

**BETWEEN:** Marie Louise Malapa  
Claimant

**AND:** Jacques Annis  
First Defendant  
Sinleo Tugu  
Second Defendant

*Date:* 10 May 2019  
*Before:* Justice G.A. Andrée Wiltens  
*In Attendance:* Mr E. Molbaleh for the Claimant  
Mr C. Leo for both defendants (absent)

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**JUDGMENT**

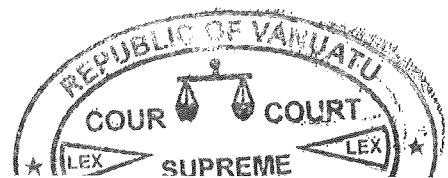
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A. Introduction

1. This is a dispute over land, between a sister (the claimant) and her brother and sister-in-law (the defendants). The leasehold title to the property in question is registered in the name of the sister, but her relatives contend that was done by trick or fraud and they say that they should rightfully be on the title and be entitled to reside on the land with their extended family rather than be evicted by the sister.
2. Mr Molbaleh sought summary judgment on the basis that the papers filed do not disclose a viable defence to the claim.

B. The Claim

3. The leasehold title to the property at No 2 Lagoon Road, Port Vila is 12/0912/227 is held in the name of the claimant. It was transferred to her by her mother, now deceased, on 18 May 2005. The claimant is 65 years old, and she was the sole care-giver for her old and frail mother prior

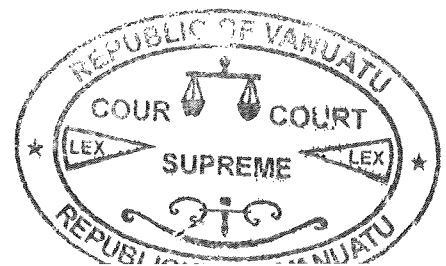


to her death – the claimant postulates that may be the reason she ended up as the registered leaseholder. The claimant resided on the property until actively chased away by the conduct of the defendants in 2016.

4. The claimant's daughter and her family also reside on the land, and the daughter confirms that her mother was driven away by the defendants, as well as elaborating on the continuing conflict between them. She is concerned that the discord will escalate further with drastic consequences.
5. The defendants are living together in a de facto relationship. They have 6 children and 9 grandchildren, who all reside together on the land.
6. Disputes between the two sides of the family are escalating, which caused the claimant to bring the present claim, seeking eviction of the remainder of the family, damages for trespass and nuisance, general damages, plus interest and costs.
7. The defendants have filed a defence. They say the property was transferred to the claimant by fraud or mistake and that it is actually a family property which Mr Annis was to inherit from his father. They further allege that as a result of the claimant's matrimonial issues with her husband, Mr Annis invited the claimant to reside on the land with them. They detail almost immediate animosity between the claimant and Ms Tugu, which led in turn to Mr Annis and Ms Tugu's relationship almost breaking up. The defendants allege that the claimant took advantage of that situation and "facilitated" the registration of the property in her name.
8. The defendants have raised a counterclaim, stating they applied for a Registered Negotiator's Certificate to have the property registered in their name. They allege registration in the claimant's name was effected by fraud or mistake, as it was never the family's intention to register in the claimant's name. They seek rectification of the Register.
9. Despite these allegations, no steps have been taken to add the Republic of Vanuatu as a party. The State Law Office ("State Law") has however filed a defence to the counterclaim, denying the allegations of fraud or mistake, disputing the defendant's registered negotiator certificate assertions, and asserting that only the Claimant has had the lease registered in her name. State Law relies on the registration occurring based on information supplied and in good faith. As the defendants have no registrable interest in the land, State Law maintains they have no standing to seek rectification of title.
10. In supporting sworn statements, Mr Annis alleges that his sister "perpetrated" the transfers of the lease title to his mother and then to herself. He maintains he paid for the lease and has been paying land rent. He alleges the claimant did not pay the transfer fee of VT 200,000, and further that the property is worth more than that.

