

1. Enforcement Orders for possession of the said land and premises and an order restraining the Defendants from interfering in any way with the quiet enjoyment of the property by the Claimants or their permitted invitees.
2. An Order that the First and Second Defendants or anyone claiming through them forthwith vacate the property (as defined in the statement of claim).
3. Costs.
4. Any application for damages is stood over for further hearing.

On 17 March 2010, the First Defendant filed a response and dispute all of the claim.

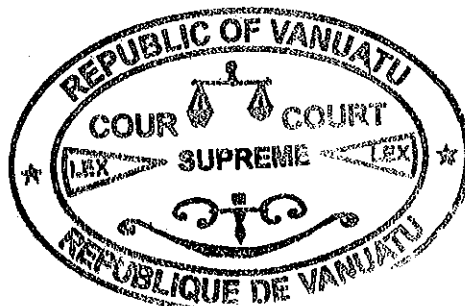
On 1 April 2010, the Court upon hearing Mr Blake and Mr Gilles Daniel, adjourned the application for summary judgment to Friday 14 May 2010. Mr Gilles Daniel informed the Court that the Second Defendant was overseas for medical reasons. The Court also directed the Defendants to file and serve their defence to the claim by 15 April 2010. The Court further ordered:

- “3. That pending further order of this court, all persons other than Mr. Daniel currently occupying the land comprised in leasehold title 11/OB24/062 (the “Property”), forthwith vacate the Property.
4. That pending further order of this court and subject only to Mr. Daniel’s interim right of residential occupation, no activities of any commercial nature or any construction is to be undertaken on the Property.
5. That the costs herein be reserved.”

On 15 April 2010, the First Defendant, Mr Gilles Daniel filed a defence to the claim.

On 14 May 2010, the Court was informed that the Second Defendant, Mr Patrice Rivière was still overseas and that Mr Gilles Daniel accepted the service of the Claim and Application for Summary Judgment on him as substituted service for Patrice Rivière (the Second Defendant).

The Court directed the Second Defendant, Mr Patrice Rivière to file and serve his defence to the claim by 4 June 2010. The hearing of application was adjourned to 9 June 2010 at 9:00am o’clock.



In his defence, First Defendant, Gilles Daniel, denied each and every allegations of the Claimants and at paragraph 3 of his defence, he says:

"Would the land be in the name of the Claimants, it is only because it has been obtained by fraud and/or contempt of enforcement orders made in the case 14 of 1999." He further says that "the Second Defendant has authorized and contracted him to remain in occupation on his behalf since the Second Defendant has fully paid the land to the Supreme Court and that the land was in the Second Defendant's name until a fraudulent transfer by the Claimants occurred." He finally say that "the pretensions of the Claimants are unlawful and that the First Defendant hold his authority from the Second Defendant who purchased the said land title."

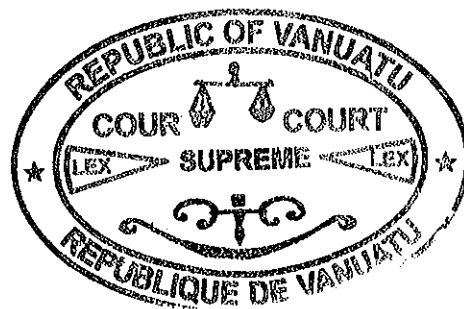
The First Defendant requests the Court to strike out the case of the Claimants and by way of counterclaim, the First Defendant requests the Court for-

1. An order requiring the Claimants to be dealt with for contempt of court;
2. An order requiring the Claimants to transfer the land title 11/OB24/062 back to the Second Defendant;
3. Damages to be assessed by the Court; and
4. Costs.

In the reply to the defence filed 20 April 2010, the Claimants joined issue with the paragraphs 1, 2 and 4-9 of the First Defendant's defence. As to paragraph 3 of the First Defendant's Defence, the Claimants deny that any fraud and/or contempt of enforcement orders made in case 14 of 1999 was involved in the registration of proprietorship to leasehold title 11/OB24/062 into their names. The Claimants deny the First Defendant is entitled to the relief claimed in his defence or by way of counterclaim.

