

**IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU**
(Civil Appellate Jurisdiction)

Civil Appeal Case No.835 of 2019

BETWEEN: JACQUES STEVEN
Appellant

**AND: THE DIRECTOR OF VANUATU QUARANTINE &
INSPECTION SERVICE**
First Respondent

AND: THE REPUBLIC OF VANUATU
Second Respondent

Coram: *Hon. Justice John von Doussa
Hon. Justice Ronald Young
Hon. Justice Oliver Saksak
Hon. Justice Daniel Fatiaki
Hon. Justice Gus Andre Wiltens
Hon. Justice Stephen Felix*

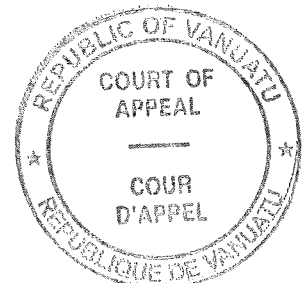
Counsel: *Eric Molbaleh for the Appellant
Lennon Huri for the Respondents*

Date of hearing: *6th May 2019*
Date of Judgment: *10th May 2019*

JUDGMENT

Introduction

1. This case concerns the death of the appellant's bees and the claim that the respondents were responsible.
2. These proceedings arise from events in 2000 when the Vanuatu Quarantine and Inspection Services inspected the bee hives of the appellant. The appellant's case at trial was that in breach of a duty of care the inspection was carried out negligently and as a result most of his bees died with a loss of VT18,400,000.



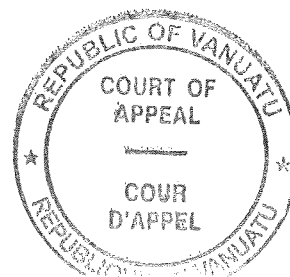
3. The Judge at trial concluded the first respondents did not carry out the inspection negligently and therefore did not cause any loss suffered by the appellant.

This Appeal

4. The appellant raises two relevant appeal grounds.
 - (a) That the Supreme Court Judge should have ordered a retrial of the claim because the claim was filed in 11 July 2003, the trial held in October 2005 and judgment given on 26 March 2019 fourteen years after trial. This delay meant the Judge could not appropriately resolve the competing claims.
 - (b) The Judge failed to sufficiently consider the evidence of the appellant and his witness in reaching his conclusions as to negligence. If he had done so he would have concluded the first respondent had breached their duty of care and as a result had killed the appellant's bees.
5. Other grounds of appeal were raised but they were not relevant to the appellant's claim. We mention them at the end of this judgment.

The Facts

6. In July and August 2000 the Vanuatu Guaranteed Inspection Service (VQIS) commissioned a bee disease survey to establish the health status of bees in Vanuatu. Two consultants were hired from New Zealand who undertook the survey with the assistance of two officers from VQIS. Part of this survey involved an inspection visit to the appellant's hives. The appellant's evidence was that about one month after the inspection of the hives he found that the bees in 20 of his 23 hives had died (3 hives had not been inspected).

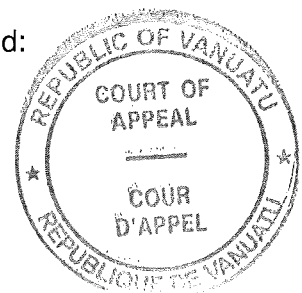


7. Neither he nor his witnesses at trial knew what caused the death of the bees. But they essentially relied on the co-incidence of timing. The bees had died within a month after the inspection. Further they say the bees in the three hives which were not inspected survived. The appellant said this evidence supported the claim that the bees had died as a result of the inspection of the hives.
8. The evidence of one of the Vanuatu VQIS officers was that when they inspected the hives they were overgrown, and some bees had died. Overall the hives were in poor condition with evidence of starvation and queen failure. Further the officer said he had told the appellant about the proposed inspection. The inspection was said to have been carried out using strict sanitation procedures.
9. The trial Judge accepted that the respondents had a duty of care to the appellant when it carried out the inspection of the hives. The Judge concluded that there was no evidence that the respondents had breached this duty. He said the evidence showed the quarantine officers and bee consultants had carried out the inspection with care. There was no evidence that the bees died as a result of any action by the respondents. The Judge found the appellant had been told of the inspection by the respondents prior to the inspection.

