

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

Civil
Case No. 15/107 SC/CIVL

BETWEEN: **JOSEPH JOEL**
 Claimant

AND: **DIRECTOR OF LANDS**
 Second Counterclaimants

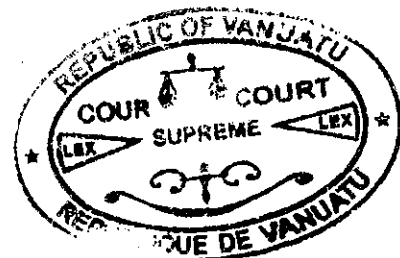
AND: **REPUBLIC OF VANUATU**
 Third Counterclaimants

AND: **STEPHEN JOEL BUSAI and FAMILY**
 KAOTEA JOEL BUSAI and FAMILY
 IAOKO JOEL BUSAI and FAMILY
 BUBU JOEL BUSAI and FAMILY
 NABINA JOB and FAMILY
 MENA and FAMILY
 Defendants

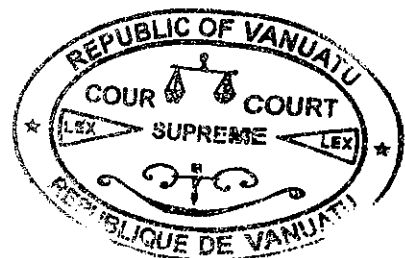
Date of Hearing: *Monday 2nd day of October and Tuesday 28th of November, 2017*
Date of Judgment: *Monday, 19th March 2018*
Before: *James Paul Geoghegan*
Distribution: *Collin Leo for the Claimant Joseph Joel*
 John L. Napuati for the Defendants
 Ms. Bani for Second and Third Counterclaimants

JUDGMENT

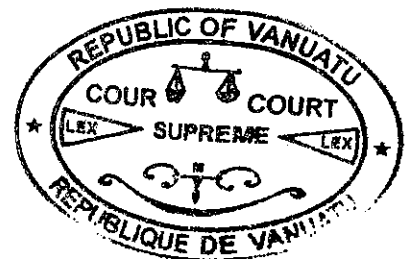
1. These proceedings involve a family dispute regarding land on Efate and being leasehold Title 11/OX21/068 ("*title 068*"). Until August 28th, 2013 the lessees of the title had been the claimant Joseph Joel and Joel Busai, who was the biological father of the defendant Stephen Joel Busai and the step-father of the claimant.
2. Joseph Joel and Joel Busai held the title 068 as joint proprietors. Upon Mr. Busai's death on July 31st 2013, Joseph Joel registered a transmission of the lease which had the effect of recording him as the sole registered lessee. That transmission of lease was registered on August 28th, 2013.



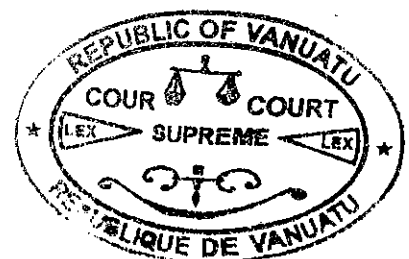
3. On August 12th, 2015 Joseph Joel issued a statement of claim in which he alleged that the defendants were residing on the property and that the claimant had, since 2010, been attempting to remove them from the property but that they refused to leave. The claimant's statement of claim sought the following relief:
- (a) An order requiring "*the defendants together with their families, agents, servants and associates or otherwise howsoever, deliver up vacant possession of the claimant's property*".
 - (b) Damages to be assessed;
 - (c) Interest and costs;
 - (d) Such further orders as the Court deems fit.
4. The defendants filed a defence to the claim. In that statement of defence they alleged that the defendant Stephen Joel Busai had applied for administration of the late Joel Busai's estate and had been granted Letters of Administration in respect of the estate. There is no dispute that Mr Busai was appointed administrator of the late Joel Busai's estate by order of the Supreme Court dated June 26th 2014.
5. The defendants alleged that the claimant had unlawfully transferred the lease property to his sole name without a Court order, a will or a Court order as required under the application for registration of transmission in Section 83 of the Land Leases Act.
6. The defendants also alleged that:
- (a) The claimant fraudulently transferred the title to his own name "*when the deceased may have been still alive*";
 - (b) The claimant was not the son of the deceased Joel Busai;
 - (c) The defendants had contributed to the purchase of the lease through their deceased father;



