**IN THE COURT OF APPEAL OF THE REPUBLIC OF VANUATU**
*(Civil Appellate Jurisdiction)*

**Civil Appeal**
**Case No. 25/1024 COA/CIVA**
**[2025] VUCA 24**

**BETWEEN: MATHEW DAI**
Appellant

**AND: AORE COASTAL DEVELOPMENT LIMITED**
Respondent

| | |
|---|---|
| ***Date of Hearing:*** | ***12th May 2025*** |
| ***Coram:*** | ***Hon. Chief Justice V Lunabek***<br>***Hon. Justice J Mansfield***<br>***Hon. Justice R Asher***<br>***Hon. Justice O A Saksak***<br>***Hon. Justice D Aru***<br>***Hon. Justice EP Goldsbrough*** |
| ***Counsel:*** | ***Mr W Daniel for the Appellant***<br>***Mrs S Motuliki and Mr J Malcolm for the Respondent*** |
| ***Date of Judgment:*** | ***16th May 2025*** |

---

# JUDGMENT OF THE COURT

---

## Introduction

1. This appeal is against the findings of the Supreme Court in Civil Case No. 24/1326 whereby the Judge found the appellant was occupying Leasehold Title 04/3034/009 (Lease 009) without permission as a trespasser with no rights protected by section 17 (g) of the Land Leases Act [Cap 163], and the orders that:

   a) The appellant and his dependants vacate Lease 009 within 3 months;

   b) They not re-enter the Lease; and

   c) The appellant pays the Claimant's costs as agreed or taxed.

## Grounds of Appeal

2. The appeal is advanced on two grounds, first that the Judge was wrong in fact and law in holding that the appellant's occupation of the area of Lease 009 since 2010 was not permitted pursuant to the decision of the Joint Land Committee dated 29 April 1982 and is not a right under custom

law of Aore Island and, in any event, his occupation was unlawful so that it could not be recognised and protected by section 17(g) of the Land Leases Act.

3. Secondly, that the judge had construed the application of the Court of Appeal decisions In Valele Family v Touru [2002] VUCA 3 and Williams v Williams [2004] VUCA 16 to hold wrongly that the appellant's actual occupation of Lease 009 could not be sustained as a right under customary law creating an overriding interest under section 17(g) of the Act.

**Relevant Background Facts (From the Respondent's view)**

4. The respondent is the current registered proprietor of Lease 009. The formal registration of the lease was effected on 14 February 2022.

5. Lease 009 was initially created between Iaris Harry Iauko (Lessee)- (now deceased) and Rachel Vatarul as the lessor in October 2012.

6. Lease 009 is comprised of 285 hectares of lands on Aore Island known as Belmol, Alao and Purumamasa.

7. It is claimed by the Respondent that on 15 June 2005 the Supenatavuitano Island Land Tribunal decided custom ownerships of those lands in favour of Rachel Vatarul. Pursuant to that decision Rachel Vatarul obtained a Certificate of Recorded Interest over those lands on 2 June 2016. As we note below, the foundation for that claim is a recital to that effect in the Certificate of Recorded Interest.

8. The lessee of Lease 009, the late Harry Iauko passed away leaving a debt to South Pacific Electrics (Vanuatu) Limited (the company) in the sum of VT 6,503,878.

9. The son of the deceased Harry Pascal Sebastian Iauko became the personal representative of the estate of the deceased. The company instituted legal proceedings to recover the debt owing against the estate.

10. During the enforcement process before the Deputy Master an application for the appointment of a receiver was made in September 2020. Pursuant to the application Mr Glen Craig was appointed as the Receiver with the obligation to enforce the enforcement warrant dated 29th April 2021 to recover the principal debt together with interest and all costs, including the enforcement costs.

11. Lease 009 became the subject of the Enforcement Order dated 29 April 2021. The lessor's interest in Lease 009 was sold by the Receiver pursuant to a Sale and Purchase Agreement in early 2021 to the Aore Coastal Development Ltd (the respondent) for the sum of VT 24,000,000.

12. Mrs Rachel Vatarul had withheld her consent to transfer Lease 009 to the respondent resulting in the respondent applying to the Supreme Court seeking an order for specific performance. The Court allowed the application and issued the orders on 29 April 2021.

13. On 29 April 2024 the Respondent issued legal proceedings against the appellant alleging the appellant and his dependants are unlawfully occupying, trespassing and developing the land without right and permission. The Respondent sought orders of eviction and prohibition against the appellant and his dependants.

