

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

**Civil  
Case No. 23/172 SC/CIVL**

**BETWEEN: JEANNE ARUTANGAI**  
Claimant

**AND: ISAAC VIRALILIU & FAMILY**  
Defendant

**Date of Hearing:** *15<sup>th</sup> day of March, 2024*  
**Before:** *Justice W. K. Hastings*  
**Distribution:** *Mr. S. Joel for Claimant*  
*Mr. K. T. Tari for the Defendant*

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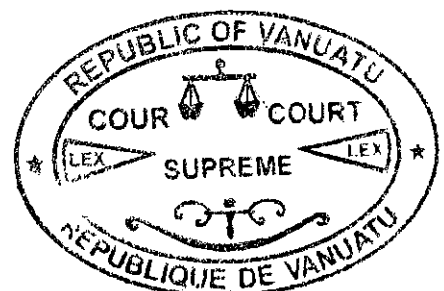
**DECISION ON APPLICATION FOR SUMMARY JUDGMENT**

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1. This is an application for summary judgment.
2. The Claimant is the widow of the late Selwyn Aru, who is the brother of the Defendant. Mr Aru passed away on 11 October 2008. The Claimant is the administrator of her late husband's estate.

**Pleadings**

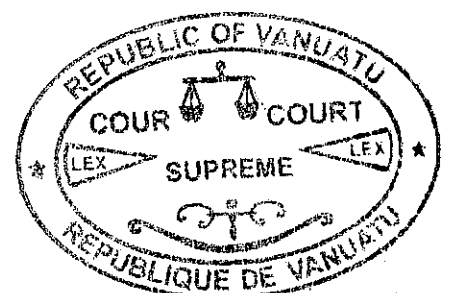
3. The claim was filed on 20 February 2023. The Claimant alleges that the defendant and his family have unlawfully resided on, and conducted businesses from, the property subject to Lease Title No. 11/OD33/030. The Claimant seeks an order that the Defendant vacate the property, an order that the Defendant refund the Claimant all money collected from the rent of rooms, a kava nakamal and businesses the Defendant operated on the property, an order restraining the Defendant from further disturbance on the property, and an order that the Defendant pay rent for the periods he occupied the property.
4. The defence is that on 21 May 1997, the Defendant entered into a partly written and partly oral agreement with his brother, the Claimant's late husband Selwyn Aru, to purchase a property from Bob Kuao for use as a "family hub". The written agreement is annexed as exhibit IV1 to the sworn statement of Chief Isaac Viraliliu filed on 30 August 2023. The written agreement is between Selwyn Arutangai and Bob Kuao. It is witnessed by Bob Liu. It does not mention the Defendant.



5. The alleged verbal agreement was that the Defendant would contribute to the purchase of the property by making small payments over time. The Defendant says that it was verbally agreed that the lease would be registered in Mr Aru's name to secure financing because Mr Aru had a stable income, whereas the Defendant at the time did not. The Defendant says he contributed about VT 3,500,000 from 1997 to 2007 to the purchase of the lease. The Defendant also says that as part of the verbal agreement, Mr Aru authorized the Defendant to reside on the property and carry on businesses to sustain his family.
6. After the death of Selwyn Aru, the Claimant told the Defendant in 2009 to vacate the property, which he did. According to the Defendant, the Claimant allowed the Defendant to return to the property in 2018 (the Claimant alleges he forced his way back onto the property). In 2022, the Claimant told the Defendant to vacate the property again.
7. The Defendant counterclaims seeking an order that he has an equitable interest in the lease and an order to rectify registration of the lease under s 100 of the Land Leases Act. Alternatively, the Defendant seeks reimbursement of the VT 3,500,000 he says he contributed to the purchase of the lease.
8. In her reply and defence to the counterclaim, the Claimant denies that there was an unwritten family agreement. She says she was not aware of any financial contributions. She says her late husband would not have entered into such an agreement because as the first-born male, he had a responsibility to look after all his siblings. The agreement as alleged would compromise those customary values because it effectively excluded the rest of the family. She denies the Defendant has an equitable interest in the property.

