

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

Civil
Case No. 23/984 SC/CIVL

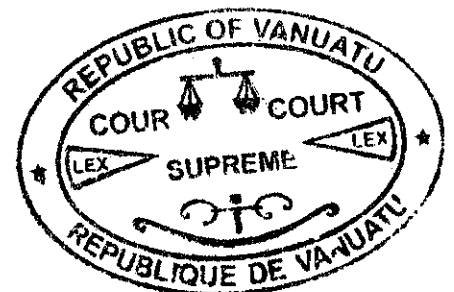
BETWEEN: Kiel Wilson, Jeffrey Moses
Claimant

AND: Iolu Tray
Defendant

Before: Hon. Justice EP Goldsbrough
In Attendance: Yawha, D for the Claimant
Malantugun, L for the Defendant
Date of Hearing: 17th June 2025
Date of Judgment: 20th June 2025

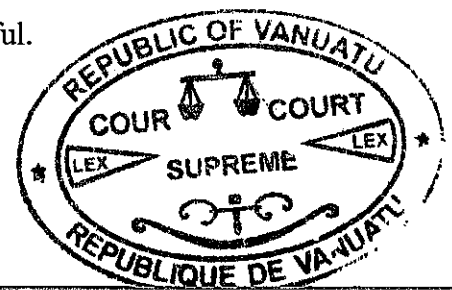
JUDGMENT

1. Iolu tray (the defendant) has been occupying land on the island of Tanna, known as Nemruerne, which is inside a larger area known as Lowinio. He claims to be a native of the area. For this decision, the land is within Parcel Numbers 14/02234/059 and 14/2234/061. It is not an issue in these proceedings that customary ownership of the land remains in dispute.
2. The claim is for eviction. The claimants assert that they are the proprietors of leases 14/02234/059 and 14/22234/061 and that, by an oral agreement, the defendant occupied the same land after it was allocated to him, subject to various conditions requiring payment. He has not paid the amount stated to be due under the agreement, which is 10% of the lease purchase price, together with an annual land rent of VT 4,000.
3. The claim was filed on June 19, 2023, and a defence to the claim was filed on December 8, 2023. Sworn statements were filed by the claimant, Jeffrey Moses, on February 27, 2024, and June 12, 2025. The defendant filed his sworn statement in support of his defence on June 6, 2025.



Evidence

4. A trial of this matter took place on June 17, 2025. Evidence on behalf of the claimant is contained in his two sworn statements, and evidence on behalf of the defendant is contained in his sole sworn statement. Both were cross-examined on the statements.
5. Jeffrey Moses confirmed that the land on Tanna, within Lowinio custom land, remains the subject of a customary ownership dispute. He further confirmed that he is not a party to that land dispute. His claim, he says, is not based on the notion of customary ownership but on his proprietorship of a land lease which has been subdivided.
6. Jeffrey Moses further confirmed that there was never any transfer of the subleases 059 and 061 to the defendant. He stated that this was because the defendant had not made the payments due under their agreement. He reiterated that the claim has nothing to do with customary ownership. He stated that he is the proprietor of a valid lease granted after a proper survey had been conducted. He had offered the two subdivisions to the defendant and confirmed that after the offer, but before payment, the defendant moved in to occupy the two pieces of land.
7. He exhibited material showing that the defendant's family is in dispute with itself over its membership. His evidence concluded when he expressed the view, but even were the defendant now to make payment under the agreement, he would be unwilling to withdraw his claim for eviction. He explained that the defendant had been challenging to deal with, and because of that, the agreement was terminated, resulting in this claim being filed.
8. Iolu Tray gave his evidence in chief in the form of his sworn statement. He said in cross-examination that he believed he should not pay anything to occupy the land because customary ownership remains in dispute.
9. He agreed that he was offered lots 59 and 61 and further agreed that he had not challenged the lease that had been granted in favour of the claimants. However, he maintained that his customary ownership was still in dispute, and therefore, he was entitled to remain in occupation of the land without payment. He was unaware of the decision in civil case 161 of 2010 in the Supreme Court, where a challenge to the head lease brought by others against the claimants was unsuccessful.

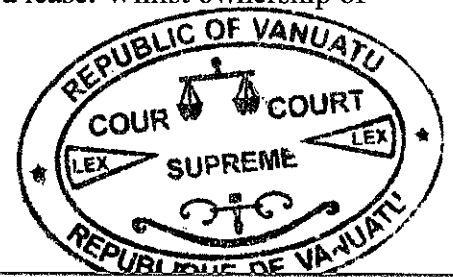


Submissions

10. Counsel made oral submissions following the reception of the evidence.
11. For the claimants, counsel submitted that the claim is based on an oral agreement made in 2019, under which the defendant was to be granted the two subleases for 59 and 61 upon payment of 10% of the lease premium, referred to as the lessor's benefit and the annual land rent. That after the agreement was entered into, the defendant moved onto the land and has subsequently sublet part of the land, but has not made any payments under the agreement. After encouraging the defendant to make payments without success, the claimants gave notice to terminate the agreement and also gave notice for the defendant to quit. No payment has been made, and the defendant has not given up his occupation of the land.
12. Counsel for the defendant submitted that the two subdivisions are irregular, with neither of the exhibited 2023 transfers signed by the Director of Lands or bearing the official stamp, and that the leases are non-compliant given that the lessor and lessee are the same people and neither bears the name of the defendant.