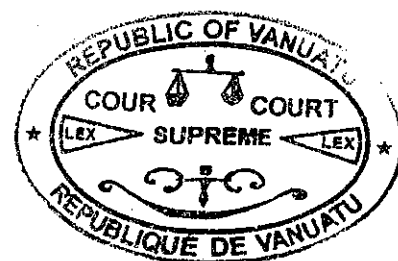
- (d) That the defendants have lived on the land with their late father before the lease was registered until the claimant "*came from Noumea to live with them as their relative*".
7. In a subsequent amended statement of defence and counterclaim the defendants repeated the allegations referred to and also alleged that the late Mr. Joel Busai had indicated before his death that his property would be passed on to his sons and that "*Stephen Joel has been constantly arguing with his father to have the property transfer to their names or his name as the first born son*".
8. By way of counterclaim the defendants alleged that when Joel Busai died the claimant, the Director of Lands and the State unlawfully, either by fraud or mistake, transferred the lease title to the claimant's name. In support of that assertion the defendants alleged that:
- (a) The application for transmission form referred to Section 83 of the Land Leases Act and not Section 92;
- (b) Paragraph 3 of the form was not satisfied by the claimant but was mistakenly and/or fraudulently signed off and registered by the Director of Lands;
- (c) That the claimant was not the sole proprietor of the lease property nor the personal representative of the deceased;
- (d) That the Director of Lands and therefore the State knew or ought to have known of the non-compliance of the transmission form it had registered. This is really a repeat of the allegation that there had been a mistake and/or fraud in the signing of the registration of the transmission document by the Director of Lands.



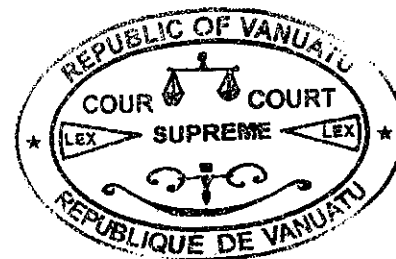
9. By way of relief the defendants sought orders that:
- (a) The registration of Joseph Joel as surviving sole proprietor be declared null and void and removed from the register;
 - (b) That Stephen Joel Busai (presumably as the eldest son of the late Joel Busai) be registered "*as one of the lessee of Lease Title No.11/OX21/068*".
10. The position of the State is straight forward. The State says that Section 75(2) of the Land Leases Act [CAP. 163] expressly deals with the property of a deceased person where the deceased is a joint proprietor over a registered interest. Upon the death of the deceased the surviving joint proprietor becomes the surviving owner of the entire interest. The State says that there is no question or dispute that the deceased Joel Busai and the claimant were registered as joint properties in respect of the lease, that Mr. Joel Busai died on July 31st, 2013 and that as a result, the claimant was entitled to register a transmission. The effect of that is that the title 068 did not form part of the property of the estate of the late Joel Busai.
11. Having heard the evidence there can be no doubt that on October 6th, 1995 title 068 was granted to the claimant and the late Joel Busai as lessees. The nature of the lease was an urban residential lease for 50 years. The lease was between the Minister of Natural Resources as lessor and the claimant and Joel Busai as lessees. The execution of the lease by the Minister was referred to as being in accordance with sections 8 and 9 of the Land Reform Regulations of 1980. The lease was expressed to be for a period of 50 years.
12. The issue of ownership of the lease appears to be an issue which has created considerable tension between family members. That may be partly explained by the fact that Joseph Joel is not the biological son of the late Joel Busai. The broad background of acquisition of the lease title and matters of family relationships were referred to in a sworn statement of the claimant dated July 19th, 2016. In that statement the claimant outlined the family's structure and the background to the acquisition of the lease.



13. The claimant's biological father was Maurice Pouillet who came from Tanna. He lived with the claimant's mother. It appears that when the claimant was relatively young his father wished to go to take the claimant and his mother to Noumea but was prevented from doing so by other family members. Mr. Pouillet went to Noumea while the claimant and his mother stayed in Vanuatu. At some stage thereafter the claimant's mother met the late Joel Busai and they were married. That marriage produced four boys and two girls who are the defendants in these proceedings. The claimant's evidence was that he came to Port Vila in 1960 and was cared for and was raised by his grandparents while his mother and her children to the late Mr. Busai lived on land on Nambatu, land which they moved on to in 2000. The claimant's mother died in September 2002.
14. The claimant's evidence was that in 1990 he and his wife Lessy Veronique came to live at Nambatri on land owned by a Mr. Robert Rodin. The claimant deposed that he rented the land from Mr. Rodin until 1993 when the government took the land. The reason for the government taking the land is not referred to. The claimant deposed that the government then subdivided that land in 1994 and told those who were living on the land that they must apply for a portion of the land if they wished to have an interest in it.
15. The evidence of the claimant was that at that time the late Joel Busai and his children to the claimant's mother lived in other land located on the site now occupied by Au Bon Marché Wholesale. He said that he told Families Manasse and Joel of the need to make an application for the land however they did not wish to do so. He gave evidence that the defendant Mena and her husband told him that they were going to return to Tanna.
16. The claimant deposed that he made three separate applications for the land, one for him, one for his wife and one for his son. The State then responded to his application and gave them the land referred to in his wife's application because at that time she was a civil servant. The significance of her status as a civil servant was not clarified in the evidence. Appropriate payments were made up until the time it came to sign the lease at which point it was the claimant's evidence that the late Joel Busai "went behind the backs" of the claimant and his wife and saw the Minister of Lands so that his name could also be placed on the title.

