

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

**Civil
Case No. 19/510 CVL**

**BETWEEN: Freddy Boblang, Willie Kalafatak, William
Kalsaupa, Albert Kalangis and Paul Kalsar**

Claimants

**AND: Jimmy Ben Essau and Family, Philimon Ben
Essau and Family, Chief Davidson Ben Essau and
Family, and Alickson Vira and Family**

Defendants

Date: 8 March 2021
Before: Justice G.A. Andrée Wiltens
Counsel: Mr D. Yawha for the Claimants
Mr E. Molbaleh for the Defendants (absent)

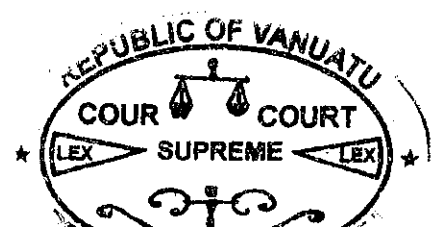
Judgment

A. Introduction

1. This was an application for eviction.

B. Background

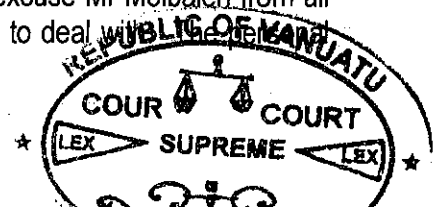
2. The Claimants are the lessees of a parcel of land situated at Forari, legally described as leasehold Title No. 12/0741/007. The lessors are Bob Sul Kalfau and Elvis Kalfau. The lease was registered on 26 October 2011.
3. The allegation is that the Defendants moved onto the land in 2012. In fact, Chief Davidson Ben Essau in his sworn statement agrees that he and the other Defendants commenced to reside on the land from 9 November 2010.



4. There has been previous litigation seeking eviction of the Defendants in 2016. That litigation has been overtaken by this current action, without the Supreme Court making any decision as to the merits of the case.
5. The current Claim was filed on 7 March 2019. A Defence was filed on 21 May 2019.
6. There have been a number of attempts to hear the case. The first date set for the trial was 16 March 2020. However, that date clashed with a Supreme Court tour to Espiritu Santo. The trial was accordingly moved to 1 April 2020. Mr Boar ceased to act for the Defendants and accordingly the trial date was vacated and the trial deferred to 23 September 2020 to give the Defendants the opportunity to instruct new counsel.
7. By Minute dated 1 September 2020, the trial date was confirmed and the Defendants put on notice that the Defence filed was inadequate. It referred to the previous 2016 litigation having been discontinued and that therefore it was no possible for the matter to be re-litigated. The Minute explained that there was no discontinuance and the closure of the previous file was no impediment to the Claimant's application for eviction.
8. Mr Molbaleh then commenced acting for the Defendants and he sought an adjournment due to being unprepared for trial, having only recently received instructions. The trial was accordingly further adjourned to 8 March 2021, with costs imposed due to the lateness of the Defendants' instruction to Mr Molbaleh. The Court understands those costs remain outstanding.
9. There then followed 3 applications by Mr Molbaleh on behalf of the Defendants, all at the eleventh hour, given the history of this litigation:
 - (i) on 12 February 2021, an application to join Mr Louis Pakoa Manasakau as a Defendant – he apparently wished to assert custom ownership of the land in question;
 - (ii) on 12 February 2021, an application to also join Family Manasakau as a Defendant – the family similarly wished to assert custom ownership; and
 - (iii) on 24 February 2021 an urgent application for leave to file an amended defence and counterclaim, now challenging the validity of the Claimants' lease.
10. The applications were all declined for reasons explained at the time. Wasted costs of VT 5,000 were ordered in respect of the third application, but have also yet to be paid.

C. Hearing.

11. Mr Molbaleh was absent from Court. There was also no appearance by any of the Defendants.
12. Mr Molbaleh has not made an application for an adjournment.
13. Instead, he effectively went behind the Court's back and made a personal appearance at the Supreme Court Registry at around 8am to speak to the Chief Registrar. He applied to the Chief Registrar that he request all the Supreme Court Judges to excuse Mr Molbaleh from all Court appearances this week as he had an urgent personal issue to deal with.



matter involved a medical crisis on the part of someone close to Mr Molbaleh and the possible evacuation of that person to New Zealand for urgent treatment.

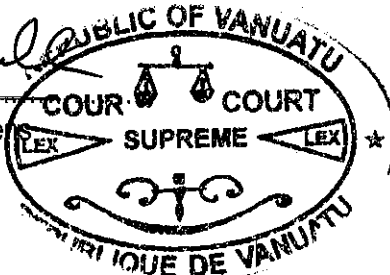
14. The application should have been made before a Judge. In fact Mr Molbaleh saw me while speaking with the Chief Registrar but made no approach to me regarding his most imminent commitment in less than an hour. Had the application to adjourn been made before me, I may well have granted it, although the full circumstances of the application remain unknown. As matters stand, however, this was just a blatant avoidance issue for Mr Molbaleh.
15. Shortly before 9am, attempts to contact Mr Molbaleh and advise him that this matter was going to be heard today proved futile – he simply did not respond to emails or telephone calls to his mobile phone. He was advised by messages left that if he or his clients did not appear, the Court could only consider the evidence available, but that the matter would conclude today.
16. Mr Molbaleh had not previously given notice of an intention to cross-examine the only witness for the Claimants. Accordingly, the matter was dealt with on the papers before the Court.
17. Mr Kalo Kaises produced a copy of the registered lease. His assertion that the Defendants were occupying the land in question was confirmed by Chief Davidson Ben Esau.
18. Were they occupying the land by permission or right? Mr Kaises alleged not. The protestations of Chief Davidson Ben Essau of the right to occupy on the basis of customary ownership cannot be given any weight. The Land Leases Act [Cap 163] in section 14 confirms that registration as proprietor confirms all the rights to the proprietor – in this case the Claimants. Accordingly, the Defendants have no legal right to occupy the land.
19. I accept the evidence of Mr Kaises. The Defendants also have no permission to occupy the land.
20. In the course of the hearing, Mr Yawha abandoned the claim for mesne profits.

D. Result

21. The Defendants are ordered to leave the land voluntarily within 21 days or be forcibly evicted from the land at leasehold Title 12/0741/007.
22. Costs are to follow the event. I set them at VT 60,000. They are to be paid within 21 days.

**Dated at Port Vila this 8th day of March 2021
BY THE COURT**

Justice G.A. Andrée Willem
Justice G.A. Andrée Willem



The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a sword. The text 'REPUBLIC OF VANUATU' is at the top, 'COUR SUPREME' is in the center, and 'LEX' is on either side of the central text. At the bottom, it reads 'ROYAUME DE VANUATU'.