

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

Civil
Case No. 21/3138 SC/CIVL

BETWEEN: Molkis Pierrina

Claimant

AND: Roline Molengleng

First Defendant

AND: Chen Jinqiu

Second Defendant

AND: Republic of Vanuatu

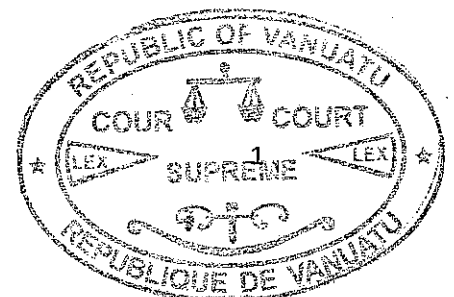
Third Defendant

Date of Trial: 1 August 2024
Before: Justice V.M. Trief
In Attendance: Claimant – Mr H. Tabi
First Defendant – Mrs M. Mala
Second Defendant – Mrs M.P. Vire, via video link from Luganville Court House
Third Defendant – Mr T. Loughman
Date of Decision: 9 October 2025

JUDGMENT

A. Introduction

1. Cyrill Molkis (deceased) was the registered proprietor of lease title no. 03/OJ92/044 (the '044 lease'). His wife Molkis Pierrina is alleging in the Claim that after Mr Molkis died, the 044 lease was transferred by fraud or mistake to Mr Tabi (the administrator of Mr Molkis' estate). After Mr Tabi died, his wife the First Defendant Roline Molengleng was appointed



the administratrix of Mr Tabi's estate. Mrs Molkis is also alleging that Mrs Molengleng then transferred the 044 lease by fraud or mistake to the Second Defendant Chen Jinqiu.

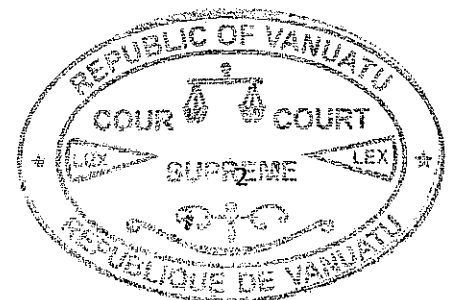
2. This is the judgment following trial.

B. Background

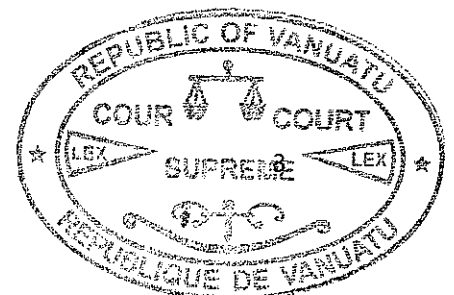
3. On 31 August 1998, Cyrill Molkis was registered as the lessee of the 044 lease.
4. The Claimant Molkis Pierrina is Mr Molkis' wife.
5. On 23 July 2005, Mr Molkis passed away.
6. On 7 May 2008, the Supreme Court granted letters of administration of the estate of Mr Molkis (deceased) to Mr Michel Tabi.
7. The First Defendant Roline Molengleng is Mr Tabi's wife.
8. On 3 September 2008, the transmission of the 044 lease to Mr Tabi was registered.
9. On 25 August 2019, Mr Tabi passed away.
10. On 20 February 2020, the Supreme Court granted letters of administration of the estate of Mr Tabi (deceased) to Mrs Molengleng.
11. On 25 May 2021, the transmission of the 044 lease to Mrs Molengleng was registered.
12. On 28 July 2021, Mrs Molengleng transferred the 044 lease to the Second Defendant Chen Jinqiu.

C. The Pleadings and Issues

13. On 23 September 2021, Mrs Molkis filed the Claim. She is alleging that the 044 lease formerly registered in the name of her deceased husband Cyrill Molkis was transmitted by fraud or mistake into the name of Michel Tabi (deceased), the First Defendant Roline Molengleng's husband, and then transferred by Mrs Molengleng by fraud or mistake to the Second Defendant Chen Jinqiu. She alleged that she did not know until 2020 of the lease transmission to Mr Tabi hence it was done fraudulently. She alleged that Mrs Molengleng has violated her duty as Administrator of Mr Molkis' estate by having the lease transmitted to herself as she had no right of ownership or personal benefit in the 044 lease hence it was a fraudulent dealing.