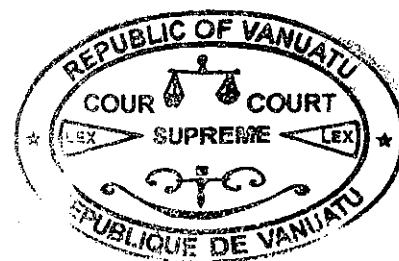


17. The claimant stated that on April 11th, 1995 when he came to sign the lease the late Joel Busai came with them and the Minister advised them that Mr. Busai would sign the lease as well. Joseph Joel deposed he was shocked by this as it was unexpected but despite this it is clear that he agreed or acquiesced to the late Mr Busai signing the lease.
18. Mr. Joel also deposed that he was aware over the years that the defendant Stephen Busai always argued with his father regarding the title 068 and clearly wished his father to hand the title over to him. He deposed that the late Joel Busai did not know which of his four boys should be provided with the title, an indication at least that Mr. Joel Busai may have intended his "*shares*" in the title to have gone to his sons.
19. The position regarding the land has created a very significant rift in the family. The claimant gave evidence that in 2008 Stephen Busai and Kaotea Busai assaulted Mr. Joel and his two sons inflicting a head injury on one son and dislocating another son's left shoulder. That resulted in all three injured parties pursuing proceedings against Stephen Joel Busai and Kaotea Busai resulting in a judgment in the Magistrate's Court on September 28th, 2008 requiring Stephen Joel Busai to pay a total of VT 600,000 by way of damages for assault and Kaotea Busai having to pay the sum of VT 400,000 for damages for assault. In addition Joseph Joel had also obtained a protection order against Stephen Joel Busai and Kaotea Busai on July 16th, 2010. There is no dispute that the orders referred to have been made.
20. Perhaps further complicating matters is the fact that on November 3rd, 2009 an agreement was reached between all of the parties in these proceedings regarding the land. The agreement included the late Mr Busai as a party. No reference to the background of that agreement was made in the sworn statement filed by the parties however the agreement itself was annexed to a sworn statement of the claimant dated September 2nd, 2015. I set out that agreement as follows:

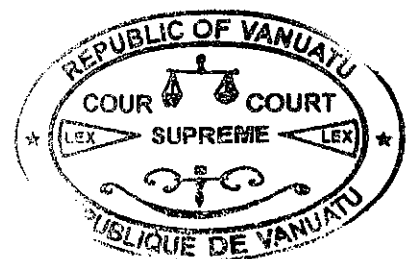


“Agreement made the 3rd day of November, 2009 between Joseph Joel Pouillet and Veronique Lessy and Joel Busai and Steven Busai, Kautia Busai, Bubu Busai, Iaoko Busai, Nicol Job and family members and Nelson Nase, Norah Nase, Mackline Nase and Joseph and family members and the Director of Land Records Department and the Director of Lands Department (the parties) the parties agree as follows:

- 1. This agreement has been reached as a result of mediation;*
- 2. The parties agreed that the property comprised in Lease Title No. 11/OX21/068 which is the subject of dispute should be valued by an independent valuer selected and approved by both parties;*
- 3. The costs of such valuation shall be shared on a 50/50 basis by Joseph Joel Pouillet and Veronique Lessy (the claimant) and Joel Busai and Stephen Busai, Stephen Busai, Bubu Busai, Iaoko Busai, Nicol Job and family and Nelson Nase, Norah Nase, Mackline Nase and Joseph and family members (the first, second and third defendants);*
- 4. All parties agree to abide by the result of such valuations;*
- 5. Following valuation, the following sum shall be paid by the first, second and third defendants to the claimants:*
 - A sum representing 100% of the value of the building on the land belonging to Joseph Joel Pouillet, and;*
 - A sum representing 60% of the unimproved value of the land;*
- 6. In consideration of the above, the claimants agree to surrender the lease title No. 11/OX21/068;*
- 7. Such costs in relation to the said surrender being stamp duty and registration of these being payable by the transferee being the first, second and third defendants;*
- 8. The claimants agree that payment of the sums described above represents settlement of all claims against the defendants in this matter”.*

