

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

Civil Case No. 18/3161 SC/CC

BETWEEN: Thidjine Kalpoi

Claimant

AND: Leiwi Kalpoi

First Defendant

AND: Patricia Joli

Second Defendant

AND: Republic of Vanuatu

Third Defendant

Date of Hearing: *3rd March 2021*
Date of Judgment: *4th August 2021*
Before: *Justice Oliver.A.Saksak*
In Attendance: *Ms Juliette Kaukare for the Claimant*
First Defendant in person- unrepresented
Ms Christina Thyna for Second Defendant
Attorney General for Third Defendant- (
Excused, to Abide Court Orders)

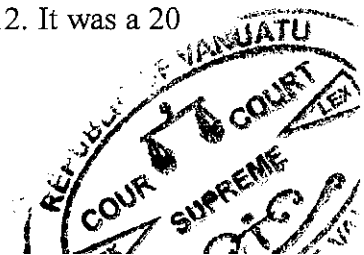
JUDGMENT

Introduction

1. This is a claim made under section 100 of the Land Leases Act [CAP.163] (the LLA).
2. The claimant alleges the transfer of Leasehold Title 12/0844/294 by Leiwi Kalpoi (First Defendant) to Patricia Joli (Second Defendant) was done through fraud and registered by the Government by mistake.
3. He seeks an order of cancellation and rectification of the lease register to restore Lease 12/0844/294 (Lease 294) to his name.

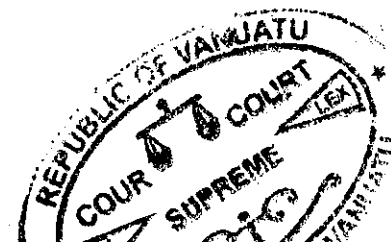
Facts

4. Lease 294 was a rural agriculture lease initially registered on 12 March 2012. It was signed on 25th October 2011 between Leiwi Kalpoi as lessor and Thidjine and Randy Kalpoi as lessees. It was approved by the Minister on 29th February 2012. It was a 20



years lease from 1st November 2011 with a land rent of VT 3,000 per annum. It was a family arrangement, therefore no consideration was paid.

5. Thidjine Kalpoi is Leiwi Kalpoi's son and Randy Kalpoi is Leiwi Kalpoi's nephew. He was a minor at the date of execution of the lease.
6. In or about July 2015 the Second Defendant appeared on the scene. The First Defendant approached her and proposed to her a sale of her properties by presenting a survey map of Lease Title 12/013/226 located also at Elluk Plateau.
7. In the morning of the same day the First Defendant with the Second Defendant paid a visit to the title with a Leitonga Kalsakau. Subsequent to the visit at the Second Defendant's office, the First Defendant informed that as there was also an interested buyer, she had to make a deposit of VT 100,000 immediately which the Second Defendant did.
8. The First Defendant subsequently offered the sale of Lease 226 for the price of VT 1,200,000. An upfront payment of VT 600,000 (as second payment) was made on 28th July 2015. By 24th August 2015 the Second Defendant had completed the payment of VT 1,200,000.
9. On 7th September 2015 the First and Second Defendants executed a Sale and Purchase Agreement for the purchase of Lease 226 by the Second Defendant.
10. A Consent to Transfer was signed by the First Defendant on 27th July 2015.
11. By 28th November 2015 the Second Defendant had made a total of VT 1,970,650 to the First Defendant. She paid a further VT 25,000 to the First Defendant on 30 April 2016 for her hospital expenses.
12. On 16th November 2016 Lease 226 was advertised for sale in the Daily Post Newspaper resulting in the Second Defendant placing a caution over the title. The First Defendant then agreed to transfer another of her property in accordance with



clause 5.1 of the Sale and Purchase Agreement. That other property happened to be Lease 294.