14. All three Defendants filed defences disputing the Claim. The First Defendant also filed a Counter Claim.
15. On 26 October 2022, the First Defendant filed Amended Defence and Counter Claim. Mrs Molengleng alleged that Mrs Molkis knew that the lease would be transferred to Mr Tabi as she and Mr Molkis' older brother Georges Vireibo consented to the transfer by way of their letter dated 17 September 2005. However, that transfer did not occur whilst Mr Molkis was alive hence the 044 lease had to be included as the only property of Mr Molkis' estate in the Letters of Administration of his estate granted to Mr Tabi. After her husband Mr Tabi passed away in 2019, she was appointed the administratrix of his (Mr Tabi's) estate. The 044 lease was transferred into her name as administratrix of his estate then in 2021, she transferred it to Mr Jinqiu as was her duty. Finally, she alleged that she is the administratrix of Mr Tabi's estate only, not of Mr Molkis' estate, hence has no legal or equitable relationship with Mr or Mrs Molkis therefore Mrs Molkis lacks standing to bring the present proceeding.
16. It is alleged in the Counter Claim that Mr Tabi bought the land subject to the 044 lease in 1998, that Mrs Molengleng and her husband Mr Tabi developed the land, that she was granted letters of administration of Mr Tabi's estate, and then administered the estate including in 2021, disposing of the 044 lease. She alleged that Mrs Molkis was wrongly bringing the Claim in the belief that Mrs Molengleng was the administratrix of Mr Molkis' estate hence the Claim is frivolous and vexatious and should be struck out.
17. On 23 August 2023, the Claimant filed Reply to First Defendant's Defence and Defence to Counter Claim. She denied that she and Mr Vireibo signed the letter dated 17 September 2005. She alleged that Mrs Molengleng as the administratrix of Mr Molkis' estate had no right to sell Mr Molkis' property to Mr Jinqiu for her own benefit as she has a duty to his beneficiaries. She alleged that she has standing to sue as the wife of Mr Molkis, who was registered proprietor of the 044 lease.
18. On 26 October 2021, the Second Defendant filed Second Defendant's Defence. He alleged that he purchased the 044 lease from Mrs Molengleng in good faith therefore he is a *bona fide* purchaser for value. He alleged that at the time he was acquiring the 044 lease, he dealt only with Mrs Molengleng and had no knowledge of Mrs Molkis' claim concerning the 044 lease.
19. The Claimant did not file a reply to the Second Defendant's Defence.
20. On 25 November 2021, the Third Defendant filed Third Defendant's Defence. It denied any fraud or mistake and alleged that it registered the lease dealings in good faith based on the information supplied and relied on ss 9 and 24 of the *Land Leases Act* [CAP. 163] (the 'Act'). It alleged that Mrs Molkis knew that the 044 lease would be transferred to Mr Tabi



as she consented to that transfer in her letter dated 17 September 2005, hence she does not have standing to bring this proceeding.

21. On 8 June 2022, the Claimant filed Reply to Third Defendant's Defence. Again, she denied signing the letter dated 17 September 2005 and repeated that she did not know of the probate granted to Mr Tabi or of the 044 lease transfers hence they are fraudulent.
22. I will determine the issues between the parties under the following headings:
 - a) **Issue 1:** Has the First Defendant proved her Counter Claim?
 - b) **Issue 2:** Does the Claimant have standing to bring the proceeding?
 - c) **Issue 3:** Whether or not the registration of the transmission of the 044 lease to Michel Tabi was obtained by fraud or mistake?
 - d) **Issue 4:** Whether or not the registration of the transfer of the 044 lease from Mrs Molengleng to Mr Jinquiu was obtained by fraud or mistake?

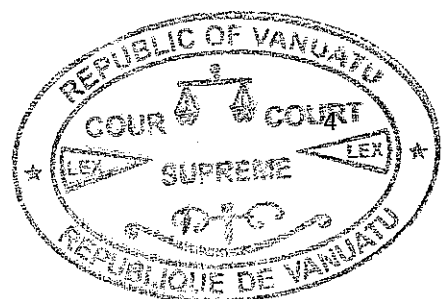
D. Evidence

23. The Claimant relied on the sworn statements of Molkis Pierrina filed on 7 June 2023 [Exhibit C1], Vireibo Georges filed on 1 July 2025 [Exhibit C2], and Sylverio Molkis filed on 3 July 2024 [Exhibit C3] and 11 July 2024 [Exhibit C4]. Mrs Molkis and Mr Vireibo were cross-examined. No one wished to cross-examine Mr Sylverio Molkis.
24. The First Defendant filed the sworn statement of Roline Molengleng on 26 October 2022 [Exhibit D1]. She was cross-examined.
25. On 23 June 2023, the Second Defendant filed the sworn statement of Chen Jinquiu [Exhibit D2]. He was cross-examined.
26. On 25 July 2024, the Third Defendant filed the Sworn statement of Gordon Willie, Director of Lands disclosing relevant records from the Land Leases Register [Exhibit D3]. He was cross-examined.

E. The Law

27. Section 9 of the Act provides as follows:

9. (1) *The Director or any other staff of the Department of Land are not liable for anything done or omitted to be done in good faith in exercising his or her functions or powers under this Act.*
- (2) *Subsection (1) does not apply, if it is proven that the Director or any of his officers acted in bad faith or in dereliction of their duties or exercise of their powers under this Act.*



28. Section 24 of the Act provides as follows:

24. *Where by this Act any person is exonerated from enquiring as to any matter of fact relating to a registered interest, or to a power of dealing therewith, or is protected from the effect of notice of any such matter or fact, then, in registering any instrument relating to that interest, the Director shall not be concerned to make any enquiry or search in relation to that interest which such person need not have made nor shall the Director be affected by any notice with which such person need not have been affected.*

