

BETWEEN: **VIRA MELE**
Claimant

AND: **POKILAU SALERUA**
First Defendant

AND: **SITE ACQUISITION SERVICES**
Second Defendant

AND: **REPUBLIC OF VANUATU**
Third Defendant

Coram: *Mr. Justice Oliver A. Saksak*

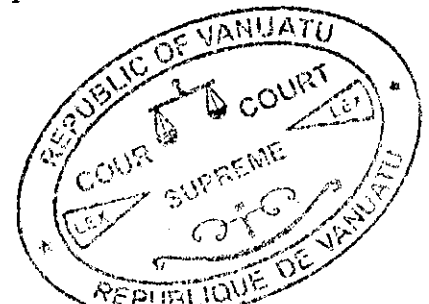
Counsel: *Kiel Loughman for the Claimant*
Marisan P. Vire for First Defendant
Frederick Gilu for Third Defendant
No appearance by Second Defendant- Ridgway Blake Lawyers

Date of Hearing: *4th September 2014*
Date of Judgment: *27th November 2014*

JUDGMENT

Introduction

1. When this case was called for trial hearing on 4th September 2014 Mr.Loughman was not present but his client and his witnesses were present and were ready to proceed. The First Defendant and the Third Defendant and their witnesses were ready to proceed to trial that day. However in view of the absence of Mr Loughman and the fact that no parties had filed any notices of intention to cross-examine each other's witnesses, the parties agreed that all their sworn statements be taken as read into evidence. They agreed that written submissions would be filed by the Claimant within 21 days and by the Defendants within 14 days thereafter. The Court heard applications for wasted costs and awarded costs in favour of the third Defendant against the Claimant in the sum of VT 68.000 to be paid before the date of judgment. The Court noted also that the First Defendant had outstanding costs thrown away to be paid to the state at VT 85.000 and to the Claimant VT 47.000. For that reason no costs were awarded to the first defendant. And it is not certain whether those costs have been paid. The Second Defendant have taken no active part in this matter and have indicated they will simply abide orders of the Court.



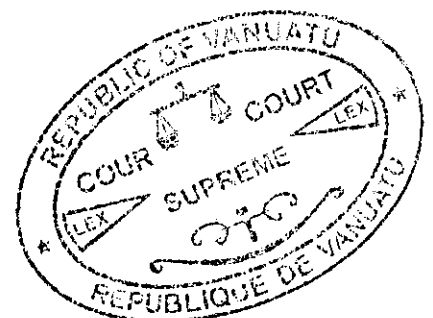
2. The State Law Office filed some written submissions on 3rd February 2014. They have not filed any supplementary submissions since 4th September 2014. The Claimants filed their written submissions on 22nd October 2014. The First Defendant filed his written submissions on 20th October 2014.

Relevant Background Facts

3. On 23rd – 25th June 2005 the Santo Supertavitano Island Land Tribunal (SSILT) sat to hear the dispute concerning customary ownership of Vunabaura Land. And on 15th July 2005 the SSILT decided customary ownership in favour of Pastor Salerua Poruja Family. The three families who disputed ownership of Vunabaura Land were Tom Totney, Family Robert Vanua and Family Poruja Salerua.
4. Subsequent to the decision of 15th July 2005 the first defendant as Lessor entered into a special lease title 04/2931/001 on 4th July 2007 registered on 3rd October 2007 with the Second Defendant to build a “Communication Facilities” on part of the first defendant’s land.
5. On 28th March 2008 the Village Land Tribunal for South Santo Area 2 (VLT) sat to hear disputes as to custom ownership of Vunabaura land and Naone Land.
6. On 2nd April 2008 the VLT decided that (a) Vanuapuru Family was the custom owner of Vunabaura Land and Melenarave Family was the Custom Land Owner of Naone Land.
7. Subsequently the Director of Lands caused a rectification on 18th January 2012 to declare and substitute “Family Vanuapuru” as lessor in place of “Salerua”.
8. In 2007 Family Vanuapuru filed proceedings in the Supreme Court seeking to challenge the decision of SSILT made in 2005. The Court held that the claim was ineffective because it had not been served within the time required by the rules of Court, and that it had not been renewed.
9. The First Defendant relying on that “ fall-back” situation sought further rectification of the register so that in February 2015 the Director rectified substituted the name of the First Defendant in place of the Vanuapuru Family.

The Challenge

10. The Claimant challenges the First Defendant’s lease under section 100 of the Land Leases Act [Cap 163] on the grounds that the registration was obtained or made through fraud or mistake.



Discussions

11. Section 100 of the Land Leases Act provides for rectification by the Court. It states-

“(1) Subject to subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is empowered by this Act or where it is satisfied that any registration has been obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the interest for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act neglect or default.” (emphasis added).

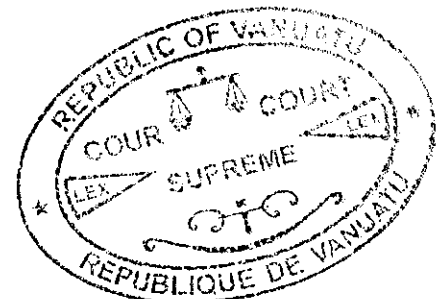
12. The Claimant relied on his evidence by sworn statements filed on 18th September 2012 and on 3rd February 2014 and the sworn statement of Chief Timothy Vuti filed on 18th September 2012.