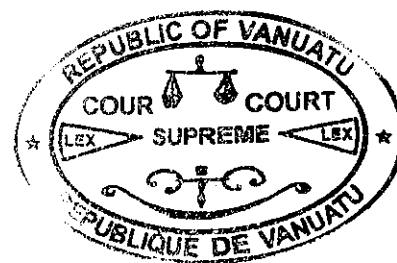


21. The agreement was executed by all parties.
22. The reference in paragraph [7] of the agreement to first, second and third defendants would indicate that other proceedings had been issued however there was no reference to that in any of the evidence in this trial. More importantly however it seemed that there was a conclusive agreement reached between the parties which, for some reason, the parties have chosen not to adhere to. The fact that they have not is a very poor reflection on all of them. The fact that the Court has not received further evidence relating to the matter is also a matter of concern.
23. Under cross-examination the claimant confirmed that at the time the land was sub-divided he was considerably older than the defendants. He referred to Stephen Busai as still being at school. Not all of the family lived on the sub-divided land but it was clear that some did while others lived elsewhere as per the claimant's sworn statement. He stated that all meetings with the Land Department regarding the subdivision were attended by the claimant and the late Mr. Busai as the other children of the family were far too young to be involved in such matters. When he was asked whether the Lands Department wrote to him about the subdivision his answer to counsel's question was "*old man [the late Mr. Busai] told us you make an application for all of us. We made an application for us. Me and wife*".
24. It was put to the claimant in cross-examination that in fact what was intended by the late Joel Busai was that the community would hold the land and that accordingly the community had made contributions by way of rental payments. The claimant denied that such a situation and maintained that his wife has paid all of the relevant fees concerning the application and that it was not intended that the land would be held for the community.

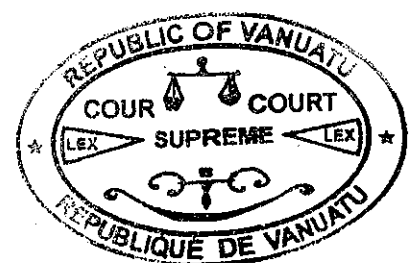


25. Regrettably despite his evidence that his wife had all of the receipts in her possession the Court did not hear any evidence from her, no sworn statements were filed by her and no receipts were produced. The claimant denied that since 1995 the entire community had contributed money to him in respect of the lease and continued to insist that he had paid all expenses. When Mr. Joel was shown receipts for payment of land rents for VT 26,926 dated April 20th, 2012 and VT 46,926 dated July 1st, 2012¹ allegedly made by the defendants he simply remarked that perhaps those payments had been made without consultation with him. The claimant appeared unwilling to contemplate that any payments at all had been made in respect of the land by anyone other than he and his wife.
26. The claimant's evidence stands in stark contrast to the evidence of Stephen Busai who deposed that many families lived on the land and had lived there as a community, all contributing to the lease. Mr. Busai annexed to his sworn statement of July 29th, a record of the payments which have been made in respect of various expenses relating to the lease. They may be summarised as follows:
- (a) August 9th, 1995 – VT20,000 for a survey;
 - (b) Land rent in 1996 – VT60,000;
Land rent in 1997 – VT49,000;
 - (c) Land rent in 1998 – VT25,000;
 - (d) Land rent in 1999 – VT29,000;
 - (e) Land rent in 2000 – VT6,000;
 - (f) Land rent in 2001 – VT7,200;
 - (g) Land rent in 2002 – VT6,000;
 - (h) Land rent in 2003 – VT19,000;
27. The evidence of Lorah Manaseh, the wife of Stephen Busai supported the evidence of her husband that a number of families lived on the same piece of land as a community. She deposed that when they found out that the land they were living on was "free" they had many meetings in order to contribute money to pay for the land with the idea that the land would be registered to all. She confirmed the contributions which Stephen Busai had deposed had been made. She referred to being shocked when she found out that the land was registered in the way that it was.

¹ See sworn statement of Stephen Busai dated July 29th, 2016 "SG83".



