

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

Civil
Case No. 24/1326 SC/CIVL

BETWEEN: Aore Coastal Development Limited

Claimant

AND: Mathew Dai

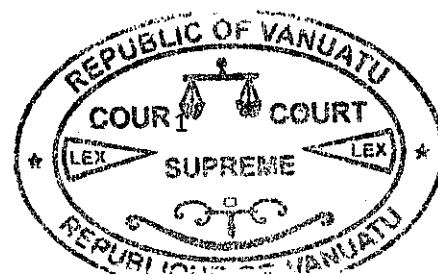
Defendant

Date of Trial: 28 February 2025
Before: Justice V.M. Trief
In Attendance: Claimant – Mrs S. Motuliki
Defendant – Mr P. Fiuka
Date of Decision: 14 March 2025

JUDGMENT

A. Introduction

1. The Claimant Aore Coastal Development Limited ('ACDL') filed the Claim on 29 April 2024 seeking an order for the eviction of the Defendant Mathew Dai from leasehold title no. 04/3034/009 located at Aore island, Santo (the '009 lease'). Also sought were orders restraining Mr Dai from re-entering the land and costs. The Claimant filed the sworn statements of David Russet on 29 April 2024 [**Exhibit C1**] and 14 February 2025 [**Exhibit C2**].
2. The Claim is disputed: Defence filed on 10 February 2025. Mr Dai alleged that the 009 lease covers four pre-Independence titles no's 422, 428 (old title no. 04/3034/002), 417 and 418 and that his adoptive father John Molivono occupied those titles many years prior to Independence. Further, that on 29 April 1982, the Joint Land Committee confirmed that Mr Dai's father is the custom owner of titles

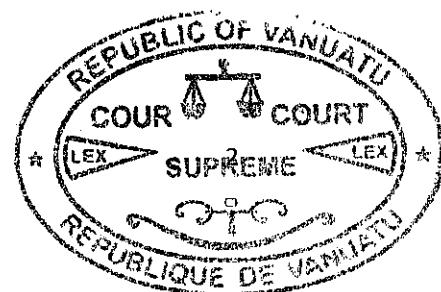


417 and 418 and that on 27 September 1982, the Minister of Lands declared his father as a custom owner representative over pre-Independence titles no's 409, 410, 423, 424, 425, 438, 624, 625, 626 and 627. He alleged that after his father died on 27 July 1983, that leasehold title no. 04/3034/002 was registered on 6 November 1987 between Frank Joe and Edward Sumbe (lessors) and Mr Pascal (lessee) for a 30 year term commencing on 13 July 1980 (the '002 lease'). He alleged that after the 002 lease expired on 13 July 2010, Mr Dai as a lessor had the right under the *Land Leases Act* [CAP. 163] (the 'Act') to re-enter the land with his family and occupy it until now. He claimed an overriding right under para. 17(g) of the Act. He denied prior personal knowledge of the 009 lease registration or the Court case order no. 391 until the present proceeding. Mr Dai filed his sworn statement on 10 February 2025 [Exhibit D1].

3. In the Claimant's Reply to the Defence filed on 14 February 2025, ACDL alleged that it had no prior knowledge of the 002 lease and that prior to Glen Craig exercising his power as receiver and manager appointed by Court case order no. 391, Iauko Harry Iaris was the registered proprietor of the 009 lease, Rachel Vatarul is the registered lessor of the 009 lease and ACDL is a *bona fide* purchaser of the lease who acquired it for VT24,000,000. It denied that Mr Dai has rights under para. 17(g) of the Act as its authorised representative inspected the 009 title and spoke with Mr Dai who never disclosed any rights.

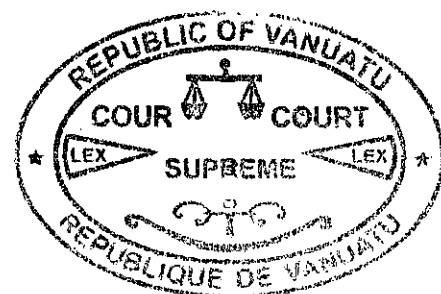
B. Discussion

4. Mr Russet deposed that in June 2021, ACDL successfully won the tender to acquire the 009 lease from Mr Craig exercising his power as the appointed receiver and manager under Court Order No. 391. The transfer of lease to ACDL was completed in July 2021 and registered on 14 February 2022 [copy of the Advice of Registration of a Dealing affecting Registered Land and of the Transfer of Lease instrument adduced as **Exhibit C1 – Attachment “DR2”**].
5. Rachel Vatarul is the registered lessor of the 009 lease. A copy of her Certificate of Recorded Interest in Land (colloquially known as a 'green certificate') based on a declaration of the Supenatavuitano Island Land Tribunal dated 15 June 2005 is attached to the Transfer of Lease instrument for the 009 lease [Exhibit C1 – Attachment “DR2”].
6. Mr Russet also deposed that upon purchasing the leased property, he went to Aore to commence cleaning up and development only to be met by Mr Dai who was living on the property with his family without permission. He deposed that he had spoken to Mr Dai many times regarding the lease transfer to ACDL and even gave him a copy of the Advice of a Registration document at **Exhibit C1 – Attachment “DR2”**

