

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

Judicial Review Case No.20 of 2014

BETWEEN: PATRICE DELAVEAU AND RENE DELAVEAU
Claimants

AND: ATTORNEY GENERAL
First Defendant

AND: MENZIES SAMUEL
Second Defendant

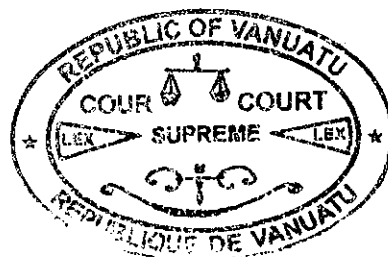
AND: JEAN MARC PIERRE
Third Defendant

Hearing: 2 July 2015 (further conferences on 25 November 2015 and 27 January 2016)
Date of Judgment: 8 February 2016
Before: Justice Stephen Harrop
Appearances: Silas Hakwa for the Claimants
Jennifer Warren (SLO) for the Defendants (subsequent appearances by Sakiusa Kalsakau)

RESERVED JUDGMENT OF JUSTICE SM HARROP

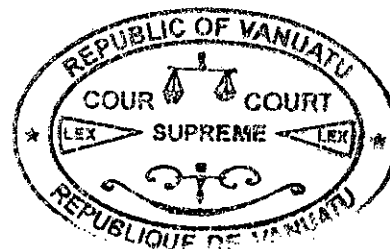
Background

1. On 28 March 2007, the then Minister of Lands, Maxime Korman Carlot, granted a lease to the claimants which was registered on 26 April 2007. The lease title number was 04/2942/001. The land comprising the lease was previously part of a larger area of alienated land which the claimant's grandfather and father had occupied and farmed for over 100 years before Vanuatu obtained Independence. The land is in South Santo and is commonly described as Artacha.
2. Artacha land has been the subject of various claims for custom ownership one of which was by the Family Vomule Garae. Their claim before the Santo/Malo Joint Area Land Tribunal was successful but an unsuccessful claimant, Family Salathiel Stephen Dule appealed against the entire judgment to the Santo/Malo Island Land Tribunal. The claimants allege that this



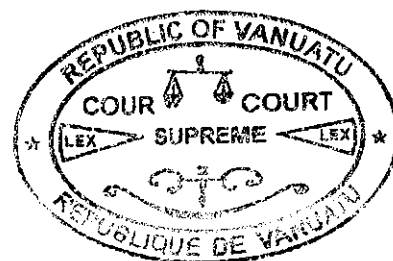
appeal was not heard despite which on 23 April 2010 that tribunal purported to make a judgment dismissing the appeal. Family Salathiel Stephen Dule then filed an application in Civil Case No. 37 of 2010 in the Supreme Court seeking an extension of time to allow a claim for judicial review of the Santo/Malo Island Land Tribunal judgment. On 17 December 2010 the Supreme Court declined this extension. However, prior to that decision and while the application was still on foot the third defendant, the Director of Lands, purported to rectify the register by substituting Family Vomule Garae as lessor in place of the Minister of Lands. The claimants were given no notice of this.

3. On 26 May 2011, Family Salathiel Stephen Dule, through the nominated claimant Bill Stephen, filed a Supreme Court claim under section 39 of the Customary Land Tribunal Act which was given reference number 107 of 2011. Family Vomule Garae was the 8th Defendant in that proceeding.
4. Members of the Family Vomule Garae went into occupation of the land and the claimants decided to withhold the payment of the annual rent for the lease to members of that family or anyone else while they sought clarification of their rights. In their view there was no justification for them to pay rent to Family Vomule Garae or anyone else.
5. On 8 April 2014, the Second Defendant, the Valuer-General, forfeited the claimant's lease for non-payment of the rent.
6. Self-evidently, the decisions of the Director of Lands on 28 June 2010 and of the Valuer-General on 8 April 2014 were predicated on the validity of the judgment of the Santo/Malo Island Land Tribunal.
7. After this proceeding was issued on 19 August 2014, Justice Fatiaki gave judgment in Civil Case 107 of 2011. The effect of that judgment, which has not been appealed, was to quash the decisions of both the Santo/Malo Joint Area Land Tribunal and the Santo/Malo Island Land Tribunal.
8. In the present proceeding, the claimants seek a declaration that the rectification of the register by the third defendant on 28 June 2010 was of no effect, invalid, void ab initio and/or



amounts to a nullity. A further order is sought quashing the determination of the second defendant on 8 April 2014 forfeiting the claimant's lease.