29. Section 84 of the Act provides as follows:

84. (1) *If a sole proprietor or a proprietor in common of a registered interest dies, his personal representative, on application to the Director in the prescribed form accompanied by proof of his authority to act, shall be entitled to require the Director –*
- (a) *to register him by transmission as proprietor in place of the deceased with the addition after his name of the words "as executor of the will of deceased" or "as administrator of the estate of deceased" as the case may be; or*
- (b) *to register some other specified person as proprietor or proprietor in common of the deceased's interest.*
- (2) *For the purpose of subsection (1) authority to act shall consist of a grant of probate of the will, a grant of letters of administration or an order of a court.*

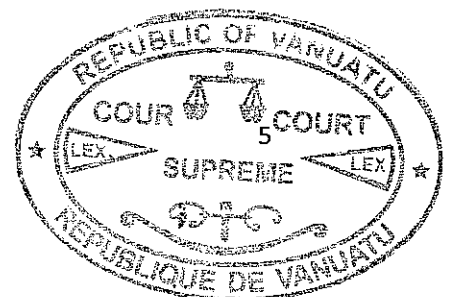
[emphasis added]

30. Section 100 of the Act provides as follows:

100. (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.*

31. Sections 101-103 of the Act provide as follows:

101. (1) *Subject to the provisions of this Act and of any law relating to the limitation of actions any person suffering damage by reasons of –*
- (a) *any rectification of the register under this Act;*
- (b) *any mistake or omission in the register which cannot be rectified under this Act; or*
- (c) *any error in a copy of or extract from the register or any copy of or extract from any document or plan in each case certified under this Act;*

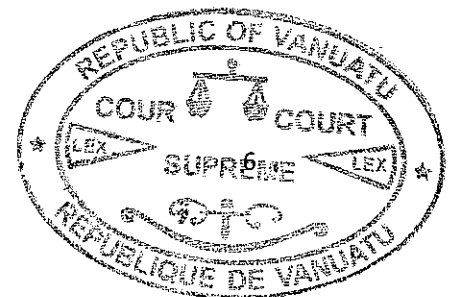


shall be entitled to be indemnified by the Government.

- (2) No indemnity shall be payable under this section –
- (a) to any person who has himself caused or substantially contributed to the damage by his fraud or negligence or who derives title, otherwise than under a registered disposition made bona fide for valuable consideration, from a person who so caused or substantially contributed to the damage;
 - (b) in respect of any loss or damage occasioned by the breach of any trust; and
 - (c) in respect of any damage arising out of any matter into which the Director is exonerated from enquiry under section 24.
102. (1) Where an indemnity is awarded in respect of the loss of any registered interest it shall not exceed –
- (a) where the register is not rectified, the value of the interest at the time when the mistake or omission which caused the damage was made; or
 - (b) where the register is rectified, the value of the interest immediately before the time of rectification.
- (2) Every award of indemnity shall include interest thereon at 5 per centum per annum from the date of the award up to the date of payment.
103. Any person who considers that he has a right to indemnity under the provisions of section 101 may apply to the Court which shall hear and determine the matter and subject to the provisions of section 102 shall make such award, if any, including costs and expenses as it thinks fit.

F. **Issue 1: Has the First Defendant proved her Counter Claim?**

32. It is alleged in the Counter Claim that Mr Tabi bought the land subject to the 044 lease in 1998, and that he and his wife Mrs Molengleng developed the land. Further, that she was appointed administratrix of her husband's estate and administered it, including disposing of the 044 lease in 2021. It is also alleged that Mrs Molkis was wrongly bringing the Claim in the belief that Mrs Molengleng was the administratrix of Mr Molkis' estate hence the Claim is frivolous and vexatious and should be struck out.
33. The relief sought includes an order that the Claim be struck out, compensation in the amount of VT12,000,000 for the improvements made on the 044 lease, costs and such other order as the Court deems fit.
34. It is accepted that on 31 August 1998, Mr Molkis was registered as lessee of the 044 lease [copy of registered transfer of lease in Mr Willie's sworn statement **Exhibit D3 – Attachment "GW2"**]. Therefore, even if Mr Tabi in 1998 purchased the land subject to the 044 lease, as alleged (although it is not pleaded from whom and when), the fact is that Mr Molkis was registered in 1998 as the proprietor of that land. That is indisputable proof that in 1998, Mr Molkis (not Mr Tabi) purchased the 044 lease from the previous registered proprietor, Mr Livo Samson. I find this aspect of the Counter Claim not proved.



35. It is also common ground that on 28 July 2021, Mrs Molengleng transferred the 044 lease to the Second Defendant Chen Jinqiu. In the circumstances, she has already received the value of any improvements that she and Mr Tabi made to the leased land (if true) from the consideration for the lease transfer to Mr Jinqiu. Accordingly, there is no basis for any claim against Mrs Molkis for compensation in the amount of VT12,000,000 for the improvements made on the 044 lease.
36. Finally, it was alleged in the Counter Claim that Mrs Molkis was wrongly bringing the Claim in the belief that Mrs Molengleng was the administratrix of Mr Molkis' estate hence the Claim is frivolous and vexatious and should be struck out. This ignores the substance of the Claim which is that Mrs Molengleng has dealt with the 044 lease when it was property which her husband Mr Tabi held on trust for the beneficiaries of Mr Molkis' estate, therefore she did not have the right to dispose of it as if it were Mr Tabi's private property.
37. For the reasons given, I find the Counter Claim not proved on the balance of probabilities. It must be dismissed.

