

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

**Civil
Case No. 18/2567 SC/CIVL**

**BETWEEN: Seru Makambo, Saki Makambo, Helen Makambo, and
Serah Makambo**

Claimants

AND: Jimmy Makambo

First Defendant

AND: Republic of Vanuatu

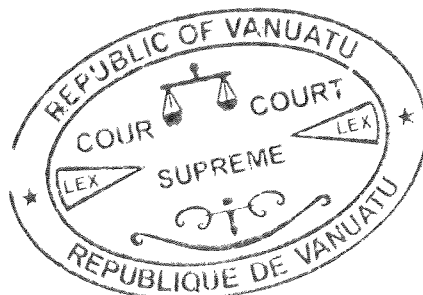
Second Defendant

Date of Hearing: 4th October 2018
Date of Decision: 21st November 2018
Before: Justice Oliver A Saksak
In Attendance: Justin Ngwele for Claimants/ applicants
George Boar for First Defendant
No appearance for Second Defendant

DECISION

Background

1. The applicants currently occupy leasehold title number 11/0C33/001(Lease 001). The registered proprietor of Lease 001 is Jimmy Makambo, the first defendant. He obtained the lease in May 2008. He filed Civil Case No. 39 of 2015 seeking eviction of the applicants. He obtained Court orders on 12th October 2015 giving him judgment. The applicants have not vacated the property since then to date. Jimmy Makambo obtained an enforcement warrant to evict the applicants on 31st July 2018.
2. The applicants filed Civil Case No. 2567 of 2018 on 19th September 2018 challenging his lease. They say the lease was obtained through fraud and/or mistake.



3. The applicants now want an order restraining the Sheriff of the Court from enforcing the enforcement warrant of 31st July 2018 pending the determination of their proceeding. The application is opposed by Mr Makambo.

Pleadings in CC 2567 of 2018

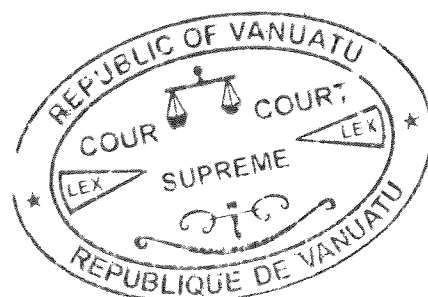
4. The applicants plead in their claims against the respondent, Mr Makambo that he obtained his lease without paying any premium and consideration, that he had not had approval from the Land Management and Planning Committee, and that the Minister's signing of the lease was not witnessed by a commissioner of oaths. They allege breaches of certain provisions of the Land Leases Act. They allege also that those acts and/or omissions tantamount to fraud or mistake.

The pleadings of the respondent in CC 39 of 2015

5. The respondent pleaded in his claims against the applicants that the applicants have chased his wife and children out of the property, are causing nuisance trespass and damage to properties and doing other activities on the property without his consent.
6. The applicants denied all the allegations except the claims in paragraphs 1, 2, 3, 4 and 5 which they admitted in their Defence filed on 30th March 2015.

Undisputed Facts in CC 39 of 2015

7. These are that the Claimant and defendants are residents of Port Vila (para.1), that the Claimant is the registered lessee of Lease 001 (para 3), the defendants are all residents on the property (para.4), and that the claimant is employed and travels extensively both in the country and out of it (para.5).



The Issues

8. The issues for consideration are whether the applicants are entitled to remain on Lease 001 and do they have standing?

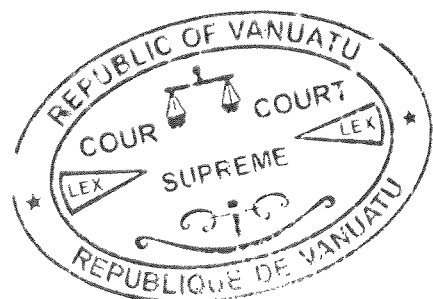
Submissions

9. Mr Ngwele argued that the applicants have a serious question to be tried for which damages are not the appropriate remedy. Further he argued that the facts of the case show fraud and/or mistake and that the applicants claim section 17 (g) rights under the Land Leases Act.
10. Mr Boar argued in opposition to the application. He submitted the same issues were raised in CC 39 of 2015 and were dismissed by the judge and therefore the applicants had no standing. Further that they had not appealed although they attempted to. He submitted as well that CC 39 of 2015 was at end and his client is being denied the enjoyment of the fruit of his judgment by the new proceeding. He raised the issue of non-compliance with previous Court orders, in particular their failure to pay the respondent's costs. Counsel submitted the application was an abuse of process.

Discussion

11. First and foremost, the applicants have not provided any clear provision in the Civil Procedure Rules as the basis of their application. Their application is headed Urgent Application for Injunctive Relief. They have filed Proceeding as Civil Case 2567 of 2018 as their foundation for making the application. The relevant rule in my view is Rule 7.2.
12. Next, the history of the case. Mr Jimmy Makambo filed CC 39 of 2015 on 25th February 2015. At paragraph 3 he claimed-

“ At all material time, the Claimant is the registered lessee of lease title 11/0C33/001 (the Property)”.



13. At Paragraph 4 he claimed-

“ THE defendants are all residents of the claimant’s property”.

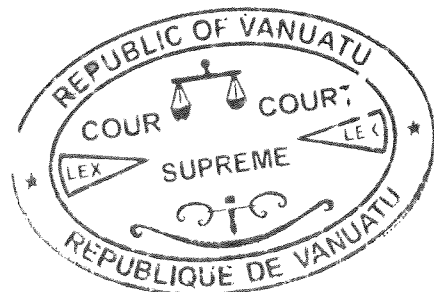
14. The applicants (defendants) filed a defence on 30th March 2015. In paragraph 1 they admitted Mr Makambo’s claims in paragraphs 1, 2, 3 and 4. Essentially the defendants had admitted they were trespassers and that Mr Makambo is the registered proprietor of Lease 001. They have no counter-claim. They could have challenged his claims right there and then but did not. They failed repeatedly to attend conferences to progress their defences and to file their sworn statements as directed. And they failed to pay wastage costs as ordered on 13th August 2015. This was more than 3 years ago. They have come to seek justice with dirty hands.

15. Mr Makambo had registered the lease in his name on 23rd May 2008. The defendant’s knew this and did not object to it at the time. In February 2015 after he filed his proceeding the defendants accepted he is the proprietor of the lease in question. They had no challenge to his claim.

16. It is only after Mr Makambo had been given judgment on 12th October 2015 and obtained an enforcement warrant for execution by the Sheriff have the defendants seen fit to file CC 2567 of 2018 to challenge the validity of Lease 001. But it has been more than 8 years since its registration in 2008 and more than 3 years after Mr Makambo had obtained judgment. And the defendants had not appealed, although they tried.

17. The defendants are using CC 2567 of 2018 as a delay tactic to deny Mr Makambo his right to enjoy the fruit of his judgment.

18. The defendants application for injunctive relief is unfair to Mr Makambo. It is an abuse of process. They have no possible defence on which to hang their claim in CC 2567 of 2018 on. Their claim is unfounded. It is frivolous and vexatious.



19. For the reasons given, I dismiss the application and award costs against the applicants on an indemnity basis. All costs must be paid before CC 2567 of 2018 can be listed for further conference.

DATED at Port Vila this 21st day of November, 2018

BY THE COURT

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Oliver.A.Saksak
Judge

