

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

Civil
Case No. 23/49 SC/CIVL

BETWEEN: Rogen Morris Moldoro
Claimant

AND: Matevulu College
First Defendant

**AND: Tangis Sisi, James Tangis and Family
Tangis**
Second Defendants

AND: Joseph Riri and Family Riri
Third Defendants

AND: Republic of Vanuatu
Fourth Defendant

Date: 30 October 2023
Before: Justice V.M. Trief
Counsel: Claimant – Mr L. Tevi
First and Fourth Defendants – Attorney General
Second and Third Defendants – Mr P. Fiuka

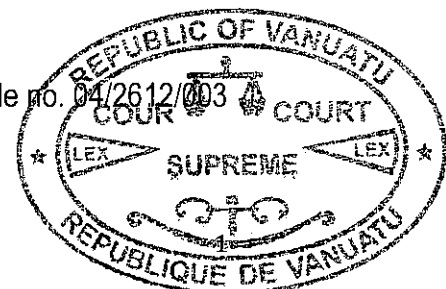
**DECISION AS TO SECOND AND THIRD DEFENDANTS' APPLICATION
TO STRIKE OUT CLAIM**

A. Introduction

1. This was a contested application by the Second and Third Defendants Tangis Sisi, James Tangis and Family Tangis, and Joseph Riri and Family Riri respectively to strike out the Claim.

B. The Claim

2. Matevulu College, the First Defendant, is the occupier of lease title no. 04/2612/003 (the 'lease').



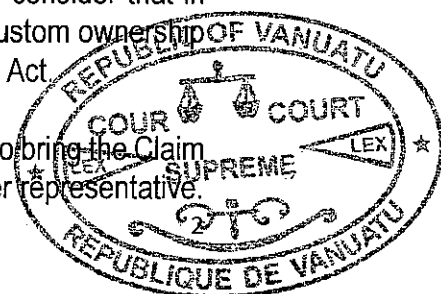
3. It is alleged in the Claim that the Second and Third Defendants are the registered lessors of the lease however the custom ownership of that land is still under dispute in Land Case No. 5 of 1992 in the Santo Malo Island Court, which they and the Claimant Rogen Morris Moldoro are party to.
4. The relief sought in the Claim includes an order that the Fourth Defendant State rectify the lease to remove the Second and Third Defendants as its lessors.
5. I understand the effect of these allegations to be that the registration of the lease was obtained by mistake as the custom ownership of the leased land is still disputed and that the Claim is so brought under s. 100 of the *Land Leases Act* [CAP. 163] (the 'Act').

C. The Application and Submissions

6. The grounds for the Second and Third Defendants' Application to Strike out the Claim filed on 31 August 2023 (the 'Application') are that Mr Moldoro does not have standing to bring the Claim because he is not a declared custom owner and secondly, he was not party to the agreement signed by the defendants dated 15 June 1987.
7. That agreement dated 15 June 1987 was an Agreement to Lease between the Director of Lands and Sisi Tangis, James Tangis, Simion Tangis, Joseph Riri and Philip Riri to lease the land including the Matevulu College land [Annexure "JR2" to the Sworn statement of Joseph Riri filed on 31 August 2023].
8. Also attached to that Sworn statement was a copy of the Minister of Lands' declaration dated 22 November 1985 pursuant to subs. 6(2) of the *Land Reform Act* that James Tangis, Semion Tangis and Joseph Riri were the representatives of the custom owners of the land including the leased land [Annexure "JR1"].
9. The Application is opposed: Claimant's submissions filed on 12 October 2023.
10. Mr Tevi submitted that the Claimant and the Second and Third Defendants are all claimants for the custom ownership of the leased land and party to Land Case No. 5 of 1995. He also referred to all three of them being party to Land Case No. 406 of 2018 in the same Island Court disputing the custom ownership of the same land. Further, that no one has yet been declared as custom owner of the leased land.

D. Consideration

11. It is common ground between Mr Moldoro and the Second and Third Defendants that no one has yet been declared custom owner of the leased land. I consider that in those circumstances, a party who is a competing claimant for the custom ownership of the leased land has standing to bring a claim under s. 100 of the Act.
12. Mr Fiuka had also submitted that Mr Moldoro did not have standing to bring the Claim as he was not declared by the Minister of Lands as a custom owner representative.



However, a declaration by the Minister of Lands is not determinative of custom ownership: *Valele Family v Touru* [2002] VUCA 3. In addition, there is no authority for the proposition that only persons declared by the Minister of Lands to be custom owner representatives have standing to bring a Claim under s. 100 of the Act. Accordingly, I consider that the first ground of the Application lacks legal merit.

13. The second ground of the Application was that Mr Moldoro was not party to the Agreement to Lease dated 15 June 1987. There is also no authority for the proposition that only parties to an agreement to lease will have standing to bring a claim under s. 100 of the Act. I consider that the second ground of the Application also lacks legal merit.
14. For the reasons given, Mr Moldoro has standing to bring the Claim under s. 100 of the Act and the Application must be declined and dismissed.

E. Result and Decision

15. The Second and Third Defendants' Application to Strike out Claim filed on 31 August 2023 is **declined and dismissed**.
16. Costs reserved.

DATED at Port Vila this 30th day of October 2023
BY THE COURT


Justice Viran Molisa Trief

