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

Civil
Case No. 22/1341 SC/CIVL

BETWEEN: Ifira Trustees Limited
Claimant

AND: George Lapi
Defendant

Before:	**Hon. Justice EP Goldsbrough**
In Attendance:	**Kalsakau, S for claimant** **Molbaleh, E for the Defendant**
Date of Hearing:	***Monday 2nd and Wednesday 4th June 2025***
Date of Judgment:	***Friday 13th June 2025***

JUDGMENT

Introduction

1. Amongst other things, Ifira Trustees Ltd. (the Claimant) is a substantial landowner. In particular, it owns Peacock Estate in Malapoa, South Efate. In 2010, George Lapi (the Defendant and Counterclaimant) agreed to buy a piece of this estate for a residence. It was then parcel number 12/0911/043. It had already been developed and featured a house that had suffered from neglect and needed maintenance and renovation.

2. The contract between the parties was executed on August 27, 2012 and provided for a purchase price of VT 5.5 million, with a deposit of VT 500,000. There is no issue in these proceedings about the execution of that agreement or its terms. The deposit was paid, amounting to VT 300,000, which was transferred directly to the Claimant (from funds already held by it for reasons not explained in these proceedings), with the remaining VT 200,000 allocated to their land agent. Nothing else has been paid under the contract, and so VT 5 million remains outstanding.

3. At the time of the purchase agreement, an existing lease was in place, which was to be forfeited due to the previous occupier's default. The agreement was expressed to be

subject to the forfeiture of that lease and the consent of the relevant department to the grant of a new lease. That new grant has still not taken place, although the forfeiture did in 2013. The same agreement provided for forfeiture of the deposit paid if the purchaser was unable to secure financing for the purchase.

4. It is an express provision of the agreement that pending completion, the purchaser had the right to enter the premises to clean, clear and protect the property from vandalism, but not to take possession of the property through that right. The defendant moved on to the property to live and remains there today. He has renovated the house that was on the land before his intended purchase.

5. The claim is for eviction from the property. The counterclaim is for the value of the improvements made to the same property. The claim is defended. As for the counterclaim, no defence has been filed by the claimant.

6. A trial took place, with one witness for the claimant and one witness for the defendant and counterclaimant. Both had filed sworn statements as evidence in chief and were cross-examined.

7. The proceedings have a sad and protracted history, about which more may be said later; however, the trial took place from Monday, June 2, 2025, to Wednesday, June 4, 2025. It was interrupted when counsel for the defendant was unable to call his client to give evidence because he had attended court without a copy of his client's sworn statement. It took him until Wednesday afternoon to obtain a copy, which he had requested from the Supreme Court Registry.

Preliminary issue

8. At the start of this trial, counsel for the claimant objected to the intended use by counsel for the defendant/counterclaimant of a sworn statement filed on 23rd April 2025 of Tari Kalterikia. The objection is that the statement was not served on him until today, a few moments before the scheduled start of the trial.

9. Counsel for the defendant agreed that the statement had not been served on the claimant before today. He suggested that attempts had been made to serve the document earlier, but had no evidence to produce of any earlier attempt. He attributed this failure to his driver, who was responsible for serving such documents. He did agree, though, that

when discussing this case with opposing counsel, he had made no reference to this statement and that its existence would come as a surprise to the claimant today.

10. The discussions between counsel had been about obtaining a current valuation for the property, which had been anticipated when counsel for the claimant obtained an adjournment in December 2024 of the trial. At the time, this Court expressed the view that counsel had been disingenuous in the application, ensuring that it was granted by attending to the hearing where the request was to be made. The passage of time has shown just how disingenuous it was, given that the valuation has still not been done.

11. Service of sworn statements to be relied upon as evidence in chief at a trial is governed by Rule 11.6 (b) of the Civil Procedure Rules. It provides for service 21 days prior to the scheduled trial date. If the witness is to give oral evidence at trial, he or she must be available to do so. This witness was not so available.

12. A decision was given to the parties that the statement would not be permitted to be used in a trial beginning today, and counsel for the defendant submitted that given the passage of time since the claim was filed and the number of aborted trials so far, that the matter should proceed without the excluded evidence and therefore did not seek any further adjournment.

Evidence

13. The evidence for the claimant and defendants to the counterclaim came from the Executive Director of the Claimant. He was not in that position when the original contract was signed. There is no issue in these proceedings about the execution of that agreement or its terms. He provided evidence of attempts made after several years of the defendant occupying the property without completing the purchase to settle the matter, none of which had been successful. He gave evidence that even after several years, during which the value of the property increased, the claimant was prepared to honour the agreement and accept the original purchase price. This, he said, was even though the defendant had not paid land rent or lease premium fees and had benefited from the work performed by the claimant to maintain the estate for the benefit of all of the occupiers. That work included, for example, the provision of services and roads to the estate.

