15 on Tanna and in the absence of any further evidence the Application makes no reference to either Warkon land or Yanatoka land. By implication portion 15, Tanna could be anywhere on the Island of Tanna. Furthermore, the chiefs' declaration of 1994 only refers to Warkon land.
11. The claimant in my view cannot rely on these two documents to assert his claim as they do not give him standing. As far as the 1994 custom Chiefs declaration is concerned, only a competent Court established by law to deal with disputes over ownership of custom land can declare custom ownership of land. [see: **Valele Family v Touru** [2002] VUCA 3]
12. The claim is therefore hereby dismissed and the Third Defendant is entitled to costs in the sum of VT 10,000 to be paid within 21 days.

DATED at Port Vila this 7 day of June, 2017

BY THE COURT



D. ARU
Judge