

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

**Civil
Case No. 17/1081 SC/CIVL**

BETWEEN: ALIDA TCHIVI AND PASCAL ALAIN

Claimants

**AND: ROSE ANNIE STEPHEN, BILL
STEPHEN, STEVE STEPHEN, TALI
STEPHEN AND MELE STEPHEN**

Defendants

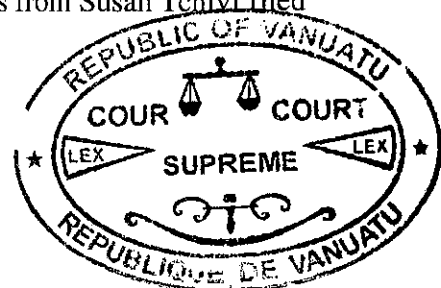
Date of TRIAL: *11th day of December, 2017 at 9:00 AM*

Before: *David Chetwynd*

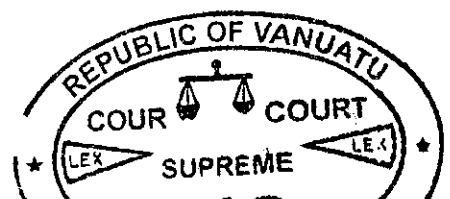
In Attendance: *Gregory Takau for Claimants
Silas Hakwa for Defendants (came in late)*

JUDGMENT

1. This case was set down for trial on 28th September 2017. When the case was called on it quickly became clear the matter was not ready for trial, mainly through the fault of the Claimants' counsel. As a result I made further orders and adjourned the case for trial today.
2. When the case was called on today Mr Takau was present with his client but there was no sign of the Defendants. My associate tried to telephone Mr Hakwa but there was no reply.
3. I decided to proceed as per Rule 12.0 of the Civil Procedure Rules. The Claimants called their evidence after a short opening. The evidence consisted of sworn statements from Alida Tchivi filed on 17th February 2016, 16th August 2017 and 22nd November 2017, and sworn statements from Susan Tchivi filed 16th August 2016 and 22nd November 2017.

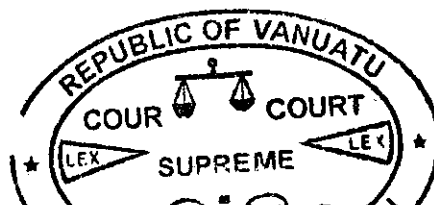


4. I took note of objections that had been raised by the defendants in a notice dated 30th August 2017. This was in relation to the sworn statement of Susan Tchivi of 16th August 2016 (wrongly said to be 2017 in the notice).
5. I also take notice of paragraph 2 of my Minute dated 16th August 2017. The defendants say there are two narrow issues. First, do the defendants have overriding interests pursuant to section 17 of the Land Leases Act [Cap 163] and the second, was the transfer of the lease to the Claimants contrary to the order by Saksak J in civil case 11 of 2004 dated 20th April 2006.
6. A copy of His Lordship's judgment is attached to the sworn statement of Susan Tchivi filed 16/08/2016. The order made was that the defendant in cc 11 of 2004 was to transfer half of his title 03/L103/031 (the defendant was named Jeannot Tari) to Susan Tchivi. The reasons why that order was made were set out in the judgment of 20th April 2006.
7. In brief there was an oral agreement between the parties in cc 11 of 2004. The agreement was that the defendant was to transfer his land to Susan Tchivi in settlement of a debt owed to her and her payment of long outstanding rentals owed by the defendant Jeannot Tari to the Lands Department.
8. Payments were made by Susan Tchivi as per the agreement but the defendant Jeannot Tari refused to transfer the Land. That was the origins of CC 11 of 2004.
9. There were enforcement proceedings in respect of the 2006 order in August 2014. A Minute published by Justice Saksak was attached to the sworn statement of Alida Tchivi filed on 22nd November 2017.
10. Alida Tchivi explains in the sworn statement how she was representing her mother under a power of attorney. There were negotiation between Alida Tchivi and Pascal Alain and Jeannot Tari. The end result is set out in Saksak J's Minute of 26th April 2015.
11. In short then, Jeannot Tari did not comply with the order of Saksak J in 2006. That order was to transfer half of 03/L103/031 to Susan Tchivi. Despite that



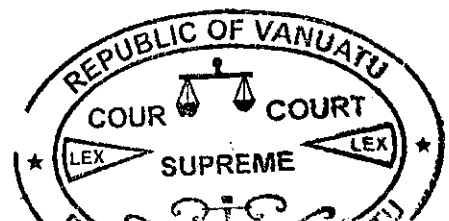
order given to Jeannot Tari the order remained unsatisfied. When Susan Tchivi tried to enforce the order another agreement was reached.