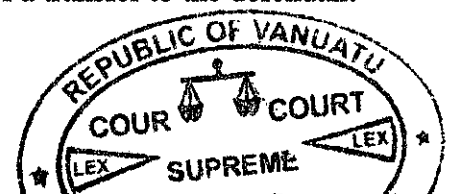
Discussion

13. In the first line of the defence, the defendant admits that the claimants are the proprietors of the two subleases and that he entered into an agreement with them on the terms that are set out in the claim. He agrees that he has made no payment under the contract.
14. Without issuing any proceedings in respect of the leases, not surprisingly given the nature of the defence filed, there is no challenge brought to the issue of the lease, whilst at the same time, although not pleaded, the defendant now seeks to challenge the validity of the same leases.
15. Whether any challenge not yet brought would be successful is not, perhaps, the issue here, but what right does the defendant seek to rely upon for his occupation of the land? It seems to be the right of a person who claims to be a custom owner, although custom ownership has not yet been determined. There is no issue that custom land ownership has not yet been determined. When that is the case, land need not be left undeveloped or unoccupied but may be preserved and developed under a lease. Whilst ownership of



the land is determined, the financial benefit of any such lease can be held in trust for the benefit of any eventually determined owner.

16. Such seems to be the case here, given the provisions of the order of the Supreme Court in 161 of 2010. The parties are not identical, and therefore, no question of res judicata or estoppel arises. However, the principle that the claimants argue is equally applicable here is that the income from the subleases is held in a trust account for the benefit of those eventually determined to be a custom owner.
17. There is an admission of occupation at paragraph 7 of the defence, but then a challenge to standing to bring the proceedings because the claimants are not the declared custom owners.
18. The claimants sought damages in the form of mesne profits in addition to seeking an eviction order. Given the information provided in the response to the defence, it would be incorrect to order damages payable to the claimants, as all income was to be held in trust for the custom owners. Equally, the claimants sought the eviction of the defendant and his family. The 'and family' part of the order cannot be made, given that no other adult family member was named and served with these proceedings. The claimants made this concession during the hearing.
19. Nothing raised in the defence, or even raised without pleading the same, amounts to a viable defence to this claim, which is essentially an attack on the principle of indefeasibility of title under the Land and Titles Act. That indefeasibility of title is provided by s15 of the Land Leases Act [Cap 163]. Once a lease is issued, the rights granted thereunder are only to be defeated in accordance with the provisions of the same Act.
20. The first line of the defence admits that the claimants are proprietors of the relevant lease, and so it seems unnecessary to prove title. That the claimants are proprietors of the head lease from which the two subdivisions were taken appears in the evidence in chief from Jeffery Moses. He was not questioned about that evidence during his cross-examination. Additionally, in the responsive evidence, the claimants demonstrate how the same lease has been the subject of an unsuccessful attack in the past (not brought by this defendant). The exhibited subleases, which are awaiting registration, are exhibited and described as being prepared in anticipation of a transfer to the defendant



if he paid what was due under the oral agreement. He was questioned about why those subdivision leases were not registered. He was not asked if the head lease was registered.

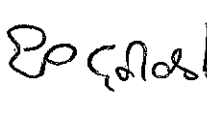
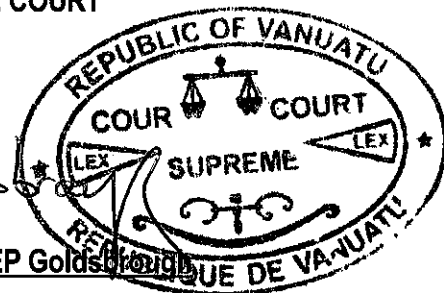
21. This is not a case where it is necessary to assess the credibility of witnesses, as there is no dispute about the essence of the agreement or the existence of the various leases and subleases. For this reason, I do not present findings regarding the credibility of the evidence. It is the effect of the various facts that needs to be assessed.
22. The evidence supports a finding that the claimants are the holders of a valid lease, that the agreement between the parties was not complied with when the defendant failed to pay what was due under the contract which would otherwise have seen him benefit from the two subleases, and that he therefore must leave the land, and orders should be made accordingly.

Decision

23. The claim is successful. An order is made that the defendant vacate the property in Title Numbers 14/2234/059 and 061 and deliver up vacant possession to the claimants.
24. Costs of and incidental to this claim are to be paid by the defendant to the claimant, such costs to be agreed or assessed.

Dated at Port Vila this 20th day of June 2025

BY THE COURT



Hon. Justice EP Goldsborough