

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

**Civil Case
No. 20/3476 SC/CIVL**

BETWEEN: Harry Kausir and Family
Claimants

AND: Jeffrey Lauha
First Defendant

AND: Havard Namaka
Second Defendant

AND: Republic of Vanuatu
Third Defendant

Date: 22 April 2024
Before: Justice V.M. Trief
Counsel: Claimants – Mrs M. Markward
First and Second Defendants – Mr D. Yawha
Third Defendant – Mr F. Bong

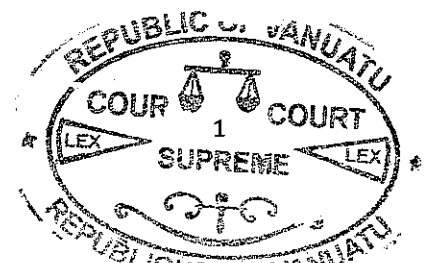
**DECISION AS TO FIRST AND SECOND DEFENDANTS' APPLICATION TO
STRIKE OUT THE AMENDED CLAIM**

A. Introduction

1. This was a contested application by the First and Second Defendants Jeffrey Lauha and Havard Namaka to strike out the Amended Claim.

B. The Amended Claim

2. On 26 July 2023, the Claimants Harry Kausir and Family filed the Amended Claim alleging fraud and mistake in the registration of leasehold title no. 12/2243/100, over some portion if not all of the Nimatautu custom land on South West Tanna island (the 'lease'). The particulars of the fraud and mistake alleged include that Mr Lauha

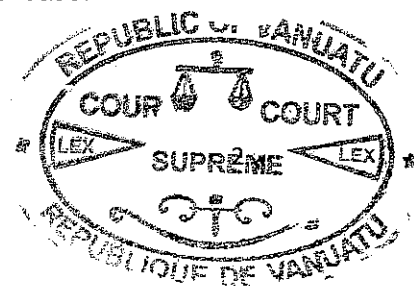


and Mr Namaka obtained the lease without any declaration of custom ownership of the subject custom land, that there must not have been any notice to the public that the area would be surveyed for lease, that no map was ever put up for the public, and that 578 people residing on the land no longer have a place to make gardens and sustain themselves. The relief sought is an order cancelling the lease.

3. The Amended Claim is disputed. The First and Second Defendants filed their Defence on 23 November 2023. The Third Defendant the State filed its Defence on 1 November 2023.

C. The Application and Submissions

4. On 18 January 2024, the First and Second Defendants filed Application to Strike out Amended Claim (the 'Application') and the supporting Sworn statement of Jeffrey Lauha.
5. The grounds advanced for the Application include that on 27 November 2023, the South West Tanna Area Council Customary Land Court Tribunal (a custom area land tribunal) determined the land dispute over Namtautu custom land in Mr Lauha and Mr Namaka's family's favour (Family Neman lesul) therefore the registration of the lease will be lawful because their family has been declared to be the custom owners of Namtautu custom land. Further, that a Certificate of Recorded Interest in Land (a 'green certificate') has been obtained following that decision. Finally, that Mr Lauha and Mr Namaka now have a valid defence and cannot see how the Claimants can succeed on the Claim.
6. The Claimants filed the following submissions in response:
 - a. Claimant's Submission in Reply to Defendant's Strike out Application filed on 25 March 2024; and
 - b. Further Claimant's Submission in Reply to the 1st and 2nd Defendant's Strike out Application.
7. Claimants' counsel Mrs Markward submitted that the decision of the South West Tanna Area Council Customary Land Court Tribunal has been appealed (there was no evidence filed as the basis for this submission). She also submitted that the allegations in the grounds advanced in the Application should be determined at trial, not on a strike-out application. She cited the judgment in *Malingy v Ashem* [2021] VUSC 350 for her submission that obtaining a lease registration in the absence of a custom ownership declaration is a mistake, and the Court of Appeal judgment in *Nafalak Teufi Ltd v Kalsakau* [2005] VUCA 15 for the submission that the processes leading up to a lease registration must be free of mistakes and fraud. She submitted that the Claimants were a competing party for the custom ownership of the subject land and therefore have an interest in seeking rectification of the lease.



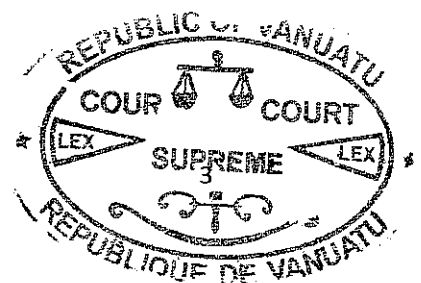
8. On 4 April 2024, the First and Second Defendants filed submissions in reply ("Applicant (1st and 2nd Defendant) Reply to Claimant Submission in Relation to Strike out Application").
9. The First and Second Defendants' counsel Mr Yawha submitted in reply that the determination of the South West Tanna Area Council Customary Land Court Tribunal in favour of Mr Lauha and Mr Namaka has erased or disclaimed fraud or mistake in the lease registration. He submitted that the lease registration was obtained lawfully because Mr Lauha and Mr Namaka have been declared custom owners, and it does not make any difference that they were so declared before or after the registration of the lease. Further, that the Court should strike out the Amended Claim because Mr Lauha and Mr Namaka have obtained a green certificate. He also submitted that *Malingy v Ashem* is distinguishable on its facts.
10. The State will abide the order of the Court.

D. Consideration

11. I cannot make findings of fact on the Application, as it is an interlocutory decision. Any findings of fact can only be made after trial. Accordingly, I cannot make findings of fact as to any of the matters advanced in the grounds of the Application including whether or not the custom ownership of Nimatautu or Namtautu custom land has been determined, whether or not that decision has been appealed, or that Mr Lauha and Mr Namaka have obtained a green certificate following the tribunal decision.
12. That is sufficient to dispose of the Application.
13. However, I turn now to a number of matters raised in counsel's submissions.
14. Mr Yawha submitted that the tribunal decision in favour of Mr Lauha and Mr Namaka has erased or disclaimed fraud or mistake in the lease registration, and it does not make any difference that they were so declared before or after the registration of the lease. That is a matter for legal argument, and arises only if the Court has made a finding of fact that such a decision has been made.
15. It is also a matter for legal argument what effect the issuance of a green certificate to Mr Lauha and Mr Namaka has. That also only arises if the Court has made a finding of fact that such certificate has been issued.

E. Result and Decision

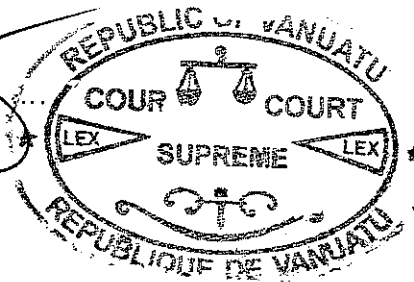
16. For the reasons given, the First and Second Defendants' Application to Strike out Amended Claim is **declined and dismissed**.



17. The costs of the Application are reserved.
18. As previously ordered, this matter is listed for Trial (3 days) at 9am on 4-6 June 2024 at Dumbea Courtroom.

**DATED at Port Vila this 22nd day of April 2024
BY THE COURT**

V.M. Trief
Justice V.M. Trief

The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The words "REPUBLIC OF VANUATU" are written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. The words "COURT" and "COURT" are on either side of the scale, with "SUPREME" in the center below the scale. The word "LEX" is written on two small banners flanking the word "SUPREME".