

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

**Civil
Case No. 17/1378 SC/CIVL**

BETWEEN: David Dick and Tessie Dick
Claimants

AND: Daniel Tissa and Caro Tissa
Defendants

Date of Hearing: 25th September 2018

Before: Justice Oliver Saksak

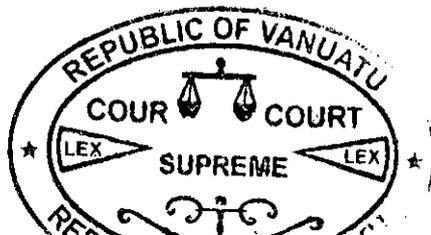
Counsel: Mr. Justin Ngwele for the Claimants
Defendants (no-appearance)

JUDGMENT

1. Judgment is hereby entered in favour of the Claimants herein against the Defendants.
2. The Claimants are entitled to the following orders:-
 - (a) That within a period of 20 days from the date hereof (by 15 October 2018), the Defendants, by themselves, their families, relatives agents and representatives residing on the Claimants' leasehold title be evicted from the property, if they do not vacate or remove themselves voluntarily.
 - (b) The relief sought for damages be deferred to a date to be fixed and notified.

Reasons

3. This is a claim for eviction on grounds of trespass and for compensatory damages, interest and costs.
4. When the case was called, the Defendants were not present. They were previously represented by Mr. Edward Nalyal who filed a notice of ceasing to act on 1st August 2018. It was on this date that this matter was adjourned for trial hearing to 25 September 2018. (today)



5. Clearly the Defendants failed to attend trial. Mr. Ngwele submitted that the Court should proceed under Rule 12.9 (1) which states:-

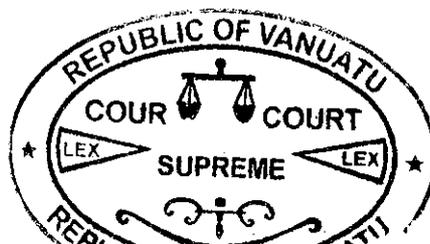
“If a Defendant does not attend when trial starts:

(a) Not applicable;

(b) The Court may give judgment for the Claimant, or

(c) The Claimant, with permission of the Court, may call evidence to establish that he or she is entitled to judgment against the Defendant.”

6. I accept the submissions and proceed to enter judgment pursuant to Rule 12.9 (1) (b).
7. For the Claimant to succeed on a claim for trespass they had to show they have title to the property. In the sworn statement of David Dick dated 4 August 2018 he annexes as DD1 a copy of lease transfer of title 11/OI22/010. The transferor is Freshwind Ltd and the transferee is David Dick and Tessie Dick, the Claimants. From this evidence clearly the Claimants have indefeasible title.
8. At paragraph 9 of the same sworn statement this Claimant says he never gave any invitation or permission to the Defendants to be on his title. I am satisfied from those evidence that the Claimants have title and that the Defendants are trespassers on the property.
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9. I have seen the defence filed by the Defendant on 5 February 2018. The pleadings in paragraph 3 (a) appears confusing. The pleadings in paragraph 4, 5, 6 and 7 are refuted by the Claimants. His evidence was that the Defendants could stay temporarily only until they could find a proper and alternative home. That is sufficient. Whatever else was said or done is immaterial. Whoever else said anything and did anything to encourage the Defendants to remain on the property had no authority to do so.
10. That being the position, the Claimants have proven their claim on the balance of probabilities and accordingly they are entitled to have judgment entered in their favour.



11. The Defendants have 20 days to remove themselves from the Claimant's property. If they fail to do so, the Claimants will need to apply for an enforcement warrant for eviction.

DATED at Port Vila this 25th day of September, 2018

BY THE COURT

