

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

Civil
Case No. 21/960 SC/Civil

BETWEEN: Patrick Wells
Claimant

AND: Kapten Naiser, Kevin John Naiser, Joe Naiser and Remy
Naiser
First Defendants

AND: Republic of Vanuatu
Second Defendant

Before: Justice Oliver A. Saksak

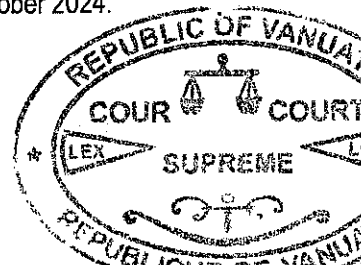
Counsel: Mr Roger Tevi for the Claimant (via telephone)
Mr Sakiusa Kalsakau for the First Defendants
Mr Freddie Bong for the Second Defendant

Date of Hearing: 31st January 2025
Date of Judgment: 6th February 2025

SUMMARY JUDGMENT

Introduction

1. Patrick Wells the claimant initiated this proceeding against the First Defendants only in March 2021 seeking orders for special and general damages against the defendants for trespassing on his Lease title 04/1832/001 (the Lease).
2. He initially obtained interlocutory restraining orders against the first defendants on 9th April 2021. These orders were varied on 20th July 2021 following appropriate application.
3. The First Defendants filed a defence on 25th May 2021 and an amended defence plus counter-claim on 30th April 2024. The counter-claim alleged that the Lease was obtained by the claimant by fraud and/or mistake. The First Defendants joined the Republic as Second Defendant and sought orders in the main for cancellation, and damages, compensation, rents, 5% interests and costs.
4. The Attorney General filed a defence to the Counter-claim on 26th June 2024 acknowledging there was no copy of the Negotiator Certificate, no custom owner declaration or Certificate of Recorded Interest and no record of any application by the claimant passing through the Land Management Planning Committee for approval, however they pleaded that the Lease was registered in good faith.
5. The Republic relied on the evidence by sworn statement of Gordon Willie filed on 1st October 2024.



6. For the Claimant, he filed a Reply to the Defence and Counter-claim on 31st January 2023 and a sworn statement in support thereof dated 17th April 2023, and an amended reply dated 16th July 2024. No other documents or evidence were filed by the claimant.

Discussion

7. To prove fraud and/or mistake the burden rests on the First Defendants.
8. At the hearing of the application for summary judgment Mr Kalsakau relied on the evidence by sworn statement of Mr Gordon Willie in paragraphs 7 and 8 where he deposed that there is no copy of a Negotiator Certificate or custom owners declarations and a Certificate of Recorded Interested and no record of any application for lease by the claimant made to the Land Management and Planning Committee. This is consistent with the pleadings in the Defence filed by the Attorney General. As such Mr Kalsakau submitted the Lease was obtained fraudulently and by the mistake of the agents of the State which warranted cancellation of the Lease.
9. Mr Bong offered no arguments or submissions but informed only that the Second Defendant will abide orders of the Court
10. Mr Tevi conceded over the telephone. He accepted that on the evidence of the Director of Lands Mr Willie, it was difficult for the claimant to by- pass or rebut it. Counsel accepted the requirements were not followed and left it entirely for the Court to decide.

The Result

11. Accordingly I enter judgment for the First Defendants on their counter-claim. I am satisfied on the evidence of Mr Willie that Lease 04/1832/001 was obtained fraudulently and by mistake. I decline the orders for damages compensation, rents and interest as they were not advanced by Counsel.
12. I therefore dismiss the claimant's claims.
13. I Order that the Director of Lands rectify the Lease Register by cancelling Lease 04/1832/001 within 30 days from the date of this judgment.
14. I further order that the claimant and second defendant pay the First Defendants costs of the proceeding on the standard basis as agreed or taxed.

DATED at Port Vila this 6th day of February 2025

BY THE COURT