## Appellant's Position

14. The appellant defended his occupation on Lease 009 in the Supreme Court

15. The appellant is the adopted son of the late John Molivono who passed away on 27 July 1983. He alleged that Lease 009 covers four pre-independence titles Nos 422,428 (previously the subject of old Lease Title No. 04/3034/002), 417 and 418 and that his adoptive father had occupied those titles for many years prior to independence in 1980. He alleged further that on 29 April 1982 the Joint Land Committee had confirmed the late Mr John Molivono as the custom land owner of the lands within the four titles. Further, that on 22 September 1982 the Minister of Lands had declared the late John Molivono as the custom owner representative over the pre-independence titles Nos 409, 410, 423, 424, 425,438,624, 625 and 627.

16. Mr Dai alleged that Lease Title 04/3034/002 (Lease 002) was created between Frank Joe, Edward Sumbe and himself Mathew Dai as Lessors and Pascal Gardel as an Agricultural Lease on 6 November 1987. That Lease 002 was granted for a period of 30 years from 30 July 1980.

17. Lease 002 expired on 13 July 2010. As one of the lessors and with the consent of Frank Joe and Edward Sumbe, the appellant re-entered the land with his family in 2010 and has remained in occupation to the present time.

## The Judgment under appeal

18. The appellant's appeal is against the findings, decisions and conclusion made by the primary Judge in paragraphs 25, 26, 27, 28 and 29 of the judgment dated 14th March 2025 where the Judge said: -

    a) **At [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 had 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."**

b) At [26]: "The Court of Appeal 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 the 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]

c) At [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 Ruset 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 inquires of Mr Dai 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."

d) At [28]: "For the reasons given, ACDL has proved the claim on the balance of probabilities.

e) At [29]: "Judgment is entered for the claimant and it is Ordered as follows:

a) The Defendant and his dependants are to vacate leasehold title No 04/3034/009 located at Aore Island, Santo, including removing their fencing, houses, personal proprietor and garden crops leaving the land vacant, within 3 months from the date of service of this judgment;

b) The Defendant and his dependants 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"

**Submissions**

19. Mr Daniel submitted on behalf of the appellant that:

a) There was undisputed evidence before the primary judge showing that the late John Molivono was recognised as the custom land owner of lands comprised in the old pre independence titles, the subject of Lease 002 and Lease 009.

b) That the appellant as the adoptive son of the late John Molivono has lived on the land for over 45 years and that there has been an absence of any land claims and disputes of ownership over these lands since.

c) As one of the lessors of Lease 002 which expired on 13 July 2010 the appellant re-entered the land two years before the creation of Lease 009 between Rachel Vatarul and Iaris Harry Iauko, of which the appellant was not made aware or informed.

d) The appellant was not notified or invited to the sitting of the Supenatavuitino island Land Tribunal to be heard before the granting of custom ownership of Belmol, Alao and Purumamasa lands.

e) That the Certificate of Recorded Interest dated 22 June 2016 in favour of the Rachel Vatarul in respect of lands in Lease Titles 04/3312/003, 04/3033/002, 04/3033/005 and 04/3312/002 which are outside the custom lands of the late John Molivono.

f) That the primary judge had misconstrued and misapplied the case of William v William [2004] VUCA 16.

20. Mrs Motuliki submitted that there was no error made by the primary judge in applying the principles in the cases of Valele v Touru and William v William on the facts and evidence as presented, and that the appellant had not proven on the balance of probabilities that he has rights to occupy the lands in Lease 009.

**Discussion**

21. At the outset of the hearing of the appeal Mr Daniel sought permission from the Court to rely on the documents to annexed as "A", "B" and "C" to the sworn statement of Jason Moli filed on 9 May 2025 in support of the appeal. The respondent objected to these documents being admitted as evidence on appeal.

22. The documents annexure "A" and "B" could have been disclosed during trial by the appellant and there is no sufficient explanation from the appellant why they were not. The document annexure "C" is a public document. It is a Certificate of Recorded Interest over custom ownership of Ratua Island which is outside the boundary of Lease 009. Therefore, this document has no relevance.

23. We therefore declined the appellant's request for permission to rely on the documents annexed as "A" "B", and "C".

**Ground 1**

24. In relation to Ground 1, the primary judge made references to the evidence of the appellant as defendant in paragraphs 2, 13, 16, and 17 of the judgment. Despite that evidence, the primary judge concluded in paragraphs 15, 16, 22, and 25 of the judgment that there was no evidence giving the appellant any right to occupy the land in issue and that he had no section 17 (g) right.

