

BETWEEN: IFIRA LAND CORPORATION LTD
Claimant

**AND: COLLIN LYCHT
KARL LYCHT**
First Defendants

AND: THE REPUBLIC OF VANUATU
Second Defendant

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

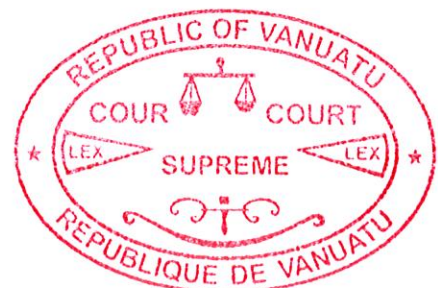
Counsel: **Less John Napuati for the Claimant
Mary Grace Nari and Georgina Kanegai for First Defendant
Hardison Tabi for Second Defendant**

Date of Hearing: **9th September 2015**
Decision: **10th September 2015**

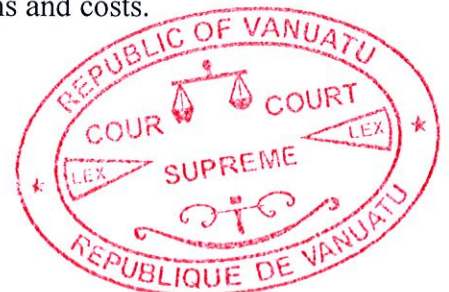
DECISION

1. This is a summary judgment. In the course of managing the case for trial hearing it has been disclosed by the First defendants that-
 - a) The claimant, Ifira Land Corporation Ltd has no standing to institute this proceeding.
 - b) The proper claimant should have been the South Pacific Pastoral Company Ltd (SPPC), but
 - c) The SPPC has been struck off the register of companies since February 2014 and dissolved.

2. Mrs Nari filed written submissions on 7th September urging the Court to dismiss the claims of the claimant and to enter judgment in favour of the First defendants on their counter-claims that-



- a) Lease title No. 12/0633/469 be cancelled due to mistake established under section 100(1) of the Land Leases Act [CAP. 163] and/or
 - b) Alternatively, award damages in favour of the First defendants for section 17 (g) rights, in the sum of VT 24,830,000, and
 - c) Costs.
3. The relevant evidence is contained in the sworn statement of Jean Marc Pierre filed on 10th June 2015 in which the Director admits an error in registering the initial Advice of Registration of Dealing (Annexure JM P2). However it is his evidence also that this error was rectified on the same date being 21st March 2012 by substituting SPPC Ltd for Ifira Land Corporation Ltd.
 4. Mrs Nari filed a memorandum attaching a copy of the final struck-off Notice of SPPC Ltd signed and dated 1st February 2014.
 5. Mr Napuati conceded that the claimant has no standing and further that the SPPC Ltd has been struck off. Counsel informed the Court that there is an application pending before the Court for reinstatement of SPPC Ltd. As for the reliefs sought by the First defendants in their counter-claims counsel submitted they rest entirely in the discretion of the Court. As for costs Mr Napuati concedes the First defendants are entitled to the costs and that he would expect a Bill of Costs to be drawn up and served on him in due course by Mrs Nari.
 6. Mr Tabi conceded that SPPC Ltd has been struck off but argued the First defendants are not entitled to the cancellation of lease until further instructions obtained from the Director.
 7. Mrs Nari in reply objected to the course proposed by Mr Tabi and maintained her arguments and submissions that the claimant's claims be dismissed and judgment be entered in favour of the First defendants on their counter-claims and costs.



8. I now consider and determine the issues as follows:-

a) On whether or not the claimant has standing?

It is generally accepted by Mr Napuati and Mr Tabi that the Ifira Land Corporation Ltd has no standing. As a result their claims cannot stand. Accordingly their claims are dismissed in its entirety with costs of and incidental to the action in favour of the First defendants on the standard basis as agreed or be determined by the Court or Master.

b) On the Counter-claims of the First defendants, whether or not Lease Title No. 12/0633/469 should be cancelled? Their answer is in the affirmative. The reason is simply that SPPC Ltd has been struck off and dissolved. There is no longer a legal creature in existence as lessee and as such Lease Title 12/0633/469 is invalid and is incapable of remaining on the register and must be cancelled forthwith.

c) I note Mr Napuati's advice that SPPC Ltd has an application for reinstatement to the register of companies which remains pending before the Court. If they should be successful, SPPC Ltd could renegotiate their lease afresh.

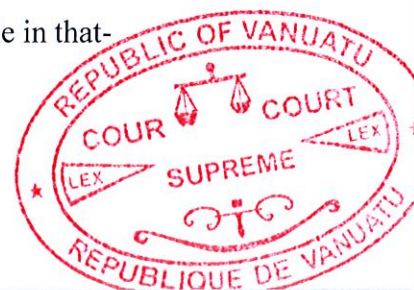
d) From the sworn statement of Mr Jean Marc Pierre, it is arguable that the proper processes were not followed by SPPC Ltd in securing the lease in 2012. There appear to be some unanswered questions which the Court cannot and should not determine here which are-

a. Whose signature appears on page 10 of the Lease?

b. Why is there "NIL VATU" payment for the lease (clause 1) for over 6 hectares of valuable land?

c. Why pay only annual rental of "ONE VATU"?


d. Paragraphs 8 of the Director's sworn statement is questionable in that-

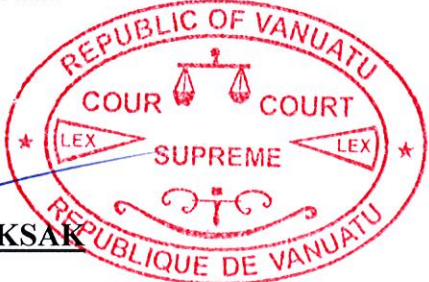


- i. Who does LMPC give advice to?
 - ii. On what subject-matter?
 - iii. If there is no record of a meeting to show the lease went through the process of “**screening**”, then who advised the Minister that the purported lease was appropriate for approval or signing?
9. These are elements or factors that could be determined to show whether or not there was fraud in obtaining the leasehold title in question. But the Court will not go to that extent when mistake or error was admitted, although it is asserted that it was only a typing error, it was in the opinion of the Court a substantial error.
10. The claims of the claimant are therefore dismissed with costs in favour of the First defendants only on the standard basis as agreed or taxed by the Court or the Master.
11. The First Defendants are successful in their counter-claims but only in relation to the first relief for an order of cancellation and for costs. The alternative relief of damages is not appropriate at this stage.
12. The final order: the Director of Lands and Lands Register be hereby required to cancel the registration of leasehold Title No. 12/0633/469 forthwith.

DATED at Port Vila this 10th day of September 2015

BY THE COURT


OLIVER.A.SAKSAK



Judge