## Submissions

9. The Claimant submits that this case is suitable for summary judgment because the Claimant's right to possess the lease cannot be defeated by an alleged claim for unregistered rights. The Claimant submits that the Defendant has offered no proof that he contributed VT 3,500,000, that there is no witness to the alleged verbal agreement, and that it is unlikely that the deceased would have authorized the Defendant to pay for the property from his earnings as a bus driver rather than from savings. The Claimant submits that s 15 of the Land Leases Act states that her rights as proprietor of a registered lease "*are not liable to be defeated except as provided in this Act.*" The Claimant submits the Defendant has no real prospect of defending the claim, and that there is no dispute between the parties about a substantial question of fact or a difficult question of law.
10. The Defendant submits "*that for the Court to exercise its inherent jurisdictional discretionary power to issue such orders of eviction and or to vacate the land lease property, this Court must investigate in whole the circumstances and facts of this case, specifically matters that connect the Defendant to the*



*land lease property before making its determination. These circumstances can be ascertained in the evidence provided by the Defendant.*” The Defendant submits that there is evidence that the Defendant lawfully occupied the property with the permission of the deceased Selwyn Aru. The Defendant submits there is a possibility that the Claimant and her son Siona Lulu (who has sworn a statement that the Defendant submits is largely hearsay) did not know about the agreement between the brothers. The Claimant also submits the burden of proof is on the Claimant to prove on the balance of probabilities that the Defendant occupied the property unlawfully.

## Discussion

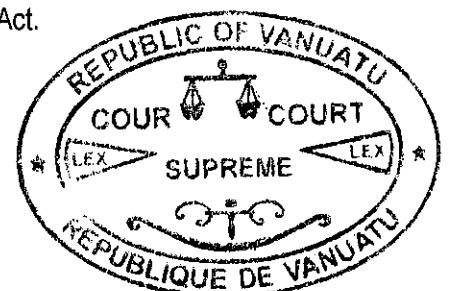
11. Rule 9.6 of the Civil Procedure Rules 2002 states that the rule applies when the Claimant believes that the Defendant “*does not have any real prospect of defending the Claimant’s claim.*” The Defence is that the Defendant has an equitable interest and an interest as a person in occupation of the land both of which are protected by s 17(g) of the Land Leases Act which states:

### **17. Overriding interests**

*Unless the contrary is expressed in the register, the proprietor of a registered lease shall hold such lease subject to such of the following overriding liabilities, rights and interests as may, for the time being, subsist and affect the same, without their being noted on the register—...*

*(g) the rights of a person in actual occupation of land save where enquiry is made of such person and the rights are not disclosed;*

12. Rule 9.9 states that the Court must not give judgment if it is satisfied that there is a dispute between the parties about a substantial question of fact or a difficult question of law. It is a mandatory provision based on the principle that the summary judgment procedure is to uphold claims about which there is no real prospect of a defence so that the time, effort and cost of a trial are avoided.
13. In this case, there is a substantial question of fact in dispute, which is whether or not a verbal agreement existed between the late Selwyn Aru and the Defendant. This will require the Court to assess the credibility of the Defendant and possible witnesses such as Bob Kuao and Bob Liu if they are still alive. Proving contributions without receipts is difficult but not impossible, and inferences may be drawn. That is a matter of proof for the Court on the evidence offered. If the Court were to find a verbal agreement existed, a difficult question of law will be the legal significance of that fact, whether any equitable interest exists, and whether an unregistered equitable interest gives the holder of that interest rights under s 17(g) of the Land Leases Act or under any other rule of law or custom that could affect the rights of the proprietor under s 15 of the Land Leases Act.



14. I am as a result satisfied that there is a dispute between the parties about a substantial question of fact *and* a difficult question of law.

**Result**

15. For these reasons, the application for summary judgment is refused. This matter will go to trial.
16. The next conference will be on 30 April 2024 at 11am. The purpose of that conference will be to establish the steps necessary to get this matter to trial.
17. Costs in the cause.

**DATED at Port Vila this 20<sup>th</sup> day of March, 2024**

**BY THE COURT**

  
Justice W. K. Hastings

