

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

Civil Case No. 187 of 2013

BETWEEN : HENRY VUTINAMOLI
Claimant

AND: DAVID BULELINGMOL
First Defendant

AND: RAYMOND BULELINGMOL
Second Defendant

Coram: Justice Aru

Counsel: Mr. J. Stephen for the Claimant
First Defendant (no-appearance)
Mr. B. Livo for the Second Defendant (no-appearance)

JUDGMENT

Introduction

1. This is an application by the claimant Hendry Vutinamoli for the Court to issue Summary Judgment on his claim against the first defendant David Bulelingmol.

Background

2. The claimant is the registered proprietor of lease title 11/0F31/021 (the 021 Lease) located at Fres Wota 1. He purchased the 021 Lease from the second defendant who upon receiving the full purchase price transferred the property to the claimant and vacated the property. The first defendant is the second defendant's son who was living



with his father on the property. He refuses to accept the sale and transfer of the 021 Lease and continues to reside on the property despite having received a notice to vacate and the fact that his father has purchased another property for them at Beverly Hills and has moved out of the 021 Lease property. Given the first defendant's refusal to vacate the property, the claimant then had no option but to seek remedy from the courts. He filed his claim on 6 February 2014 and served it on the defendants. The first defendant then responded by filing a defence and counterclaim on 8 April 2014.

Pleadings

3. The claim seeks the following relief:-

1. Damages for illegal occupation of land and consumption of water and electricity at the expense of the claimant in the sum of VT 250,000;
2. Cost of the proceedings;
3. An eviction order removing the first defendant and his belongings from the premises of lease title 11/0F31/021;

In the alternative, the court orders:-

4. The eviction of the first defendant at the expense of the second defendant for not disclosing any agreement (if any) between them as to the rights of the first defendant to remain on the property;
5. Such further orders as the court deems fit.

4. The claim as pleaded at paragraph 1 to 14 is as follows:-



- "1. The Claimant is 38 years old from Malo Island, is married with two kids, age 3 and 6 and has been in continuous employment with the Vanuatu Financial Service Commission since October 2009.*
- 2. The First Defendant is from Pentecost and is in occupation of the Claimant's Land and property situated at Fresh Wota 1.*
- 3. The Second Defendant is the First Defendant's father and is the proprietor and transferor of land lease title 11/OF31/021 prior to it being transferred to the Claimant.*
- 4. On or about September 2012 the Claimant went to Fres Wota 1 to enquire about a land that was up for sale in the area when he met the Second Defendant.*
- 5. The Second Defendant was a that time, looking after property that was put up for sale.*
- 6. The Second Defendant then made an offer to the Claimant that he is willing to sell his own land and property situated in the same area at Fresh Wota 1 for a much cheaper price.*
- 7. Upon inspection, the Claimant agreed to purchase the Land from the Second Defendant and the Second Defendant agreed to transfer the land lease title in consideration of VT4, 967, 560.*
- 8. The Second Defendant informed the Claimant that he is the legal proprietor of the lease title and that the First Defendant has no right whatsoever and that there is no agreement with the First Defendant for him to stay in the proprietor..*
- 9. On or around 29 October 2012 a Deed of Release was entered between the Claimant and the Second Defendant to effect transfer of Land Lease Title 11/OF31/021 form the Second Defendant to the Claimant.*
- 10. Upon the signing of the Deed with the Claimant a cheque of VT4, 967, 560 was made out to and received by the Second Defendant in consideration of the transfer.*
- 11. The Second Defendant has since vacated the property and has bought and build a new home at Beverly Hills Estate.*



12. *On or around 13 November 2012 Land Lease Title 11/OF31/021 was transferred and registered with the Lands Department in the name of Raymond Boulelingmol being the Transferor and Henry Vutinamoli being the Transferee.*
13. *Despite the land lease title having been transferred, the First Defendant continues to be in occupation of the property and not moved out with the Second Defendant to the purchased property at Beverly Hills Estate.*
14. *On 8 November the Claimant gave the First and Second Defendants 2 weeks' notice to vacate the property, but to which the First Defendant has failed to comply.*

..."

5. The first defendant in his defence to the claim pleads at paragraph 2 of the defence as follows:-

"....

2. *The First Defendant admits Paragraph 2 of the claim and adds that he is with family in permanent, continuous and lawful occupation of the land of the Lease 11/OF31/021 and that his rights to occupy that land are overriding interests protected by Section 17 (g) of the Land Leases Act [CAP 163].*

...."

6. The first defendant also filed a counterclaim with his defence but this was struck out on 3 June 2015 pursuant to a strike out application made by the claimant.
7. The Application for Summary Judgment was filed with a sworn statement of the claimant in support on 10 June 2015. The claimant also relies on his sworn statements filed on 15 November 2013 and two others filed on 6 February 2014.



Law

8. Rule 9.6 of the Civil Procedure Rules provides for Applications for Summary Judgment and sub rules 1) , 2) and 7) state as follows:-

"9.6 Summary judgment

(1) *This rule applies where the defendant has filed a defence but the claimant believes that the defendant does not have any real prospect of defending the claimant's claim.*

(2) *The claimant may apply to the court for a summary judgment.*

.....

.....