28. Under cross-examination Mrs. Manaseh confirmed that she was aware that the lease was in two names in 1995 and that she made no subsequent complaint about that. Looking at the evidence overall that is perhaps not surprising given that she might reasonably have anticipated that the interest of the late Mr. Joel Busai in the land would not have automatically been transferred to the claimant.
29. Mrs. Manaseh deposed that payments made by her were given directly to the claimant but that he did not issue any receipts for those payments. She gave evidence that payments were made to the claimant until he requested that those payments stop. The reasons as to why the claimant requested that payments cease was not explored in the evidence.
30. Mrs. Manaseh gave evidence that the total amount paid to the claimant was between VT 1 and VT 2 million, a sum which was paid to the claimant between 1996 and the time of the death of the late Joel Busai. Mrs. Manaseh deposed that the payments amounted to approximately VT 54,000 a year and were paid by the adults making up the community living on the land. Those adults number approximately 37 in total. Clearly those figures do not match the figures referred to in paragraph [26].
31. Under cross-examination Mr. Stephen Joel Busai also confirmed that in 1995 he was aware that the leasehold title was in the joint names of his father and the claimant. His evidence was that at that time the Joel family and the Manasse Family all lived as one community and all contributed to the lease payments so did not consider that there was a need to do anything about the lease title at that time. The community was content with the lease title being in the names of the claimant and the late Joel Busai.
32. It is clear from the evidence of Mr. Busai that the community made no particular distinction between lease premiums and land rentals and that there was an extremely loose arrangement in respect of payment. What consistently came through in the evidence of Mr. Stephen Busai and Mrs. Manaseh however was that they, and others, were of the view that the land was held for, and on behalf of the community. Mr. Busai's evidence was that he went to live on the land in 1983.



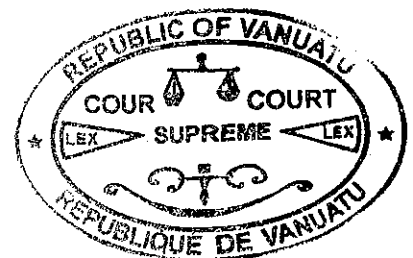
33. Only one witness gave evidence on behalf of the second and third counterclaimants. That witness was Mr. Paul Gambetta, the acting Director of the Department of Lands. Mr. Gambetta's brief sworn statement simply addressed the transactions in relation to the land in dispute and confirmed a registration of the lease and transmission. Mr. Gambetta also referred to the fact that on January 13th, 2015 the Department registered a mortgage over the lease title between Mr. Joel as the mortgagor and Bred (Vanuatu) Bank Limited as the mortgagee.

34. At paragraph 10 of his sworn statement dated September 20th, 2017, Mr. Gambetta stated:

"I confirm that the department registered lease 068 in favour of Mr. Joel and Mr. Busai as lessees and later the transmission to Mr. Joel in good faith and based on information and documents supplied at the time".

35. In his cross-examination of Mr. Gambetta, Mr. Napuati focussed on the form that was used to register the transmission. It was put to Mr. Gambetta that the form used by Mr. Busai to apply for registration of a transmission was incorrect, as paragraph 3 of that form contemplated the transmission in circumstances where there had been a grant of probate or a grant of letters of administration or an order of the Supreme Court, none of which had applied in this case. Mr. Gambetta agreed that the form was the wrong form and that the form used by Mr. Busai was a form for use under section 83 of the Land Leases Act when the applicable section was section 84. An application under section 83 is an application used when an interest in a lease is held as a proprietor in common rather than a joint proprietor. Mr. Gambetta clarified his evidence subsequently however to advise that in fact there was no available form for the registration of a transmission by survivorship and that in fact the only available form was the form which had been used by the claimant. It appears therefore that it would not have been possible for Mr. Joseph Joel to use any other form.

36. Mr. Gambetta also clarified a couple of matters in relation to the lease. He confirmed that Clause 5 of the lease was the relevant clause dictating how the lease was to be held. Clause 5 provides:

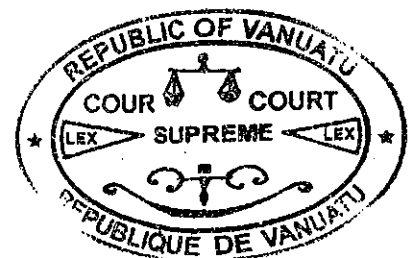


*“The lessees hold this lease as *joint proprietors/*proprietors in common in the following undivided shares”*

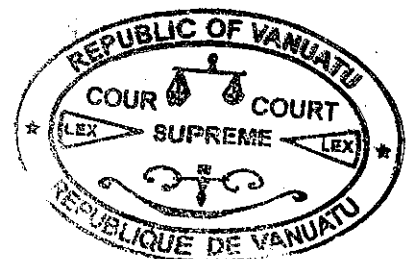
37. In this particular case the words “*proprietors in common in the following undivided shares*” had been deleted.
38. Mr. Gambetta also confirmed that no premium had been paid in respect of the lease at any time and accordingly the only relevant payments were payments of land rent in advance together with the necessary administration fees consisting of survey fees, preparation of lease and other legal costs.

