

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

Civil
Case No. 21/2237 SC/CIVL

**BETWEEN: Geordie Mackenzie-Reur representing
Family William Reur**
Claimant

AND: Jonathan lavere
First Defendant

AND: Family Lensly lavere & Neeth lavere
Second Defendants

**AND: Christiane Marie Josette Brunet nee
Russet**
Third Defendants

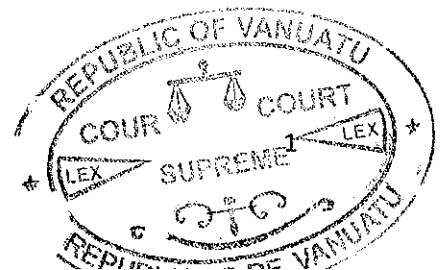
AND: Republic of Vanuatu
Fourth Defendant

Date of Hearing: 22 June 2022
Before: Justice V.M. Trief
In Attendance: Claimant – Mr P. Fiuka
First Defendant – Mrs M.G. Nari
Second Defendants – Mrs M. Bakeo
Third Defendants – Mr M. Hurley
Fourth Defendant – no appearance (Mr F. Bong)

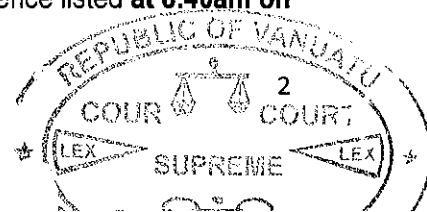
Date of Hearing: 26 July 2022

DECISION AS TO SECOND DEFENDANT'S STRIKE-OUT APPLICATION

1. On 23 December 2021, the Claimant Geordie Mackenzie-Reur representing Family William Reur filed Amended Claim (the 'Claim'). The Claim is brought under s. 100 of the *Land Leases Act* [CAP. 163]. It alleges fraud and/or mistake in the registration on 1 March 2012 of lease title no. 04/0934/001 over Lulum customary land and Ureure island at Big Bay side, North East Santo as custom ownership of the land has not yet been declared.



2. The Second Defendants Family Lensly lavere & Neeth lavere's Application to Strike out the Claim Application filed on 27 May 2022 sought an order striking out the Claim on the following grounds:
 - a. There is no cause of action against the Defendants;
 - b. That the Claimant does not have a sufficient interest to bring the Claim;
 - c. That the Amended Claim filed on 23 December 2021 did not meet the requirements of rule 4(2)(1) of the *Civil Procedure Rules* to be as brief as the nature of the case permits and to set out all the relevant facts relied on and lacks proper particulars; and
 - d. The Claim is time barred pursuant to the *Limitation Act* [CAP. 212].
3. The First Defendant Johnathan lavere supported the Application.
4. The Third Defendant Christiane Marie Josette Brunet nee Russet adopted a neutral position. She will abide the Order of the Court.
5. Having considered the documents filed and having heard counsel, the Application is **declined and dismissed** for the following reasons:
 - a. There is no merit in the ground that the Claim does not disclose a cause of action against the Defendants. The cause of action in the Claim arises from s. 100 of the *Land Leases Act*;
 - b. The Land Tribunal decision dated 14 March 2012 declaring the custom ownership of the subject land was quashed by the Supreme Court on 27 November 2012: *lavere Family v Hog Harbour & Port Olry Joint Village Land Tribunal* [2012] VUSC 249;
 - c. The custom ownership of the subject land remains undetermined. Family William Reur are one of the claimants for custom ownership. It is alleged that prior to registration of the lease, they resided on the land and made claim to it. Further, that they were declared custom owners in the Land Tribunal decision that was subsequently quashed by the Supreme Court;
 - d. In the circumstances, Family William Reur have a sufficient interest in the register entry sought to be rectified and which it is claimed was registered through a mistake or fraud: *Nafalak Teufi v Kalsakau* [2005] VUCA 15;
 - e. There is no merit in the ground that the Claim has not complied with the requirements of rule 4(2)(1) of the Rules. It contains a concise statement of the case, sets out the facts relied on and is particularised; and
 - f. The ground that the Claim is time-barred pursuant to the *Limitation Act* is devoid of merit. The lease was registered on 15 March 2017; the initial Claim was filed on 9 July 2021. The Claim is not statute-barred;
6. I will hear counsel as to the costs of the Application at the Conference listed **at 8.40am on 2 September 2022.**



7. The Third Defendant is to file and serve Defence to the Amended Claim **by 4pm on 15 August 2022.**

**DATED at Port Vila this 26th day of July 2022
BY THE COURT**

VM Trief
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Justice Viran Molisa Trief

