

BETWEEN: SOVEREIGN DEVELOPMENT LIMITED
First Claimant

AND: GRAHAME HACK
Second Claimant

**AND: JOSES LAAU, ISAAC ISAIHAH, JOSEPH
SALONG, JUDE TABI, DENIS ABEL, HENRY
ALVEA, LORIN STATHAM, KARL JOCKEY,
MAURICE HORRY, RAYNOLD SIMON BORI,
MOLI MAMIKI, MARK KALOTAP**
Defendants

Coram: **Mr. Justice Oliver A. Saksak**

Counsel: **Mr Silas Hakwa for the First and Second Claimants**
Mr Nigel Morison for the Defendants

Date of Hearing: **1-2 September 2014**
Date of Judgment: **16th December 2014**

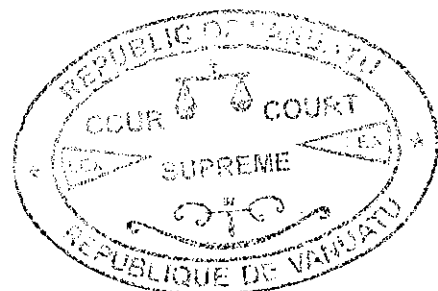
JUDGMENT

Introduction

1. The first claimant (SDL) is the registered proprietor of leasehold land which is compromised in and/or described as Lease Titles No. 04/2632/023, 04/2632/024, 04/2632/026, 04/2643/016, 04/2643/017, 04/2643/018, 04/2643/019, 04/2643/020 04/2641/031 and 04/2632/038 (the property).

Background Facts

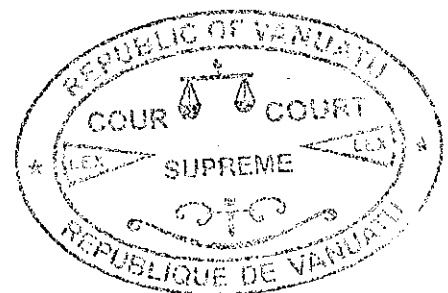
2. Following some verbal arrangements made between the Second claimant on behalf of the first claimant with the 12 named-defendants in or about 2001, the defendants entered onto the property and have occupied, resided and farmed on the property to date.



3. The details of Occupation are as follows:-

Name (Defendant)	Description of Property	Lot No.	Area of Land in Hectors
Moli Mamiki	04/2632/023	7	5
Lorin Stathem	04/2632/024	8	5
Raynold Bori	04/2632/026	10	5
Maurice Horry	04/2643/016	40	2.5
Denis Abel	04/2643/017	42	2.5
Karl Jockey	04/2643/017	43	2.5
Joseph Salong	04/2643/018	45	2.5
Jude Tabi	04/2643/019	46	2.5
Henry Alvea	04/2643/019	47	2.5
Joses Laau	04/2643/020	48	2.5
Mark Kalotap	04/2643/038	52	2.5
Isacc Isaiah	04/2643/031	51	2.5

4. The cost of the 2.5 hectare lots was VT 1.100.000 each and the cost of the 5 hectare lots was VT 2.000.000 each.
5. The verbal arrangements between the claimants and the defendants were that the defendants would occupy the lots, plant manioc, taro Fiji and water taro and sell them to Clean and Green Company, a previous company established by the second claimant. A portion of the proceed of sale would be retained by the company in reduction of the purchase price of the defendant's lots.
6. All appeared to go well until 2003 when wild pigs damaged crops reducing production to supply to the claimant's factory. Further there were droughts which affected the crops and reduced production.
7. In 2007 the Clean and Green Factory closed.



8. On 15th September 2008 the Second Claimant served Trespass Notices on all the defendants demanding that each of them vacate the property they occupy within 14 days by no later than 1st October 2008.
9. The defendants did not vacate. Therefore the claimants filed this proceeding claiming that the defendants are trespassers and squatters on the property since 1st October 2008.

Reliefs Sought

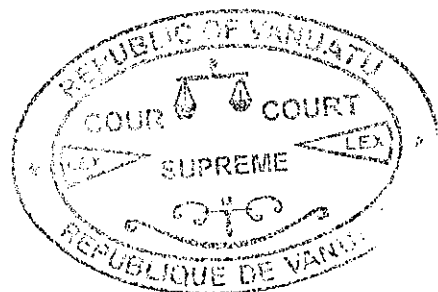
10. The claimants seek eviction orders, restraining orders, outstanding land rents and damages against all the named defendants.

Defendants Defence

11. The defendants deny that the claimant is entitled to any of the reliefs claimed. They say the claimants have no lawful cause of action against them and further say that non-payment by them is resultant upon the contractual breaches of the claimants.

