

**BETWEEN: Dolcy Pakoa**

*Claimant*

**AND: Harry Amos and Family, Mark Amos and Family, Leisalae Amos and Family, Kalsong Amos and Family, Joseph Amos and Family, Philip Amos and Family, Caleb Amos and Family, David Amos and Family, Marie John Delwin Manaon, Telma John Delwin and Family, Dolcy John Delwin and Family, Mark Robert and Family Jacob and Leipunusar Lukai and Family, Jack Robert and Family, Tiamua Lukai and Family, Ethah Lukai and All Family**

*Defendants*

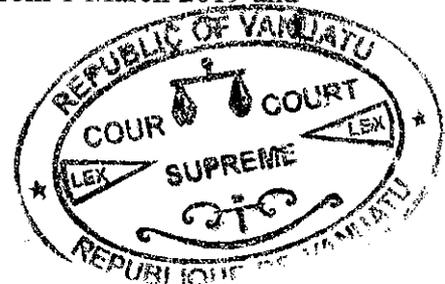
**Before:** *Justice Oliver Saksak*  
**In Attendance:** *No appearance for Claimant*  
*Jack I Kilu for Defendants/ Counter-Claimants*  
**Date of HEARING:** *2nd day of July, 2021 at 2:00 PM*  
**Date of Decision :** *7<sup>th</sup> July 2021*

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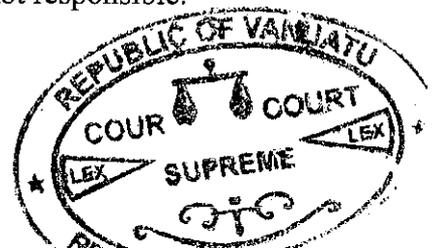
**DECISION**

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1. The claim of the claimant filed on 17 December 2018 is dismissed.
2. The claimant sought three reliefs: (a) an eviction order against the defendants from Lease title 11/0821/030 within 30 days; (b) mesne profits; and (c) costs.
3. On 17 April 2019 the claimant filed an application seeking leave to remove the first relief sought, for reasons the defendants had vacated the title from 1 March 2019 and therefore eviction was no longer an issue.



4. On 22 May 2019 Mrs Marie-Noelle F Patterson ceased acting for the Claimant. As such no leave had been granted and no amended claim was filed.
5. The Claimant has not taken any active steps to pursue her claims since her lawyer ceased acting.
6. Under Rule 9.10 (1) and (2) of the Civil Procedure Rules the Court strikes out the claim and proceeding.
7. The defendants have however pursued their counter-claims for –
  - (a) Reimbursement of expenses – VT 2,503,000;
  - (b) Damages for stress and anxiety – VT 2,400,000;
  - (c) Interest at 5% per annum for 29/9/2018 to date of settlement; and
  - (d) Costs.
8. The defence and counter-claim was filed on 6 March 2019 after the defendants had vacated the claimant's property.
9. The Claimant filed a reply on 22 March 2019 stating –
  - (a) The defence did not concern Marie John Delwin Manaon, Telma John Delvin, Dolcy John Delwin, Mark Robert, Jacob and Leipunuasar Lukai, Jack Robert, Tiamua Lukai and Ethah Lukai.
  - (b) Regarding the Claims of Betty Amos and her siblings the principle of Anshun Estoppel was applicable to their Claim as they had failed to raise their Counter-Claims in Civil Case No. 3 of 2015 which was appealed to the Court of Appeal in 2018 (CAC 2665 of 2018).
  - (c) In the alternative, the Claimant raised the issue of res judicata.
10. The Claimant therefore denied the counter-claims stating –
  - (a) The damages alleged were done by a cyclone and she was not responsible.



