

IN THE COURT OF APPEAL
OF THE REPUBLIC OF VANUATU
(Civil Appellate Jurisdiction)

Civil Appeal
Case No. 20/1447 CoA/CIVA

BETWEEN: Elizabeth Moli
Appellant

AND: BCD Limited
Respondent

Coram: Hon. Chief Justice V. Lunabek
Hon. Justice J. Mansfield
Hon. Justice R. Young
Hon. Justice D. Aru
Hon. Justice V. M. Trief

Counsel: Appellant in person
Mr. N. Morrison for the Respondent

Date of Hearing: 11th November 2020

Date of Judgment: 20 November 2020

JUDGMENT

1. BCD Limited (BCD) a local company became the registered proprietor of lease title 04/3042/072 on 3 October 2007. This was the head lease of the Banban subdivision in Luganville, Santo. It was surrendered to create 15 new commercial leases. Among the new lease titles created were lease titles 04/3024/089 and 04/3024/090 (the 089 and 090 Leases). BCD was registered as proprietor of these two leases on 16 October 2018. Without BCD's knowledge and authority Mr Sung Eun Joo erected a dwelling house across parts of the 089 and 090 Leases. On 14 March 2019 a notice of eviction was issued to Mr Joo by the respondent's lawyers giving him 14 days to vacate the two leases.
2. The demand was ignored and on 5 June 2019 BCD issued proceedings against Ms Elizabeth Moli and Mr Joo to restrain them and also to evict Mr. Joo from the two leases.
3. The proceedings against Ms Moli were based on the claim she had encouraged Mr Joo to trespass and she was also trespassing on the land from time to time. In their defence, the defendants said they

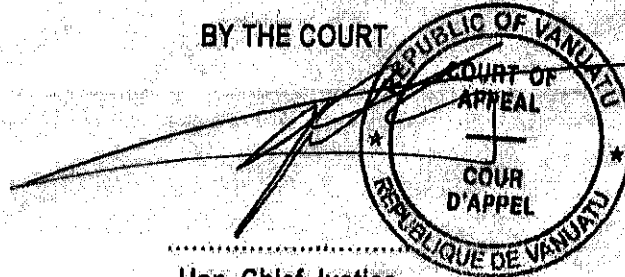


had been living on the land prior to the creation of the two leases and that the leases were obtained by fraud and mistake. No particulars were pleaded and no counterclaim was filed.

4. Prior to these proceedings, in 2018 Ms Moli had also filed a claim against BCD, the two lessors to their leases and the Director of Lands, Survey and Records. This proceeding was resolved by consent orders signed on 6 April 2018. All parties including Ms Moli agreed that she and her associates were restrained from entering the leased property which then was still under the head lease and they also agreed not to continue building Mr Joo's house on the property.
5. On 16 April 2020 the Court below entered judgment on an application for summary judgment in favour of BCD. Mr Joo was ordered to vacate the dwelling on the 089 and 090 Leases within 28 days. Mr Joo has not appealed those orders and is not a party in this appeal.
6. This appeal is only being pursued by Ms Moli. The Judge in the Supreme Court did not make any orders with respect to Ms Moli. BCD did not seek any order from the Court at the summary judgment hearing with respect to her conduct.
7. We are satisfied therefore the Supreme Court did not make any order with respect to Ms Moli. In those circumstances there is no judgment to appeal from.
8. We note that Ms Moli sought an adjournment of this appeal. We refuse the application given our conclusion that there is no judgment against Ms Moli to challenge. In any event we would not have granted an adjournment on the grounds sought. Ms Moli has not filed the documents required to progress this appeal other than her original Notice of Appeal. She had no valid basis for this failure.
9. The appeal will be dismissed with costs to the respondent payable by Ms Moli in the sum of VT 75,000.

DATED at Port Vila this 20 day of November, 2020

BY THE COURT



**Hon. Chief Justice
Vincent Lunabek**