

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

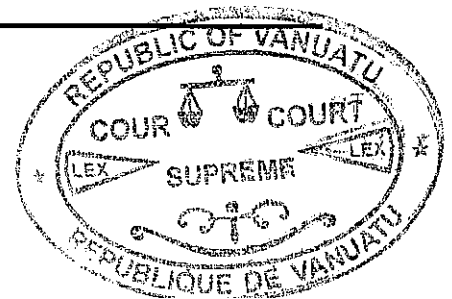
Civil
Case No. 21/3561 CVL

BETWEEN: Frederick Ham Hosea
Claimant

AND: Lennard Horambath
Yean Horambath
Yano Horambath
Kitu Horambath
Billy Peter
Grenly Peter
Grensly Peter
Kollen Peter
Sam Thomas
Tino Thomas
Adam Thomas
Defendants

Date of Hearing: 22 June 2022
Before: Justice G.A. Andrée Wiltens
Counsel: Ms J. Kaukare for Mr D. Yawha for the Claimant
Mr J. Kilu for the Defendants
Date of Decision: 24 June 2022

Judgment



A. Introduction

1. This matter concerned an application for summary judgment. It was based on the contention that the Defence filed did not reveal a viable defence.

B. Claim

2. The Claim was for eviction from customary land known as Tenlamu on Malekula Island. Mr Hosea produced a sworn statement appending a decision of the Lehan Council of Chiefs dated 13 August 2020, declaring Mr Hosea to be the true custom owner. This was subsequently the basis on which Mr Hosea obtained a Certificate of Recorded Interest in Land, a copy of which he also appended to his sworn statement.
3. Mr Hosea further deposed to having requested the Defendants on several occasions to vacate the land. It is contended they are trespassers since 2020. To date there has been no compliance with those requests.
4. Accordingly, the Claim was filed on 29 October 2021.

C. Defence

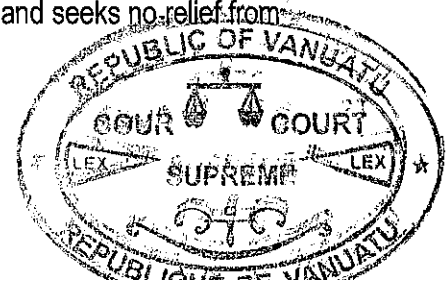
5. The Defence was filed on 4 February 2022 – it was served on 9 June 2022. There is a denial of trespassing, and an allegation that that the Lehan Council decision was irregularly obtained. An appeal against the decision is said to have been filed.
6. The Defence includes a Counter-claim. The Counter-claim makes a number of allegations which attack the validity of the Lehan Council decision. It seeks declarations that the decision is unlawful and of no effect, and that the Recorded Interest in Land is also unlawful and of no effect.

D. Response to Application

7. The Response was, in reality, no more than a repetition of the Defence and the Counter-claim. Again, there is reference to an appeal having been filed. There is a general statement regarding delay occasioned by the Covid-19 restrictions. There is also a contention that the application is premature, but that submission holds no logic. Rule 9.6 of CPR is relied on, it being contended that there are highly contentious issues of facts to be determined.

E. Discussion

8. The claim is straight-forward, with evidence supporting Mr Hosea's perspective.
9. The details of the contended appeal are absent, as is any skerrick of information relating to any such appeal. This appears to the Court to be no more than a further exercise in delay. If there were an appeal, why is all information relating to it withheld by the Defence?
10. The Counter-claim is misconceived. Any challenge to the Lehan Council decision can only be by way of appeal. Further, it contains no allegations against Mr Hosea and seeks no relief from him.

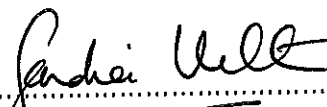


11. There is no valid defence disclosed on the material before the Court.
12. The Defendants have had ample time to attend to this matter and appear to be content to simply stall.
13. There is no good reason to not grant the present application.

E. Result

14. Summary Judgment is granted. The Defendants have 3 calendar months to vacate the land; namely by 24 September 2022.
15. The Claimant is entitled to his costs for this action. I set them at VT 45,000. They are to be paid within 28 days. The costs are assessed on a joint and several basis.

Dated at Port Vila this 24th day of June 2022
BY THE COURT


Justice G.A. Andrée Wiltens

