

AND: Johnna Tao
Claimant

AND: Singiau Daniel
Defendant

Before: *Justice Oliver A. Saksak*

In Attendance: *Mr Roger Rongo for the Claimant*
No appearance for the Defendant

Date of Hearing : *30th May 2023*
Date of Judgment: *18th August 2023*

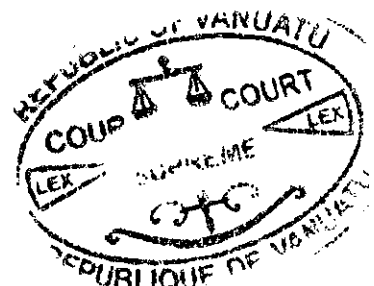
JUDGMENT BY DEFAULT

Introduction

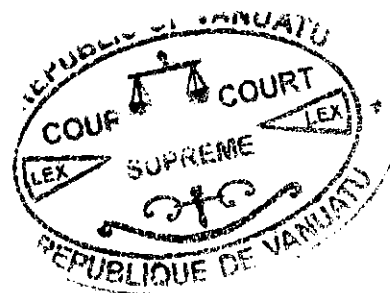
1. Mr Rongo filed a request for default judgment together with a sworn statement of the claimant on 19th May 2023 and a sworn statement as to proof of service on 15th May 2023.
2. On 30th May 2023 there was a formal proof hearing in chambers. The defendant did not attend on that date.
3. At no point has the defendant filed any response and/or defence or any notice of beginning to act by a Solicitor.

Background Facts

4. On 14th February 2023 the claimant filed his Supreme Court claim against the defendant for the sum of VT 3,000,000 plus VT 20,000 as filing and service fees.
5. In addition the claimant filed an urgent ex-parte application seeking restraining orders together with a sworn statement of urgency and an undertaking as to damages.

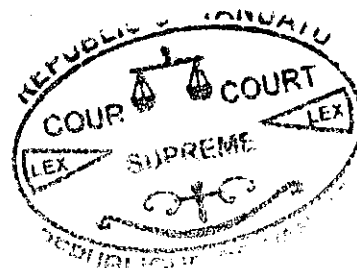


6. On 5th April 2023 I heard the urgent application *ex parte* and issued the restraining orders sought by the claimant/ applicant which are orders-
- 1) "Allowing the applicant and his workmen to enter the land in Lease No. 12/0914/157 at Erakor Half Road and do any development without any disturbance from the Respondent (Defendant) and his friends and agents.
 - 2) That the Respondent and his agents be restrained from disturbing the applicant and his workmen with the work that are currently ongoing inside the said land.
 - 3) That the Respondent and his agents stay away from the applicant and his workmen by a distance of 100 meters.
 - 4) Allowing the applicant and his family members and his workmen to continue with the work without any disturbance from the respondent and his agents.
 - 5) In the event that there is any breach of these orders the culprit shall be arrested and tried for contempt of Court.
 - 6) A party is at liberty to file response to these Orders by giving the other party 48 hours notice."
7. Chief Jimmy Kawiell filed proof of service on 15th May 2023 deposing that he served the defendant on 18th April 2023 with a copy of the Restraining Orders of 5th April 2023 and the Supreme Court claim. A photograph is annexed as "JK1" showing actual service on the defendant sitting at the back of a Toyota vehicle in a blue shirt.
8. Since the date of service to date the defendant has not filed or served any response and defence to the Supreme Court claim or filed any application to challenge or be heard in relation to the *ex parte* orders issued on 5th April 2023.



Discussion

9. The request for default judgment is therefore unopposed and unchallenged. Equally so are the claims of the claimant as pleaded on the Supreme Court claim.
10. In the claim it is pleaded that on 2nd January 2019 the claimant bought a portion of land at Erakor Half Road with a Lease Title No. 12/0914/157 for the sum of VT 3,000,000. A receipt signed by the defendant was issued for the payment.
11. On 19 August 2020 Lease 12/0914/157 was transferred by the defendant to the claimant. Thereafter the claimant started to develop the land by laying a brick-wall around the title, putting up an iron gate and planting of garden crops.
12. In January 2023 the claimant however noticed some strangers clearing the land and burning dead grass on his land. When he inquired, he was told that they had paid the same land from the defendant.
13. The claimant alleges sale of his land to a third party without his knowledge and breach of their agreement.
14. His claims are for a permanent injunction against the defendant and for an Order directing the Director of Lands and his staff to complete the registration of Lease No. 12/0914/157 into the claimant's name.
15. The evidence of the claimant in support of his claims is contained in his sworn statement dated 14th February 2023 whereby he annexes as "JT1" the cash receipt dated 2nd January 2019 for VT 3,000,000 paid by himself to the defendant in respect of Lease No. 12/0914/157. The receipt is signed by the defendant.
16. The claimant also annexes as "JT2" a copy of the Transfer of Lease No. 12/0914/157 showing the defendant as transferor and the claimant as transferee for a consideration of VT 3,000,000 signed by both the claimant and defendant before a Commissioner for Oaths, Mr Tom Bethuel. In addition



consent to transfer title by Timaima Tountan Lauto and Bernard Lauto is annexed dated 19th August 2020. But the lease is not yet registered.

Findings and Conclusions

17. Those evidence and documents are unchallenged by the defendant.
18. The claimant is clearly entitled to judgment. He has made payment of the land in Lease No. **12/0914/157** in full. The lease has been transferred. There has been clear consent.
19. I am satisfied on the evidence that title has passed and the lawful proprietor of the Lease is now the claimant.
20. The defendant does not have any defence to the claims. He has been served and has not filed any response and/or any defence.
21. I now enter judgment in the claimant's favour. He is entitled to the orders that he seeks in his claim which are-
 1. The ex parte Orders issued on 5th April 2023 paragraphs (1), (2), (3), (4), and (5) are made permanent orders.
 2. The Director of Lands and his officers are hereby required to effect the transfer of Lease **No. 12/0914/157** by registering the said Lease in the claimant's name within 14 days from the date of this judgment.
 3. A copy of this judgment be served on the Director by the claimant's counsel immediately.
 4. The claimant is entitled to his costs of and incidental to this proceeding on the standard basis as agreed or taxed.

DATED at Port Vila this 18th day of August 2023

BY THE COURT


Oliver A. Saksak

Judge