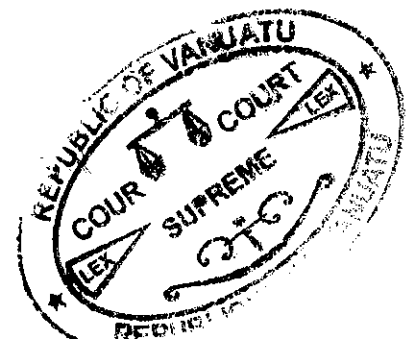
13. For that purpose the First Defendant presented a Power of Attorney to the Second Defendant given to hereby the claimant and Randy Kalpoi. The Second Defendant believed the First Defendant and subsequently Consent to Transfer was signed on 13th November 2015 and Lease 294 was accordingly transferred to the Second Defendant on 15th December 2015 and registered on 13th January 2016.

Evidence

14. The Claimant relied on the evidence by sworn statements of Thidjine Kalpoi dated 08/04/19, 13/11/19 and 3/5/21. Graham Mahit deposed to a sworn statement in support for the claimant's claim on 3/05/21 and Tom Bethuel and Samson Tari, Commissioner for Oaths with the BRED Bank deposed to sworn statements dated 6th May 2021 in support for the claimant's allegation of fraud.
15. The Second Defendant deposed to a sworn statement in support of her defence on 19th August 2018.
16. The Republic filed a sworn evidence by the Director of Lands Mr Paul Gambetta on 31st May 2019 in support of their defence.
17. The First Defendant did file a defence on 30th August 2019 and a sworn statement on the same date.

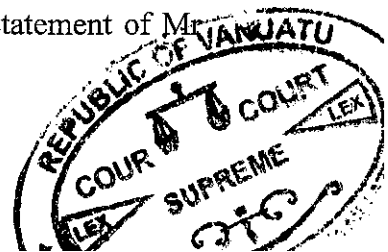
Submissions

18. Pursuant to the directions issued on 3rd March 2021 only the claimant filed written submissions on 18th June 2021. The First and Second Defendants have not filed any submissions. The Republic maintained a neutral position and undertook to simply abide by court Orders. Responding submissions were to have been filed by 7th April 2021.



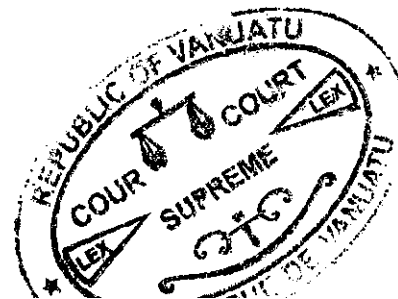
Discussion

19. More than 3 months have gone by since that date. More than ample time has been allowed. The Court must proceed to give judgment.
20. For a claim made under section 100 of the LLA to succeed the claimant must prove the defendants committed fraud and/or mistake in the process or transaction. Further the claimant has to establish the first and second defendants as proprietors had knowledge of the fraud or mistake and that she or they contributed substantially to the act, neglect or default. See Jone Roqara & Ors v Noel Takau & Ors [2005] VUCA 5.
21. The claimant has shown by evidence at least three actions or omissions of the First Defendant which were dishonest and which she clearly had knowledge about. The first is the power of Attorney dated 29th October 2015. This was a forged document done without the knowledge of the claimant. The claimant's evidence is that he had no knowledge such Power of Attorney existed. He denied signing it and claimed the signature on it as donors are not his and Randy's.
22. The First Defendant admitted she did the document herself in order to facilitate the transfer without the claimant's knowledge. Graham Mahit's evidence clearly confirms of this admission.
23. There are some distinguishing features that show the Document was false and fraudulently made. First is the Title No it related to was 12/0913/027 which is blotted out and replaced with 12/0844/294. Secondly the document is dated 29th October 2015 but the Stamp Duty on it predates it as 27th October 2015 by 2 days. And thirdly the signatures of the donors of the power are forged.
24. Further the evidence of Samson Tari and Tom Bethuel as Commissioners of Oaths confirm that the First Defendant had relied on the forged document to convince them to witness the signing of the Consent to Transfer. That was a dishonest act. Third, the First Defendant had lied to Mr Bethuel that the claimant Thidjine had signed the purported Power of Attorney at home because he does not come to town every day and spends most of his time at the village. See paragraph 6 of the statement of Mr



Bethuel dated 6th May 2021. The claimant confirms this in paragraphs 8 of his statement dated 13 November 2019.