#### C. The Application

11. Rule 9.6(1) provides for summary judgment where there is no real prospect of defending a claim, even though a defence has been filed. The claimant has complied with the requirements of sub-rule 9.6(4). There has been no response filed by the defendants.



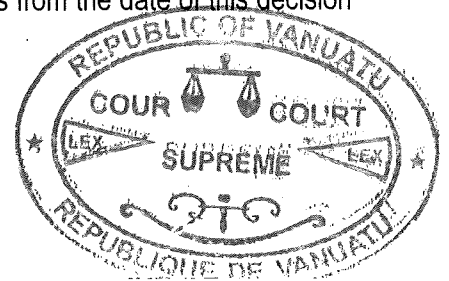
12. Mr Leo who has acted for the defendants on and off, was unavailable at the hearing of this application and suggested a further adjournment so that all parties could attend. Mr Molbaleh objected and wished to proceed, despite Mr Leo's absence. Indeed, Mr Leo had been advised the evening prior to the hearing, that the Court would not be granting an adjournment simply due to his absence and that he should arrange for another counsel to appear. None did. In the circumstances, there was no need to defer the matter – the absence of the defendants and their counsel was a deliberate decision.
13. Mr Molbaleh made oral submissions, complementing his application with the sworn statement of the claimant in support.

D. Discussion

14. It is very easy to assert fraud and/or trick. It is also easy to assert that the family intended to do something other than what transpired in time. Assertions are one thing – acceptable evidence is quite another.
15. There is no evidence, which I am in a position to accept, of these matters. The bald assertions by the defendants do not lead me to conclude there is substance in the statements made, because the actuality of the situation is completely different. The claimant says she is the registered holder of the title, which is confirmed by the evidence. State Law has confirmed some of the circumstances of registration, which further undermines the defendants' position. The principle of indefeasibility of title means the claimant has the law on her side in this dispute. I do not accept the protestations of the defendants.
16. The issue of Certified Negotiator's Certificates has no bearing on this matter. There is no evidence to support the contentions of the claimant "facilitating" or "perpetrating" the wrongful registration of the property. There is no evidence to support the defendants' claim that Mr Annis paid for the lease. In my view, the family's true intention is more readily seen by the registration than by Mr Annis' statement.
17. The defendants effectively concede the disputes between the two sides of the family. Further, the evidence of the Claimant's daughter satisfies me that the claimant's assertions regarding being driven away from the property and the continuing animosity are true. I take note not only of the oral nuisances complained of, but also the frightening and potentially serious consequences of stones being thrown at an elderly mother. That aggravates the matter.

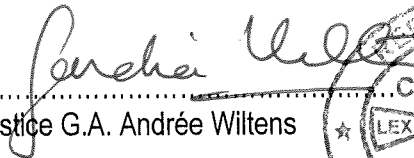
E. Decision

18. I grant summary judgment to the claimant. There is no viable defence to the claim.
19. The claimant is entitled to reside on the land. She is also entitled to determine who else may reside on the land. As the registered leaseholder, no one else is in a position to determine who may reside there but the claimant.
20. The defendants, their children and grandchildren are ordered to be evicted from the land at No 2 Lagoon Road, Port Vila, leasehold title no. 12/0912/227. They have been residing at the property for a number of years. Accordingly, they have 3 months from the date of this decision to vacate the property.



21. The defendants have been trespassers on the claimant's land and have caused her nuisance. The claimant is entitled to damages for that, which I set at the sum of VT 1,000,000, given that the claimant was forced from her property since 2016 and has been residing with another of her children, and taking the nature of the nuisance into account – as well as recognising that this is an inter-family dispute.
22. The claimant is entitled to interest on that sum at the rate of 5% per annum from the date of this decision until that amount is fully paid.
23. There is no evidence before me to establish the claim for general damages. I accordingly make no order in relation to that.
24. The claimant is entitled to costs. If they cannot be agreed they are to be taxed.

Dated at Port Vila this 14th day of May 2019  
BY THE COURT

  
Justice G.A. Andrée Wiltens