Discussion

39. While much of the evidence relating to the making of payments in respect of land rental and the like is unsatisfactory in this case, having heard the evidence of the parties I consider it unlikely that the late Joel Busai intended to be included on the title as a joint tenant with the effect that upon his death the claimant would be the sole proprietor of the leasehold interest. I say that because I consider it equally unlikely that Mr. Joseph Joel would have willingly anticipated a situation where, in the event of his death his share in the property would be transferred to Joel Busai rather than to his own sons.
40. There are also what I consider to be strong suggestions in the evidence given by the parties that it was not anticipated by the late Joel Busai that the lease would be held as joint proprietors rather than as proprietors in common. Those matters are the following:
- (a) Under cross-examination the claimant conceded that the “*old man*” told us (ie. the claimant and his wife) to “*make an application for all of us*”. I consider it highly likely that “*all of us*” was a reference to the community in general rather than to Joel Busai, and the claimant’s wife.

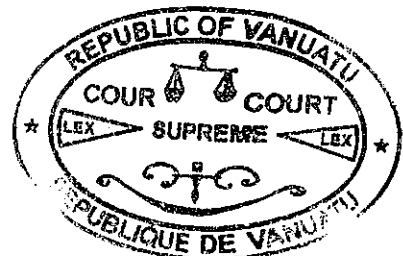


- (b) It is clear from the evidence that all members of the family had been living together as effectively one family or a community for a very significant period of time before the lease was entered into in 1995.
- (c) The particular family structure in place at the time would make it far more likely that the late Joel Busai might distinguish between his biological sons on the one hand and Mr. Joseph Joel, his step son, on the other. I consider it likely that the late Joel Busai may have considered holding the leasehold title in separate shares in order to provide equitably for his family.
- (d) In his sworn statement of July 19th, 2016 at paragraph 17 the claimant stated that he was aware that the defendants Stephen Joel Busai had always argued with his father to hand over the land title that belonged to him but that "*my father did not know which of the four boys he will hand over the title to them until he died*". The claimant could only have obtained that knowledge from the late Joel Busai himself. That acknowledgment is, in itself, a clear indication that the late Mr. Busai had intended that his share of the land go to his four biological sons but that he had difficulty in determining which son would be responsible to control the land for the benefit of the family.
- e) While the claimant maintained in his evidence that he had paid all expenses in respect of the land I have to say that I do not accept that evidence. Although the nature of the evidence relating to payments made in respect of the lease was unsatisfactory, the defendants were able to provide copies of receipts which supported their assertions that they had made payments in respect of the land rental. Mr. Joseph Joel appeared to concede as much in the course of his cross-examination. He had also stated in his sworn statement of September 2nd, 2015 that "*Joel Busai and I jointly paid an annual rent of VT 18,240 towards the purchase of the residential property*". I consider that it is highly likely that payments in respect of the necessary expenses to obtain the lease together with various other rental payments were made by the defendants in addition to Mr. Joel. While it was suggested that such payments could simply be for occupying the land, I consider that it is far more likely that such payments were consistent with the view held by the defendants and perhaps the community at large that they had an equitable interest in the land through their father the late Joel Busai.

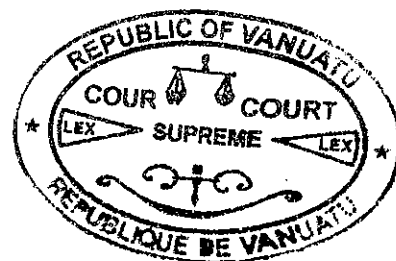


- (f) At paragraph [23] of this judgment I referred to the fact that the claimant had stated that all meetings with the Land Department concerning title 068 were attended by the claimant and the late Mr Busai. That would indicate that Mr Busai had a somewhat greater involvement in the matter than acknowledged by the claimant who had referred to Mr Busai "*going behind the backs*" of the claimant and his wife.
- (g) While the agreement set out in paragraph [20] could not be evidence of Mr Busai's intentions when he signed the lease it is certainly supportive of the assertions by the defendants that the land was never intended to be the exclusive property of the claimant.
41. The issue, having come to those conclusions is whether that is of any assistance to the defendants given the way this case has been pleaded and argued.
42. In that regard, I refer to the statement of defence and counterclaim filed by the defendants. They are poorly drafted and the defence refers firstly, to fraudulently transferring the property to his own name after the death of Mr Busai and secondly, to Mr Busai signing the lease in his capacity as representative of the family "*and is not the sole proprietor under Section 92 of the Land Leases Act,*" The latter part of that particular pleading simply makes no sense but the broad point being made, is that Mr Busai was signing the lease as representative of his family, namely, the defendants.
43. The counterclaim of the defendants pleads at paragraph [2] that:

"2. The Defendants claim when the deceased died, the Claimants {First, Second and Third Claimants unlawfully either by fraud or mistake transferred the lease title No. 11/0X21/068 to the first Claimants name."