(7) *If the court is satisfied that:*

(a) *the defendant has no real prospect of defending the claimant's claim or part of the claim; and*

(b) *there is no need for a trial of the claim or that part of the claim, the court may:*

(c) *give judgment for the claimant for the claim or part of the claim; and*

(d) *make any other orders the court thinks appropriate.*

9. Section 17 g) of the Land Leases Act [CAP 163] provides:-

"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 –

.....

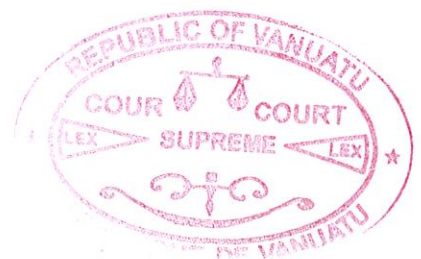
.....



*(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; and
....."*

Discussion

10. The first defendant at paragraph 2 of his defence admits that he is from Pentecost and is in occupation of the claimant's land and property at Fres Wota, but pleads that he is in lawful occupation of the 021 Lease and that his rights are overriding interests protected by section 17 (g) of the Land Leases Act.
11. The claimant submits that the first defendant has no overriding interests protected by section 17 (g). He submits that he enquired with the second defendant who informed him (the claimant) that the first defendant has no right to remain on the property. Secondly, the claimant submits that the first defendant does not have an interest as defined in the Land Leases Act other than being an occupier of land. The claimant submits that the fact that he made an enquiry which disclosed a lack of genuine interest by the first defendant to remain on the land defeats the first defendant's reliance that his rights are protected under section 17 (g).
12. The Claimant's evidence as deposed in his sworn statement filed in support of the Application is that that on or around September 2012, he spoke to the second defendant concerning the sale of the property comprised in the 021 Lease. During that time he also met the first defendant's wife who enquired about his presence on the property. The claimant informed her that he intended to buy the property as it was put for sale.
13. Later around September or October 2012, the claimant met the first defendant on the property who told him (the claimant) that he (the claimant) must not buy the property as the second defendant did not know what he was doing. The Claimant then did a due



diligence check on the 021 Lease title and discovered that the 021 Lease was registered in the name of the second defendant alone as proprietor. The claimant then informed the second defendant about his discussions with the first defendant and his wife but the second defendant told him that he (the second defendant) was the registered proprietor and as such he can deal with the lease in the manner he chooses. The second defendant also told him (the claimant) that the first defendant will move out with him to Beverly Hills once the property is sold and transferred.

14. In his sworn statement filed on 6 February 2014, the claimant deposes that a deed of release for the sale of the property was signed by the parties on 29 October 2012 and a cheque payment in the sum VT4, 967, 560 was issued to the second defendant on the same day (Annexure 'HV1'). The Minister of Lands gave consent to the transfer on 26 October 2012 (Annexure 'HV3') and the transfer of the 021 Lease to the claimant was registered on 13 November 2012 (Annexure 'HV4'). On 8 November 2012 a notice was issued to the defendants to vacate the property (Annexure 'HV2').
15. The second defendant filed a sworn statement on 28 January 2014 and his evidence supports the claimant's submissions that the first defendant has no interest in the 021 Lease property. The second defendant deposes that there was no agreement with his son (the first defendant) whether oral or written to transfer the property to him. He says that the first defendant knew that the property was for sale and he (the first defendant) was previously informed to move out. The second defendant further deposes that he gave the first defendant VT300, 000 witnessed by the chiefs and told him (the first defendant) to help built their new home at Beverly Hills.
16. The first defendant has not demonstrated any lawful right to occupy the property and there is no evidence to suggest that the registration of the 021 lease by Mr. Vutinamoli was obtained by fraud or mistake. The first defendant's continued occupation of the 021



Lease is unlawful and amounts to trespass as the claimant has an indefeasible title under section 14 and 15 of the Land Leases Act.

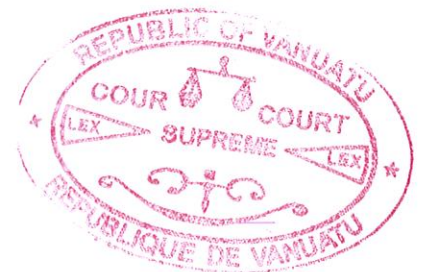
17. On the issue of damages the claimant pleads that he has suffered damages as a result of the first defendant's occupation of the property and use of water and electricity at his expense and seeks damages in the sum of VT250, 000. No evidence of the expenses incurred is provided to support this allegation.

18. Having heard the claimant on his submissions I am satisfied that the first defendant does not have any real prospects of defending the claim and there is no need for a trial of the claim.

19. I therefore make the following orders:-

ORDERS

- 1). The Application for Summary Judgment is granted.
- 2). An eviction order is issued against the first defendant and his family to vacate the 021 Lease property immediately.
- 3). Order (2) above is stayed for a month from today to allow the first defendant time to vacate the property.
- 4). Liberty to the claimant to apply.
- 5). The claim for damages is dismissed.



6). The claimant is entitled to costs to be paid by the first defendant as agreed or to be taxed.

DATED at Port Vila this 8 day of July 2015

BY THE COURT



.....
D. ARU
Judge.