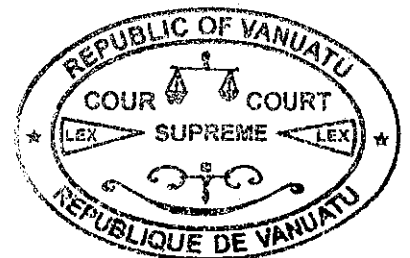
9. At a conference held on 2 July 2015 the parties agreed that this claim for judicial review must succeed because Justice Fatiaki's judgment in Civil Case No. 107 of 2011 had removed the essential foundation of both the decision of the Director of Lands of 28 June 2010 and that of the Valuer-General of 8 April 2014. Those decisions had each been predicated on the validity of the Santo/Malo Island Land Tribunal decision which had declared that Family Vomule Garae was the legitimate custom owner of the Artacha land. It was agreed as between the parties to this case that I would issue a judgment by consent granting the application for judicial review and quashing the two decisions under challenge. It was further agreed that costs would lie where they had fallen because the claimants accepted that the Director and Valuer-General had acted in good faith and were at the time of their decisions simply giving effect to the Santo/Malo Island Land Tribunal decision.
10. Subsequently it seemed to me as a matter of natural justice necessary to ensure that Family Vomule Garae have an opportunity to be heard since that Family would obviously be directly affected by the quashing of the two decisions. Arguably they should have been served with the proceedings at the outset pursuant to rule 17.6 (2) (a) but this had not occurred.
11. In addition it occurred to me that it was possible that following the determination of the Valuer-General on 8 April 2014 the Family Vomule Garae may have issued a new lease and if so the new lessees might be innocent purchasers for value without notice of any of the preceding issues. I was therefore concerned that enquiry should be made as to whether any such new lease had been issued. Indeed it appeared from Justice Fatiaki's judgment itself that there had been a lease registered on 4 June 2014 between Family Vomule Garae and Milai (Vanuatu) Ltd. His Lordship had on 16 September 2014 issued an injunctive order against all defendants including Milai (Vanuatu) Ltd prohibiting any dealings with that lease pending determination of the issues in Civil Case No. 107 of 2011. I therefore considered that Milai (Vanuatu) Ltd should also have an opportunity to be heard in this case despite its position being already frozen by the injunctive order.



12. On 27 August 2015 Mr Hakwa filed an application for Vomule Garae to be appointed as duly authorized representative of Family Vomule Garae and that she be joined in that capacity as a party to the proceeding. I granted that application on 25 November 2015. Mrs Garae had already been served with the relevant preceding documents in this proceeding but I directed that she also be served with a copy of my Minute of 25 November 2015 in which I recorded that if she or anyone in the family she had been appointed to represent wished to take any step to oppose what was sought by the claimants she had to act urgently and in any event had to file and serve a statement of defence and any sworn statement she wished to file in response to those of the claimants, no later than 18 December 2015. I further noted that there would be a conference on Wednesday 27 January 2016 at 10:30 am for final orders to be made subject to any steps taken by her in the meantime.
13. Mrs Garae was served with that Minute on 4 December 2015 but she took no steps by 18 December or otherwise prior to the conference on 27 January. Nor did she appear or arrange for representation at that conference.
14. In relation to Milai (Vanuatu) Ltd, Mr Hakwa made enquiries of representatives of that company. On 7 August 2015 he received a letter by email from Adrian Sinclair a partner of Barrett and Partners in which he confirmed that Milai (Vanuatu) Ltd had no interest in lease title 04/2942/001.
15. As a further precaution to ensure that there were no other potentially affected parties I also directed that the State Law Office file a sworn statement from the Acting Director of Department of Lands, Jean-Marc Pierre confirming that there was (apart from the Milai (Vanuatu) Ltd one) no other lease registered against the relevant title before 16 September 2014. He has subsequently confirmed this by sworn statement.

Consequential Orders against all of the above background

16. By consent of the original parties and without opposition from Family Vomule Garae and Milai (Vanuatu) Limited, I therefore make orders quashing the rectification of the register for lease title number 04/2942/001 made by the Director of Lands on 28 June 2010 and the determination of the Valuer-General forfeiting the claimants' lease made on 8 April

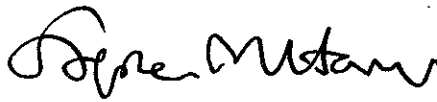


2014. The effect will be to return the lease register to the position it was in between 26 April 2007 and 28 June 2010.

17. Costs will lie where they have fallen.

18. I invite Mr Hakwa to file draft orders for my consideration and, if in order, for signing by me.

BY THE COURT



SM Harrop
JUDGE

