

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

Civil
Case No.23/279 SC/CIVL

BETWEEN: CHIEF TOULU MATUELE
(representative of Jerry Matapau Family, Kalfau Matuele
Family, David Taripoawia and Peter Meamealiu Family)

Claimant

AND: SANDY JOHN MANASAKAU

First Defendant

AND: REPUBLIC OF VANUATU

Second Defendant

Date of Hearing: On the papers

Before: Justice W. K. Hastings

Distribution: K Ture Tari for the Claimant
N Morrison for the First Defendant
J Toa for the Second Defendant

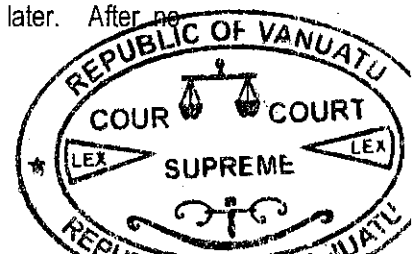
Date of Decision: 27 May 2024

DECISION

1. This is an application by the first defendant Sandy John Manasakau to strike out the claim of Chief Tolu Matuele. Mr Tari for the claimant was given until 25 January 2024 to file and serve his response to the application. When no response was filed, he was given until 4 April 2024. Again, no response has been filed. No submissions were filed by the second defendant who was excused. I will therefore proceed to determine the application on the basis of Mr Morrison's submissions and the law.

Background

2. On 7 August 2023, Mr Tari filed an urgent ex parte application to restrain the defendants from developing or subdividing the land covered by lease title 12/0242/001. The application was ordered to be served on the defendants and a hearing set down a week later. After no



appearances from either defendant, the application was granted on the information provided by the applicant.

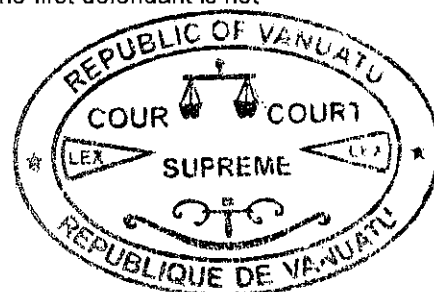
3. The claim was filed on 16 October 2023. The claimant seeks an order that the registration of lease title 12/0311/015 was obtained by fraud or mistake. He also seeks an order declaring that the registration of the first defendant on the lease was obtained by fraud or mistake and ought to be rectified under s 100 of the Land Leases Act, or in the alternative, an order rectifying the lease by removed the first defendant as lessor and replacing him with the claimants as lessors.
4. The claimant claims he is the paramount chief of Moso, and that the first defendant is also a chief of Moso Island. The claimant says lease title 12/0242/001 was registered on 29 May 1995 naming the claimants as lessors, and Port Havanah Bay Resort Limited as the lessee. Separately, the claimant alleges that on 8 March 2005, Moso Limited was struck off the Companies Register by the Vanuatu Financial Services Commission. The claimant claims that on 30 December 2008, Port Havanah Bay Resort changed its name to Moso Limited (the name of the company that had already been struck off the Companies Register), the Director of the Department of Land Records registered a change of lessee from Port Havanah Bay Resort Limited to Moso Limited, and then registered the forfeiture of the lease. The claimant says that forfeiture of the lease was premised upon the registration of the struck-off Moso Limited as lessee.
5. The claimant claims that the lease survived Moso Limited being struck off the Companies Register, and that the removal of Moso Limited from the Companies Register "should not be used as a licence to forfeit the lease." Alternatively, the claimants say that once the lease was forfeited, the land should have been returned to the claimants who were the custom owners and lessees of lease 001.
6. The claimant claims that lease 001 still exists, and lease 015 was mistakenly or fraudulently created out of a pre-independence title that was not alienated after independence. The claimant says the subsequent registration of lease 015 on land covered by lease 001 was made by fraud or mistake and must be rectified to record the names of the claimants as custom owners since they were recorded as custom owners of that land in lease 001.

Submission

7. The first defendant applies to strike out the claim which, if successful, means the restraining orders would be of no effect.
8. The first ground upon which the first defendant seeks to strike out the claim relies on s 44 of the Land Leases Act which provides that:

The forfeiture of a lease determines every sublease and every other registered interest relating to that lease ...

9. Mr Morrison submits first that the claimant's interest in lease 001 was determined by its forfeiture under s 44. He submits that the claimant's contention that lease 001 survives despite its forfeiture is contrary to the law and logic.
10. He submits secondly that the claimant's assertion of chiefly title against the first defendant is not something over which the Supreme Court has jurisdiction.



11. Third, Mr Morrison submits that the issue of titles 001 and 015 has already been decided in favour of the first defendant. Justice Saksak struck out the claimant's claim on 26 August 2020 in *Matuele v Manasakau*, Civil Case No. 20/1297, because the forfeiture of lease 001, upon which the claimant based his claim, meant the claimant had no cause of action. On 6 November 2020, the claimant discontinued his appeal against that decision.

Discussion

12. Striking out any statement of a case is a "draconian remedy" (*Asiansky Television plc v Bayer Rosen* [2001] EWCA Civ 1792). Although striking out a claim is not inherently contrary to the Constitution's guarantee of protection of the law, and equal treatment under the law or administrative action, in Article 5, the Court must nevertheless be cautious to ensure its exercise of discretion to strike out a claim does not violate those guarantees. A claim will not be suitable for striking out if it raises a serious factual issue which can only be properly determined by hearing oral evidence (*Bridgeman v McAlpine-Brown* [2000] LTL January 19, CA). Nor should a claim be struck out unless the Court is certain that the claim is bound to fail (*Hughes v Colin Richards & Co* [2004 EWCA Civ 266]). In short, if a pleading raises a serious contested issue, then it should not be struck out and the issue should be determined after trial.
13. This claim falls into the category of claims that are bound to fail. The claim has already been determined, first by Justice Saksak, and then by the claimants themselves when they decided to discontinue their appeal from Justice Saksak's decision in 2020. There is therefore no serious contested issue to be tried. The subdivision of lease 015 was approved by the Shefa Provincial Council on 22 December 2021 and the Land Management and Planning Committee on 1 June 2022 following 30 days' notice during which the proposed subdivision was not contested. And the Supreme Court has no jurisdiction to determine a dispute over a chiefly title.

Result

14. For these reasons, the application is granted. The claim is struck out.
15. For the avoidance of doubt, the restraining orders issued on 14 August 2023 are revoked.
16. Costs are awarded to the first defendant to be taxed if they are not agreed.

Dated at Port Vila, this 27th day of May, 2024

BY THE COURT

Justice W. K. Hastings