44. The defendants also counter-claimed that the transmission form was "*mistakenly and/or fraudulently signed off and registered by the Second and Third Claimants.*" As a result, the defendants sought orders declaring that the registration of the First Claimant as surviving sole proprietor be declared null and void and removed from the Register and that the defendant Stephen Joel Busai be registered as one of the Lessees of title 068.
45. In my assessment of the matter the defendants pleadings are poorly drafted and do not set out particularly clearly what is really at the heart of the defendants case which is that upon signing the lease Mr Busai did so as a representative of the defendants and to ensure that the defendants were to have a share in the land, While that is set out in the statement of defence it is not referred to specifically in the counter-claim as a basis for rectification under s.100. In fact, s. 100 is not referred to at all although it is clear that rectification under s.100 is sought. If relief is sought under s.100 then it should be specifically pleaded.
46. What the defence really amounts to is a claim of two mistakes, firstly when the lease was signed, and secondly when the transmission was registered.
47. Where a party alleges that there has been common or unilateral mistake regarding a contract the usual remedies are a declaration that the contract is void or an award of damages. Rectification may also be a remedy but that would be rectification of the contract between the parties as opposed to rectification of the register pursuant to section 100, although that may also flow as a natural consequence.
48. Accordingly, it is necessary to consider firstly, whether the two mistakes I have referred to are mistakes which would come within s. 100 and secondly, whether given the state of the pleadings it is appropriate to grant relief to the defendants on the basis of either mistake.



49. As the Court of Appeal stated in Roqara v Takau² :

“For a party seeking rectification under s.100 Land Leases Act it is not sufficient to prove that a mistake occurred in the course of a transaction which ultimately concluded in registration of the interest which it is sought to have removed from the register. In terms of s. 100 the Court must be satisfied that the “registration has been obtained, made or omitted by fraud or mistake”. The section imposes a causal requirement, The mistake must lead to the impugned registration being made. The onus is on the party seeking rectification not only to establish a mistake, but also to satisfy the Court that it caused the registration to occur.”

50. As to the type of mistake which the Court may consider, the Court of Appeal considered that matter in Turquoise v Kalsuak³ where it referred to the type of mistake to which s. 100 might apply. It stated :

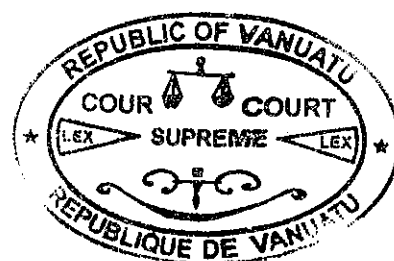
“Mr Jenshel presented an argument that a mistake by the Minister in the manner of exercise of power under s. 8 is not the kind of mistake which is contemplated by s. 100(1), and does not empower the Court to order rectification. He argued that the mistake must be in relation to the title particulars and suggested that the type of mistake that enlivens the power in s. 100(1) includes the matters described in s. 99(1) but probably does not go much further.

In ordinary use the concept of “mistake” is a broad one that includes mistake of law as well as mistake of facts.

We are unable to accept that s. 99(1) imposes any limitation on the otherwise broad scope of “mistake”. Section 99(1) empowers the Director to take steps to rectify the register where the register “does not truly declare the actual interest to which any person is entitled under this Act or is in some respect erroneous or imperfect.” This is a very wide power.”

² [2005] VUCA 5

³ [2008] VUCA 22



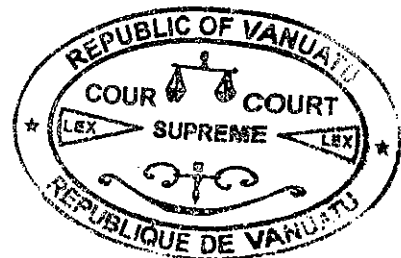
51. I am satisfied, given the authorities referred to, that the two mistakes which I have referred to are mistakes which come within s. 100. As to the "first" mistake, I am satisfied that if Mr Busai had been aware of the mistake he would not have agreed to the registration of the lease and that accordingly the causal link required is fulfilled. As to the "second" mistake I consider that the causal link is clear. The transmission would never have been registered if the lease had been held by the parties as proprietors in common.

