

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

**Civil Appeal Case No. 01 of 2013**

**BETWEEN: APIA ATIS, ROBERT DORIRI, SANDY BEN, JOHN RINGO FRED, KEN BUKTAN, ROSE MARY TOM, ROCKY BUKTAN, LUKE SARISETS, ROS TOM, & JOSEPH BUKTAN**  
*Appellants*

**AND: NTM FAMILY WORSHIP CENTER LIMITED**  
*Respondent*

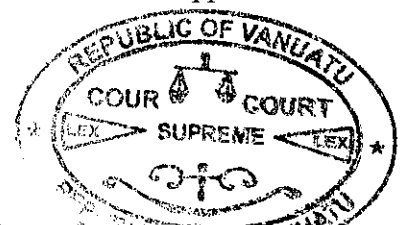
**Hearing: 3 October, 2013**  
**Before: Justice RLB Spear**  
**Appearances: Colin Leo for the Appellants**  
**Marie N Patterson for the Respondent**

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**ORAL JUDGMENT**

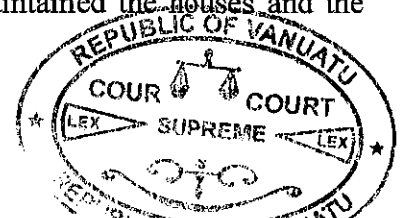
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1. This appeal challenges a particular determination of the Magistrate's Court given on 9 April 2013 effectively dismissing the counterclaim. Before dealing with the point attempted to be made in the appeal, it is necessary to have some regard to the factual background which is largely and materially not in dispute.
2. The case relates to two leasehold properties in Port Vila being lease titles 11/OI23/003 and 11/OI23/004. Those two properties used to be owned (leased) by Agathis Timber Ltd. The properties were sold (the leasehold interest assigned) to NTM on or about 28 January 2010 when the transfer in each case was registered. From that time, NTM was the registered proprietor of the leasehold interest in the two properties.
3. The appellants resided in certain wellings on the property and they have done so for a number of years. They were paying rent to Agathis Timber Ltd but that appears to have



stopped around 2003. This was known to NTM as it apparently became entitled to the benefit of the rental from the beginning of 2004.

4. In 2011, NTM decided that it required the full extent of the properties for its own purposes. It asked the appellants to leave. They refused to do so. Formal notices to quit were then served on the appellants on or about 8 February 2011. The appellants engaged legal counsel who appears to have taken issue with the legality of NTM's claim as to ownership of the properties and its legal ability to evict the appellants.
5. There is no dispute that the appellants occupied part of the properties by way of a periodic tenancy in the sense identified and explained in s. 33 of the Land Leases Act [Cap.163]. There is no suggestion that a formal lease was ever entered into between any of the appellants and either Agathis Timber Ltd or NTM. The undisputed evidence was that when the appellants were paying rent they were doing so on a monthly basis. Accordingly, any notice to quit or more exactly notice to determine the periodic tenancy was required to give the appellants at least one month's notice in accordance with s. 33 (3) of the Act. The notices to quit did not, however, give the appellants' at least month to quit the premises and so they are of questionable legal effect although that point has not been taken on the appeal nor was it taken in the Magistrate's Court.
6. However, any deficiency in that respect was easily overcome by the proceedings in the Magistrate's Court. That can be taken as a restatement of the notice to quit and finally addressed by the decision of the learned Magistrate which required the appellants to vacate the property within two months from the date of the Magistrate's Court judgment being 9 April 2013: that is, that they were required to vacate the property by 9 June 2013.
7. The appeal does not challenge the decision of the learned Magistrate in so far as it ordered that the appellants to quit the premises. The appeal is brought on the sole ground that the learned Magistrate was in error to dismiss the appellants' counterclaim.
8. That counterclaim was against NTM and it sought damages of Vt 1 million for maintaining and carrying out improvements to the property over the many years that the appellants were residing on the property. It is claimed that the appellants maintained the houses and the



grounds, assisted in preventing a fire from damaging the houses, and met their own costs for water and light, for removing rubbish, and emptying septic tanks. They sought recovery of their expenses and compensation for their efforts. This aspect of the case was dealt with by the learned Magistrate as follows:-

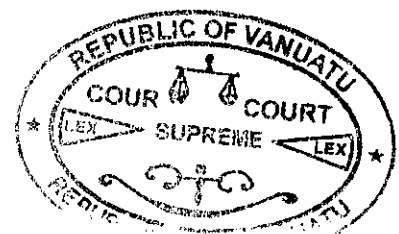
*“The counterclaim by the (appellants) against (NTM) cannot therefore be proceeded with unless Agathis Timber Ltd is made a party in the proceeding. But even if Agathis Timber Ltd is made a party in the proceeding, the (appellant’s) counterclaim cannot succeed because it has not been sufficiently proven so as to give some justifications or right for them to continuously occupying the houses within the (appellant’s) mentioned land properties”.*

9. The appeal challenges only that part of the judgment of the learned Magistrate and it does not challenge the findings in the Magistrate’s Court that NTM was entitled to determine the periodic tenancy and seek vacant possession of the property as against the appellants. The two grounds advanced by Mr Leo in support of the appeal are as specified in the notice of appeal in this way:-

a) *“It would be unnecessary in law to add Agathis Timber Ltd to be a party in the proceeding given NTM Family Worship Center in law is the registered proprietor leasehold title: 11/OI23/004 (“the property”) and has overtaken rights and obligations of the previous lease by Agathis Timber Ltd.*

b) *The appellant’s counterclaim does not relate to the appellant’s continuous occupation of the property other than compensation and monetary value for improvement made on the property by the appellants at their own expense, matters which the lenient Magistrate failed to consider”.*

10. On questioning Mr Leo about this thrust of the appeal, it became clear that he was contending that NTM assumed liability for any liability that had attached to Agathis Timber Ltd in respect of work carry out by the appellants on the property prior to the time when



NTM purchased the properties in 2011. Mr Leo was unable to refer me to any authority which could possibly support that argument. I cannot accept it.

11. It is trite law that any liability of this nature is a right *in personam* (that is, personal to the parties) and that it does not attach to the land (it is not *in rem*). The transfer of the properties to NTM did not, by itself, also transfer to NTM any liability on the part of Agathis Timber in respect of the claim (counterclaim) by the appellants. Failing agreement by NTM to assume responsibility for any such liability on the part of Agathis Timber, which would have also required the appellants to release Agathis Timber from such liability on the basis that it was assumed by NTM, the appellants never had a claim on NTM in this respect. Furthermore, I struggle to see how this “counterclaim” could have ever succeeded in any event even if it had been brought as a claim against Agathis Timber.
12. It is accordingly clear that this appeal has no substance. The appeal is accordingly dismissed with costs to the respondent of Vt 30,000 to be payable within 30 days.
13. It is now for the respondent to take such enforcement action as may be available to it in respect of the judgment of the Magistrate’s Court.

**BY THE COURT**