14. He gave evidence that the property would now have a greater value, and had intended to obtain a current valuation, but that had not happened. He suggested that VT 17 million might be an approximate current value, and he agreed that any current valuation was based on the improved dwelling that the defendant was responsible for, amongst other things. He went on to say that he agreed that the defendant should be reimbursed for the value of the improvements he had made but was not in a position to put a value on those improvements and made the point that the defendant should have completed the purchase first and paid all his dues such as land rental and lease premium before he moved on to the premises and developed the land.

15. In cross-examination, he did not agree that the defendant was entitled to move onto the land and develop before completion of the purchase. Whilst he maintained that the purchase agreement would now be signed only by the Chairman of the Claimant, he did not seek to resile from the agreement, which, on execution, was signed by the land agent instead. He gave evidence that the original lease was forfeited in 2013 and that, at any time after that, a new lease could have been created in favour of the defendant. However, this did not happen, as the defendant had not paid the balance of the purchase price.

16. He gave evidence of the various attempts to settle the matter by encouraging the defendant to pay the balance under the contract. He gave further evidence of the defendant's failure to cooperate. He noted that the proceedings to evict had been themselves protracted. He provided evidence that by 2018, he was requesting the defendant to pay VT 12 million, but that this was after several years of the defendant's unwillingness to settle the original purchase balance. His evidence and answers ended with the statement that after so many years, the Claimant was no longer prepared to sell for VT 5.5 million given that the defendant had had the benefit of occupation without paying any land rent to help with the cost of maintaining Malapoa Estate save for his VT 500,000 deposit which was to be forfeited if completion did not take place through a lack of finance on the part of the defendant.

17. There was no further evidence in support of the claim.

18. At the close of his evidence, and given his concession that the Claimant should pay something reflecting the value of the improvements, counsel were asked to consider

reaching a settlement of the matter. After several hours, when counsel returned and indicated that no agreement had been reached, the trial resumed.

19. At the resumed trial, George Lapi (the defendant) gave evidence and was cross-examined. His evidence in chief is contained in his sworn statement, filed on September 9, 2024. In that statement, he outlined the history of his involvement with this land, explaining that he had signed the purchase agreement but had neither paid the balance of the purchase price nor received a lease in his name. He exhibited pictures of the vandalised house and a valuation prepared in 2020, setting the market value of the property at VT 17.5 million. He states that he spent a substantial amount on the house without providing a specific figure for that expenditure, and that he considers himself entitled to the difference between the current value, which he claims is VT 17.5 million, and the original amount stated in the contract, VT 5.5 million. He confirmed that he is willing to pay the balance of the purchase price, subject to the grant of a new lease in his favour.

20. In cross-examination, he confirmed that at all times during the process of purchase, he had the benefit of a lawyer. He also confirmed receiving a notice to quit after negotiations were unsuccessful. He said that his lawyer replied to that notice, but was unaware of what the response said. He did not agree that he was given the opportunity to complete the purchase at VT 5.5 million during the negotiations and after the original lease had been forfeited. When answering that question, he hesitated and said that Mr Kaltabang had never accepted execution of the contract at VT 5.5. million 'in writing'.

21. On the question of the cost of the improvements he made to the existing house, he responded that he had no receipts to produce 'at the moment' because he had thought that the contract would be executed. He further indicated that when he claimed VT 5 million, he thought it was a fair amount, allowing him to come to a bargain with the claimant. He said that the amount was not based on the cost of renovations.

22. In re-examination, he said that he moved into the house because Malapoa was at the centre of illegal drug dealing and that he hoped that his occupation of the land would improve life in the neighbourhood, especially for his neighbours. When asked by the Court, he stated that he had never paid the lease premium of VT 112,500 and that he had paid some land rent; however, what he had paid had been refunded to him when it

was discovered that he had no lease in his favour. He stated that the land rent was VT 50,000 per annum, as opposed to what he had previously mentioned about the land rent being VT 25,000 per month, and that he had occupied the property for twelve years.

23. Counsel did not seek to ask any further questions after those put by the Court, and no further witnesses were called for the defence.

Discussion

24. Although it does not seem necessary to make findings as to credibility on the evidence presented, as the majority of facts are not in issue, on the one issue that is disputed, this Court finds that the evidence of the witness for the claimant is more credible than the defendant when the question of what took place in the negotiations. I accept that the defendant was given the option to complete the purchase for VT 5.5 million by Mr Kaltabang when he assumed office and took over, in an attempt to settle this matter between the parties. The evidence presented by the defendant on this point was couched in language that made it less credible, especially when he qualified his answer to confirm that this particular offer was never reduced to writing, which was not what he was asked.

25. There is nothing in the evidence from the defendant that shows he has any entitlement to occupy this land. He did not fulfil his part of the bargain he made to purchase the property and is therefore not entitled to continue occupying it. He has, in effect, no defence to the claim that he be evicted. During the trial, counsel for the claimant indicated that the claimant does not pursue the claim for damages and only seeks an order of eviction.

