

**BETWEEN: DICK TAHO**  
Claimant

**AND: ELDER EZEKIEL WOKON**  
First Defendant

**AND: THE DIRECTOR OF LAND RECORDS**  
Second Defendant

**Coram:** *Justice C.N. Tuohy*

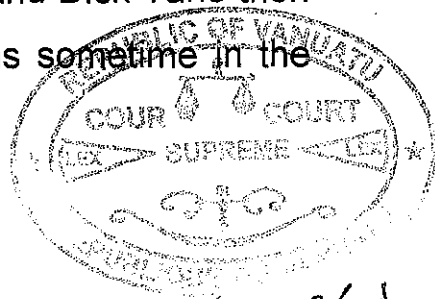
**Counsels:** *Mr. Yawha for Claimant*  
*No appearance for 1<sup>st</sup> Defendant*  
*Ms. Williams for 2<sup>nd</sup> Defendant*

**Date of Hearing:** *13 December 2007*

**Date of Decision:** *13 December 2007*

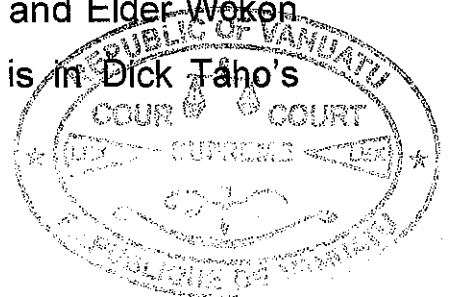
## **ORAL JUDGMENT**

1. This is a claim by Dick Taho for an Order under section 100 of the Land Leases Act rectifying the register in respect of land title 11/0H24/084. The title is wrongly described in the claim itself. However the reference which is just set out is the correct title number.
2. The background to the claim is relatively simple. Several years ago the title was in the name of the late Jimmy Timonia. During his life time it was transferred to Dick Taho and Dick Taho then became the registered proprietor. That was sometime in the



1990's. Following the death of the late Jimmy Timonia both Elder Wokon and Dick Taho applied for administration of his estate. Each of them claimed to be adoptive sons. Operating under a misapprehension which has been widespread among the public of Vanuatu and even among the lawyers of Vanuatu, each of them thought that obtaining administration would in some way give them ownership of the leasehold title which Jimmy Timonia had transferred to Dick Taho during his life time.

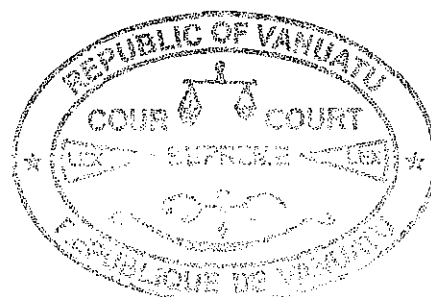
3. Hopefully this widespread misapprehension has been dispelled for once and for all by the recent decision of the Court of Appeal in relation to the Estate of the Late John Molivono. In any event during the course of the contested application for administration, I explained to the parties on many occasions and also in my judgment that the only thing that a grant of administration would give was the duty and the right at administrating the assets in the estate, or of taking or defending Court action on behalf of the estate.
4. Elder Wokon was successful on the application for administration and he was appointed the administrator of the estate of Jimmy Timonia, and I gave a lengthy oral judgment which I do not need to repeat here but it sets out the background I have covered in a little more detail.
5. What was really in issue between Dick Taho and Elder Wokon was ownership of the leasehold title which is in Dick Taho's



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name. The grant of administration at least put Elder Wokon into the shoes of the late Timonia enabling him if he chose to do so to issue a claim against Dick Taho alleging that the transfer of the title to him by Jimmy Timonia was made under undue influence and that the title should be returned to the estate.

6. However, Elder Wokon did not issue such a claim instead the evidence seems to show that he went to the Lands Office and somehow or other managed to persuade the Director of Land Records, using my judgment, to transfer the title in Dick Taho's name into Elder Wokon's name. My judgment did not authorize that to happen. That was actually very clear from my judgment.
  
7. Obviously there was a total mistake on the part of the Director of Land Records. As far as Elder Wokon is concerned it is difficult to see that his actions in approaching the Director of Land Records can be characterized as a mistake as opposed to fraud because Elder Wokon had no excuse for not understanding the true position. However to give him the benefit of the doubt, it was a mistake. If it was not a mistake, it was fraud. I have not the slightest doubt that there has been fraud or mistake in the transfer of this title from Dick Taho to Elder Wokon. It should never have happened. I am still at a complete loss to understand what the Director thought he was doing. I intend to make an order rectifying the register.



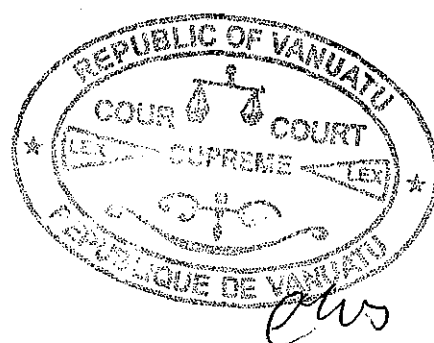
*CWS*

8. The one thing I can say to the credit of the Director is that after this claim was issued and the State Law Office came into the matter, it is plain that the Director came to understand the proper situation and was quite willing to transfer the title back pursuant to his powers to do so under section 99. I in fact suggested that at the conference as a way of avoiding costs. However, although I have been given a letter showing that the Director would take that course the Director then ran up against my Order No. 4 of 30 October 2007, which was intended as a restraining order to stop anything further happening to the register until it could be sorted out. That order stopped the Director making any entry in the register until further order of the Court, so he was unable to carry out his intention of rectifying under section 99. The end result is that the case has ended before the Court today and the Court will take it into its own hands to make the necessary order which I make accordingly.

9. The formal order of the Court is:

**That the register for lease title No. 11/0H24/084 shall be rectified by cancellation of the transfer from Dick Taho to Elder Ezekiel Wokon.**

I also discharge the orders made on 30 October 2007 which were made in respect of the wrong title anyway.



10. Mr. Yawha has asked for costs against Elder Wokon. He has specifically stated that he is not applying for costs against the Director of Land Records because although the Director was at least as responsible as Elder Wokon for the original transfer, he was prepared to fix the problem of his own initiative once the proper legal position became clear to him, but was unable to do because of the Court's interim restraining order. So I think that Mr. Yawha's decision not to ask for costs against the Director of Land Records is a reasonable one.

11. However, he has asked for costs against Elder Ezekiel Wokon. Elder Wokon has not even appeared today. I can see no reason why costs should not be ordered against him and I order costs at the normal rate as Mr. Yawha has not asked for anything more. However, Elder Wokon should count himself lucky not to be up for indemnity costs because his actions could not be justified and have put everyone to the time and expense of reversing the wrongful transfer.

The costs are to be agreed or fixed by the Court on application.

Dated at Port Vila, this 13<sup>th</sup> day of December, 2007

BY THE COURT



C.N. TUOHY  
Judge

