

BETWEEN: Walter Alatoa

Claimant

AND: Willie Koko, Moise Paise, Sandy Kaltapang

Defendants

Date of Hearing: 23rd November 2020
Date of Decision: 18th February 2021
Before: Justice Oliver.A.Saksak
In Attendance: Mr James Tari for the Claimant
Mr Roger Tevi for Defendant Willie Koko
Mrs Pauline Malites for Defendant Sandy Kaltabang
No appearance for Defendant Moise Paise

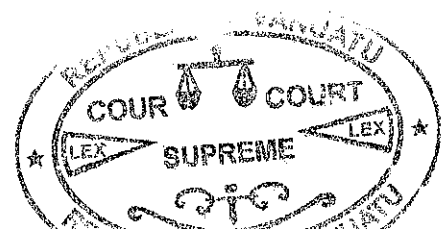
JUDGMENT

Background Facts

1. Walter Alatoa, the claimant filed his claim for eviction of the 3 named defendants on 12th March 2020 on grounds that he is the registered proprietor of Lease Title 12/0913/117 and that the 3 defendants are trespassers on the demised land.
2. None of the 3 defendants filed any responses and/or defences within 28 days although they were served. That being so the claimant requested for default judgment. The Court issued judgment by default on 15th April 2020.
3. The Court issued eviction order against all 3 defendants but stayed enforcement for one month to enable the defendants to remove themselves willingly and peacefully.
4. The Court has been told by Mr Tari that Moise Paise has vacated the land although there is no evidence of it. This defendant had filed a response on 20th March 2020 agreeing the claim is correct.



5. Willie Koko obviously became aware of the eviction order and applied on 13th May 2020 to have the default judgment dated 15th April 2020 be set aside.
6. The application was fixed for hearing on 15th May 2020 but was adjourned on that date to 2nd June at the request of Mr Tevi.
7. On 2nd June 2020 Mr Tevi conceded to the eviction order and withdrew his client's application.
8. Sandy Kaltabang filed a late defence on 8th June 2020 alleging the claimant is not a bonafide purchaser for the leasehold property and claiming that as custom owner of the demised land his father Leslie Kaltabang did not consent to the transfer of the lease but someone else did. Indirectly he alleged fraud and/or mistake. He also alleged he has section 17 (g) rights to the land. No counter-claims were included in the defence.
9. Mr Kaltabang filed sworn statements in support of his defence from his wife, Mrs Touam Kaltabang, his father Leslie Kaltabang and from himself.
10. On 8th June 2020 Sandy Kaltabang filed an application to set aside the default judgment of 15th April.
11. Willie Koko filed a late defence on 17th December 2020. He relied on the evidence of John Kalpep Kalmet filed earlier on 13th May 2020 and his own statement. No counter-claims were included in the defence
12. At a conference hearing on 23rd November 2020 only Mr Tari and Mrs Malites were present. After discussions directions were agreed. Mrs Malites for the applicant was to file written submissions on the legal issues within 21



days and Mr Tari was to file responding submissions within a further 21 days thereafter, and that the Court would formulate its decision on the papers.

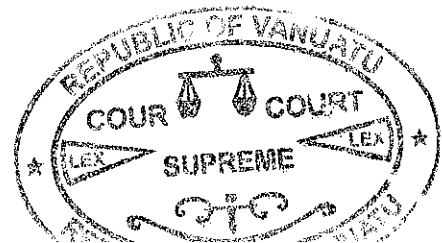
13. Mr Tari has not filed any submissions and neither has Mrs Malites. Only Willie Koko filed written submissions albeit late on 2nd February 2021 but the Court is surprised because neither he nor his counsel were present at the directions hearing on 23rd November 2020.

Discussion

14. The failures by counsel to file submissions can have very serious consequences therefore the requirements to do so must be taken seriously.
15. Despite the lack of written submissions by Sandy Kaltapang on the legal issues, the Court has found assistance on the facts by the sworn statements filed by the defendant.
16. Equally I am assisted by the facts in evidence produced by Willie Koko and his submissions filed on 2nd February 2021. These submissions are signed by Willie Koko himself but the submissions appear to have been prepared by a lawyer. They are full and extensive submissions.

Findings

17. From the facts in evidence before me I find as follows-
- (a) Willie Koko and Sandy Kaltabang are not trespassers on the claimant's lease.
 - (b) The claimant's lease overlaps onto Sandy Kaltabang and Willie Koko's portions of the land.
 - (c) There is sufficient evidence showing the claimant's lease may have been obtained by fraud and/or mistake.
 - (d) Willie Koko and Sandy Kaltabang have section 17 (g) rights on the land.



18. These answers are in response to the issues raised in the submissions of Willie Koko. These are sufficient to allow the application by Sandy Kaltabang to set aside the judgment entered on 15th April 2020.

19. The claimant has not responded at all to the evidence filed in support of the defences of Willie Koko and Sandy Kaltabang. The lack of or absence of his responses indicate the claimant knew or was well aware of all those facts, yet he proceeded to obtain the lease. That was dishonest dealing on his part.

Decision

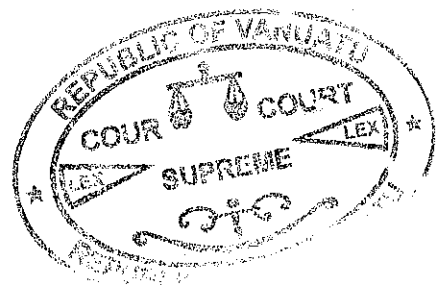
20. I have stated earlier that the failure to file submissions and/or evidence in accordance with directions as agreed by Counsel can have very serious consequences.

21. Accordingly the default judgment dated 15th April 2020 is hereby vacated. In this case the Court goes further to dismiss the claimant's claim filed on 12th March 2020.

Suggestions as to the way forward

22. The solution to his case lies with the claimant himself. The easy solution for all these parties may be for the claimant to surrender his lease in order to exclude the portions occupied by Willie Koko and Sandy Kaltabang. He could then claim a reimbursement of part of the VT 4,500,000 he paid as consideration from Michel Kalpoi and Kalmet Kalbet.

23. In the event the claimant may not be attracted to this option, it would be open to Willie Koko and Sandy Kaltabang to file separate proceeding alleging fraud and mistake and to claim their section 17 (g) rights.



24. These are only suggestions offered by the Court to assist these parties reach a solution that is workable and preferable to all.


Result

25. The claimant's claim and proceeding are dismissed.

26. In the circumstances of the case, there will be no order as to costs. Each party will bear their own costs.

DATED at Port Vila this 18th February 2021

BY THE COURT


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Oliver.A.Saksak

Judge