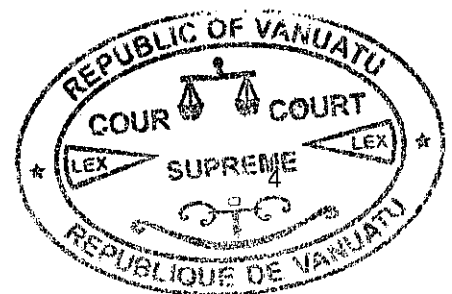


so that he could vacate the property but Mr Dai has not vacated it. He deposed that Mr Dai's occupation of the property is preventing ACDL's operations [Exhibit -C1].

7. In cross-examination, Mr Dai accepted that ACDL is now the registered lessee of the 009 lease.
8. There is clear evidence of ACDL's legal entitlement to the land. It is the registered lessee of the 009 lease.
9. Mr Dai and his family occupy the land, and despite being given verbal notices to vacate, have not vacated the property.
10. ACDL has proved the Claim.
11. I turn now to the matters raised in defence.
12. The defence case includes that Mr Dai's father John Molivono was a custom owner of the leased land, and also that he (Mr Dai) was a lessor of the 002 lease therefore when that lease expired, that Mr Dai had the right to re-enter the land with his family and occupy it.
13. Mr Dai deposed that the 009 lease covers four pre-Independence titles no's 422, 428 (old title no. 04/3034/002), 417 and 418. Further, that on 29 April 1982, the Joint Land Committee confirmed that Mr Dai's adoptive father John Molivono is the custom owner of titles 417 and 418 and that on 27 September 1982, the Minister of Lands declared his father as a custom owner representative over pre-Independence titles no's 409, 410, 423, 424, 425, 438, 624, 625, 626 and 627 [Exhibit D1].
14. However, neither a land committee nor a council of chiefs had any jurisdiction or authority to make a binding determination of custom ownership: Valele Family v Touru [2002] VUCA 3 at p. 10. Further, Ministerial declarations pursuant to s. 6 of the *Land Reform Act* [CAP. 123] appointed persons as representatives of the custom owners of the land. Those Ministerial declarations did not and could not constitute any title as custom owners as the Minister of Lands also did not have any jurisdiction or authority to make a binding determination of custom ownership: Valele Family v Touru [2002] VUCA 3 at p. 9.
15. Accordingly, Mr Dai's father John Molivono may have been a custom owner of the leased land however there is no evidence of that in the present matter. There is also no evidence in the present matter that Mr Dai is a custom owner of the land subject to the 009 lease.



16. Mr Dai deposed that he and two others were the lessors of the 002 lease which covered pre-Independence title 428. He deposed that they were the lessors as custom owners [Exhibit D1]. I have already held above that the Joint Land Committee and Ministerial declarations that Mr Dai relied on were not binding determinations of custom ownership and that there is no evidence in the present matter that Mr Dai is a custom owner of the land subject to the 009 lease.
17. Mr Dai deposed further that when the 002 lease expired, with the consent of all the custom owners, that he had the right to re-enter the land with his family and occupy it [Exhibit D1]. However, Mr Dai accepted in cross-examination that he could not have had Mr Joe's consent as Mr Joe had already passed away when the 002 lease expired. There is also no evidence that either Mr Joe or Mr Sumbe has ever been declared a custom owner of the land subject to the 009 lease by a body who can finally determine custom ownership of land such as an island court, customary land tribunal or on appeal by the Supreme Court or by the customary institutions or procedures set out in the *Custom Land Management Act: Kalvur v Saul* [2025] VUSC 31 at [20]-[21]. I therefore find that Mr Dai did not have the consent of all the custom owners or any custom owners to re-enter and occupy the land which had been covered by the 002 lease (which on his evidence, covered pre-Independence title 428).
18. Mr Fiuka submitted that the lessors of the 002 lease had the right pursuant to clause 3(p) of Schedule A to the 002 lease to vacant possession of the leased land on the expiration of the term of that lease.
19. Lessors do have a right on the determination of a lease to vacant possession of the leased land pursuant to para. 41(j) of the Act.
20. However, even if Mr Dai re-entered the land subject to the 002 lease after that lease expired on 13 July 2010, subsequently that land became subject to the 009 lease (on Mr Dai's own evidence that the 009 lease covers four pre-Independence titles including title no. 428).
21. I find on Mr Russet's evidence that the 009 lease was registered in 2012 between Harry Iauko Iaris (lessee) and Rachel Vatarul (lessor). As set out above, Ms Vatarul's green certificate is attached to the Transfer of Lease instrument under which the 009 lease was transferred to ACDL.
22. There is no evidence that Mr Dai had Ms Vatarul's permission to occupy the land. As already stated, there is no evidence in the present matter that Mr Dai is a custom owner of the land.