25. Next, the transfer of Lease 294 dated 15 December 2015 (Annexure TK2) resulted from the dishonest actions of the First Defendant. It is an invalid document for the following reasons (a) Leiwi Kalpoi acted upon a forged Power of Attorney, (b) the sum of VT 1,200,000. This consideration was given in respect of Lease 12/013/226 not Lease 294. Finally it is not true that Thidjine and Randy appeared personally before the Commissioner of Oaths on 15 December 2015.
26. Leiwi Kalpoi well knew what she was doing was dishonest, but she continued to do so until she got what she wanted. She acted fraudulently. The First Defendant had substantially contributed to the fraud. She even made false representations to Patricia Joli, Second Defendant as evident in her paragraph 16 of the statement dated 19 August 2019.
27. The actions of Ms Joli are also questionable. First she knew she had paid consideration for Lease 226 and not 294 but proceeded to accept the transfer of Lease 294 for which she had not paid any consideration. She said she was concerned about the advertisement of the sale of Lease 226 on the Daily post and subsequently lodged a caution over the title. See paragraph 11 of her statement. Despite these, she accepted the transfer of Lease 294 when she was under no legal obligation to carry out any transactions in respect of it. Her obligations under the Sale and Purchase Agreement of 7 September 2015 with Leiwi Kalpoi was in respect of Lease 226 and not Lease 294.
28. The transfer of Lease 294 made on 15 December 2015 was registered on 13 January 2016. What is interesting to note is that on the same date 15 December 2015, Ms Joli executed a mortgage between the BRED Bank and herself (See Annexure PG4) to the statement of Paul Gambetta filed on 31st May 2019 for a loan of VT 5,900,000. But the consent to the registration of this mortgage is dated 23 November 2015, well before the transfer of lease was made.



29. Ms Joli never stated or disclosed any of those transactions in her sworn statement of 19th August 2019. She knew about it all but failed to disclose them. She was therefore dishonest and as such contributed to the fraud committed by the First Defendant.

30. As regards the Third Defendant they registered the power of attorney, the consent to transfer of lease based on the notarisations of the Commissioners of Oaths. Those actions were done on a mistaken belief, but were done in good faith.

Findings

31. I find the actions of the First and Second Defendants were tainted with fraud, resulting in the unlawful transfer of Lease 294 to the Second Defendant.

Result

32. I therefore enter judgment for the claimants but only in respect of the first relief sought. The second reliefs sought for general damages in the sum of VT 1,500,000 is declined.

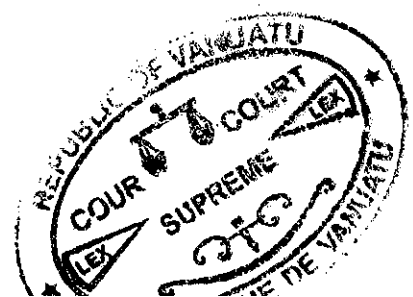
33. I order the Director of Lands Department to rectify the register by cancelling lease 12/0844/294 to the Second Defendant and restoring the Title to the Claimants Thidjine Kalpoi and Randy Kalpoi.

Counter-claim of the Second Defendant

34. The Second Defendant counter-claimed for the amount she paid as consideration for Lease 226 and for general damages of VT 1,000,000.

35. The First defendant has no defence to this claim therefore judgment is entered for the Second Defendant but only in respect of the First relief. The Second relief is declined due to her contribution to the fraud.

36. I therefore order the First Defendant to pay to the Second Defendant the sum of VT 1,970,650.



37. The First Defendant shall pay the claimants' costs of and incidental to this action as agreed or taxed by the Master.

**DATED at Port Vila this 4th day of August 2021
BY THE COURT**


OLIVER.A.SAKSAK
Judge

