

BETWEEN: **FAMILY BOETARA**
Claimant

AND: **SOCIETE CIVIL IMMOBILIERE**
First Defendant

AND: **PETER COLMAR**
Second Defendant

AND: **THE REPUBLIC OF VANUATU**
Third Defendant

Coram: *Mr. Justice Oliver A. Saksak*

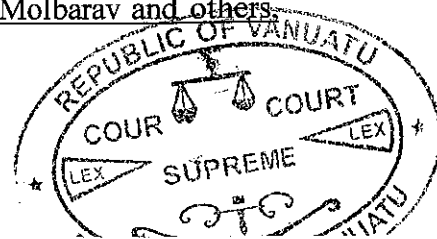
Counsel: *Felix Laumae for the Claimants/ Applicants*
Nigel Morrison for First and Second Defendants/ Respondents
Sammy Aron for Third Defendant/ Respondent

Date of Hearing: *28th November 2016*

Date of Judgment: *7th December 2016*

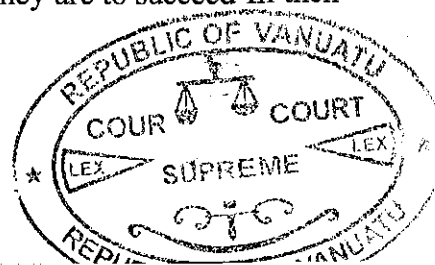
DECISION

1. On 3rd November 2016 the Claimant filed an application seeking summary judgment against the defendants pursuant to Rule 9.6 of the Civil Procedure Rules No.49 of 2002 (the Rules).
2. The Claimants believe the defendants do not have any real prospects of defending their claims. They claim that the defences filed on 13th November 2013 and on 2nd October 2012 by the First and Second defendants have no legal basis. They relied on the sworn statements of Felix Laumae filed on 3rd November 2016, of Lauren Solomon filed on 23rd August 2011, of Alan Carlot filed on 28th November, 2016 and of Peter Pata filed on 31st May 2012.
3. Mr Morrison, Counsel for the First and Second defendants filed written submissions on 28th November 2016 opposing the application placing reliance on the Court of Appeal case of Acting Director of Lands and Anor.v.John Tari Molbarav and others.



to argue that the position of ownership of Belbarav Land has changed with the Court of Appeal having recognised that Mathias and Rachel Molsakel have a proceeding on foot and awaiting determination. As such they argued that the Claimants have no standing to bring this claim. Counsel submitted the claims of the Claimant should be dismissed with costs on an indemnity basis.

4. Mr Aron did not file any written submissions but simply concurred with the submissions made by Mr Morrison.
5. I have considered the arguments and the submissions made by all counsel. I have read the defences filed by the defendants. I have read the sworn statements filed by each party to this proceeding. I have read the memorandum filed on 26th June 2015. I have also read the case authorities cited by Counsel.
6. I have to decide on two simple issues-
 - a) Do the claimants have standing?
 - b) Do the defendants have any real prospect in defending themselves from the Claimant's claims?
7. As for the first issue, I accept the Claimant's submissions that the Court is functus. The issue was decided on 10th September 2013. The defendants have not appealed that decision.
8. As for the second issue the answer is in the affirmative. The Claimants rely on section 100 of the Land Leases Act [CAP.163] as the legal basis of their claims for fraud and mistake. They rely on the statement of Lauren Solomon. But in my view that is insufficient evidence. The danger of relying on that evidence is that the deponent was one of the signatories to the Agreement for premium dated 10th March 2010. Jerome Natu, Mathew Tamata and Zebedee Molvatol were also signatories to that Agreement. None of them have filed any sworn statements in support of the Claimant's claims. Unless they do Lauren Solomon's evidence standing alone is insufficient to prove fraud. That is the hurdle the Claimants have to leap over if they are to succeed in their claims.



9. As their evidence stand at this stage of the proceeding, they fall short of proving fraud.
10. For those reasons their application for summary judgment fails and the application is hereby dismissed.
11. Mr Morrison submits that the Claimant's claims should be dismissed as well with costs.
12. For reasons stated in Counsel's written submissions and the Civil Appeal Case No. 25 of 2015, I accept that submission.
Accordingly I dismiss the Claimant's claims in its entirety.
13. As regards costs, I note the Claimants were awarded costs of VT 20.000 on 6th August 2014 which is not paid. They were awarded costs also on 6th February 2014 calculated at VT 365.332, which remains owing from the First and Second defendants.
14. For those failures and/ or omissions the request for costs on an indemnity basis is declined. They will be no order as to costs.
Each party is to bear their own costs of this proceeding.

DATED at Port Vila this 7th day of December 2016

BY THE COURT


OLIVER.A.SAKSAK

Judge