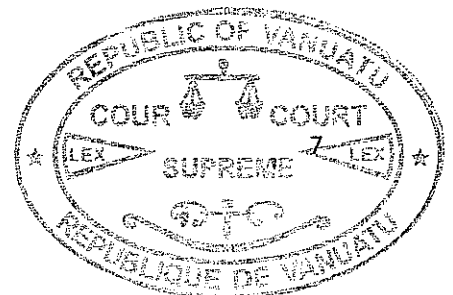
G. **Issue 2: Does the Claimant have standing to bring the proceeding?**

38. It is common ground that Mrs Pierrina Molkis was Mr Molkis' wife.
39. Accordingly, she is a beneficiary of his estate: reg. 6 of the Succession, Probate and Administration Regulation No. 7 of 1972 (UK).
40. The first leasehold dealing under challenge in the present proceeding is the registration on 3 September 2008 of the 044-lease transmission from Mr Molkis to Mr Tabi.
41. Who may invoke s. 100 of the Act? The Court of Appeal held as follows in Naflak Teufi Ltd v Kalsakau [2005] VUCA 15 at p. 5:

The particular aspect of section 100 that requires clarification in this appeal, is the question of who may make the application or who may invoke section 100 of the Land Leases Act?

The answer to the question is not immediately apparent as the section itself does not speak about Applicants or Claimants; it is purely an empowering section for the Supreme Court. That is not to say that no one may apply to invoke section 100 outside the Court itself.

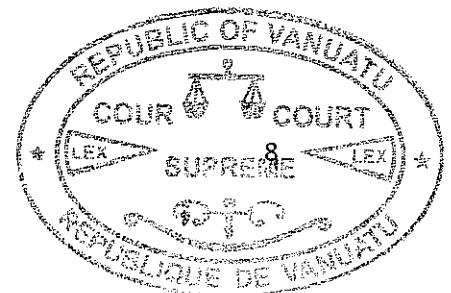
We are satisfied on a consideration of the object and purpose of the section that, at the very least, a person seeking to invoke section 100 must include a person who has an interest in the register entry sought to be rectified and which it is claimed was registered through a mistake or fraud. Not only must there be proof of mistake or fraud but also that such mistake or fraud caused the entry to be registered. Furthermore it has to be proved that the mistake or fraud was known to the registered proprietor of the interest sought to be challenged or was of such a nature and quality that it would have been obvious to the registered proprietor had he not shut his eyes to the obvious or, where the registered proprietor himself caused such omission, fraud or mistake or substantially contributed to it by his own act, neglect



or default. We use the word 'interest' in the widest possible sense although accepting it may have in appropriate circumstances be distinguished from a mere busy body.

[emphasis added]

42. Mr Molkis was the registered proprietor of the 044 lease.
43. Mrs Molkis is a beneficiary of Mr Molkis' estate. As a beneficiary, she has an interest in the registered dealings of the 044 lease which she is now claiming were obtained by fraud or mistake as in the event of rectification, she could be made a registered proprietor of the 044 lease.
44. Accordingly, I am satisfied and find that Mrs Molkis has an interest and therefore has standing to bring the present proceeding pursuant to s. 100 of the Act.
- H. **Issue 3: Whether or not the registration of the transmission of the 044 lease to Michel Tabi was obtained by fraud or mistake?**
45. It is alleged in the Claim that the registration on 3 September 2008 of the transmission of the 044 lease to Michel Tabi was obtained by fraud or mistake.
46. The Claim in part appears to allege that Mrs Molkis did not have any knowledge of the lease transmission to Mr Tabi or the lease transfer to Mr Jinqiu hence the registration of the two leasehold dealings was fraudulent. The First and Third Defendants' case is that that is not true as Mrs Molkis and Mr Molkis' older brother Vireibo Georges signed a letter dated 17 September 2005 consenting to the transfer of the 044 lease to Mr Tabi. In reply, Mrs Molkis denies ever having signed that letter.
47. However, I do not have to decide whether or not Mrs Molkis and Mr Vireibo Georges signed the letter because the State's evidence is that the 044 lease was not transmitted based on the letter but on the letters of administration granted to Mr Tabi. In cross-examination, Mr Willie stated that the letter may have been used to obtain probate orders from the Supreme Court, but the Director of Lands could only register a transmission lease based on probate Orders from the Court. He confirmed that the 044-lease transmission was registered only following the grant of letters of administration to Mr Tabi.
48. Mr Willie's evidence is supported by the timing in which the registration occurred – the letter was written in 2005, but the 044 lease transmission was only registered on 3 September 2008, after Mr Tabi had obtained the letters of administration on 7 May 2008.
49. In addition, Mrs Molkis' lack of knowledge of the two leasehold dealings does not on its own render their registrations fraudulent. More is required to constitute fraudulent conduct.
50. That disposes of the allegation in the Claim that the registration of the 044 lease transmission was obtained by fraud.