In his defence, the Second Defendant denies each and all allegations of the Claimants and say further that:

- i. The Second Defendant has acquired the property title 11/OB24/062 on or about the 7th May 2009 after a sale by tender of the Supreme Court;
- ii. The Second Defendant has had then on the 8th May 2009, the title registered in his own name;



- iii. The Claimant got the registration rectified on 14th October 2009 under section 100 of the Land Leases Act, directly by the Director of Lands, Mr Peter BATA. The Second Defendant say that the registration in the names of the Claimants is illegal and owed to be reversed.
- iv. The Second Defendant further says that he had no knowledge that the Claimants acquired the same property prior to the tender. He alleged that if such acquisition be true it would have been obtained by fraud.

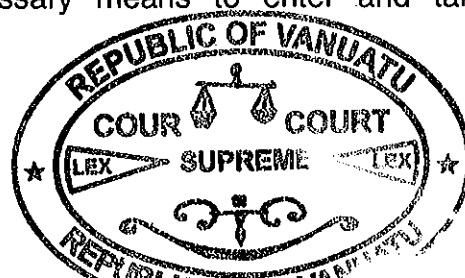
This proceeding raises this legal question:

Does the Sheriff of the Supreme Court have the power to sell property of another person for the purpose of enforcing a judgment against the Defendant who is not the legal owner of the property?

The next question is can this question be answered summarily in the present case without a trial?

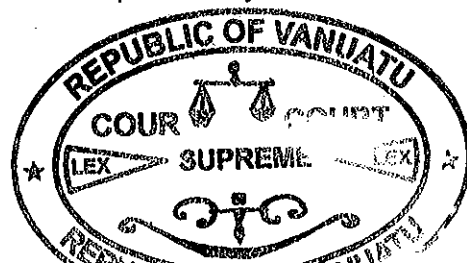
The relevant history of the matter is as follows:

- (a) Leasehold property title 11/OB24/062 ("the property") was initially registered in the name of Mr Api Toara. Mr Api Toara was the former owner of the property.
- (b) In or about 29 July 2008, Mr Gene Wong negotiated with Api Toara, the former owner of the Property, to acquire the property from him. On 13 August 2008, he and his wife Giovanna Soldateschi completed the acquisition of the title for Vatu 11,500,000, and Mr Toara delivered up to them the signed transfer of lease in respect to the property together with the consent from the Minister of Lands to that transfer. Mr Gene Wong then attended to the stamping and registration of the transfer.
- (c) On 27 November 2008, the transfer from Api Toara to Gene Wong and Giovanna Soldateschi was registered with the Land Records Office.
- (d) An Enforcement Warrant was granted by order of the Supreme Court on 20 March 2009 in Civil Case No.14 of 1999 in relation to an action against Mr Api Toara. On 20 March 2009, an Enforcement Warrant issued by the Supreme Court in relation to the recovery of a judgment debt of Vatu 27,804,333 and authorising the Sheriff to use necessary means to enter and take legal



possession of, among others, title 11/OB24/062 said to belong to "the Defendant" (Api Toara) and to advertise it by tender for sale to recover the abovementioned costs.

