

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

**Civil Case
Case No. 20/1274 SC/CIVL**

**BETWEEN: Anderson Wells, Patrick Wells, Edwin Wells, Norris
Wells**
Claimants

**AND: Remo Waen, Thomas Nigisa, Kenny Nigisa, Yanke
Colen**
Defendants

Coram: Justice Aru

Counsel: Mr. R. Tevi for the Claimants

Defendant/Applicants-represented by L. Kalnpel as a friend of the Court

DECISION

Introduction

1. This is an application by the defendants to set aside the summary judgment entered on 11 August 2022. The grounds for the application were that Counsel on record at the relevant time Mr Rollanson Willie of the Public Solicitors Office was not in contact with them. They were not served with the application for summary judgment and sworn statement in support and on the hearing date, they did not attend the hearing as there was a death in their village.

Background

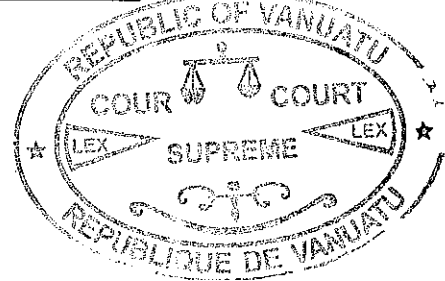
2. The claimants are the registered proprietors of lease title No 04/1832//001 located on the eastern part of the island of Santo. Their claim was for damages against the defendants for trespassing on their lease property and disturbing their peaceful enjoyment. The defendants' main defence to the claim is that the claimants are not the registered proprietors of the lease as there has yet be a formal declaration of custom ownership of the land.

Discussion

3. Section 15 of the Land Leases Act [CAP 163] in in part states: -

"15. Rights of proprietor

The rights of a proprietor of a registered interest, whether acquired on first registration or subsequently for valuable consideration or by an order of the Court shall be rights not liable to be defeated except as provided in this Act, ..."
(emphasis added)



4. The pleading of lack of formal declaration of custom ownership simply cannot defeat the lease. The lease can only be defeated by the defendants filing a proper claim challenging the lease pursuant to the provisions of the Land Leases Act. They have done nothing to date since the registration of the lease on 18 January 2016.
5. Even if the summary judgment is set aside, it cannot defeat the fact that the claimants are the registered proprietors of the lease in question.

Result

6. The application to set aside is therefore dismissed. The claimants are entitled to costs fixed at VT 50,000 to be paid within 21 days.

DATED at Port Vila this 2 day of February, 2023

BY THE COURT



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D. Aru
Judge