51. However, was the registration of the 044 lease transmission obtained by mistake?

52. Section 84 of the Act provides for transmission of leases as follows:

84. (1) If a sole proprietor or a proprietor in common of a registered interest dies, his personal representative, on application to the Director in the prescribed form accompanied by proof of his authority to act, shall be entitled to require the Director –

(a) to register him by transmission as proprietor in place of the deceased with the addition after his name of the words “as executor of the will of deceased” or “as administrator of the estate of deceased” as the case may be; or

(b) to register some other specified person as proprietor or proprietor in common of the deceased’s interest.

(2) For the purpose of subsection (1) authority to act shall consist of a grant of probate of the will, a grant of letters of administration or an order of a court.

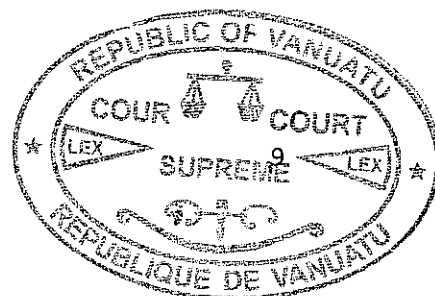
[emphasis added]

53. Mr Molkis was the sole proprietor of the 044 lease prior to his death. When Mr Tabi obtained the grant of letters of administration of Mr Molkis’ estate, Mr Tabi became Mr Molkis’ personal representative and had ‘authority to act’ as defined in subs. 84(2) of the Act. With that authority to act, Mr Tabi was entitled to require the Director of Lands to register him (Mr Tabi) as proprietor of the 044 lease in Mr Molkis’ place with the addition after his (Mr Tabi’s) name of the words, “as administrator of the estate of Cyrill Molkis (deceased)” pursuant to para. 84(1)(b) of the Act.

54. Mr Willie’s evidence included the registration of the 044 lease transmission to Mr Tabi with the supporting documents including the 17 September 2005 letter as well as a copy of the Supreme Court Orders dated 7 May 2008 granting letters of administration of Mr Molkis’ estate to Mr Tabi [Exhibit D3 – Attachment “GW5”].

55. Accordingly, I infer that Mr Tabi presented his authority to act, being his letters of administration of Mr Molkis’ estate, to the Director of Lands in accordance with para. 84(1)(a) of the Act.

56. In the Advice of Registration of a Dealing affecting Registered Land, the Director of Lands recorded under “Nature [of dealing], “Transmission of Lease” and under the heading of “Other Particulars”, the words, “Dated 7th May 2008 to: Michel TABI”. I infer that the 7 May 2008 date in the particulars is a reference to the date of the Supreme Court Orders granting Mr Tabi letters of administration of Mr Molkis’ estate. It is clear therefore that this transmission of lease was made based on those letters of administration.



57. However, the Director did not include the words, "as administrator of the estate of Cyrill Molkis (deceased)", in breach of para. 84(1)(a) of the Act.
58. Accordingly, I find that the Director of Lands made a mistake in the registration of the transmission of lease because he omitted to include after Mr Tabi's name the words, "as administrator of the estate of Cyrill Molkis (deceased)", in breach of para. 84(1)(a) of the Act.
59. The inclusion of these words was necessary to comply with para. 84(1)(a) of the Act. However, the words were also necessary to make it clear and unmistakable on the Land Leases Register that the lease transmission was to the administrator of the estate of a deceased person.
60. Why would an administrator of an estate get a lease transmitted to him or her? This is because of the administrator's solemn duty to call in the assets of an estate and settle its liabilities: In re Estate of Molivono [2007] VUCA 22 at p. 4:

Obtaining probate or administration is placing on an individual an extraordinarily solemn duty. It is the duty first to call in and collect all the properties of the deceased person apart from any interest in custom land. Then, they must pay all the debts of the estate. Their solemn obligation is to ensure that what is left is distributed either in accordance with the terms of the will or in accordance with the rules laid down in Queen's Regulations [No. 7 of 1972]. It provides for the executor or administrator no rights of ownership or personal benefit.

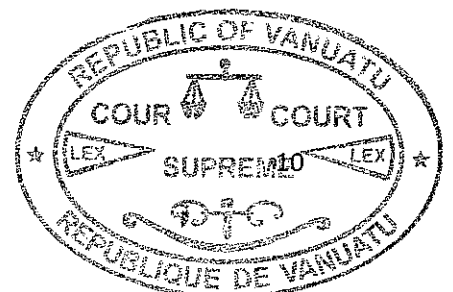
A person who is granted probate or administration is answerable to the Court for the proper exercise of the obligation which he or she has chosen to take up.

...

When someone dies the first question must be whether any assets of that deceased person require to be administered by will or under a grant of administration. If the answer is yes an application must be made. Those carrying out this task must ensure that before there is any distribution of any realized assets the debts and obligations of the deceased person are identified and met.

[emphasis added]

61. An administrator or administratrix has the right to obtain transmission of lease pursuant to s. 84 of the Act to facilitate his or her performing their solemn duty to call in the assets of the estate and settle its liabilities.
62. Once a leasehold title is under the administrator or administratrix's control following the lease transmission, then he or she can transfer it to one or more beneficiaries, or organise its sale so that the proceeds may be applied to liabilities of the estate and/or be distributed to the beneficiaries of the estate.



