

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

**Civil Appeal
Case No. 23/209 COA/CIVA**

**IN THE MATTER OF: AN APPEAL BY RICHARD SOLZER AND
ELIZABETH PRASAD IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**

BETWEEN: RICHARD SOLZER and ELIZABETH PRASAD
Appellants

**AND: DR ANDRINA KL THOMAS, MARGRARETH PEATO
and ALICE PIPITE**
Respondents

Date of hearing: 12 May 2023

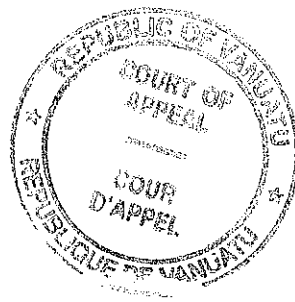
Coram: *Hon Chief Justice Lunabek
Hon Judge J Mansfield
Hon Judge R Young
Hon Judge O Saksak
Hon Judge E Goldsbrough*

Counsel: *RT Willie for the Appellants
No appearance for the Respondents*

Date of Decision: 19 May 2023

JUDGMENT OF THE COURT

1. These proceedings concern land in the Sarakata area and a dispute about who was entitled to occupy the land. The respondent Dr Thomas has a judgment from the Supreme Court given on 26 September 2022, awarding her general damages of VT100,000 arising from the appellants' unlawful interference in the construction of a house on the land.
2. The appellants filed an appeal in the Court of Appeal dated 27 February 2023, and an amended appeal on 19 April 2023, although the appeals were out of time for filing as of right.
3. The appellants seek leave to file their appeal out of time. In considering whether to grant leave the delay itself, any reasons for the delay, the merits of the appeal and the overall justice of the application are all relevant.



4. The period between the Supreme Court decision and the appeal is approximately five months and so the proposed appeal is four months out of time. No sworn statement has accompanied the application. As to reasons for delay, counsel's submissions note in relation to the appellants "because of financial difficulties, they are unable to file the appeal on time". There is no evidence to support this assertion and we set it aside for the purpose of considering whether leave to appeal out of time should be granted

5. We therefore turn to the merits.

6. The appellants issued proceedings in the Magistrates Court in May 2020, alleging that the respondents had trespassed on their land in lease number 03/0172/047 in the Sarakata area, Luganville. In February 2021, the respondent Dr Andrina Thomas filed a counterclaim seeking damages of VT1,000,000 for loss of business and VT1,000,000 for general damages arising from the alleged interference by the appellants in Dr Thomas' occupation of the land and the construction of a house.

7. On 10 March 2021, the Magistrates Court transferred proceedings to the Supreme Court.

8. In October 2021, the Supreme Court struck out the appellants claim in trespass. The court said:

"5. In the claim for trespass, the claimant must establish either ownership or occupation of the subject land. The claim alleges only that the claimants are "the intended proprietors of the property", it does not set out what rights they have to ownership of the lease, nor whether or not they occupy the subject land".

9. The Judge therefore concluded that the claim did not disclose a cause of action and struck it out. There is no appeal from that decision.

10. The counterclaim came on for trial on 14 June 2022, with judgment given on 26 September 2022.

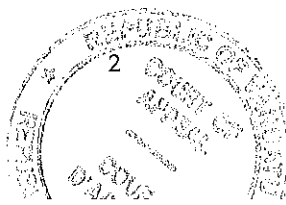
11. The Judge rejected the claim for damages for loss of business. She allowed the claim for general damages to Dr Thomas and made an order for general damages of VT100,000. In reaching her conclusions the Judge said;

"17. The defendants have proved on the balance of probabilities, that Dr Thomas had the right (along with three other of her siblings) to occupy the Sarakata property.

18. I also accept as proved that Dr Thomas had commenced building a house on the lease but that due to the claimant's interference, namely their Claim in this matter to evict her and the two other defendants, she stopped the construction works".

12. In dismissing the claim for damages for loss of business the Judge said

"20 The first order sought in the counterclaim is for Vt 1,000,000 damages for the loss of business. Dr Thomas had hoped to finish the building and rent it out. That has not occurred



due to the claimant's interference. As no business has ever been operated in or using that (partly constructed) building, no order can be made for loss of business.

13. In allowing in part the claim for general damages the Judge said

"21. The other order sought is for VT1,000,000 in general damages. General damages will flow where pain and suffering is caused. I accept that Dr Thomas has suffered from having to stop the construction of her house due to the claimant's eviction claim. Accordingly, I award general damages in the sum of VT100,000".

This appeal

14. The basis for the appellant's challenge to the judgment is:

- a) Dr Thomas had no interest in the title 03/0172/047;
- b) Dr Thomas had not been given any right to build on the land and therefore could not claim any damages arising from interference in the construction of the house and the occupation of the land.
- c) The judge had failed to take into account evidence filed by the appellants that was relevant to the property rights with respect to the land;
- d) There was no evidence of a breakdown of the general damages claim or evidence of any interference of the occupation by the appellants.

