IN THE SUPREME COURT   Constitutional
OF THE REPUBLIC OF VANUATU   Case No. 17/3488 SC/CNST
(Other Jurisdiction)

BETWEEN: TIMOTHY WASS

<u>Claimant</u>

AND: THE STATE OF THE REPUBLIC OF VANUATU

<u>Defendant</u>

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Date:	*24th day of August, 2018 at 2:00 PM*
Before:	*Chief Justice Lunabek*
In Attendance:	*Mr. Saling Stephens for the Applicant*
	Mr. Tom Loughman for the Respondent

JUDGMENT

Decision:

(i) Constitutional Application is struck out.

(ii) No cause of action shown.

(iii) Costs of 20,000VT to be paid by the Applicant to the Respondent within 21 days i.e. by 13th September 2018.

Background and Reasons:

1. Applicant seeks an order to enforce his fundamental right breach as per Article 5(1) (d) (j) and (k) of the Constitution against the Respondent (Republic of Vanuatu). This Constitutional Application is filed on 10 August 2010. The Application is based on alleged interest the Applicant (Timothy Wass) is said to have on leasehold title no.03/103/077 or on Rose Mala's will.

2. Leasehold title 03/K103/077 was granted to one Rose Mala for residential purposes by the Luganville Urban Land Corporation for 50 years commencing on 30 July 1980. Rose Mala appeared to transfer the lease to François Tari for VT300,000 on 7 October 1995. The transfer was duly registered by the Director of Lands Records.

3. The said lease was subsequently transferred in 18 March 2002 by François Tari to Gideon Charley for VT300,000. That second transfer was also duly registered. The lease was further transferred on 22nd June 2004 by Gideon Charlie to John Knox for VT100, 000. That third transfer of the lease was also duly registered.
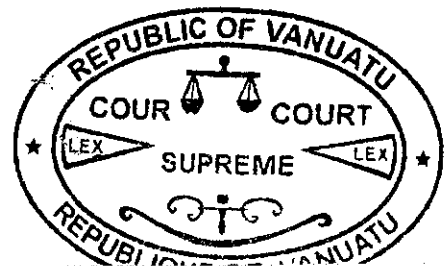
4. On 11 March 2004 Rose Mala made a will. She appointed a solicitor as the sole executor. She bequeathed the lease and improvements to Timothy Wass absolutely. If she had any other assets, she did not dispose of them by the will. The will was signed by Rose Mala. The nominated executor did not apply for probate of Rose Mala's Will. On 2 October 2007, Letters of Administration with the will annexed was granted to Timothy Wass. That order identified the estate of Rose Mala to which it referred as being only the lease.

5. Applicant, Timothy Wass, brought proceedings in the Supreme Court claiming the first transfer of the lease title 03/103/077 to François Tari was made by fraud. Timothy Wass was also claiming that the Second and Third transfers of the same leasehold title to Gideon Charley and John Knox respectively were made by fraud. The Supreme Court Judge found and ruled substantively against Timothy Wass. The Court of Appeal confirmed substantively the decision of the Supreme Court (Wass –v- Tari [2009] VUCA 41; Civil Appeal Case No.14 of 2009 (30 October 2009)).

6. On 11 April 2011, by consent of the parties, the Court issued orders staying the proceedings in Constitutional case No.01 of 2010 pending full payment of the costs ordered by the Court of Appeal against the Appeal in CAC No.14 of 2009 (orders made on 30 October 2009).

7. The Applicant (Claimant) paid costs as ordered against him with a receipt of payment by the State Law Office on 12 August 2016.

8. The Applicant applied for his Constitutional Application Case 01 of 2010 to be heard.

9. A Constitutional first conference hearing was conducted on 24 August 2018 pursuant to Rules 2.8 of the Constitutional Procedure Rules.

10. The Applicant (Timothy Wass) through his lawyer could not identify any constitutional rights that he has as per the lease or will that is giving him a fundamental right which is beached by the actions of the Respondent as alleged in this constitutional application.

11. In the circumstances of this case, Rose Mala, by her will, gave Timothy Wass all her interest in the lease. In fact, Timothy Wass did not benefit under the will. John Knox, by then, was the registered owner of the lease. This constitutional application is a misapprehension of the constitutional rights claim. These are the reasons for judgment.

DATED at Port Vila this 24th day of August, 2018

BY THE COURT

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Vincent Lunabek

Chief Justice