- (e) In late April 2009, Mr Gene Wong become aware that attempts were being made to sell the property he had acquired. On 29 April 2009 he received a letter from the Court Sheriff requiring him to vacate the property and in that letter he relied upon the abovementioned Enforcement Warrant. Mr Wong immediately instructed Ridgway Blake and they wrote to the Court Sheriff on 29 April 2009.
- (f) It was apparent that the letter to the Sheriff was ignored and on 8 May 2009, on Mr Wong's instructions, Ridgway Blake wrote to the Court Registrar.
- (g) On 8 May 2009, the Court Sheriff transferred the property to the Second Defendant, Patrice Rivière. On the same date of 8 May 2009, an Order suspending the Enforcement Warrant relating to property title 11/OB24/062 was made by the Supreme Court.
- (h) In 30 August 2009, after receiving a letter from the Second Defendant, and conducting a search with the Land Records Office, Mr Wong became aware that a transfer of their property from the Sheriff to the Second Defendant dated 8 May 2009 had been registered by the Director of Land Records on 29 June 2009 after he paid an amount of VT4,000,000 as set out in the Tender documents. On his instructions Ridgway Blake wrote to the Director by letter dated 1 September 2009.
- (i) By letter of 1 September 2009, Ridgway Blake also wrote to the Registrar of the Supreme Court.
- (j) By letter dated 3 September 2009, Ridgway Blake wrote to the Second Defendant, and this was copied to his lawyer.
- (k) By Advice of Registration of a Dealing dated 14 October 2009, the Director of Lands rectified the Register by cancelling the transfer of lease in the Second Defendant's favour and reinstating the Claimants as the registered proprietors of the property.
- (l) On 13 November 2009, Mr Gene Wong lodged a complaint with the Vanuatu Police Force concerning the trespass of the Defendants and his agents onto the property. Apparently, there had been problems previously in October when the

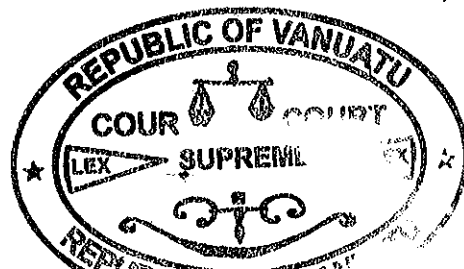


First Defendant dealt with goods of Mr Wong's business which were stored on the property and which was alleged to have been removed by the Defendant from covered storage and exposed to the elements causing damage. Separate proceedings in relation to the damage caused to the property are being brought against the First Defendant. When the Police sought to remove the First Defendant and his associates from the property the First Defendant sought and obtained ex parte orders against the Police in Constitutional Case No.6 of 2009. Those orders have now been vacated.

- (m) Following the vacation of the orders in Constitutional case No.6 of 2009, Mr Wong instructed his lawyers to serve a Notice to Quit on the First Defendant. Following service of the notice the First Defendant wrote to Ridgway Blake lawyers. The First Defendant has failed to vacate the property. In the circumstances the Claimants filed the claim and the application which are now the subject of this proceeding requesting orders that the Defendants and their servants and agents immediately quit and vacate the property and that they be restrained from trespassing on the property and otherwise interfering with the Claimants' quiet enjoyment of the property.

It is common ground that on 29 July 2008, the leasehold property title 11/OB24/062 (the "property"), was registered in the name of Api Toara. On 27 November 2008, the property was transferred and registered jointly in the names of the Claimants, Gene Wong and Giovanna Soldateschi. The Transfer of Lease instrument was executed between Mr Api Toara and Gene Wong and Giovanna Soldateschi on 13th August 2008 for a total consideration of VT11,500,000 for the transfer.

On 20 March 2009, the Supreme Court issued an Enforcement Warrant against Mr Api Toara in Civil Case No.14 of 1999. The Warrant authorised the Sheriff of the Supreme Court to use necessary means to enter and take legal possession of properties belonging to the Defendant (Mr Api Toara) including leasehold title 11/OB24/062 and advertise it by tender for sale to recover debts of VT27,804,333. Despite the suspension of the Enforcement Warrant by the Court on 8 May 2009, the Sheriff proceeded by Tender and sold the property title 11/OB24/062 to the Second Defendant, Patrice



Riviere at a tender price of VT4,000,000 which was paid into Court by the Second Defendant. The said property was then registered in the name of the Second Defendant on same date of 8 May 2009.

