

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

Civil
Case No. 12/204 SC/CIVIL

BETWEEN: **Kalkot Mataskelekele**
Claimant

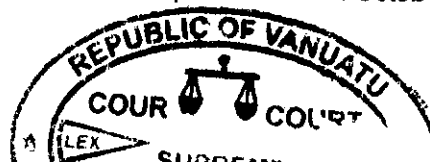
AND: **Georgie and Philip Bakokoto**
First Defendant
Republic of Vanuatu
Fourth Defendant
The National Bank of Vanuatu
Interested Party

Date of Hearing: 15 April 2020
Before: Justice G.A. Andrée Wiltens
In Attendance: Claimant in person
Mr S. Kalsakau for the First Defendant
Ms A. Bani for the Fourth Defendants
Ms C. Hamer for Mr M. Hurley for the Interested Party (appearance excused)
Date of Decision: 27 April 2020

JUDGMENT

A. Introduction

1. The First and Fourth Defendants made application to strike out the New Amended Statement of Claim. This form of the Claim resulted from the historical developments of this file. Parties had sought to join, parties had sought to be removed; and there were a slew of applications, all said to be urgent, by way of interim restraining orders and case management matters. Given that the Claim was first filed in the Supreme Court in October



2012 and that there were 3 previous iterations of the Claim, some semblance of order was required to be brought to the pleadings.

2. Accordingly Mr Mataskelekele was given leave to re-formulate his Claim and focus on the remaining extant Defendants.
3. No sooner had he done so, than the applications to Strike out were filed.

B. Background

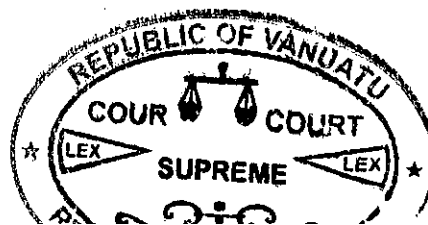
4. This is a Claim by Mr Mataskelekele, on behalf of himself and his siblings, in an attempt to protect their claim of customary ownership of certain land. The land in question is known as Falea Iaru, in Tagabe, Port Vila. It is claimed that, contrary to the interests of Mr Mataskelekele and his siblings, that the First Defendant has improperly and fraudulently obtained a registered lease over that land, namely Lease Title 12/0633/1327.
5. Mr Mataskelekele has persistently maintained that the land is in the process of imminently being sold – since 2012. Hence he sought restraining orders.

C. The New Amended Claim

6. The relief sought is four-fold:
 - Firstly, a declaration is sought from the First Defendants as to what "...remaining amount of money, vehicles and other moveable or immoveable assets, if any [are] still held by the 1st Defendants relating to the sale and purchase of the Lease Title"; and for such money/assets to be transferred into the Supreme Court trust account for safe-keeping until further order of the Court.
 - Secondly, that the National Bank of Vanuatu declare the remaining amount of money held by it in relation to the same transaction, and to transfer the same to the Supreme Court trust account for safe-keeping until further order of the Court.
 - Thirdly, that the proprietorship of Lease Title 12/0633/1327 and/or the mortgage registered against that title be rectified pursuant to section 100 of the Land Leases Act.
 - Fourthly, in the alternative, that the Defendants pay damages, including aggravated damages, for jointly causing the loss of possession, use and enjoyment of the Claimants' ancestral land.

D. Submissions

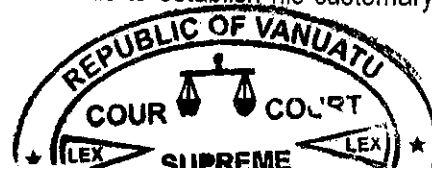
7. Mr Kalsakau submitted that Mr Mataskelekele had no standing to bring this Claim. He relied on the authority of *Ishmael v Kalsev* [2014] VUCA 60. It was submitted that as Mr Mataskelekele could not point to any declaration in his favour of customary ownership, he had no demonstrable interest in the land to be able to make his Claims.



