

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

Civil
Case No. 22/2675 SC/CIVL

BETWEEN: George David Bule
Claimant

AND: David Willie, Davina David, Peter
Remon, Donald Berry, Serah Donald,
Norsie Seule, Sandra Donald, Moise
Sandra, Evelyne Willy, Kabi Willy,
Saneleo Joseph, Selly Joseph
First Defendants

AND: Jack Willie, Leipaloo Annie Jack,
Kalsave Jack, Mariane Jack, Sirelyn
Jack
Second Defendants

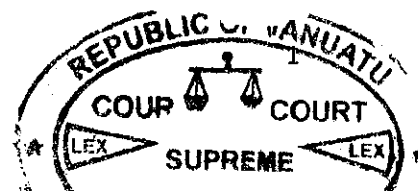
AND: Jimmy Toara, Lewia Jimmy, Lilly
Jimmy
Third Defendants

AND: Fina Luen, Belma Luen, Joana Luen
Fourth Defendants

Date: 23 January 2024
Before: Justice V.M. Trief
Counsel: Claimant – Mr B. Livo
First-Third Defendants – Mr A. Godden
Fourth Defendants – in person

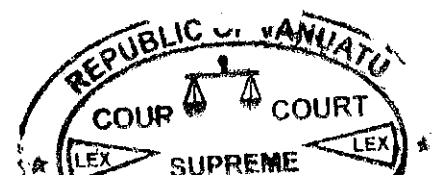
**DECISION AS TO APPLICATION FOR STAY OF ENFORCEMENT OF
JUDGMENT DATED 7th AUGUST 2023**

1. On 16 October 2023, the First and Second Defendants filed Application for Stay of Enforcement (Judgment dated 7 August 2023) (the 'Application'). In the Minute and Orders dated 3 November 2023, I recorded concerns I had raised with the



First and Second Defendants' counsel Mr Godden and gave time for an Amended Application to be filed and served by 4pm on 20 November 2023.


2. On 24 November 2023, First and Second Defendants' Memorandum was filed and Mr Godden requested that this matter be listed urgently. Following the conference on 1 December 2023, I extended the 3 November Orders to give the First and Second Defendants more time to file and serve an Amended Application.
3. No Amended Application has been filed.
4. By the Application, the First and Second Defendants seek an order that enforcement of the Judgment dated 7 August 2023 evicting them be stayed with no order as to costs. The grounds of the Application are that the land contained in lease title no. 12/0431/045 (the subject property) is Wanakopa custom land which Family Albert Kalmarie and Chief Manukat and Family are the declared custom owners of. Further, that in 1964, Chief Albert Kalmarie authorised the First and Second Defendants to settle on the land, and their custom agreement still exists today. Finally, that the custom owners have requested the Director of Lands to register them as lessors but he has not yet done so, and they believe that the registration of the lease was obtained by mistake and if they are successful in challenging the lease, the First and Second Defendants will not be evicted given their custom agreement with Chief Kalmarie.
5. The Sworn statements of Daniel Maripatouk and of Chief Willie David Tariipoamata were filed in support of the Application.
6. Mr Maripatouk deposed that he represents the First and Second Applicants and that they have an arrangement with the Applicants to reside on the subject land. He stated that he has written to the Director of Lands to include him as a lessor (copy of letter dated 25 September 2023 attached) and that he has instructed his lawyers to file a claim challenging the lease registration.
7. Chief Tariipoamata deposed that he represents the First and Second Applicants. The Supreme Court judgment dated 8 April 2022 confirmed the Island Court's decision dated 18 June 2011 declaring Family Manukat and Albert Kalmarie as the custom owners of Wanakopa land. Their former lawyer Mr Kilu wrote to the Director of Lands requesting the cancellation of lease title no. 12/0431/045 (copy of letter dated 26 July 2023 attached). The Island Court judgment stated that persons evicted are to be compensated for their developments carried out on the land so he has obtained an Agriculture Department valuation for the trees he planted (copy attached).
8. I will now determine the Application.
9. It is clear that the First and Second Defendants believe that the lease registration was obtained by mistake. However, it is now nearly four years since the lease was



transferred to the Claimant and they have not commenced proceedings to challenge that lease registration. If there were proceedings on foot, enforcement should be stayed pending the outcome of those proceedings but there are no proceedings on foot.

10. Otherwise the First and Second Defendants are alleging that they have rights of occupation of the land by way of an agreement in custom with the custom owners. However, there is no evidence filed from any of those custom owners.
11. Further, their asserted rights to occupy the land may be rights under para. 17(g) of the *Land Leases Act* [CAP. 163] (the 'Act') however there was no reference to that provision in the Application. Whether or not the First and Second Defendants have rights under an agreement in custom, or under para. 17(g) of the Act, are matters which should have been raised in disputing the substantive Claim; I cannot determine such matters now on an application for stay of enforcement.
12. For the reasons given, the Application is **declined and dismissed**.
13. There is no order as to the costs of the Application.

DATED at Port Vila this 23rd day of January 2024
BY THE COURT


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Justice Viran Molisa Trief

