

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

Civil Case No. 19/2966 SC/CIVL

BETWEEN: Stephen Haruel

First Claimant

AND: Director of Lands

Second Claimant

AND: Republic of Vanuatu

Third Claimant

AND: Numani Ham and Family

Stephen Sapa and Family

Defendants

Date of Hearing : 30th September 2020
Date of Decision: 16th December 2020
Before: Justice Oliver.A.Saksak
In Attendance: Mr Henzler Vira for the Claimant
No appearance for First and Second Claimants
Mr Colin B Leo for the Defendants

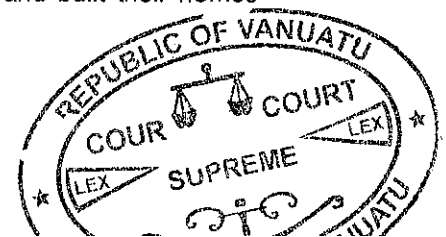
DECISION

Introduction

1. The claimant seeks summary judgment against the Defendants. He seeks eviction orders against them on the basis they are trespassers on his lease title No. 11/0524/039. He believes the defendants do not have a good defence and that they have no prospect of defending his claim against them.
2. The defendants deny the claimant's claim. They counter-claim against the claimant alleging they were the first to reside on the land and that they claim section 17G rights under the Land Leases Act. They allege the lease was granted fraudulently or by mistake.

Facts

3. On 8th July 2015 the claimant obtained lease 11/0124/039 (the Lease) and became registered proprietor of the land comprised in the title. He paid a premium of VT 1, 185, 337 for the lease. He fenced off a smaller portion of the land for residential and gardening purposes. The defendants however trespassed onto the unfenced portion of the land and built their homes and rental houses and making profits on the land.



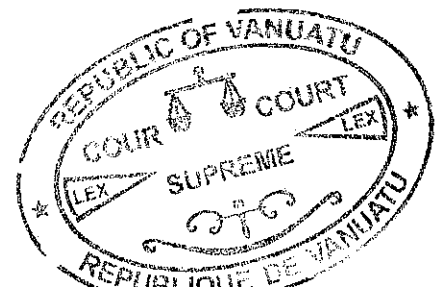
4. The claimant entered into a sale and Purchase Agreement with Freshwind Limited on 29th October 2003.
5. The lease was transferred by Freshwind Limited to the claimant jointly with his deceased wife on 15th February 1993.

Evidence

6. The claimant filed evidence by sworn statements from himself dated 1st November 2019, 14th April 2020 and 25th and 26th June 2020, from Yannick Jacobe dated 22nd June 2020, from Matheson Dovo dated 19th June 200, from Christie Haruel, Copper Hopman and Notis Benjamin dated 25th June 2020, and from Rono Koubak dated 12th August 2020.
7. The defendants filed evidence in support of their defence and counter-claim from Daniel Vincent Bebe, Stephen Joel, Charleon Falau and Wesley Rawyama all dated 22nd May 2020.
8. The First and Second claimants have not been involved at all and have not filed any evidence in support of the claim. And the absence of their evidence is crucial in the determination of this application for summary judgment

Discussion

9. Rule 9.6 of the Civil Procedure Rules is the relevant rule of consideration. Rule 9.6 (9) states:
"The Court must not give judgment against a defendant under this rule if it is satisfied there is a dispute between the parties about a substantial question of fact, or a difficult question of law."
10. A substantial issue of fact is the sketch or survey plan showing the area of land in the claimant's lease. The claimant has shown his lease but there is no survey map showing the area of land involved. Yannick Jacobe's evidence does show the size of the Lease but there is no specific survey plan.
11. Then there are the questions of law. The defendant raised (a) fraud and/or mistake. This is both a question of fact and law. The Director has no evidence in support of the claimant's claim. Unless that evidence is available, the Court cannot determine this issue at this stage.
12. Then there is the issue of consideration. Yannick Jacobe in his statement say the Lease is 2, 353 square meters. And the price of that plot was VT 1, 185, 337. The issue is was that adequate consideration?
13. For those reasons, the application for summary judgment must be declined and is accordingly dismissed. There will be no order as to costs.



14. This case must be progressed further. It is necessary to issue some directions as follows:-

- (a) The claimant is to file and serve additional sworn statement's showing a survey plan by 15th January 2021.
- (b) The First and Second claimants are to file and serve their sworn statements in support of the claim also by 15th January 2021.
- (c) The defendants will file and serve their responses to those statements by 30th January 2021.
- (d) There be a further conference on Thursday 4th February 2021 at 8:45am.

DATED at Port Vila this 16th day of December 2020

BY THE COURT


OLIVER.A.SAKSAK

Judge

