

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

**Civil
Case No. 17/735 SC/CIVL**

BETWEEN: NAISER NWARMOKOS
Claimant

**AND: ANDERSON WELLS
WELLS VASO**
First Defendants

**AND: PATRICK WELLS
EDWIN WELLS
NORRIS WELLS
HENRY RERE WELLS**
Second Defendants

AND: REPUBLIC OF VANUATU
Third Defendant

Before: *Justice Oliver A. Saksak*

Counsel: *George Boar for the Claimant
Wilson Iauma for First and Second
Defendants
Hardison Tabi (SLO) for the Third
Defendant*

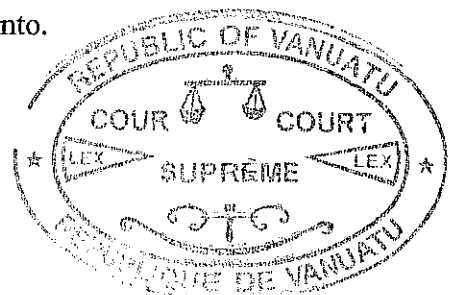
Date of Hearing: *17th May 2018*

Date of Judgment: *8th October 2018*

JUDGMENT

Introduction And Background

1. The Claimant is a resident on Lorethiakarkar land, South East Santo.



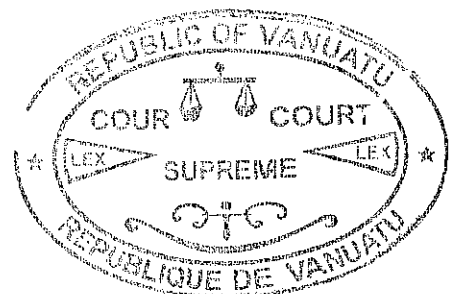
2. The First and Second Defendants are relatives and members of the Family Wells who live at Laite Village, East Santo.
3. On 18 January 2016 the First and Second Defendants registered Leasehold Title 04/1832/001 which is an agricultural lease with the Third Defendant.
4. The Claimant complains that the Defendants' lease covers part of Lorethiakarkar land and that it was done without knowledge and authority.
5. He filed his claim on 24 March 2017 against the Defendants claiming the following Orders—
 - (a) To stay the restraining orders obtained by the Defendants against the Claimant.
 - (b) To restrain the Defendants from mortgaging and/or dealing with Leasehold Title 04/1832/001 pending a hearing and determination by a Land Tribunal.
 - (c) To direct the Director of Lands to cancel the Defendants' Leasehold Title 04/1832/001.
 - (d) In the alternative, an order that the Claimant be permitted to remain on Lorethiakarkar Land pursuant to Section 17(g) of the Land Leases Act [Cap. 163].
 - (e) Costs.

Interim Orders

6. On 23 February 2018 the Claimant obtained interim restraining orders against the Defendants after the Court heard an urgent application made ex parte.
7. These interim orders are still in place but not complied with by the Defendants and the Claimant has filed an application for contempt of court. The application remains unheard.

Agreed and Disputed Facts

8. On 7 May 2018 Mr Boar filed the following agreed facts –



- (a) The Claimant and the Defendants are claiming the land ownership of Lorethiakarkar Land which claims are still pending in the Land Tribunal.
- (b) The Claimant occupies Lorethiakarkar Land and has residence, coconut plantation, gardens and animals on the said land before the Defendants registered Leasehold Title 04/1832/001 on 18 January 2016.
- (c) The Claimant was not notified nor was there a public notice for the Defendants to register the said lease over Lorethiakarkar Land as lessors and lessees.
- (d) The First and Second Defendants have not been declared as custom owners of Lorethiakarkar Land to enable them to be registered as lessors and lessees of Leasehold Title 04/1832/001.

Disputed Fact

- 9. The disputed fact is that the Defendants' lease is located on Lorethiakarkar Land.

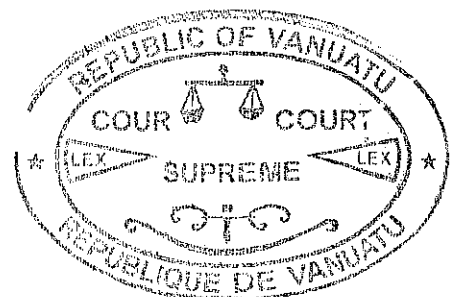
Issues

- 10. The issues raised for determination are –

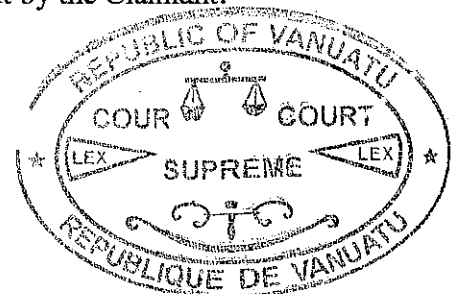
- (a) Whether or not the Defendants have committed fraud and/or mistake when they registered Leasehold Title 04/1832/001.
- (b) Whether or not the land comprised in Leasehold Title 04/1832/001 was a vacant land?
- (c) Whether or not the land comprised in Leasehold Title 04/1832/001 is currently under dispute and if so, whether the Claimant and Defendants are Parties to the dispute?
- (d) The Defendants raised an additional issue: whether or not the Claimant has locus standi to challenge Leasehold Title 04/1832/001?