12. Instead of transferring half of 03/L103/031 and because of his continuing lack of ability to pay rental and other dues, Jeannot Tari agreed to transfer all of 03/L103/031 to Susan's daughter and de facto partner, Alida Tchivi and Pascal Alain. In return Alida Tchivi and Pascal Alain discharged all remaining rents and duties due and which were payable before the transfer set out in the order of 20th April 2006 could be effected.
13. The evidence from Susan Tchivi shows she had no objection to the transfer of her half interest to Alida Tchivi and Pascal Alain.
14. There is absolutely no merit to the argument that the transfer to Alida Tchivi and Pascal Alain was "in breach" or "contrary to" the requirement as set out by Saksak J in April 2006. Indeed, he reviewed the transfer arrangement in the enforcement proceedings in April 2005. He was shown copies of receipt for payments made. As His Lordship says, he was satisfied on the information provided that the case (CC 11 of 2004) was fully settled.
15. The only issue then is in relation to any overriding interests that the defendants may have. It does appear from the Claimants' evidence that the defendants have been living on part of 03/L103/031. The defendants therefore say that they are entitled to raise, as a defence to the claim, their rights as persons in actual occupation of the Land.
16. There are two points to bear in mind. First, this is a claim for eviction. There is no apparent dispute the defendants were and still are in actual occupation of part of 03/L193/031. In the circumstances the Claimants would have acquired the title subject to the rights in the Land of the actual occupiers. That would mean, if the rights involve occupation, eviction is not a remedy available to the Claimants.
17. Secondly, there is no evidence about the exact nature of those rights. All that is said is that they revolve around some kind of agreement the defendants reached with the father of Jeannot Tari, the Late Jackson Tari. This is based on



the defendants' parents having provided unspecified financial assistance to the Late Jackson Isaac Tari.

18. In her sworn statement filed 16/08/16 Susan Tchivi gives details of agreement she knows of. She accepts that the Late Jackson Isaac Tari died and that his son Henry approached the mother of the defendants. This evidence was subjected to a notice of objections on the basis it was hearsay. It was not hearsay and Susan Tchivi swore that it was a matter within her own knowledge. It could well have been and more than likely was. Similarly the objection to paragraph 5 is not sustained. This could easily have been information in Susan Tchivi's knowledge.
19. Susan Tchivi then says Jackson Isaac Tari, when he was still alive, spoke to Joyce Elmodan (Tari) and told her to move off the Land if they could not pay the outstanding Land rent. When Joyce died in 1995 the daughter of Jackson Isaac Tari asked Susan Tchivi to look after the land. The defendants objected to some of this evidence on the basis it was hearsay. However, it is supported by what the defendants are saying. They argue they (or their parents) were allowed on the land because they were going to or had helped Jackson Isaac Tari to meet rental costs. The evident strongly suggests they did not pay anything because there were areas of rents in 1999 paid for by Susan Tchivi.
20. In all the circumstances the right that the defendants have must relate to and be tied up with the payment of rent for their use of the land. They are required to pay a reasonable rent for their continued occupation. The one thing that is clear is they have no right to occupy the land rent free.
21. The upshot is the Claimants are entitled to possession of the whole of 03/L103/031. The order for possession of part of 03/L103/031 is suspended pending payment of a sum for reasonable rents to be paid to the Claimants. If that reasonable rent is not paid the defendants will have to vacate and the suspension of the order for possession will lifted.
22. As for costs, the defendants shall pay the Claimants' costs of these proceedings, said costs to be taxed on a standard basis if not agreed, save that



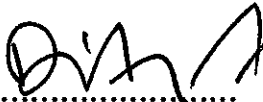
no costs are payable in respect of today's hearing and that which took place on 16th August 2017.

23. In summary;

- 1) The Claimants are entitled to vacant possession of title No. 03/L10/031;
- 2) The order for eviction shall be suspended pending payment of a reasonable sum for rent or further order;
- 3) The Defendants shall pay the Claimants' costs in this Court, save and expect that the costs of the hearing on 16th August 2017 and that dated today shall not be part of those costs, and such costs shall be taxed if not agreed on a standard basis.

DATED at Port Vila this 12th day of December, 2017.

BY THE COURT


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David Chetwynd
Judge