26. At the same time, the claimant, through its evidence, accepts that the defendant should receive something for his contribution to the increased value of the property. The only question is what amount should that be? The defendant claims that his contribution should be assessed at VT 5 million in his counterclaim, VT 12.5 million in his statement, VT 12.5 million again in his closing submissions, and, perhaps, even more if a more recent valuation had been obtained which suggested a higher present market value..

27. From the evidence presented, the defendant does not take the opportunity to substantiate his counterclaim with actual costs of the improvements that he may have made to the

house on the property. He asserts that he alone is entitled to any increase in value between 2012 and 2025 because the only change is the work he has done on the house.

28. That argument fails to consider any other changes. There is evidence that the claimant improved the general area by applying land rent received from others to enhance services in the area. There is no evidence, but the Court is entitled to take into account that over a period of 12 or 13 years, there has been inflation. This particular property may well benefit from an increase in value, subject to the general improvements of neighbouring houses, and in particular if it no longer carries the stigma of being the centre of illegal drug dealing in Port Vila, for which the defendant cannot claim entire responsibility.

29. It is, of course, incumbent on the defendant counterclaimant to prove his claim, and without producing evidence of what he spent on improvements, he has failed in that regard. His counterclaim, for VT 5 million, is based on making the house 'liveable' based on actual spending on improvements, as set out in paragraphs 1 and 2, but has not been supported by evidence. Indeed, his evidence is not that he spent VT 5 million on improvement but that the exact figure seemed to him to be a sound bargaining chip. When he says, at paragraph 2 of his counterclaim, that the VT 5 million must be deducted from the 'said purchase price' he is effectively saying that he should be given the property for free, as he also asserts that he should be allowed to complete the purchase at the original VT 5.5 million.

30. No attempt was made to justify the VT 3 million in general damages.

31. Eviction from the property is indicated on the evidence. As the claimant no longer seeks further relief, the only outstanding question is whether the defendant is entitled to any relief under his counterclaim? On the evidence, that is doubtful, as none has been produced to show the cost of improvement.

32. On the other hand, there is a concession made by the only witness for the claimant that there have been improvements made by the defendant to their property and that the claimant is able and willing to pay for those improvements. However, they are not in a position presently to put a figure on those improvements.

33. It would, perhaps, be too harsh on the defendant to dismiss his claim for the value of his improvements when all agree that he has made the same. If he had put himself in a position where he provided evidence of costs and relied upon that evidence rather than the general assertion that he was entitled to all of the increase in value over time, particularly when his occupation of the property was not legal, he would have been in a better position. The circumstances surrounding this are unclear.

34. The defendant counterclaimant could never be awarded more than he claimed in his counterclaim, and there was no attempt to amend that, even though his evidence supported a much larger amount. Nor is the defendant entitled to receive the full benefit from improvements to the property when he was not paying his share of land rent, which others were paying. That alone amounts to VT 600,000.

35. He is not entitled to the entire increase in value over time without having shown that he alone was responsible for all of it.

36. Earlier, there is a reference to a history in these proceedings. In early 2023, counsel for the claimant sought a default judgment in this matter but was advised that such was not available in an eviction case. Later in 2023, a consent order was agreed between counsel based on a concession made by counsel for the defendant, which he later sought to withdraw, initially by filing an appeal against the consent order. That appeal was withdrawn when counsel for the defendant approached the Supreme Court with an application to reopen the matter, withdraw the concession and seek to recall the consent order based on the same concession. That was not opposed by counsel for the claimant.

37. Several scheduled trial fixtures were not utilised, the last being 5 December 2024, when counsel for the claimant secured the adjournment to allow him time to obtain an up-to-date valuation. That has still not been produced, nor does counsel now seek to rely upon any such document. There are also multiple instances of counsel failing to appear for scheduled conference hearings.

38. The purpose of setting out this history is to demonstrate why the matter was heard and determined when it was. Equally, it goes to explain why an order in favour of the defendant is made when, on the evidence, without the concession made by the claimant in its evidence, he has failed to make out his counterclaim.

Decision

39. The claim is made out, and an order is made that the defendant give the claimant vacant possession of the property formerly titled 12/0911/043, together with its fixtures and fittings. No further order is made concerning other relief in accordance with the concession made during the trial.

40. The counterclaim is upheld in the sum of VT 5 million, less the amount not paid in land rent over the 12 years of occupation, that is, VT 600,000. The balance of the counterclaim is dismissed. The claimants are ordered to pay this amount to the defendant, subject to the defendant settling the costs order set out below.

41. An order for costs is made against the defendant for costs of and incidental to this claim, to be agreed or assessed at the standard rate. Whilst he was successful in his counterclaim, no order for costs is made in favour of the defendant, given that he refused a documented offer from the claimant above that which he has now recovered.

Dated at Port Vila this 13th day of June 2025

BY THE COURT

REPUBLIC OF VANUATU COUR SUPREME COURT LEX LEX REPUBLIQUE DE VANUATU

Hon. Justice EP Goldsbrough