13. The duty to prove omission, fraud or mistake rests on the Claimant and the standard is a higher one on the balance of probabilities. See **Albert Solomon v. Turquoise Ltd & Others** [2007] VUCA 9 and **Wass v. Tari and Others** [2009] VUSC 12, **CC 16 of 2007**.

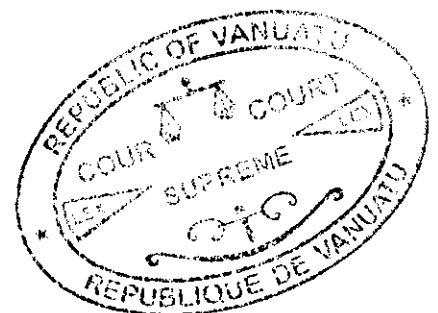
14. In this case the Claimant must satisfy the Court that the Leasehold Title 04/2931/001 was obtained, made or omitted by fraud or mistake. Further the Claimant must satisfy the Court that the Second Defendant as proprietor of the title (a) had knowledge of the omission, fraud or mistake and (b) that the proprietor substantially contributed to the registration of title by his act, neglect or default.

15. I have read and considered the evidence relied on by the Claimant in support of his challenge to the Second Defendant’s leasehold title with the first defendant registered as lessor **and I am not satisfied that-**

- a) There was any omission or acts of fraud or mistake made by the second and third Defendants.
- b) There was any false representation made by the first or second defendants to the third defendant, or that any such representation made was made with intent to deceive.
- c) The second defendant as proprietor had any knowledge of any false representation or mistake, and
- d) The proprietor substantially contributed to any such omission, fraud or mistake by his act neglect or default.



16. Accordingly this claim must fail under section 100 of the Land Leases Act.
17. This claim is misconceived. Further the Claimant has no standing to challenge the validity of the Second Defendant's lease on the basis of the 2005 Tribunal decision. He was not a party to that proceeding in 2005. The evidence of Pokilau Salerua filed on 26th March 2014 annexes as "PS10" the record of proceedings on 9th May 2005 which show that there were three parties disputing ownership of Vunabaura Land but the Claimant was not one of them.
18. The Claimant relies on the decision of the VLT dated 4th April 2008 but that decision is in relation to Naone Land over which Melenaraue Family was declared custom owner. There is overwhelming evidence by the defendant's witnesses that (a) the Claimant used the same plan used by the first defendant to mislead the Court at the time, (b) that Naone Land is situated along the coast and that Vunabaura Land is situated inland (c) the Digicel Tower is situated on Vunabaura Land not on Naone Land, and (d) that the Claimant forced the members of the VLT to sign the second decision against their will and which is not true. The defendant relied on the sworn statements of Ps Lulu Vula (7/2/13) John Selmen Varinatakasi (7/2/13), Chief Tama Tamata (3/4/14) and Chief Jean Baptisted Andikar (26/3/14). These witnesses evidence bear more weight and credibility than the sworn statement of Chief Timothy Vuti who makes reference to a Map at paragraph 7 of his statement. However he had not identified where the Digicel Tower is built on that map. His evidence there lacks credit and is disallowed.
19. The decision of VLT dated 4th April 2008 declared Vanuapuru Family also as the declared custom owner of Vunabaura Land which witnesses depose that Digicel Tower of the Second Defendant is built on. However it is interesting to note that (a) the Vanuapuru Family are not challenging the validity of the Second Defendant's lease with the First Defendant, (b) the lease was registered in 2007 and it was not subject to any challenge then and (c) the Digicel Tower stands on Vunabaura Land.
20. The Claimant's submission in paragraph 11 states that the Claimant is not disputing the decision that Vunabaura Land belongs to the First Defendant but that he is claiming only that the communications tower is built on Naone Land. That being the position, there is clearly no basis for instituting the proceeding under section 100 of the Land Leases Act. But more so, the Claimant's submission is contradictory to his pleading in paragraph 8(1) to his Further Amended Claim. Those inconsistencies indicate the Claimant is simply misleading the Court.



21. Further the Claimant pleads at paragraph 5 (iii) of his Claims that the Tower is built on Naone Land. However the Claimant has not produced any evidence of any maps showing-
- a) The actual location of the Tower. He could not simply rely on the Map used in the dispute proceedings as that map:-
 - i. Is disputed as not his originally,
 - ii. Relates to the location and boundaries of Vunabaura Land and Naone Lands, it did not concern the Communications Tower. In other words the Tower was not the subject matter of the dispute before the VLT in 2008, but it is in this proceeding.
 - b) That he or the Melenarave Family negotiated with the Second Defendant for the Tower to be built on Naone Land.
22. Clearly the Claimant has failed to discharge the onus placed on him to prove his claims to the required standard. Therefore the only conclusion the Court reaches is that the claims of the Claimant fail and accordingly they are dismissed in their entirety.
23. The Claimant's submissions are bare and have legal no backing and no case authorities. On the other hand the First and Second Defendant's submissions have great weight and are supported by case authorities and legal provisions. The Court accepts all the submissions made on behalf of the First and Third Defendants.
24. Accordingly the First and Third Defendants are entitled to their costs of and incidental to this proceeding on the standard basis as agreed or be determined by the Court. These include all previous cost awarded on 4th September 2014 which must be paid separately.

DATED at Port Vila this 27th day of November 2014
BY THE COURT


OLIVER A. SAKSAK
Judge

