

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

**Civil
Case No. 15/814 SC/CIVL**

**BETWEEN: PETER MASEL NIKIATU, JONA ROBERT
NAMATAK** representing the declared land
owners of Lowinio namely
Family Nalpin Kath
Family Iolu
Family Kauh
Family Iolin
Family Iavis
AND the People of Lowinio, Lenakel Tanna.

Claimants

AND: KEIL WILSON and JEFFREY MOSES
First Defendants

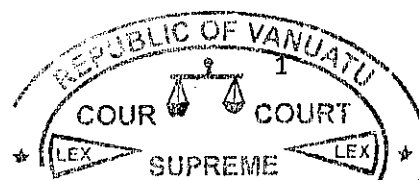
AND: REPUBLIC OF VANUATU
Second Defendant

Date of Hearing: 15 September 2020
Before: Justice V.M. Trief
In Attendance: Claimants Family Nalpini Kath & Family Iolin – Mr A. Bal & Mr A. Nalpini
First Defendants – Mr W. Kapalu
Date of Decision: 16 September 2020

**DECISION AS TO URGENT EX PARTE APPLICATION TO
STAY ENFORCEMENT WARRANT**

A. Introduction

1. Following the execution of an Enforcement Warrant that commenced last week on the island of Tanna, and the hearing of interlocutory applications by the Magistrates' Court, an Urgent Ex Parte Application to Stay Enforcement Warrant was filed in Civil Case No. 814 of 2015 ('CC 15/814') (the 'Application'). Having heard counsel, this judgment determines the Application.

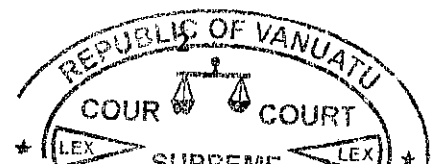


B. Naming of Parties in the Application

2. Family Nalpini Kath, Family Iolin and Family Iolin filed the Application in this matter naming themselves as the Claimants and Jeffrey Moses, Kiel Wilson and Gilbert Dinh as the Defendants.
3. As the first page of this decision shows, Family Nalpini Kath and Family Iolin are but two of the Claimants in this matter, while Jeffrey Moses and Kiel Wilson are the First Defendants. Gilbert Dinh is not a party to CC 15/814.
4. I therefore have not followed the erroneous naming of parties by Mr Bal, counsel for Family Nalpini Kath, Family Iolin and Family Iolin but maintained the correct naming of parties for CC 15/814. It appears that Mr Bal adopted the naming of parties from the Magistrates' Court proceeding Civil Case No. 73 of 2008 ('CC 08/73') in which the Enforcement Warrant dated 31 July 2009 for eviction of the enforcement debtors from lease title no. 14/2234/019 (the 'Enforcement Warrant') was issued.

C. Discussion

5. By the Application, Family Nalpini Kath, Family Iolin and Family Iolin seek the following Orders:
 1. *That the Orders of the Magistrates' Court in CC 08/73; Jeffrey Moses & Kiel Wilson v Jimmy Matin & Ors to evict persons on leasehold title 14/2234/019 be stayed;*
 2. *That the Claimants through its Agents and Servants be restrained from forcefully removing from within the boundary of the lease any person(s) and/or any of their belongings and possessions pending determination of the dispute over the registered leasehold title no. 14/2233/019 [sic];*
 3. *That the Claimants through its Agents and Servants be restrained from harassing, threatening or abusing either physically or verbally any person(s) and his or her family residing on the lease; and*
 4. *Costs of the application being in the course.*
6. Mr Bal cited *National Housing Corporation v Okau* [2013] VUCA 21 for the proposition that the Magistrates' Court has jurisdiction to grant eviction orders but only where the title of the claimant lessee is not in dispute and the value of the leasehold is less than VT1,000,000. He submitted that the lessee's title is under dispute in CC 15/814 and the value of the leasehold is over VT1,000,000 therefore the Magistrates' Court exceeded its jurisdiction in granting the Orders and Enforcement Warrant in CC 08/73.
7. The Claim in CC 15/814 alleges that lease title no. 14/2234/019 was obtained by fraud or mistake. That Claim was filed on 1 December 2015. However, at the time the Enforcement Warrant was issued on 31 July 2009, no such challenge to the lease existed. Therefore the Magistrates' Court cannot be said to have exceeded its jurisdiction at the time it issued the Enforcement Warrant. Further, Mr Bal conceded that despite his asserting that the value of the leasehold is over VT1,000,000, he did not have evidence of this anywhere in the sworn statements filed in support of the Application. He asserted only that there is a



subdivision on the subject land therefore the value of the leasehold must be over VT1,000,000. Given the lack of evidence before me, I am unable to accept this assertion. Both grounds of the Application therefore fail.

8. Mr Kapalu submitted that the proceeding in CC 15/814 is challenging lease title no. 14/2234/019 for fraud or mistake but in the meantime, his clients the registered proprietors of that lease can develop their leasehold property including by evicting the enforcement debtors who are squatters on the land. He stated that by Consent Orders dated 27 May 2019 in CC 10/161, orders staying the execution of the Enforcement Warrant were removed and monies to be paid to the custom owners or lessors are to be paid to the Supreme Court Trust Account. Mr Bal's clients are disputing custom owners for the subject land whose interest is catered for by the payment of monies to the Supreme Court Trust Account and if the challenge in CC 15/814 is successful, will have as a remedy the rectification of the name of the lessor. Mr Kapalu submitted that the proper persons to apply for a stay of the Enforcement Warrant are the persons who are directly affected by its execution, none of whom are Mr Bal's clients. Accordingly, Mr Bal's clients cannot show that they are seriously disadvantaged by the execution of the Enforcement Warrant.
9. In reply, Mr Bal stated that his client Jonah Robert (whose sworn statement was filed in support of the Application) does have persons from his family residing on lease title no. 14/2234/019 that he does not want evicted until the determination of the custom ownership dispute in Land Appeal Case No. 2 of 2012. However, Mr Bal had to agree that this also was not covered in the sworn statements filed. I therefore am unable to accept this assertion also.
10. Finally, I note that the Undertaking as to Damages filed with the Application is deficient as it is signed by Mr Bal instead of by his clients. Any award of damages will be against a party, not against Mr Bal. It is imperative therefore that the party itself gives an Undertaking as to Damages, not counsel.

D. Result and Decision

11. The Application is declined and **dismissed**.
12. Costs should follow the event. The Claimants Family Nalpini Kath and Family Iolin are to pay the First Defendants' costs summarily assessed at VT40,000 within 21 days.

**DATED at Port Vila this 16th day of September 2020
BY THE COURT**


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Viran Molisa Trief
Judge

