

BETWEEN: **JOE JOHNNY**
Claimant

AND: **LAURENCE SOLOMON**
First Defendant

AND: **JOHN TABI MOLBARAV**
Second Defendant

AND: **JEROME NATU**
Third Defendant

AND: **MOSES MOLVATOL**
Fourth Defendant

AND: **THE ESTATE OF LATE FELIX LAUMAE
TALOINAO KABINI**
Fifth Defendant

AND: **THE REPUBLIC OF VANUATU**
Sixth Defendant

AND: **THE NATIONAL BANK OF VANUATU**
Interested Party

Date: 12 December 2023

Before: Justice W. K. Hastings

Distribution: Mr. A. Godden for the Claimant
Mr. J. Tari for the First, Second, Third, Fourth and Fifth Defendants
Mr. F. Bong for the Sixth Defendant

DECISION ON STRIKE-OUT

1. There are two reasons why this claim must be struck out. The first is that the claimant has no standing to bring the claim. The second is *res judicata*, the matter has already been decided.

Standing

2. The claimant seeks an order that lease title no. 04/3021/1083 (lease 1083) be cancelled and that the register be rectified pursuant to s 100 of the Land Leases Act. Mr Godden submitted that in a Torrens land title system, the accuracy of the register is paramount.
3. In their defence, the first, second, third and fifth defendants submitted that at the time lease 1083 was registered, there was a decision of the Veriondali Land Tribunal declaring them custom owners of the land where lease 1083 is situated.



4. I note that that decision was subsequently quashed by the Supreme Court in *Molsakel v Molbarev and others* [2017] VUSC 212 and referred back to the Island Court.
5. The first, second, third and fourth defendants applied to strike out the claim because the claimant is neither a custom land owner nor a party to lease 1083. As such, they submitted the claimant has no standing to pursue a claim under s 100 of the Land Leases Act. The sixth defendant, in his response to the strike out application, submitted that ownership of the land in dispute, the Belbarav land, is currently before the Santo/Malo Island Court which has yet to make a declaration of custom ownership. The sixth defendant submitted neither the claimant nor the other four defendants are custom owners of the subject land, and that the lease was registered pursuant to a decision that was later cancelled. The claimant acknowledges in paragraph 1.1 of his response that he is “a potential custom owner.”
6. In *Ishmael v Kalsev* [2014] VUCA 27, the Court of Appeal said at paragraph 7 that “being merely a claimed custom owner, he does not have the requisite legitimate interest or standing to apply for rectification under s 100.” Similarly, in *Mataskelekele v Bakokoto* [2020] VUCA 31, the Court of Appeal said at paragraph 26:

In the appellant’s case it was a case of challenging the validity of a lease under section 100 of the Land Leases Act. The appellant was neither the lessor nor the lessee. And neither had he nor his family been declared custom owners by any Court or tribunal of competent jurisdiction. In this case the appellant had no standing.

7. Mr Godden sought to distinguish *Mataskelekele* by submitting the appellant in *Matakelekele* had a decision which the appellant alleged was fraudulently obtained, whereas in the present case he submitted the land is still in dispute. That does not change the fact that that the claimant in this case is neither the custom owner nor a party to the lease. No matter how desirable he thinks it may be for the register to be accurate, the claimant has no standing to seek rectification under s 100.

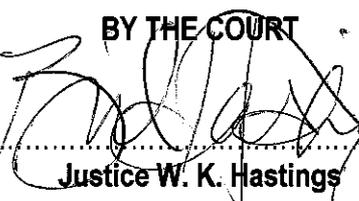
Res judicata

8. This matter was the subject of a claim concerning the same parties and the same set of facts in Civil Case No 343 of 2021. The claimant filed a notice of discontinuance in that case. Under r. 9.9(4), if the claimant discontinues, the claimant may not revive the claim. To try to do so is an abuse of process.

Result

9. For the reasons above, the claim is struck out.
10. Costs are awarded to the defendants to be taxed if they cannot be agreed.

DATED at Port Vila this 11th day of December 2023

BY THE COURT

Justice W. K. Hastings