8. Mr Kalsakau further submitted that there was no evidence of fraud or mistake – simply a bare allegation of the same.
9. Ms Bani concurred in both submissions. She went on to submit there was no reasonable cause of action demonstrated in the current version of the Claim. She also contended that there was no evidence demonstrating that the Lands Department had knowledge of the Mataskelekele customary ownership claim prior to registration, which therefore put an end to application for rectification on the basis of mistake.
10. Mr Mataskelekele submitted that his current Claim was misunderstood by opposing counsel. His Claim, he submitted, was merely seeking to maintain the present status quo - pending the determination of claimed customary ownership by the appropriate authority. He maintained that he had done all he could to advance the issue of his claim to be the customary owner of the land, but he received no co-operation in those attempts by the authorities – he claimed to be ignored by the Island Court.
11. Mr Mataskelekele agreed that his first step should be to have his customary ownership claim determined; and he further agreed that the Supreme Court was unable to deal with that. Yet, he wanted his present Claim to continue despite its shortcomings.
12. Mr Mataskele ultimately agreed that he had no standing to bring the Claim, but he maintained that he did have standing to seek the restraining orders, which was all his present Claim amounted to.
13. He was most anxious that the Orders first granted by Justice Sey on 31 October 2012, later struck out by her on 28 February 2013, and then re-instated again by her on 23 April 2013, be permitted to continue to remain in force should the Claim be struck out.

E. Discussion

14. Given the concessions in argument by Mr Mataskelekele, in which he accepted that he had no standing and that what he was asking the Court to do was not possible, it is inevitable that the Claim be struck out.
15. The relief sought by Mr Mataskelekele was problematic. He was asking the Court to compel the First Defendant, 8 years after the event, to isolate out from other assets what had been received in relation to the sale and purchase of the land in 2012. Further, the Court was to then compel the First Defendant to disgorge those funds/assets and place them with the Supreme Court trust account until further Order of the Court. The high impossibility of complying with such Orders, so long after the event, means the orders sought are untenable. The second Order sought was to require the National Bank of Vanuatu to do the same – that is also untenable.
16. Mr Mataskelekele believed these orders necessary despite the indemnity provisions in section 101 of the Land Leases Act, should he ultimately succeed with his allegations.
17. Both the first two Orders sought were premised on the assumption that Mr Mataskelekele will be declared to be the customary owner of the land in question. However, before this Court is able to endorse Mr Mataskelekele's Claims, he needs to establish his customary



ownership in the correct forum – simply making the bald assertion is insufficient. Without a definitive and authoritative statement to that effect, there is no basis on which he can advance his Claims in the Supreme Court. The third and fourth prayers for relief are similarly premature.

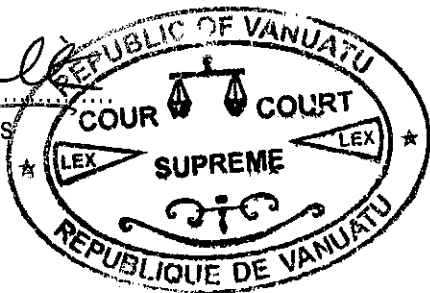
18. By this litigation, Mr Mataskelekele is not, as he repeatedly submitted, simply maintaining the status quo. He was seeking that the Court make final orders in his favour completely contrary to the status quo. I reject Mr Mataskelekele's submissions that the opposing counsel misunderstood his Claim. The reality, sadly, is that Mr Mataskelekele misunderstood his own position.

F. Result

19. The New Amended Statement of Claim is hereby struck out in its entirety.
20. The Interim Restraining Orders ultimately granted by Justice Sey are hereby set aside. There is no urgency in any of Mr Mataskelekele's fears. The 8-year delay, the blame for which I lay largely at his feet, has not been characterised by sudden, unexpected dispositions of the property or parts of it to his prejudice. Those Orders instead have prevented the First Defendant from the quiet enjoyment of the property.
21. If Mr Mataskelekele wishes to pursue his Claims, he should do so forthwith in the proper forum. Once there, he has the ability to attempt to persuade that forum of the need for interim restraining orders. Whether such entreaties succeed is another matter.
22. Costs are to follow the event. Mr Mataskelekele is to pay VT 75,000 costs to each of the remaining Defendants within 21 days.

Dated at Port Vila this 27th day of April 2020
BY THE COURT

G.A. Andree Wiltens
Justice G.A. Andree Wiltens

The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The words "REPUBLIC OF VANUATU" are written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, the words "COUR SUPREME" are written, with "COUR" on either side of the scale. Below the scale, the word "LEX" is written on two small banners. The seal is stamped in black ink.