52. For the reasons already stated I am satisfied that the signing of the lease by Mr Busai as a joint proprietor was a mistake and that the lease should be rectified accordingly. That mistake has flowed on to the wrongful registration of the transmission. No fault however, can lie at the feet of the second or third counterclaimants as they were, at all times, entitled to take the documents at face value. In addition, while, strictly speaking, the transmission was not completed through use of the correct form, the reason for that was adequately explained by the evidence of Mr Gambetta.

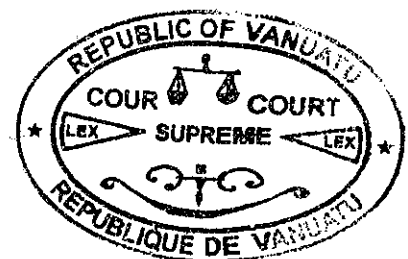
53. Having resolved that matter the issue is then, whether given the state of the defendant's pleadings they should be given the relief they seek. In this regard I am satisfied that they should be. I am satisfied as to that as the issue of Mr Busai's signing of the lease and the fact that it was regarded by the defendants that Mr Busai had signed the lease on behalf of the family was a central issue in the proceedings and a focus of the evidence. I am satisfied that the matter was fully addressed in the evidence and the claimant would suffer no prejudice by the Court considering rectification of the lease interest on the basis of the two mistakes referred to.

54. I am satisfied also that despite the fact that there are a number of defendants, any rectification, if ordered, may be in the name of Steven Joel Busai as firstly, that is sought in the prayer for relief filed in the defendants counterclaim and secondly, Mr Busai has provided evidence that he was appointed as administrator in the estate of the late Joel Busai by order of the Supreme Court dated June 26th 2014.

55. Counsel need to take note however that pleadings are of central importance to any litigation. They set out a parties case. Regrettably, too often in Vanuatu, the Court is faced with inadequate and poorly drafted pleadings which do not adequately address the central issues. There is a need for significant improvement in this area.



56. Before concluding this judgment there are other observations I wish to make.
57. At the conclusion of this case I directed that counsel were to file English translations of all sworn statements in bislama no later than December 12th. I also directed that any further submissions on behalf of the claimant on the issue of nature of the eviction order sought by the claimant were to be filed on the same date with submissions in reply to be filed by December 22nd. The submissions as to the nature of the eviction order sought were important for the reasons set out in my Minute of November 28th.
58. Neither of these directions were complied with. In the case of the translated documents that is simply a discourtesy to the Court. In the case of the submissions, counsel, at the very least should have shown the Court the courtesy of filing a memorandum advising that no submissions would be filed. This non-compliance does not reflect well on counsel and has contributed to a delay in the issuing of this judgment.
59. In addition, I refer to the mediated agreement reached between these parties in 2009. I referred to that agreement and the parties' non-adherence to it in a Minute issued on December 7th 2016. I referred then to the fact that the context of the agreement was not explained by the evidence.
60. When I commenced this hearing on October 2nd I again referred to the mediated agreement and urged the parties to consider very carefully abiding by the terms of that agreement which seemed to me to provide a logical and sensible basis upon which this matter could be resolved. I specifically adjourned the hearing to enable that opportunity to be taken. It is extremely unfortunate that, for whatever reasons, they have been unable or unwilling to do so. An agreement reached by the parties themselves will almost always provide a more satisfactory outcome to a dispute than a Court imposed outcome.
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61. While I consider that the parties would have been able to sue on the basis of the agreement reached, they have chosen not to and accordingly I have proceeded on the basis that they do not wish to be bound by the agreement. I would simply observe however that it may, and probably does, still provide a basis upon which the parties could finally determine this matter as the orders that I am going to make will most certainly not end the difficulties for the parties. Accordingly I urge them to use the agreement as a basis for ongoing discussions.

62. Accordingly I make the following orders:-

1. Pursuant to s. 100 Land Leases Act I order the registration of Leasehold title 11/0X21/068 be amended to record the lessees of the title as Joseph Joel and Steven Joel Busai (as administrator of the estate of the late Joel Busai) as proprietors in common in equal shares.
2. I dismiss the application by the claimant for an eviction order.
3. I dismiss the claim by the defendants against the second and third counterclaimants the Director of Lands and the Republic of Vanuatu.
4. I grant costs to the defendants against the claimant on a standard basis to be agreed between the parties within 28 days failing which they are to be taxed.
5. I grant costs to the second and third counterclaimants against the defendant on a standard basis to be agreed between the parties within 28 days failing which they are to be taxed.

DATED at Port Vila this 19th day of March 2018

BY THE COURT

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James Paul Geoghegan
Judge