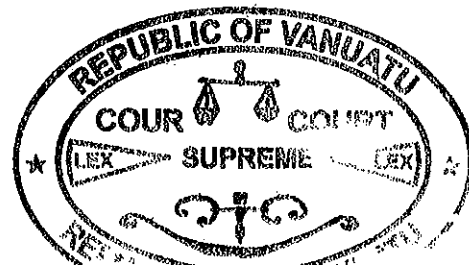
There is no doubt that the Claimants acquired and registered the property in their joint names in 2008 before the issuance of the Enforcement Warrant in CC 14 of 1999 and by which the Transfer of the property title 11/OB240662 by the Sheriff to the Second Defendant was executed.

The thrust of the Defence is that they purchased the property and it belongs to them. The First Defendant's defence is that he has right of occupation of the property because he says the right was given to him by Mr Patrice Rivière who purchased the property. It is noted that the Second Defendant has put his defence through the First Defendant, Mr Gilles Daniel. The Second Defendant's Defence is that he acquired the property through the transfer from the Court Sheriff to him and the property was registered on his name on 8 May 2009 after he paid Vatu 4,000,000 into Court for transfer consideration and he has also paid the land registration fees.

The Defendants say in their defence that the Claimants bought the property title 11/OB24/062 by fraud. There was no details or particulars of the fraud pleaded in the defence. There was no suggestion that Mr Api Toara was restrained or restricted to sell his property to the Claimants in 2008.

The sworn statement of Mr Gilles Daniel filed in support of the Defence, shows that the property was purchased by Mr Rivière and so Mr Rivière has a strong defence. Mr Gilles Daniel submitted that Mr Rivière purchased the property in good faith and the transfer between Mr Toara and Claimants in 2008 was illegal and the Court should not rely on it.

Mr Daniel also submitted that the Defendants believed Mr Api Toara transferred the property to the Claimants in 2008 without receiving consideration of VT11,500,000 for the transfer. Mr Daniel argued that the Sheriff sold the property because he knew about some of the dirty actions. He finally contended that the letter of 14 October 2009



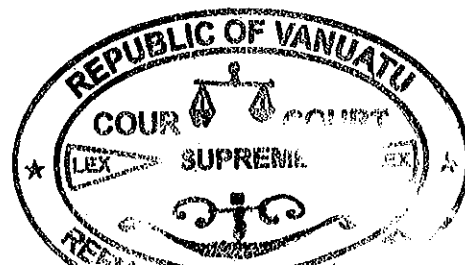
rectifying the register and replace the name of the Second Defendant by the names of the Claimants is illegal because the Director of Land Records has no power to do so without hearing him and Patrice Rivière.

The submissions made by the First Defendant, Mr Gilles Daniel are rejected as baseless. Any allegations of fraud must be specifically pleaded. Mr Api Toara who was the former owner of the property title 11/OB24/062 transferred the leasehold property to the Claimants in November 2008. If such a transfer is to be attacked, it will only be by Mr Api Toara. It is open for Mr Toara to take proceedings. That is not the case in the present case.

The defence that Mr Patrice Rivière had purchased the property in good faith is not tenable and could not be a good defence in this case for the following reasons. Mr Patrice Rivière must take the step to check the Register. There was no suggestion that search was conducted at the Land Registry to check the Register. If search on the Registry was made the register will show that the property title 11/OB24/062 was registered in the names of the Claimants and that they are the legal owners of the said property.

It is more likely than not, that no search was conducted by the Court Sheriff before the sale of the said property was made to the Second Defendant, Patrice Rivière despite correspondences from the Claimants' counsel to the Sheriff until the suspension of the Enforcement Warrant in relation to the property title 11/OB24/062 on 8 May 2009 by the Supreme Court.