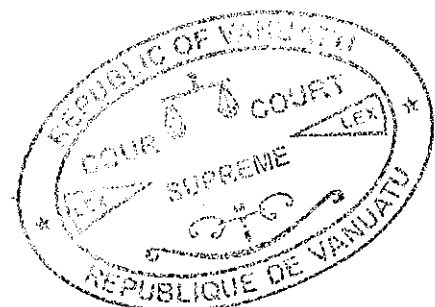
Counter-claims

- a) The defendants counter-claim against the claimants for-
- b) A declaration that the lots of land provided to the defendants for possession and ownership should be lawfully registered to them.
- c) Damages (to be assessed) for breaches of express and implied terms of their agreements with the claimants.
- d) Restraint upon the claimants prohibiting them from dealing in the lots of land without the express written consent of the defendants.
- e) Interest and costs, and
- f) Such further or other relief as deems just.



Evidence

12. The first claimant relied on his evidence by sworn statement dated and filed 17th December 2012 tendered as Exhibit C1. The claimant was cross-examined by Mr Morrison in relation to his sworn statement.
13. The defendants relied on the evidence by sworn statements of John Maxwell Fordham dated 16th May 2014 tendered as Exhibit D2, of Joses La'au (Exhibit D3) of Moli Mamiki (Exhibit D4) dated 30/8/2013 and of 7/5/2014 (Exhibit D5), of Denis Abel dated 30/8/013 and 6/5/014 (Exhibits D6 and D7), of Karl Jockey dated 21/5/014 and 29/8/013 (Exhibits D8 and D9), of Isaac Isaiah dated 8/5/014, 20/8/013 and 30/8/013 (Exhibits D10, D11 and D12) and of John Bisson dated 30/8/013 (Exhibit D13). The defendants also relied on the Second claimant's sworn statement dated 25th July 2007 (Exhibit D1) in their defence. All the defendants witnesses present were cross-examined by Mr Hakwa.
14. The following defendants joined in the proceeding were not available in Court during the trial hearing and did not file any evidence by sworn statements.
- a) Joseph Salong
 - b) Jude Tabi
 - c) Henry Alvea,
 - d) Lawrenceor Lorin Stathem
 - e) Raynold Bori
 - f) Mark Kalotap
 - g) Maurice Horry (but he filed a sworn statement on 21st May 2014 relying on his statement dated 28th May 2007 used in CC 21 of 2007).



Discussions

15. The first issue to be discussed is in relation to the sworn statements of the defendants.

Mr Hakwa objected to the statements of-

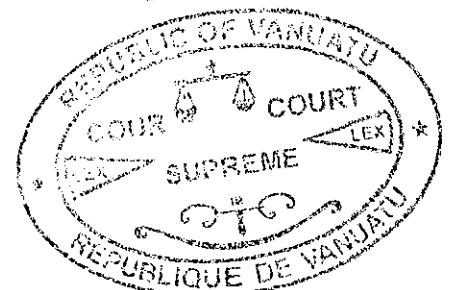
- a) John Maxwell Fordham because he is not a party to the proceeding and his evidence bears no relevance to the defendant's case, and
- b) Denis Abel, Isaac Isaiah, Joses Laau, Karl Jockey, Maurice Horry, Moli Mamiki and Lorin Stathem, on the basis that these evidence were relevant to the proceeding CC 21/2007 but not to this present case.

Mr Hakwa submitted these should be rejected

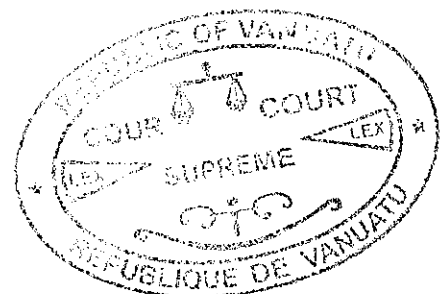
16. On these issues, I accept that Mr Fordham's evidence bears no relevance to the defendants case and his evidence is therefore rejected in its totality.

17. As for the statements of Denis Abel, Isaac Isaiah, Joses Laau, Karl Jockey, Moli Mamiki, and Lorin Stathem, I see no inappropriateness in them relying on the same evidence they relied on in the proceeding in 2007, and therefore admit them into evidence. As for Maurice Horry's sworn statement, it is inadmissible because he was not in Court to be cross-examined by Counsel for the Claimant.

18. Mr Hakwa took issue also with the Counter-claims of Joseph Salong, Raynold Bori, Lorin Statham Mark Kalotap Jude Tabi and Henry Alvea because they were not in Court for the trial hearing and had not given any authority to the defendants present to act in their behalf. I accept his submissions that they have not given any express authority to the defendants present to represent them in respect of their counter-claims. Further as none of these named defendants filed any sworn statements or were present in Court to give evidence in relation to any counter-claims they might have, the Court concludes that Joseph Salong, Reynold Bori, Lorin Stathem, Mark Kalotap, Jude Tabi and Henry Alvea have no claims and/or counterclaims against the claimants. Accordingly the claimants must succeed in their claims against these defendants.