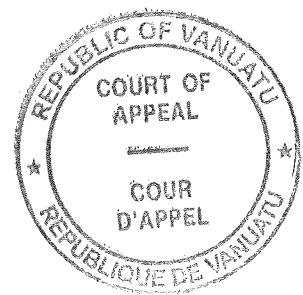
Discussion

Retrial Claim

10. The appellant says that given the timing of the trial and the judgment in this case the Judge should have ordered a retrial.
11. The trial of his case was heard in October 2005. This was shortly before the Port Vila Courthouse was burnt down in June 2007 destroying all of the pleadings, and the evidence in the trial.
12. As to the conduct of the trial from then on the trial Judge said:



- "1. At a conference conducted on 2 June 2014, the Court noted that after the file for this case No.123 of 2003 had been destroyed by fire on June 2007, the case file has been reconstructed.*
- 2. The claim, defence and sworn statement are filed and submissions are also copied and there are no notes of evidence (written notes of cross-examination of witnesses).*
- 3. In such a situation, the Court gave two options-*
 - a) Counsel to exchange and provide to the Court their respective written notes of evidence; or*
 - b) If not satisfactory, then, a retrial of this matter will be ordered.*
- 4. The Defendants forwarded their written notes of evidence to Counsel of the Claimant but they did not receive any response.*
- 5. The Defence attached and provided to the Court their written notes of evidence previously forwarded to the Claimant's Counsel;*
 - (i) The Claimant's opening address;*
 - (ii) Opening submission for the First and Second Defendants;*
 - (iii) Examination in chief, cross-examination and re-examination of Jacques Steven;*
 - (iv) Cross-examination, examination and re-examination of Annick Steven;*
 - (v) Cross- examination and re-examination of Rebecca Kausej;*
 - (vi) Cross- examination and re-examination of Moses Nambo; and*
 - (vii) Cross-examination of Sylvie Warimavute.*
- 6. The Claimant provided their handwritten notes of evidence of Annick Steven and Rebecca Kausie much later.*
- 7. I assess the reconstructed file documents and materials of this case and I am satisfied they are sufficient for a decision to be made based on them. There is no need for a retrial."*



13. The appellant therefore had an opportunity to make submissions on the questions of the proper conduct of the trial. He did not do so. Given the information available to the Judge as detailed above and given that many years had passed since the facts that gave rise to the proceedings occurred we are satisfied the trial Judge took the only sensible, practical course.

14. We therefore reject this ground of appeal.

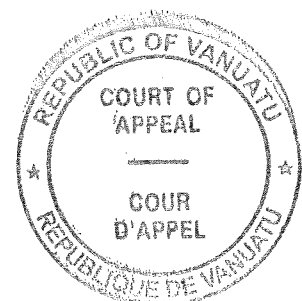
Challenge of Factual Conclusions

15. We now consider the other grounds of appeal.

16. We are satisfied the Judge was correct to conclude the respondents owed the appellant a duty to take care in this inspection of the hives. We are also satisfied there was ample evidence to support the Judge's conclusion that the appellant had not proved a breach of that duty.

17. The trial Judge set out in considerable detail the respective evidence of the parties. He concluded that the evidence established the quarantine officers and consultants had maintained due care in the inspection of the hives. He was satisfied the appellant had been told of the inspection by the quarantine officers. The Judge noted the appellants had not attempted to identify the cause of death of the bees. The criticism of the officers that they had not used sterilised equipment was not based on any evidence.

18. These conclusions were all based on the evidence before the trial Judge. He was entitled to accept this evidence. Once he accepted this evidence if inevitably led to the conclusion that the appellant had not established any lack of care in the respondents' inspection. Given the pre-existing poor state of the hives inspected it was hardly surprising there was extensive bee death.



19. The appellant also claimed in his submissions that the Quarantine Officers and the consultants deliberately killed the bees. There is no evidence to support this claim.

20. In addition to the above issues the appellant raised a series of other issues which were irrelevant to the issue of negligence. They were whether the Minister did or did not authorise the survey of bees; whether as a result of the survey a formal report was prepared; and whether there was a follow-up inspection of the hives by the quarantine officers.

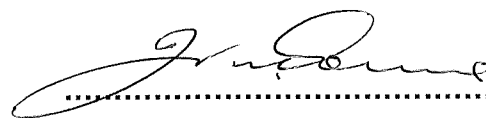
21. For the reasons given therefore the appeal is dismissed.

Costs

22. The appellant will pay the respondents costs on the appeal of VT50,000.

DATED at Port Vila this 10th day of May, 2019.

BY THE COURT



Justice John von Doussa

