IN THE SUPREME COURT OF

THE REPUBLIC OF VANUATU

(Civil Jurisdiction)

Civil

Case No. 20/2389 SC/Civil

BETWEEN: Tony Ria Nicholas Oloi and Others First Claimants Philip Ria Abner Maki and Others Second Claimants

AND: Lency Kaun and Charlie Kaun

First Defendants

Joy Ishmael

Second Defendant

Leonard Daniel

Third Defendant

Republic of Vanuatu

Counter-Claim Defendant

Date of Hearing:	27 May 2022
Before:	Justice G.A. Andree Wiltens
Counsel:	Mr K. Ture for the Claimants
	Ms M. Nari for the First Defendants
	Mr L. Malantugun for the Second Defendant
	Mr E. Macreveth for the Third Defendant
	Mr S. Aron for the Counter-Claim Defendant
Date of Decision:	6 June 2022

<u>Judgment</u>



A. Introduction

- 1. It appears all the parties are closely related.
- 2. The Claimants are the lessors and lessees of certain land at north-east Malekula, more particularly described as Leasehold Title No. 09/0744/001. By their Amended Claim, the Claimants seek the eviction of the named Defendants from that land by virtue of their proprietorship.
- 3. The Defendants have filed Defences to the Claim, the First and Second Defendants doing so jointly; and the Third Defendant doing so separately. Their defence to the Amended Claim is that the leasehold title is but a relatively small part of a much larger area of land known as Louni; and that they, as well as the Claimants, lay claim to being the true custom owners of Louni.
- 4. It is not disputed that the issue of custom ownership has yet to be determined.
- 5. The First and Second Defendants have also filed a counter-claim jointly; and the Third Defendant has also filed a separate counter-claim. Both are seeking to utilise section 100 of the Land Leases Act to answer the Claim.
- 6. The Republic of Vanuatu has been brought into the case as a Defendant to the counter-claim by the First and Second Defendants.
- B. <u>Hearing</u>
- 7. The matter before the Court was an application by the Claimants and the Republic of Vanuatu to strike out the two counter-claims. It is contended by those seeking the strike out that the counter-claimants have no standing to bring their counter-claims.
- 8. Both applications were opposed.
- 9. Counsel filed helpful written submissions, upon which each relied in support of their positions.
- C. <u>Discussion</u>
- 10. I have no doubt that those seeking to strike out the counter-claims are correct. There can be no basis for the counter-claims to be allowed to continue, as the counter-claimants do not have standing. I rely on the authority of *Ishmael v Kalsev & Others* in CC 12/220 and subsequently in CAC 14/27 as support for this determination. The counter-claimants have no interest in the lease, and accordingly the remedy each seeks by way of counter-claim is unavailable to them in law.
- 11. However, in closely examining the large amount of material on the file, it occurred to me that simply dealing with the present applications would be to do an injustice to the parties. I consider the Amended Claim itself to be premature.
- 12. If the Defendants were to be identified as true custom owners, then it would be entirely wrong for the Claimants to be able to evict them from their own land.

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- 13. The whole issue of ownership and usufructuary rights requires to be considered, and determined, before there can be true resolution between the parties. To date, that has not been completed. To my mind, that was he pressing issue between the parties which requires addressing.
- 14. Accordingly, I invited counsel to a conference to discuss the matter. As well as counsel, two individuals also attended.
- 15. I indicated that I was minded to not only strike out the counter-claims, but further that I was minded to also strike out the Amended Claim as premature, and as having no realistic prospect of success.
- 16. I suggested the parties would be much better off to cease squabbling through lawyers, at cost to them, and get to the nub of the issue within their community, namely to identify the true custom ownership of Louni and for a determination also to ne made of parties' secondary rights.
- 17. Counsel agreed, almost immediately; and after a short time to take instructions Mr Tari's client also agreed.
- D. <u>Result</u>
- 18. The compromise arrived at, is that the Amended Claim is withdrawn, and that by consent the counter-claims are struck out.
- 19. Costs are to lie where they fall.
- 20. The file is now closed.

Dated at Port Vila this 6th day of June 2022 BY THE COURT Justice G.A. Andrée Wiltens