The Sheriff of the Supreme Court has authority to seize and sell property belonging to Mr Api Toara in the enforcement of the Judgment in Civil Case No.14 of 1999. In this case, the Sheriff seized and sold property title 11/OB24/062 which was not the property of Mr Api Toara. The property title 11/OB24/062 was the property of the Claimants at the date of its seizure and sale by the Sheriff to the Second Defendant on 8 May 2009. The Sheriff of the Supreme Court has no legal authority to sell and transfer the property title 11/OB24/062 as he did on 8 May 2009. The sale and transfer of the property title 11/OB24/062 to the Second Defendant in May 2009 had no effect or force in law.



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The contention by the First Defendant that the Director of Lands Records has no power to rectify the Register under Section 99(1) of the Land Leases Act because s.99(1) is subject to s.100(2) and also that the Director has not notified the First and the Second Defendants of the rectification cannot stand for the following reasons. First, s.99 of the Act empowered the Director of Lands Records to rectify the Register in the circumstances described under subsections (1), (2) and (3) of that section. Second, the Sheriff has no legal authority to sell the property title 11/OB24/062 to the Second Defendant, Patrice Rivière on 8 May 2009. Thus, the sale was unlawful and has no effect or force in law. Further, by 8 May 2009, the Enforcement Warrant relating to property title 11/OB24/062 was suspended. Finally, in law, there was no property lawfully registered in the name of the Second Defendant. Any transfer and registration of property in the name of Patrice Rivière in the Register constituted administrative errors warranting for rectification by the Director without notice within the second proviso of s.99(1) of the Land Leases Act.

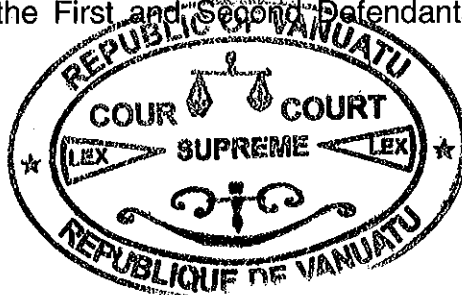
The circumstances of this case justify the Director of Land Records to rectify the Register by registering title 11/OB24/062 back in the names of the Claimants as he did in October 2009.

The Defence filed in this proceeding is not substantiated. The Defence failed to demonstrate any substantiated Defence in law or facts warranting for a trial. The Defence fails to show any prospect of success. It is not a defence to say that the Claimants made dirty dealings with Api Toara to sell his property 11/OB24/062 to the Claimants in 2008.

My answers to the questions posed in this case are this:

The Sheriff of the Supreme Court is authorised to seize and sell property of the Defendant (Mr Api Toara). But the Sheriff is not empowered under any law to seize and sell property of another person to enforce a judgment against the Defendant Toara in Civil Case No.14 of 1999.

In this case, the application for Summary Judgment is successful and orders sought by the Claimants are granted with costs against the First and Second Defendants. The



relief sought in the counterclaim are dismissed. Money paid into Court and any land fees paid by the Second Defendant will be paid back to the Second Defendant.

The Court makes the following orders:-

ORDERS

1. THAT, Enforcement Orders are made for the Claimants to take possession of the leasehold property title 11/OB24/062 and premises and an Order is made restraining the First and Second Defendants from interfering in any way with the quiet enjoyment of the property by the Claimants or their permitted invitees.
2. THAT, the First and Second Defendants or anyone claiming through them forthwith vacate the property title 11/OB24/062.
3. THAT, Interim Orders made by the Court on 1 April 2010, are superseded by the present Orders.
4. THAT, the Claimants are entitled to their costs against the First and Second Defendants. Such costs shall be agreed or assessed by the Court.
5. THAT, the sum of VT4,000,000 paid into Court by the Second Defendant, Patrice Rivière, shall be paid back to the Second Defendant forthwith.
6. THAT, land registration fees paid by the Second Defendant shall be refunded to him.
7. Any application for damages is still stood over to a conference to be held between the parties on Wednesday 18th August 2010 at 8:30am o'clock.

DATED at Port-Vila this 5th day of August 2010

BY THE COURT

Vincent LUNABEK
Chief Justice

