

**AND: Daniel Poussai**  
*Claimant*

**AND: Taho Nanuman**  
*Defendant*

**Before:** *Justice Oliver A. Saksak*

**Counsel:** *Ms Kylie Karu for the Claimant*  
*Mr Jerry Boe for the Defendant ( via telephone)*

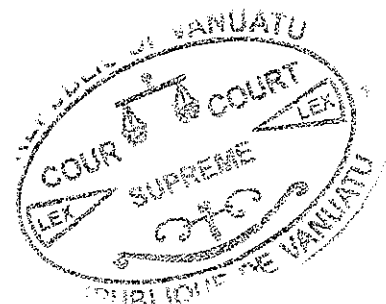
**Date of Hearing:** *6<sup>th</sup> September 2023*  
**Date of Judgment:** *11<sup>th</sup> September 2023*

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## **JUDGMENT**

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1. This is a claim for eviction orders and for special damages of VT 530,000 and general damages of VT 200,000 for loss of enjoyment of property and emotional stress.
2. The claimant is the registered proprietor of Lease Title No. 11/0133/043 situate at Ohlen Freshwind subdivision in Port Vila.
3. A transfer of lease was executed on 7<sup>th</sup> September 2022 and registered on 20<sup>th</sup> September 2022 in favour of the claimant for a consideration of VT 650,000.
4. The lease is currently occupied by the defendant who has built temporary structures and planted trees and gardens, and who has refused to vacate the land despite he has been demanded verbally to do so.
5. The defendant filed a defence on 29<sup>th</sup> June 2023 and a sworn statement in support of his defence also. He says he denies any actual payment of VT 600,000 by the claimant and that he is not aware the claimant is the legal proprietor of the leasehold property. He says the lease is illegal because the Government and Calillard Kaddour / Freshwind Limited have not paid any money to the Ifira people before subdividing the land and selling them. He denies the reliefs claimed by the claimant and says the claim should be dismissed with costs.
6. At the pre-trial hearing today Mrs Karu requested that a hearing date to be fixed.



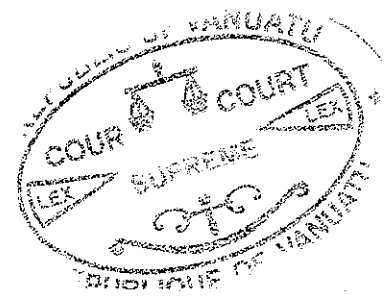
7. However Mr Boe told the Court that trial would not be necessary because he accepts the lease is currently registered in the claimant's name and that he is entitled to an eviction order against the defendant.
8. In view of that concession made by Counsel for the defendant, it follows logically that the Court deals with the claim by way of a summary judgment.
9. It is within the discretion of the claimant to apply for a summary judgment – see Rule 9.6 ( 2)  
Summary judgment
10. By implication Mrs Karu made that application when she indicated to the Court that that the claimant would not be filing any statements in response to the statements filed by the defendant first on 29 June 2023 and later on 10 July 2023, and to the defence filed also on 29 June 2023.
11. In essence what the claimant is saying is that, he believes the defence is not a good defence without any prospect of success.
12. The Court must be satisfied from the evidence and pleading before it that the defendant has no real prospect of defending the claimant's claim -see rule 9.6 (7) (a).
13. I have seen the sworn statements of the defendant which show that he has been on the land but he cannot even state the date he started living on it, see paragraph 2 of his statement dated 10/07/2023. The defendant then says he and his family has lived on the land for 37 years and states in paragraph 4 his concern that Caillard Kaddour / Ohlen Freshwind never gave him the opportunity to purchase the land. That is not evidence, that is a complaint. It would have been better and helpful if he stated he was aware of the subdivisions and that he went to the office to ask for or apply to lease the land on which he claims he has lived with his family for 37 years.
14. The defendant then complained that for 42 years Caillard Kaddour/ Ohlen Freshwind Limited has not and never paid for the land to the custom land-owners at Ifira. This is not a matter that should concern him, that is for the appropriate persons concerned and he should best leave the matter for them.
15. The defendant should be concerned as to his position in law as a resident on a registered lease when he is not in fact and in law the registered proprietor of the lease.
16. Part 4 of the Land Lease Act [CAP 163] proves for " EFFECT OF REGISTRATION

*"14. Interest conferred by registration*

*Subject to the provisions of this Act, the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease together with all implied and expressed rights belonging thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease.*

*15. Rights of proprietor*

*The rights of a proprietor of a registered interest, whether acquired on first registration or subsequently for valuable consideration or by an order of the Court shall be rights not liable to be defeated except as provided in this Act, and shall be held by the proprietor together with all*



*rights, privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject –*

*(a) to the encumbrances and to the conditions and restrictions shown in the register;*

*(b) unless the contrary is expressed in the register, to such of the liabilities, rights and interests as are declared by this Act not to require registration and are subsisting:*

*Provided that nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as trustee.”*

17. Applying those two sections to the facts of this case, it is clear that-
  - a) It is the claimant who is the registered proprietor of Lease 11/0133/043.
  - b) The defendant is not the registered proprietor and is a trespasser on the Lease title.
18. Accordingly I enter judgment summarily in favour of the Claimant. He is therefore entitled to an eviction order against the defendant.
19. I therefore order that the defendant, his immediate family and relatives living on Lease title 11/0133/043 to remove themselves, their properties, movable and immovable within 30 days from the date of service of this judgment and order, by 30<sup>th</sup> October 2023.
20. The claimant's claims for damages are declined and dismissed.
21. In the circumstances there will be no order as to costs.

**DATED at Port Vila this 11<sup>th</sup> day of September 2023**

**BY THE COURT**

  
**Oliver A. Saksak**

**Judge**