25. Whilst it is correct to say there was no evidence showing any valid determination under the Island Courts Act of custom ownership to the late John Molivono or his adoptive son, Mr Dai, there is undisputed evidence of Lease 002 that Mr Dai was one of the three lessors of that lease from 30 July 1980. That lease expired on 13 July 2010. Upon its expiration Mr Dai re-entered the land and occupied it until 2012 when Lease 009 was created without his knowledge. Although he may not have been declared a custom-owner, Lease 002 had existed for its full 30 years without any challenge as to its validity and he was accepted at the time by others as being entitled to be one of the lessors.

26. Furthermore, from 2012 to date there has been no evidence from the respondent showing any challenge to his occupation of the land from or on behalf of Rachel Vatarul as custom owner of the land or as registered lessor, or from Harry Iauko as lessee.

27. The Lease Register dated 6 November 1987 confirms that Mr Dai is recorded as one of the three lessors of Lease 002 over ex-428 Lot. Again, there has been no evidence challenging the validity of the register.

28. Next the primary Judge found on Mr Russet's evidence as recorded in paragraph 5 of the judgment that Rachel Vatarul is the registered lessor of Lease 009. That finding was based on the Certificate of Recorded Interest said by its contents to be based on the declaration of the Supenatavuitano Island Land Tribunal. There was no evidence of the Decision or Judgment of the Tribunal before the Court below or before us.

29. There is in our view a gap in the proceeding that reveals a flaw and prejudice to the appellant.

30. The primary Judge acknowledged the lessors' rights to re-enter vacant land on the determination of leases in paragraph 19 of the judgment being in accordance with section 41 (j) of the Land Leases Act [ Cap 163]. However, in paragraph 17 the Judge denied that right of re-entry to Mr Dai because consents were not given by Mr Joe and Mr Sumbe. However, it is difficult to understand how consent was necessary when the appellant re-entered on the portion of Lease 002 covering pre independence title 428 which the appellant had always occupied.

31. In our view, the primary judge did not have evidence upon which to base the conclusion that, at least from 2012 the commencement of Lease 009, the appellant was a trespasser on the land. At least to 2012, his father and then the appellant himself had been living on the land (subject to Lease 002). No evidence at all could support the conclusion that he was a trespasser at that time. Assuming Rachel Vatarul is the recognised custom owner from 2005 (although no decision of any Land Tribunal was produced in evidence), there is evidence that she or the lessee under Lease 009 were not aware of the appellant living on the land, and required him to leave it. His own evidence was that he continued to do so, until confronted by Mr Russet after the respondent had secured the transfer of the lessee's interest apparently in 2021.

The respondent did not inspect the land of the 009 Lease before it had that lease transferred to it, so it took its chances about someone occupying part of the land and being entitled to protection under section 17 (g).

**Ground 2 and 3**

32. Finally, it was argued and submitted by Mr Daniel that the primary Judge had misconstrued the principles in William v William in paragraph 26 of the judgment.

33. This Court made it plain in William v William that the onus of proof as to the making of due enquiry rests on the proprietor of a registered lease. To discharge that duty the proprietor would have to establish that sufficient enquiry was made before the proprietor become the registered proprietor of a lease.

34. As we noted in this case the Judge found in paragraph 27 of the judgment on Mr Russet's evidence that he went to Aore after ACDL had been registered as proprietor and that ACDL and did not make inquiries of Mr Dai prior to becoming the registered proprietor of Lease 009. Despite those findings, the Judge held Mr Dai was a trespasser with no section 17 (g) rights. Clearly the respondent had failed to meet the onus of proof to make due enquiry to adhering the principles in Wiliam v William.

35. We are satisfied that an error has been demonstrated in the judgment of the primary Judge in finding that the appellant was a trespasser.

**Result**

36. Accordingly, we allow the appeal. The formal orders are:

a) Appeal allowed;

b) The judgment dated 14th March 2025 is hereby quashed;

c) The case is remitted to the Supreme Court for a re-trial before a different judge;

d) The respondent is to pay the appellant's costs which we fix at VT 75,000, within 14 days from the date of judgment.

**Dated at Port Vila this 16th day of May 2025**

**BY THE COURT**

REPUBLIC OF VANUATU COURT OF APPEAL COUR D'APPEL REPUBLIQUE DE VANUATU

**Hon. Chief Justice, Vincent Lunabek**