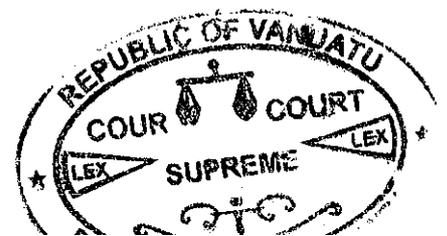
- (b) The Supreme Court and the Court of Appeal had found the defendants to be trespassers with no rights to be on the property.
  - (c) There was no agreement between them to remain occupation.
  - (d) The defendants have removed all their belongings including removables and fixtures upon vacation on 1<sup>st</sup> March 2019 and that nothing was left to be compensated.
  - (e) No duty was imposed on the defendants to build and maintain the property.
11. The Claimant sought an order striking out the counter-claims with indemnity costs. The claimant relied on her sworn statement filed on 4 April 2019.

### **Discussion**

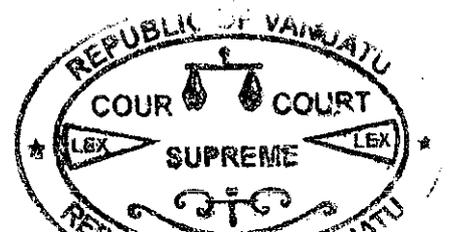
12. At the hearing in Chambers on 2 July 2021 the Claimant was not present. Neither was she ever present at any other previous conferences by herself or a lawyer since her previous lawyer ceased acting.
13. I had indicated orally to Mr Kilu after hearing submissions from him that I would grant judgment in favour of the defendants on their counter-claim, but that it was to be for a reduced amount.
14. I have however reflected on that position after reading the evidence by sworn statements filed by the defendants and the replies of the claimant filed on 23 March 2019 and the sworn statement filed by the claimant on 4 April 2019 in support of her replies.
15. The views I expressed orally to Mr Kilu must now change in light of further scrutiny of the defendants' counter –claim in light of the pleadings and evidence before the Court.

### **Findings**

16. From the evidence I find as follows:-
- (a) That the main claimant is Betty Amos, however she has not been named as one of the defendants in the proceeding.



- (b) Betty Amos was a party to Civil Case No. 3 of 2015. She had the opportunity to raise her counter-claims with her siblings but failed to do so. As such the principle of Anshun estoppel applies to her and her sibling's claims.
- (c) Even if the Court is wrong on this point, the evidence of the claimant that when vacating the property on 1 March 2019, the defendants had removed their belongings and all fixtures and the defendants have no evidence rebutting that evidence.
- (d) Even if they had any properties damaged, the damage was caused by a natural disaster, a cyclone and the claimant could not be responsible for those damage.
- (e) Willie Kalo Amos sworn evidence filed on 7 October 2020 and all other statements of the defendants confirm damages were caused by Cyclone Pam.
- (f) Willie Kalo Amos statement states he incurred VT 399,000 in building materials but no documentary evidence to substantiate those alleged expenses.
- (g) In any event, there is no evidence of any agreement between Willie Kalo Amos and the Claimant to make the purchase and do repairs.
- (h) The photographs Annexures WKA1 show pictures of a mere shed or shelter including a toilet and bathroom. Mr Amos states these were put up after cyclone Pam. In 2015, Civil Case No. 3 of 2015 was a case between the claimant and John Delwin Kalsong Manaon and Betty Amos and the Minister and Director of Lands. That case was appealed to the Court of Appeal in November 2018. Willie Kalo Amos was not a party. He filed his statement on behalf of Family Amos. Willie Kalo Amos is not named as a defendant in this proceeding.
- (i) The defendants are therefore estopped from raising these counter-claims.
- (j) Their claims for stress and anxiety are not substantiated by any medical reports and are rejected.



**Conclusion**

17. For those reasons the counter-claims of the defendants fail in their entirety and are hereby dismissed.
18. In the circumstances of this case it is my view there will be no order as to costs. Each party is to bear their own costs.

**DATED at Port Vila this 7th day of July, 2021**

**BY THE COURT**

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**Oliver Saksak**  
**Judge**