Discussions And Considerations

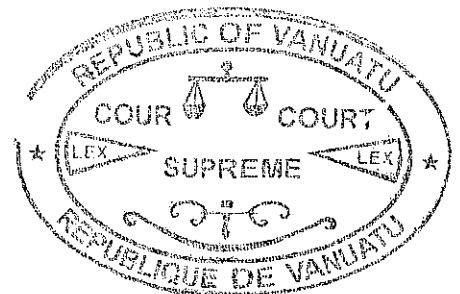
- 11. For the Claimant to succeed he must show in his evidence –



- (a) That Leasehold 04/1832/001 in fact covers Lorethiakarkar Land.
 - (b) The Defendants were dishonest in their dealings to have Leasehold Title 04/1832/001 registered in their names.
 - (c) The Third Defendant registered the First and Second Defendants' lease by fraud and/or mistake.
 - (d) That Leasehold Title 04/1832/001 was obtained over land occupied by the Claimant.
 - (e) That Lorethiakarkar land is currently under dispute and is still pending hearing and determination in the Land Tribunal.
12. I begin with the issue (e). This is an agreed fact by both parties i.e the Claimant and the First and Second Defendants and is therefore not in issue.
13. The Claimant's evidence is contained in his sworn statement filed on 30 October 2017. At paragraph 13 he states that Leasehold Title 04/1832/001 covers up to 90% of Lorethiakarkar Land but falls far short of producing any sketch plans or maps showing the actual area covered. The photograph of a man standing behind a white stone is meaningless without words or figures. The copy of a decision annexed has no specific sketch plan or map showing Lorethiakarkar land and is therefore unhelpful to the Claimant.
14. The further sworn statement of the Claimant filed on 6 September 2017 annexes a decision with a sketch plan but it fails to identify where Lorethiakarkar Land is. It does however show Leceia land clearly on which Leasehold Title 04/1832/001 covers and it is well outside the boundary of "KRAON BLONG ARMOKOS".
15. If "KRAON BLONG ARMOKOS" is in fact Lorethiakarkar land and comparing its size to Leceia land, it is clearly inconsistent with the Claimant's claim that the lease obtained by the First and Second Defendants covers over 90% of Lorethiakarkar Land.
16. I find therefore that the issue in paragraph 11(a) is not made out by the Claimant.



17. For the Claimant to succeed on his claim for cancellation under section 100 of the Land Leases Act he must prove to the satisfaction of the Court that the mistake or fraud alleged led the Third Defendant to register Leasehold Title 04/1832/001. This is clearly established in Rogara v. Takau CAC 25/2005.
18. I have read the sworn statements filed by the Claimant and by his witnesses. I have read the sworn statement of Anderson Wells filed on 17 May 2018 and of Gordon Willie filed by the Third Defendant on 21 November 2017 in support of the Defendants' defence. I find no evidence of fraud or mistake on the part of the First, Second and Third Defendants. These issues raised in paragraphs 10(a) and 11(b) and (c) are not made out by the Claimant and are answered in the negative.
19. The Claimant alleges he occupies Lorethiakarkar Land but does not show which part he occupies exactly. In his sworn statement filed on 16 February 2018 in support of his application for restraining orders the 4 photographs showing logging he claims were done by the First and Second Defendants on Lorethiakarkar Land. There are no houses or buildings in any of those photographs.
20. The First and Second Defendants maintain those activities are being done on Leceia Land on which they have registered Leasehold 04/1832/001.
21. I find therefore the Claimant is not in occupation of the part of land on which Leasehold 04/1832/001 is located or comprised in. The issue in paragraphs "(d) and (b) fails and is answered in the negative.
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22. Finally the issue raised by the First and Second Defendants that the Claimant has no locus standi. It is an agreed fact by the Claimant and the First and Second Defendants that the ownership of Lorethiakarkar Land is still under dispute and the dispute is pending hearing and determination in the Land Tribunal.
23. I accept the First and Second Defendants' submissions that the Claimant has no standing to bring this claim and seek the orders that he has. His alternative claim made pursuant to Section 17(g) of the Land Leases Act must therefore fail for this reason.



The Result

- 29. The Claimant's claims fail and are hereby dismissed in their entirety.
- 30. The Claimant has put the Defendants to costs. All the Defendants are entitled to their costs of and incidental to the action on the standard basis as agreed or be taxed by the Master.
- 31. The Interim Orders issued on 23 February 2018 are hereby vacated.

DATED at Port Vila this 8th day of October, 2018.

BY THE COURT

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OLIVER A. SAKSAK

Judge

