

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

Civil Case No. 193 of 2011

BETWEEN: RICKY TORO & TONY TORO representing Family Toro
Claimant

AND: KALCHIRI KIRI
First Defendant

AND: REPUBLIC OF VANUATU
Second Defendant

AND: MEDICI INVESTMENT LIMITED
Third Defendant

Hearing: 7 November, 2013

Before: Justice Robert Spear

Appearances: *Mary Grace Nari for the Claimants*
No steps/No appearance for the First Defendant
The Solicitor General Viran Molisa Trief for the Second Defendant
No steps/No appearance for the Third Defendant

Judgment: 18 November 2013

RESERVED DECISION

1. This was to be the hearing of the claim seeking damages and rectification in respect of land described in leasehold title No. 12/0633/059.
2. The Court was initially surprised that no steps have been taken particularly by the third defendant despite having been served appropriately with the claim.
3. There is no dispute in respect of the facts leading up to a certain stage in this case and which can be conveniently summarised in this way:-



25 April 2000	The Minister of Lands leases the land to the first defendant Kalchili Kiri for 50 years commencing 28 March 2000. The rental specified to be Vt 6,400 per annum. No premium was paid for the lease
31 January 2007	Notice of forfeiture was issued on Kalchili Kiri for breach of the lease and in particular for not paying land rent and also for allowing squatters on the land
26 May 2008	The Valuer General refused the application for forfeiture. It would appear that this was because land rents were held by the Director of Lands and they were available for Family Toro.
August 2010	The interest of Kalchili Kiri as lessee was transferred to the third defendant Medici Investment Ltd without the consent of Family Toro. The consent was purportedly given by the Minister of Land notwithstanding that the land leases register continuing to show Family Toro as the lessor. The Minister of Lands of that time gave that consent on 22 December 2008 for reasons that were not able to be explained by Mr Jean Marc Pierre, Acting Director General of Lands

4. It is crystal clear that the Minister of Lands did not have the lawful power to consent to the transfer of lease 059 from Kalchili Kiri to Medici Investment Ltd.
5. The evidence also discloses that Kalchili Kiri was, or about that time, became a 50% shareholder in Medici Investments Ltd with a Mr Dominique Dinh holding the remaining shares.
6. Kalchili Kiri must have known that the consent of Family Toro was required for the transfer of the lease to Medici Investments Ltd yet his failure to obtain their consent is telling. Furthermore, given that Kalchili Kiri received 50% shareholding in Medici Investment Ltd, clearly as part and parcel of the overall transaction, the Court has no difficulty at all inferring that Medici Investment Ltd was well aware at the time it took the transfer of the lease from Kalchili Kiri that Family Toro was the lessor and that the consent of Family Toro was required.
7. If matters had stopped there then this decision could now be brought to a conclusion. Without question, the registration of the transfer of the lessee's interest from Kalchili Kiri to Medici Investment Ltd occurred as a result of either mistake or fraud which should have been easily appreciated by the Director of Lands at the time the transfer was tendered for registration. The "mistake" or "fraud" is the registration of the transfer with the consent endorsed from the Minister of Lands rather than then registered lessor being Family Toro.
8. The Court of Appeal and this Court have said time and time again that the land leases register is everything in respect of land dealing. Any search of the land leases register



would have revealed that Family Toro was the lessor. In particular, that the Minister of Lands had no power to give consent to such a transfer of the lessee's interest as occurred here.

9. Mr Pierre's carefully expressed and detailed statement was filed only on 30 October 2013. It reveals that on 10 February 2009, the date that lease title 059 was transferred to Medici Investment Ltd, it was also surrendered. That surrender was not apparent from the documentation that had been filed in this case beforehand. It immediately raised the question as to why the lease had been surrendered and the suspicion of course was that it had been replaced by either another lease or leases.
10. The Court took a short adjournment while Mr Pierre went back to the Lands Department and undertook a further search of the Lands Records. When the Court resumed, Mr Pierre was able to explain that a sub-division had taken place in respect of this land. Lease 059 was surrendered but replaced by 28 new leases or lots allocated lease title reference numbers 12/0633/863 – 890. In the short time available to Mr Pierre, he was able to ascertain that at least two of those 28 lots had been on sold by Medici Investment Ltd.
11. In the case of each of the 28 lots in the subdivision, the lessor is specified as the Minister of Lands although, without question, the Minister had no right at all to be declared and specified on the land leases register as the lessor in respect of this general block of land subdivided or otherwise.
12. The case will need to be reshaped now to include all those who have an interest in the land which will obviously include anyone who has purchased one of the subdivided lots. They might well have an indefeasible title and their own remedies which will need to be handled and addressed specifically, independently and carefully.
13. For this reason this hearing cannot proceed further.
14. **Given these conclusions, and to ensure that the interests of the rightful lessors in respect of each of those subdivided lots is not placed at further risk, I make the following orders:**
 - a) **That the Director of Lands rectify the land leases register forthwith in respect of those 28 subdivided lots (being leases 12/0633/863-890 (inclusive)) by substituting the Minister of Lands as lessor with "Ricky Toro and Tony Toro representing Family Toro" as lessor – pursuant to s. 100(1) Land Leases Act;**
 - b) **That the Director of Lands not permit any further dealings to be registered in respect of those 28 leases without the further order of the Court or the prior written consent of the claimants Ricky Toro and Tony Toro as the representatives of Family Toro.**



15. Mr Pierre is to provide an update as to the current position in respect of that subdivision including a copy of each of the 28 leases and the Land Leases Register together with any transfers that have been registered by 18 November 2013.
16. **The case will return for a conference before me at 8:30 am on 22 November 2013 (Supreme Court Office).**
17. I wish to emphasise that the approach taken above and the orders that have been made are without opposition by the State and with the urging of Mrs Nari for the claimants.
18. Finally, Mrs Nari is required to serve a copy of this decision again on Medici Investments Ltd by delivering a copy to the registered office of that company and a further copy on Mr Dominique Dinh.
19. Costs reserved.

BY THE COURT

