

**BETWEEN: SEL JOHNNY, TOM SAUTE, JOEL SEL, IOLU
TONG, JOE IAUTIM, TOM NALAUAS,
ARMSTRONG NIMISA, PETER NAMAK
representing 400 natives of the MANIK TRIBE
Claimants**

**AND: IAUILU POLO, NAKOU ERNEST & NAKOU
IAUREL SAKARMI
First Defendants**

**AND: IAUILU POLO, NAKOU ERNEST & NAKOU
IAUREL SAKARMI
Second Defendants**

**AND: REPUBLIC OF VANUATU
Third Defendant**

Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Daniel Yawha for the Claimants*
Justin Ngwele and Gregory Takau for First and Second Defendants
Sammy Aron for Third Defendant.

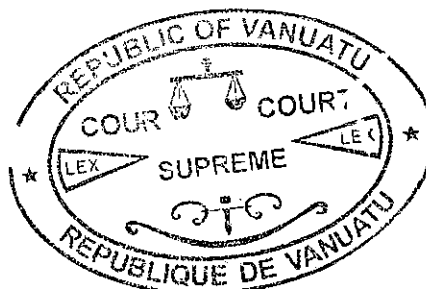
Date of Hearing : *30th March 2016 and 14 June 2014*

Date of Judgment: *18th October 2016*

JUDGMENT

Introduction

1. This is a claim filed by the Claimants pursuant to Section 100 of the Land Leases Act [CAP.163] (the Act).
2. The Claimants claim that the alteration of Leasehold title 14/2231/001 (Lease 001) into a new Leasehold title 14/2231/014 (Lease 014) by the defendants amounted to fraud and/or mistake.



3. The Claimants seek orders that-
- a) Lease 014 be cancelled for mistake or fraud, or
 - b) In the alternative, a declaration that the defendant's proper lease is Lease 001 and not Lease 014,
 - c) Costs, and
 - d) Any other orders deemed just.

Facts

4. The facts can be understood from the following chronology of event helpfully set out in the Claimant's submissions-
- 20 May 2008 The First and Second Defendants carried out survey plans in Manik Custom land for the purpose of Lease 001 for a specific area of 2 hectares

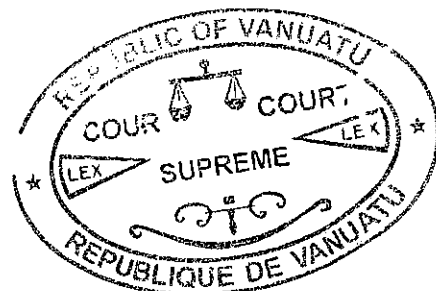
 - August 2011 The First Defendant applied to the Land Management Planning Committee for a Negotiator Certificate.

 - 13th September 2011 The then Minister of Lands granted a Negotiator Certificate specifically for an area of 2 hectares.

 - 8th December 2011 The Third Defendant registered Lease 001. On the same date the figure "001" was crossed out and replaced with the figure "014" and registered accordingly.

 - 12th December 2012 The First Defendants carried out a survey plan in Manik custom land for the purpose of Lease 014 for 72 hectares, a year after Lease 014 had been signed on 3rd October 2011 and registered on 8th December 2011.

These facts do not appear to me to be in dispute.

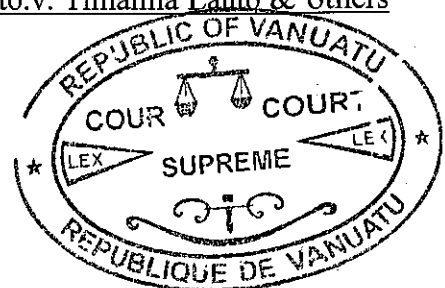


The Issues

5. The issues as raised by the Claimants are-
 - a) Whether the Director of Lands, Survey and Registry wrongly invoked his power under section 99 of the Act to alter Lease 001 for 2 hectares in favour of the First and Second Defendants by substituting the figure “ 014”?
 - b) Whether the wrongful actions of the Director in doing so constituted fraud and/or mistake?

Discussions

6. From the facts deduced from the evidence, it is apparent there were 2 separate leases. Lease 001 covering a specific area of 2 hectares and Lease 014 which covers a larger area of 72 hectares.
7. The First and Second Defendants properly applied for a negotiator certificate which was properly granted by the Third Defendant.
8. Evidence also shows that on 8th December 2011 when Lease 001 was presented for registration, the figure “001” was crossed out and substituted with “014” and registered on the same date. However the new survey plan was now for an area of 72 hectares.
9. Was there a mistake made? The answer in my view is “ yes’ . It was a substantive mistake. The size of the land being 72 hectares was such that it should have given rise to suspicion and questions. It should have given rise to the need to advise the First and Second Defendants to apply for a new certificate of registered negotiator. Section 6(1) of the Land Reform Act Cap 123 requires an application to the Minster. Subsection (3) provides that the Minster may refuse to approve any agreements where negotiations are made without a certificate of registered negotiator. The First and Second Defendants rely on the case of Bernard Itai Lauto.v. Timaima Lauto & others CC 152 of 2012.



10. In my view this case does not assist the First and Second Defendants and even the Third Defendant.

11. Mr Peter Pata, the only witness of the Third Defendant made clear admissions of mistake at paragraphs 12 and 13 of his sworn statement dated 5th November 2014 tendered as Exhibit TD1. That is sufficient for the Court to find in favour of the Claimants.

12. Both issues are therefore answered in the affirmative.

13. Judgment is therefore entered in favour of the Claimants.

14. The Claimants are entitled to the first relief sought. The second relief sought is declined.

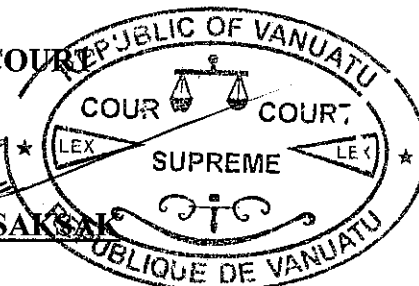
15. The orders of the Court are-

a) The Director of Lands, Survey and Registry is hereby Ordered to cancel the registration of Lease Title No. 14/2231/014 forthwith.

b) The Claimants be entitled to their costs of and incidental to this action on the standard basis as agreed or be taxed by the Master.

DATED at Port Vila this 18th day of October, 2016

BY THE COURT



OLIVER.A.SAKSAK

Judge