

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

Civil
Case No. 21/3138 SC/CIVL

BETWEEN: Molkis Pierre Cyrill Molkis
Claimant

AND: Roline Molengleng Michel Tabi
First Defendants

AND: Chen Jinqiu
Second Defendant

AND: Republic of Vanuatu
Third Defendant

Date: 2 August 2023
Before: Justice V.M. Trief
Counsel: Claimant – Mr R. Rongo
First Defendants – Mrs M. Mala
Second Defendant – Mrs M.P. Vire
Third Defendant – Mr T. Loughman

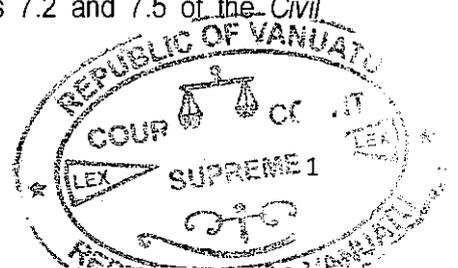
DECISION AS TO CLAIMANT'S URGENT APPLICATION FOR RESTRAINING ORDERS

A. Introduction

1. The Claimant Molkis Pierre Cyrill Molkis ('Mrs Molkis') alleges in the Claim that lease title no. 03/OJ92/044 formerly registered in the name of her deceased husband Cyrill Molkis was transmitted by fraud or mistake into the name of the First Defendants Roline Molengleng Michel Tabi who then transferred it to the Second Defendant Chen Jinqiu.
2. This was an Urgent Application for Restraining Orders.

B. Submissions

3. On 10 May 2023, Mrs Molkis filed Urgent Application for Restraining Orders seeking orders against Mr Chen (the 'Urgent Application'), Sworn statement of Urgency, Undertaking as to Damages and supporting Sworn statement of Molkis Sylverio. The Urgent Application is made pursuant to the Court's inherent jurisdiction and rules 7.2 and 7.5 of the *Civil Procedure Rules* ('CPR').



4. The grounds for the Urgent Application include that Mr Chen entered onto the leased land without any Court Order, that he damaged Mrs Molkis' building and the trees and plants there with a heavy digger machine, and that the status quo of the land should be maintained pending the final determination of this case.
5. On 23 June 2023, Mr Chen filed submissions in response and his Sworn statement. Mrs Vire submitted on his behalf that he purchased the property around July 2021 and therefore entered the property with heavy machinery to do work because the property now belongs to him. He asserts that he is a *bona fide* purchaser and should not be barred from entering his own property. Further, that there was no caution on the lease at the time he purchased the property nor was he aware of any issue with Mrs Molkis in relation to the land. Mrs Vire submitted that the Urgent Application be dismissed with costs on an indemnity basis.

C. Discussion

6. The Undertaking as to Damages is by a Molkis Sylverio, not Mrs Molkis. As Molkis Sylverio is not a party to this proceeding, he cannot be held to this undertaking. The Undertaking as to Damages not having been made by Mrs Molkis, that alone is reason for the orders sought to be refused.
7. Mrs Molkis may have a serious question to be tried (in terms of rule 7.5(3)(a) of the CPR). However, I am unsure as to the naming of Michel Tabi as a First Defendant when it appears he is deceased and whether or not any action has been taken in relation to his performance of his duties as administrator of Mr Molkis' estate. In addition, I consider that Mr Chen as an asserted *bona fide* purchaser for value, with possession of the leased land, would suffer the more serious disadvantage if the orders were made than Mrs Molkis who is not in possession and asserting that the transfer of lease by Mrs Tabi to Mr Chen was obtained by fraud or mistake (in terms of rule 7.5(3)(b) of the CPR).
8. In addition, even if Mrs Molkis were to succeed on the Claim, her remedy would only lie against Mrs Tabi unless it can be shown that Mr Chen was party to the fraud or mistake alleged.
9. For the reasons given, I decline to grant the Urgent Application.

D. Result and Decision

10. The Claimant's Urgent Application for Restraining Orders is **declined and dismissed**.
11. Costs reserved.

DATED at Port Vila this 2nd day of August 2023

BY THE COURT


Justice Viran Molisa Trief