63. The Court of Appeal held as follows in Naflak Teufi Ltd v Kalsakau at p. 5:

... Not only must there be proof of mistake or fraud but also that such mistake or fraud caused the entry to be registered.

64. In the present matter, there is not only proof of mistake by the Director of Lands but I am also satisfied that his mistake caused the entry to be registered in the terms that it was, namely, with the omission of the words, "as administrator of the estate of Cyrill Molkis (deceased)".

65. The Court of Appeal held as follows in Rogara v Takau [2005] VUCA 5 at p. 7:

For a party seeking rectification under s.100 of the Land Leases Act, it is not sufficient to prove that a mistake occurred in the course of a transaction which ultimately concluded in registration of the interest which it is sought to have removed from the register. In terms of s.100, the Court must be satisfied that the "registration has been obtained, made or omitted by fraud or mistake". The section imposes a causal requirement. The mistake must lead to the impugned registration being made. The onus is on the party seeking rectification not only to establish a mistake, but also to satisfy the Court that it caused the registration to occur.

[emphasis added]

66. I am satisfied that the causal requirement imposed by s. 100 has been proved. Not only was there a mistake on the part of the Director of Lands, but his mistake caused the registration of the 044 lease transmission to occur in the way that it did when he omitted the words, "as administrator of the estate of Cyrill Molkis (deceased)", in breach of para. 84(1)(a) of the Act.

67. For the foregoing reasons, my answer to **Issue 3** is, "Yes."

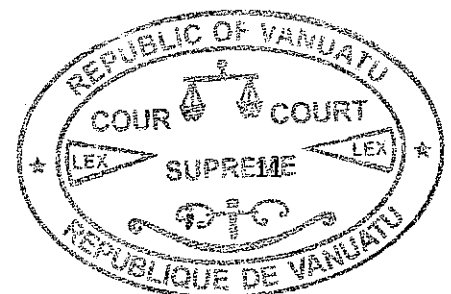
I. **Issue 4:** Whether or not the registration of the transfer of the 044 lease from Mrs Molengleng to Mr Jinqiu was obtained by fraud or mistake?

68. The other interest being challenged is the registration of the 044 lease transfer by Mrs Molengleng to Mr Jinqiu.

69. The balance of the Claim is an allegation that Mrs Molengleng has violated her duty as Administrator of Mr Molkis' estate by having the lease transmitted to herself as she had no right of ownership or personal benefit in the 044 lease hence it was a fraudulent dealing.

70. Mrs Molengleng is correct in pointing out in her Defence that she is not the administratrix of Mr Molkis' estate. At all times, she was the administratrix only of her husband Mr Tabi's estate.

71. However, as pleaded in the Claimant's Reply to First Defendant's Defence, Mrs Molengleng had no right to sell Mr Molkis' property. I agree.



72. As the administratrix of Mr Tabi's estate, Mrs Molengleng could deal only with the assets of Mr Tabi's estate. She had no right to deal with and to sell Mr Molkis' property.

73. The following is pleaded in Mrs Molengleng's First Defendant's Defence at paras 4(e) and (f):

4. As to Paragraph 6, the First Defendant denies this paragraph and says:

...

(e) She further says whatever lease transactions her deceased husband had done with the lease after having obtained the Letters of Administration is beyond her knowledge and wisdom as she honestly believed that the said transfer of lease was made in accordance with the consents given by the Claimant and Vireibo Georges through the letter dated 17 September 2005.

(f) Having believed so, the transfer of lease to the First Defendant was taken to be done in good faith as she knew the lease had been transferred to her husband through the authorised letter but that transfer was not effected until after the original lessee had passed away, hence, had to be included as the only property of the estate of the Claimant's deceased husband in the Letters of Administration granted to Michel Tabi (dec.).

74. Mrs Molengleng is correct that the sole property of Mr Molkis' estate listed in the Supreme Court Orders dated 7 May 2008 granting Mr Tabi letters of administration of the estate was the 044 lease – see **Exhibit D3 – Attachment "GW4"**.

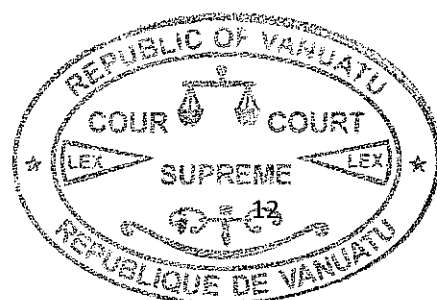
75. I consider that I need not determine if there was ever a loan of funds by Mr Molkis to Mr Tabi in 1998 to purchase the 044 lease as the indisputable fact is that in 1998, Mr Molkis was registered as the proprietor of the 044 lease, not Mr Tabi.

76. Even if there had been a loan of funds by Mr Molkis to Mr Tabi, it is also an indisputable fact that Mr Molkis did not transfer the 044 lease to Mr Tabi whilst he (Mr Molkis) was still alive.