19. Mr Hakwa further took issue with the evidence of John Bission as regards the Assessment of Damages he submitted on behalf of the defendants on the basis that they were hearsay and should be rejected. I accept that submission and reject the Assessment Reports as inadmissible.
20. On whether or not these defendants had entered into agreements with the claimants for the sale and purchase of the lots they now occupy, I find from the evidence that-
- a) Except for Mark Kalotap, there were no written agreements between the claimants and the defendants.
 - b) Joses Laau signed an agreement but on his own evidence he held it back.
 - c) All the other defendants had only verbal agreements with the second claimant which did not and could not amount to agreements or contracts.
 - d) Those verbal agreements amounted only to mere licences.
 - e) Those verbal agreements were uncertain and not capable of being enforced.
 - f) Both the claimants and the defendants failed to perform in accordance with the uncertain terms of the agreements.
 - g) The defendants all failed because-
 - I. They did not make any further payments after the factory closed due to circumstances beyond their control in 2007.
 - II. They did not maintain their own records of payments.
 - III. They went beyond and planted other crops and commercial trees on the property.
 - h) The claimants failed on their part because-
 - I. They failed to keep and maintain record of payments by the defendants.
 - II. They failed to provide alternative avenues or resolve after their factory closed in 2007.
 - i) The licences granted to the defendants were determined by the notices issued by the claimants and served on the defendants ending on 1st October 2008.



- j) From 1st October 2008 all the defendants were trespassers and squatters on the claimant's property.
- k) The claimants have good and indefeasible title.
- l) The counter-claims of the defendants were struck out in 2007. The defendants did not appeal. Their counter-claims are res judicata.

Conclusions

21.1 For those findings and reasons the Court concludes that the claimants must succeed in their claims but only in part, and they are entitled to judgment which is entered in their favour.

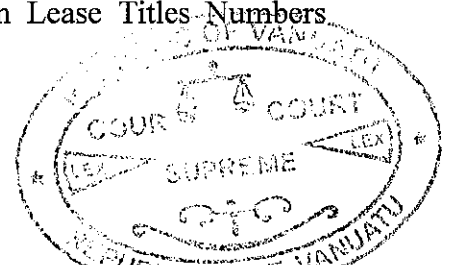
21.2 The claimants are not entitled to mesne rents in the sum of VT 14.000.000 as claimed. And they are not entitled to compensation in the sum of VT 8.514.875. They are the authors of their own misfortune. The claimants have enriched themselves by retaining payments by the Defendants which they are unable or unwilling to account for. And the Claimants are not entitled to any interest.

21.3 Under those circumstances, their request for costs must also be declined.

21.4 All counter-claims by the defendants are rejected as non-existent.

The Orders

22. The claimants are entitled to the following orders against the defendants jointly and severally-
1. "Jones Laau, Isaac Isaiah, Joseph Salong, Jude Tabi, Denis Abel, Henry Alvea, Lorin Stathem, Karl Jockey, Maurice Horry, Raynold Simon Bori, Moli Mamiki and Mark Kalotap together with members of their immediate families, their workmen, servants, agents or associates are hereby ordered forthwith to vacate and remove themselves with all their personal belongings and any movable properties within 30 days from the date of this Order from any part of the land which is comprised in Lease Titles Numbers



04/2632/017, 04/2632/024, 04/2632/026,04/2643/016, 04/2643/017, 04/2643/018, 04/2643/019, 04/2643/020, 04/2641/031 and 04/2632/038 which land is situated at Jubilee Farm in Santo (hereinafter severally and jointly referred to as “ the property”).

2. The Sheriff of the Supreme Court together with all Police officers of the Police Force of the Government of the Republic of Vanuatu are hereby ordered and authorised forthwith to attend on the property at 0900 hours on 31st January 2015 and shall evict and remove from the property (and if necessary with reasonable force) any of the Defendants or any other person who is still on the property.
3. Joses Laau, Isaac Isaiah, Joseph Salong, Jude Tabi, Denis Abel, Henry Alvea, Lorin Stathem, Karl Jockey, Maurice Horry, Raynold Simon Bori, Moli Mamiki and Mark Kalotap together with members of their immediate families, their workmen, servants, agents or associates are restrained from re-entering for any purpose whatsoever on any part of the property.
4. Joses Laau, Isaac Isaiah, Joseph Salong, Jude Tabi, Denis Albert, Henry Alvea, Lorin Stathem, Karl Jockey, Maurice Horry, Raynold Simon Bori, Moli Mamiki and Mark Kalotap together with members of their immediate families, their workmen, servants, agents or associates are restrained from in any way shape or form interfering with the claimants, their officers, workmen, employees, agents or associates in their lawful exercise and enjoyment of their rights, privileges and/or benefits over the first claimant’s land and use of the same for their development.
5. An originally sealed copy of these orders shall be served on the Sheriff of the Court and the Police Commissioner.”
6. There will be no order as to cost. Each party is to pay their own costs.

DATED at Port Vila this 16th day of December 2014.

BY THE COURT


OLIVER.A.SAKSAK

Judge