23. The balance of the defence case is that Mr Dai has an overriding right to occupy the 009 lease pursuant to para. 17(g) of the *Land Leases Act*.

21. Paragraph 17(g) of the Act provides:

17. *Unless the contrary is expressed in the register, the proprietor of a registered lease shall hold such lease subject to such of the following overriding liabilities, rights and interests as may, for the time being, subsist and affect the same, without their being noted on the register –*

...

(g) *the rights of a person in actual occupation of land save where enquiry is made of such person and the rights are not disclosed; and*

...

Provided that the Director may direct registration of any of the liabilities rights and interests herein before defined in such manner as he may think fit.

24. The Court of Appeal held as follows in *William v William* [2004] VUCA 16:

Fifthly, s.17(g) operates in respect of "rights", that is rights recognized by the law of Vanuatu. A person in actual occupation who is a trespasser will have no "rights" which are protected by the provision. A right may arise under custom law, or it might be a right that derives from and through the proprietor of a registered lease or the predecessor in title of that lease...

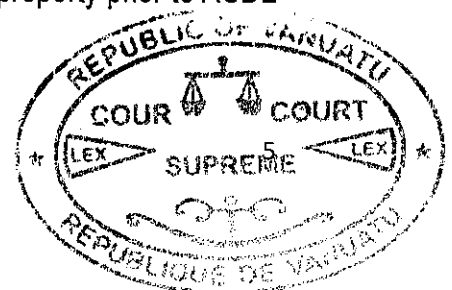
25. As held above, there is no evidence that Mr Dai has a right under custom law to occupy the leased land. There is also no suggestion that he has a right that derives from and through the registered proprietor of the lease or its predecessor in title. On Mr Dai's own evidence, he was not even aware of the registration of the 009 lease or the Court case order no. 391 until the present proceedings [Exhibit D1 at para. 3.11]. In the circumstances, I find that Mr Dai is a trespasser hence he has no "rights" which are protected by para. 17(g) of the Act.

26. The Court of Appeal also held as follows in *William v William* [2004] VUCA 16:

Sixthly, if the person in actual occupation claiming under s.17(g) establishes rights which support the occupation, the rights will be 'overriding' rights unless the proprietor of the registered lease establishes that enquiry was made of that person for an explanation of his or her occupancy, and the rights were not disclosed. The onus of proof as to the making of due enquiry is on the proprietor of the registered lease. To discharge that onus the proprietor would have to establish that a sufficient enquiry was made before the proprietor became the registered proprietor of the lease.

[emphasis added]

27. On Mr Russet's own evidence, he only went to Aore to the property after ACDL had become the registered proprietor of the 009 lease. There, he was met by Mr Dai who was living on the property with his family without permission [Exhibit C1, para. 5]. In cross-examination, Mr Russet stated that he did not visit the property prior to ACDL



becoming the registered proprietor of the 009 lease. I find therefore that ACDL did not make inquiries of Mr Dai prior to becoming the registered proprietor of the 009 lease. However, on the facts of the present case, that does not assist Mr Dai because as per the finding above, he is in any event a trespasser hence has no 'rights' which are protected by para. 17(g) of the Act.

28. For the reasons given, ACDL has proved the Claim on the balance of probabilities.

C. Result and Decision


29. Judgment is entered for the Claimant and it is ordered as follows:

- a) The Defendant and his dependents are to vacate leasehold title no. 04/3034/009 located at Aore island, Santo, including removing their fencing, houses, personal properties and garden crops leaving the land vacant, **within 3 months from the date of service of this Judgment;**
- b) The Defendant and his dependents are not to re-enter onto the Claimant's leased land leasehold title no. 04/3034/009 located at Aore island, Santo; and
- c) Costs follow the event. The Defendant is to pay the Claimant's costs as agreed or taxed by the Master. Once settled, the Defendant is to pay the costs within 28 days.

30. Enforcement

31. Pursuant to rule 14.37(3) of the *Civil Procedure Rules* ('CPR'), I now schedule an Enforcement Conference **at 1pm on 27 June 2025** to ensure that the judgment has been executed or for the Defendant to explain how it is intended to comply with this judgment. For that purpose, this judgment and a summons in Form 27 of the CPR must be personally served on the Defendant, and proof of service filed.

**DATED at Port Vila this 14th day of March 2025
BY THE COURT**


Justice Viran Molisa