77. The pleading in para. 4(f) of the First Defendant's Defence is an admission that Mrs Molengleng knows that there was no transfer of the 044 lease to Mr Tabi by Mr Molkis whilst he (Mr Molkis) was still alive. By her own admission, the 044 lease was therefore included as the only asset of Mr Molkis' estate in the Letters of Administration granted to Mr Tabi.

78. The same pleading is also an admission that Mrs Molengleng knows that the 044 lease was only transferred (more accurately, transmitted) to Mr Tabi after Mr Molkis had died.

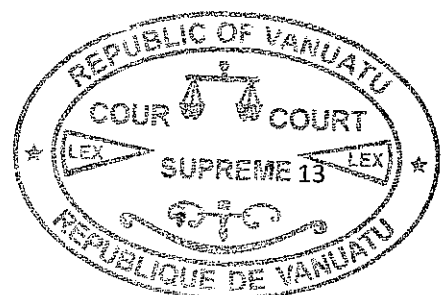
79. Mrs Molengleng's evidence in **Exhibit D1** at para. 7 is as follows:



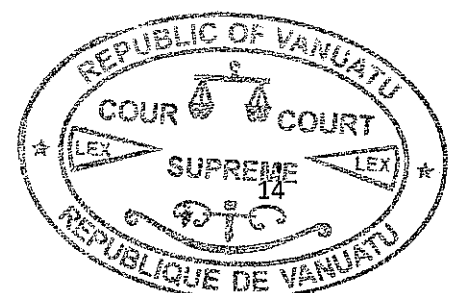
7. On 7 May 2008, my husband was granted letters of administration to administer the estate of late Cyrille Molkis and based on that grant, Lands Department transferred title 044 to my husband's name accordingly.
80. By her own evidence, then, Mrs Molengleng knows that the transfer (more accurately, the transmission) of the 044 lease to Mr Tabi's name was done based on the grant of letters of administration to Mr Tabi to administer the estate of the late Cyrill Molkis. I so find.
81. The 044 lease transmission having been made to Mr Tabi based on the grant to him of letters of administration of Mr Molkis' estate, it follows that Mr Tabi held the 044 lease in trust for the beneficiaries of Mr Molkis' estate.
82. Mrs Molkis was one of the beneficiaries of Mr Molkis' estate.
83. Mr Tabi passed away.
84. On 20 February 2020, the Supreme Court appointed Mrs Molengleng as the administratrix of her husband Mr Tabi's estate [**Exhibit D3 – Attachment “GW6”**].
85. On 25 May 2021, Mrs Molengleng became the registered proprietor of the 044 lease pursuant to a transmission of lease under s. 84 of the Act [**Exhibit D3 – Attachment “GW6”**].
86. The Court of Appeal held as follows in *Naflak Teufi Ltd v Kalsakau* at p. 5:

... Furthermore it has to be proved that the mistake or fraud was known to the registered proprietor of the interest sought to be challenged or was of such a nature and quality that it would have been obvious to the registered proprietor had he not shut his eyes to the obvious or, where the registered proprietor himself caused such omission, fraud or mistake or substantially contributed to it by his own act, neglect or default.

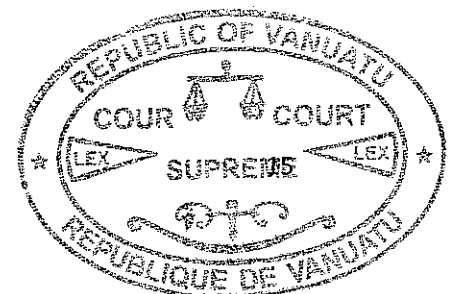
87. I find that with all that Mrs Molengleng knows as admitted in her pleadings and by her own evidence, it is inconsistent to then assert (as she has) that after she was appointed as the administratrix of Mr Tabi's estate, that she could then deal with the 044 lease as if it was Mr Tabi's private property.
88. I also find that in the circumstances, the mistake in the 044 lease transmission to Mr Tabi was of such a nature and quality that it would have been obvious to Mrs Molengleng had she not shut her eyes to the obvious. She knew that her husband Mr Tabi only obtained the 044 lease transmission following his being granted letters of administration of Mr Molkis' estate. Yet once she herself obtained letters of administration of Mr Tabi's estate, she obtained the registration of the 044 lease transmission into her own name and disposed of the 044 lease by transferring it to Mr Jinqiu as if the 044 lease were Mr Tabi's private property.



