

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

Civil  
Case No. 20/2857 SC/CIVL

**BETWEEN:** Thi Tham Goiset  
*Claimant*

**AND:** Edmond Sope  
*First Defendant*

**AND:** Yu Jing and Zhonghang He  
*Second Defendant*

**AND:** Paul Gambetta as the Director of  
Lands  
*Third Defendant*

**AND:** Minister of Land  
*Fourth Defendant*

**Coram:** Justice Dudley Aru

**Counsel:** Mr. D. Yawha for the Claimant  
Ms. M. Mala and Mr. S. Kalsakau for the First Defendant  
Mr. J. Tari for the Second Defendant  
Mr. F. Bong for the Third and Fourth Defendants

---

## JUDGMENT

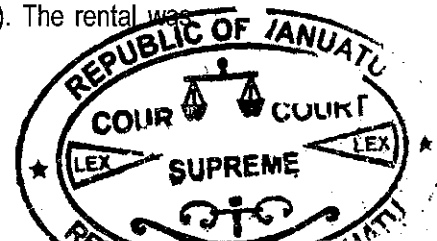
---

### Introduction

1. This is a claim under s100 of the Land Leases Act [CAP] (the Act) seeking rectification of the land leases register on the basis of fraud and mistake. Following the one-day hearing which concluded on 9 April 2024, directions were issued for the parties to file and serve their closing submissions. The claimant was given 14 days to file and serve their submissions by 23 April 2024 and the defendants to respond by 7 May 2024 and judgment to be issued thereafter. The second defendant was the only party who complied with those orders.
2. On the 25 February 2025 the claimant was allowed a further 7 days to comply. The first, third and fourth defendants were also allowed a further 7 days to respond. It was also ordered that *'judgment will be issued if the submissions are not filed'*. To date the claimant and first defendant have not filed any submissions.

### Background

3. In April 2003 the claimant entered into a lease agreement with Rakesa Sope now deceased regarding use of his property under lease title 11/0B31/006 (the 006 lease). The rental was



agreed at roughly VT30, 000 per month. Part of the conditions of the agreement were that should the late Rakesa intend to sell the property, the claimant should be given the first priority to purchase. Otherwise, the claimant will renew the lease for another 10 years.

4. After entering this arrangement, Rakesa Sope died on 19 March 2012. The 006 lease was then registered in the first defendant's name by transmission as administrator of Rakessa Sope's estate. Later the first defendant sold the lease property to the second defendant for a sum of VT 8 million.
5. The claimant then filed these proceedings.

### The claim

6. The gist of the claimant's claim is that the registration of the second defendant as the lessee was obtained by fraud and or mistake therefore the register should be rectified by removing the second defendant's name and replacing it with her name.

### Defence

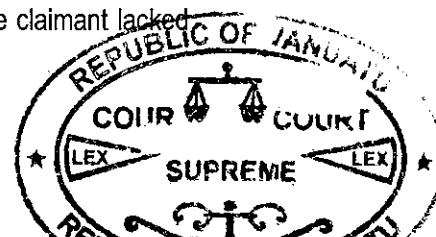
7. The first defendant denies the claim and says she was not a party to the claimant's agreement with her late husband and says she is not bound to sell the property to the claimant. The agreement with her husband was for the claimant to rent the property for VT 30,000. The second defendant on the other hand also denies the claim and says he acquired the lease property for valuable consideration and is protected by s 100 (2). Finally, the third and fourth defendants also deny the allegations against them and simply say that the claimant did not comply with the procedures and requirements for registering leases under the Land Leases Act.

### Evidence

8. The claimant relied on the following sworn statements and was cross examined:
  - Sworn statement of Thi Tham Goiset in support of the claim filed on 9 December 2020 tendered as **Exhibit C1**
  - sworn statement of Thi Tham Goiset filed on 20 September 2023 tendered as **Exhibit C2**
9. The first defendant failed to comply with rules 11.6 b) of the Civil Procedure Rules and filed her sworn statement late in the proceedings and was struck out
10. The second defendant relied on the sworn statement of Yu Jing filed on 2 November 2021 tendered as **Exhibit D2-1**.
11. The third and fourth defendants rely on the sworn statement of Gordon Willie filed on 18 September 2023 and tendered as **Exhibit D3&4- 1**

### Submissions

12. The claimant has not filed any submissions despite directions to do so and the first defendant has also not filed any submissions. The second defendant submitted that the claimant lacked



standing to bring the claim under s100 of the Land Leases Act (as amended). That she failed to show in her pleadings and evidence that she had an interest as defined under s100. The second limb of their submissions is that the second defendant was a bona fide purchaser for valuable consideration.

