

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

Civil
Case No. 20/2167 SC/CIVIL

BETWEEN: Family Wallace Andre
Claimant

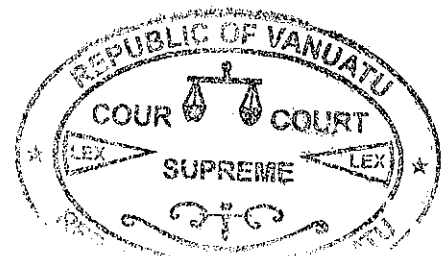
AND: Majorie Andre
First Defendant
Lands Department
Second Defendant
Republic of Vanuatu
Third Defendant

Date: 24 September 2020
By: Justice G.A. Andrée Wiltens
Counsel: Mr B. Kalotiti for Mr D. Yahwa for the Claimant
Mr E. Nalyal for the First Defendant
Mr F. Gifu for the Second and Third Defendants

Judgment

A. Introduction

1. This Claim was filed on 19 August 2020, and served on the First Defendant's counsel on 25 August 2020 and on the SLO on 31 August 2020. Although no Response or Defence has been filed, the First Defendant has filed an urgent application to strike out the entire Claim. There is a supporting sworn statement and a statement as to urgency – the property is subject to an Agreement for Sale and Purchase.
2. The application to strike out the Claim is the issue at hand.



B. Background

3. The Claim alleges that the First Defendant, the deceased's daughter-in-law, who was at the relevant time working in the Lands Office, caused the title of Lease No. 11/OJ14/006 to be transferred to her name by fraud or mistake. This was allegedly achieved by taking a thumb print from the deceased while he had "memory loss and medically affected". The Claim sought rectification of title under s.100 of the Land leases Act.

C. The Application

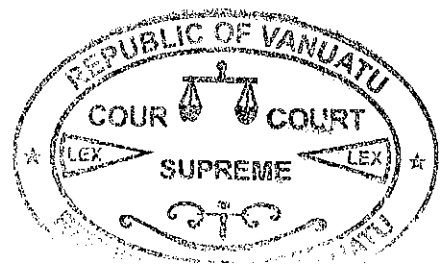
4. Mr Nalyal submitted that Family Wallace Andre was not a legal entity capable of suing or being sued. Mr Kalotiti agreed that the Claimant would have to be amended.
5. Mr Nalyal further contended that Family Wallace Andre, nor any member of the family, had no standing to bring a Claim under s.100 of the Land leases Act. He pointed to the fact that the Title was in the sole name of the deceased prior to the transfer, not as a representative of the family.
6. Mr Kalotiti was adamant that he had evidence from the Lands officer who witnessed the application of the deceased's thumb print onto the transfer document that it had occurred in a fraudulent fashion.
7. It is notable that there are no sworn statements on file in support of the Claim.
8. Mr Gilu supported Mr Nalyal's submissions as to lack of standing. He took no objection to the separate naming of the Lands Department, even though that is inappropriate.

D. Discussion

9. Mr Kalotiti had opportunity aplenty to seek to amend the Claimant's identification in the entitling of this matter.
10. He has also had ample time to file supporting sworn statements setting out an evidential basis for the allegations. No explanation has been provided for these steps have not been taken.
11. Presently, there is no evidence of standing on the part of the Claimant. Given that the title was previously in the deceased's sole name, it is difficult to see how this could be overcome by the Claimant. I refer to *Ishmael v Kalsev* [2014] VUCA 27 as relevant authority for the proposition that standing is required in order to be able to claim the relief sought in this case.
12. Even amending the Claimant to reflect the names of the deceased's son and daughter, who are apparently the ones behind this action, would not establish that either has any standing to bring this action. There is simply no evidence as to this.

E. Result

13. The application to strike out is granted.

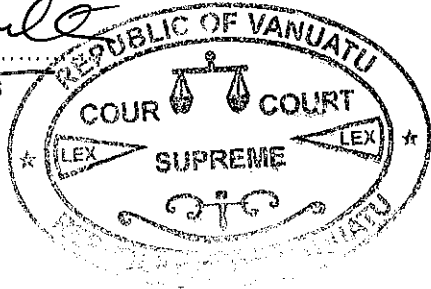


14. The Claimant is to pay VT 25,000 by way of costs to the First Defendant. That is to be paid within 21 days.

15. Mr Gilu, on behalf of the Second and Third Defendants did not seek costs.

Dated at Port Vila this 25th day of September 2020
BY THE COURT

Gendrei Uilo
Justice G.A. Andrée Wittens

The seal of the Supreme Court of the Republic of Vanuatu is circular. It features a central scale of justice. The words "REPUBLIC OF VANUATU" are written along the top inner edge, and "COURT SUPREME" is written along the bottom inner edge. The word "COURT" appears on either side of the scale, and "LEX" is written on two banners extending from the base of the scale. There are small stars on the left and right sides of the seal.