89. I have found, as set out above, that the mistake in the registration of the 044 lease transmission to Mr Tabi (that is, the Director of Lands' omission to record in the registration that Mr Tabi was the administrator of Mr Molkis' estate) was known to Mrs Molengleng. I have also found that the mistake was of such a nature and quality that it would have been obvious to her had she not shut her eyes to the obvious.
90. Accordingly, I find that when Mrs Molengleng transferred the 044 lease to Mr Jinqiu, she did so fraudulently or at the least, substantially contributed to it by her own act, neglect or default as she dealt with the 044 lease as if it was Mr Tabi's private property when she knew that Mr Tabi had only become the registered proprietor of the lease following the Supreme Court granting to him letters of administration of Mr Molkis' estate.
91. For the foregoing reasons, I find that the registration of the lease transfer from Mrs Molengleng to Mr Jinqiu was obtained or made by fraud on Mrs Molengleng's part, or substantially contributed to it by her own act, neglect or default.
92. Accordingly, my answer to **Issue 4** is, "Yes."
93. What, then, is the Second Defendant's position?
94. Following the lease transfer to Mr Jinqiu, he became the registered proprietor of the 044 lease [**Exhibit D3 – Attachment "GW7"**].
95. Mr Jinqiu's case is that he is a *bona fide* purchaser for value. He alleged that he purchased the 044 lease from Mrs Molengleng in good faith. Further, that at the time he was acquiring the lease, that he was never aware of Mrs Molkis' claims.
96. Mrs Molkis did not file a Reply to the Second Defendant's Defence therefore has not contested Mr Jinqiu's defence case.
97. Mr Jinqiu's evidence in **Exhibit D2** is that at the time he purchased the 044 lease, he was not aware of Mrs Molkis' claims. Further, that he purchased the property in good faith and is an innocent purchaser.
98. Significantly, there is no evidence contradicting Mr Jinqiu's evidence about not being aware or knowing about Mrs Molkis' claims at the time that he was acquiring the 044 lease.
99. Accordingly, I accept and find that Mr Jinqiu purchased the 044 lease in good faith and that he is a *bona fide* purchaser for value. I also accept and find that he is in possession of the 044 lease.
100. Consequently, the 044 lease may not be cancelled or rectified pursuant to subs. 100(2) of the Act as that would affect Mr Jinqiu's title.



101. However, I accept and find that Mrs Molkis has suffered damage in the loss of the 044 lease to her as a beneficiary of Mr Molkis' estate.
102. What relief may the Court order?
103. The mistake in the register not being able to be rectified under the Act, Mrs Molkis is entitled to be indemnified by the Government (the State) pursuant to subs. 101(1) of the Act.
104. I am satisfied that subs. 101(2) does not apply to Mrs Molkis.
105. The State's defence in reliance on ss. 9 and 24 of the Act does not shield the Government from the application of s. 101 of the Act. The Director may well have acted in good faith in registering both leasehold dealings however due to the outcome of this proceeding, s. 101 applies therefore the Government must indemnify Mrs Molkis.
106. However, given my findings about Mrs Molengleng's knowledge of the 044 lease transmission to her husband Mr Tabi as administrator of Mr Molkis' estate, and then her subsequent dealing with the 044 lease as if it were Mr Tabi's private property, I find that Mrs Molengleng must be jointly liable with the Government for the damage suffered by Mrs Molkis in the loss of the 044 lease to her as a beneficiary of Mr Molkis' estate.
107. What will be the amount of the indemnity awarded to Mrs Molkis and how much must Mrs Molengleng pay to her for the damage she has suffered?
108. The value of the interest at the time of its transfer to Mr Jinjiu was VT12,000,000, that being the consideration for the transfer of lease declared on the lease transfer instrument [Exhibit D3 – Attachment "GW7"].
109. Accordingly, I assess that the total amount payable to Mrs Molkis for the damage that she has suffered is VT12,000,000. The Government is to pay half of that amount by way of the indemnity awarded to Mrs Molkis, and Mrs Molengleng is to pay the other half as follows:
- a) The **indemnity awarded** to Mrs Molkis pursuant to para. 102(1)(a) of the Act hence the sum that the State is to pay to her in respect of the loss of the 044 lease is VT6,000,000; and
 - b) Mrs Molengleng is to pay VT6,000,000 compensation to Mrs Molkis for the damage that she has suffered.
110. The award of indemnity shall include **interest** thereon at 5% per annum from the date of the award up to the date of payment pursuant to subs. 102(2) of the Act.
111. The sum that Mrs Molengleng is to pay to Mrs Molkis will also incur interest until it is fully paid.



J. Result and Decision

112. Judgment is **entered** for the Claimant.
113. The First Defendant's Counter Claim is **dismissed**.
114. The First Defendant is to pay VT6,000,000 **compensation** to the Claimant (the 'judgment sum').
115. The First Defendant is to pay interest on the judgment sum at the rate of 5% per annum until fully paid.
116. The Third Defendant is to **indemnify** the Claimant in the sum of VT6,000,000 (the 'judgment sum.')
117. The Third Defendant is to pay interest on the judgment sum at the rate of 5% per annum until fully paid.
118. Costs must follow the event. The First and Third Defendants are to each pay half of the Claimant's costs as agreed or taxed by the Master. Once settled, the costs are to be paid within 28 days.
119. The First Defendant is to pay the Second Defendant's costs as agreed or taxed by the Master. Once settled, the costs are to be paid within 28 days.

K. Enforcement

120. Pursuant to rule 14.37(1) of the *Civil Procedure Rules*, this matter is listed for Conference **at 1.25pm on 19 November 2025**, to ensure the judgment has been executed or for the First and Third Defendants to explain how it is intended to comply with the Court's Orders. For that purpose, this judgment must be personally served on the First and Third Defendants and proof of service filed.

**DATED at Port Vila this 9th day of October, 2025
BY THE COURT**


Justice Viran Molisa Trief