13. Their final submissions were that the claimant did not complete the process of registration and as a result the lease could not have been transferred to her. The second defendant had completed the process, and the lease was correctly transferred to him therefore the claim should be dismissed.
14. The third and fourth defendants raised similar issues. First that the claimant lacked standing to bring the proceedings against the defendants. They rely on **Mataskelekele v Bakokoto** [2020] VUCA 31 to submit that the claimant is not the custom owner or the lessee therefore she lacks the standing to bring claim.
15. Second, relying on s5 and s76 of the Act the third and fourth defendants submit that the Director of Lands was under no legal obligation to register the 006 Lease in favour of the claimant as she had not complied with the legal requirements of the Act.

## Discussions

16. This is a claim brought under s 100 of the Land Leases Act [CAP 163] (the Act). Section 100 provides: -

**"100. Rectification by the Court**

*(1) Subject to subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is so empowered by this Act or where it is satisfied that any registration has been obtained, made or omitted by fraud or mistake.*

*(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the interest for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default."*

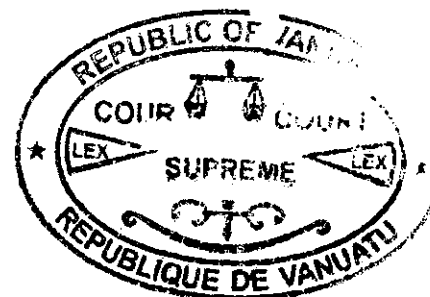
17. Section 5 states:

**"5. Manner of registration**

*Registration shall be affected by an entry in the register in such form as the Director may from time to time direct and by the cancellation of the entry, if any, which it replaces."*

18. And section 76 states: -

**"76. Form of instruments**



(1) Every disposition of a registered interest shall be effected by an instrument in the prescribed form or in such other form as the Director may in any particular case approve.

.....”

*Whether the claimant has standing to bring the proceedings*

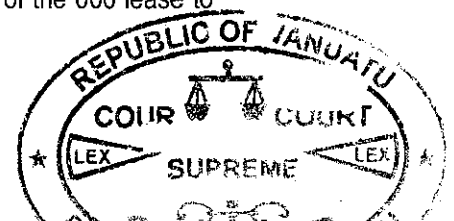
19. The claim being brought under s100, seeks the cancellation of the lease registered to the second defendant on the basis that the registration of his lease was obtained, made or omitted by fraud, or mistake. The submissions by the second, third and fourth defendants are that the claimant lacked standing to bring such a claim as she is neither the custom owner (lessor) nor the lessee.
20. In *Mataskelekele*, the appellant sought rectification of the register under s100 in relation to a lease registered by Bakokoto (custom owner/lessor) then transferred to a third party. The Court of Appeal in dismissing the appeal held that:

“In the appellant’s case it was a case of challenging the validity of a lease under section 100 of the Land Leases Act. The appellant was neither the lessor nor the lessee. And neither had he nor his family been declared custom-owners by any Court or tribunal of competent jurisdiction. In this case the appellant had no standing. He had no serious question to be tried in the Supreme Court.”

21. Mrs Goiset, as the claimant is neither the lessor nor the lessee, therefore she clearly lacks standing to bring the claim under s100 of the Act.

*Whether the Director of Lands was under any legal obligation to register the 006 Lease in favour of the claimant*

22. Section 5 and 76 of the Act require persons intending to obtain leases to do so in the prescribe forms. The second defendant became the registered proprietor of the 006 lease upon completing and lodging the requisite forms for registration.
23. Once the procedures have been complied with and requisite fees paid, there can be no reason to withhold registration. The claimant admitted at trial that she failed to attend the Department of Lands to lodge her application for registration. The agreement for lease between the claimant and Rakesa Sope **annexure TTG in Exhibit C1** is not a lease in the prescribed form capable of being registered. Only a lease in registrable form when registered gives good title to a lessee: see *Worwor v Pio* [2011] VUCA 8.
24. Furthermore, stamp duty can only be paid on a transfer of lease in registrable form before registration is effected. Despite the claimant’s payment of stamp duty in the sum of VT 80,000 and transfer fees in the sum of VT 200,000, there is no evidence of a transfer of lease to her in registrable form.
25. Ministerial consent to transfer is the initiating process of a transfer of lease but that in itself is not a transfer of lease capable of being registered. Once obtained it has to be followed through with an application in the prescribed form. In this case, the claimant obtained two consents to transfer regarding the 006 lease. The first is dated 23 September 2003 issued by Jackleen Ruben Titek as Minister of lands. The second was issued by Alfred Maoh on 28 March 2019. This was not followed through with an application in the prescribed form for the transfer of the 006 lease to



her. The second defendant being the first applicant in time to complete all the requirements to register the transfer to him is eligible to be registered as the lessee. Ministerial consent to transfer was issued on 23 May 2018 and the transfer of lease was registered on 12 May 2020. On balance, I am not satisfied that the claimant has proved her claim for fraud and mistake.

**Result**

26. The claim is therefore dismissed. The second and third and fourth defendants are entitled to costs to be agreed or taxed by the Master.

DATED at Port Vila this 27<sup>th</sup> day of June, 2025

BY THE COURT

Dudley Ara ★  
Judge