15. The Judge considered whether Dr Thomas had a right of occupation of the land. The Judge said:

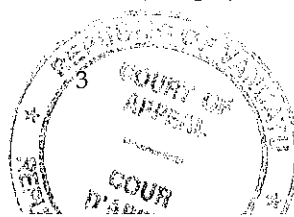
*"14. Dr Thomas deposed in **exhibit D1** that the six children of her father Busin Prasad and Elizabeth Senior (first marriage) and with Rose Morin Prasad (second marriage) agreed to distribute amongst themselves, their parents two properties being the lease at Sarakata and lease title 03/0174/008, at Side River in Luganville. Two children and their offspring would reside at the Side River property. The other four, including Dr Thomas and their offspring, could build and reside at the lease in Sarakata. Mrs Peato also deposed to that effect in her sworn statement, **exhibit D3**.*

*15. The only sworn statement from the claimants relied on the "Further Sworn statement of Elizabeth Brassard" (**exhibit C1**). This did not contain any evidence to the contrary.*

16. Accordingly I accept that Dr Thomas had obtained her siblings consent, including that of Elizabeth Prasad, to build a house at the lease at Sarakata

17. The defendants have proved on the balance of probabilities that Dr Thomas had the right (along with three other of her siblings) to occupy the Sarakata".

16. The appellants say that they did tender evidence at trial, establishing that Dr Thomas had no interest in the land, contrary to what the judge had said at paragraph 15 of her decision. In support of their

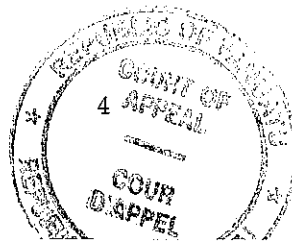


case in the Supreme Court they annexed, to a sworn statement by Elizabeth Prasad, a judgment of the Supreme Court of Vanuatu (186/2005) which they claimed established that Dr Thomas had no interest in the land.

17. The parties in the Supreme Court proceedings in civil case 186/2005, included the appellants and the three respondents in this case, as well as other siblings of Dr Thomas. The introductory paragraph of the September 2008 judgment identifies the land that was the subject of the dispute between the parties. It says:

"These proceedings concern claims for rectification of the land leases register in respect of lease number LN 03/0174/008, covering an allotment of land known by the parties as the Side River lease (the Side River land). The lease as presently registered shows the second defendants as the registered lessee's".

18. The Judge in civil case 186/2005 said there was a deep-seated, wide-ranging and long-standing family feud about the land. The Judge ordered rectification of the lease by cancelling the registration of Elizabeth Prasad and Richard Solzer as lessees and declared that Margareth Peato, Alice Pipite, Esther Tavue, Peter Prasad and Elizabeth Prasad were the proper lessees. Dr Thomas was not declared one of the lessees on the basis that she was not a child of the marriage between Rose Morin and Busin Prasad, who were the parents of those declared to be the correct lessees.
19. The Supreme Court proceedings 186/2005 were not concerned with who the lessees were of Lease 03/0172/047 and the land at Sarakata the subject matter of this case. However, the appellants submit that the findings of the judge in 186/2005 which focused on the Side River land could be used in this case to establish entitlements to the Sarakata land. As a result, they say the Judge in this case should have concluded Elizabeth Prasad and other of her siblings had property rights to the land and Dr Thomas did not.
20. We reject this approach. In dismissing the trespass action, the judge concluded that the appellants did not have sufficient property rights with respect to the land to bring trespass proceedings. The Judge found that Dr Tomas had the authority of her siblings, who had rights to the land, to occupy and build a house on the land.
21. Given those conclusions we are satisfied that the appellants had no rights to interfere in Dr Thomas's occupation of the land or on her construction of her house. We therefore reject this ground of appeal.
22. We turn to the final ground of appeal which is that there was "no evidence produced in court for a breakdown of the amount claimed", or evidence of any interference to the occupation of the land
23. This is a claim for general damages. General damages are those which arise directly and inevitably from a breach of contract or tort. Here, the tort alleged in the counterclaim was the wrongful interference with Dr Thomas' construction of her house and occupation of the land. General damages are compensation for losses that don't have a specific price tag but still come from injury caused by the actions of another.



24. In her sworn statement of 16 February 2021 Dr Thomas recounts the attempts by the appellants to interfere in her construction of her house and occupation of the land. The actions included; attempting to stop the installation of water to the property; attempting to prevent a building permit being granted; when others in the family and hired workers were cleaning up the Sarakata land the appellants threatened to call the police to remove them from the land, the threats became so persistent that some workmen stopped working on the land.
25. This evidence established unlawful interference with Dr Thomas' construction of the house and occupation of the property. And so contrary to the appellant's submission there was evidence relevant to an award of general damages. In the circumstances the award of Vt 100,000 was a modest award.
26. Given, the delay in filing the appeal of four months, the failure to provide evidence to this court for the reasons for the delay and the lack of merit of the appeal, we are satisfied the overall justice in this case requires that we refuse leave to appeal out of time.
27. Leave to appeal is therefore refused.

DATED at Port Vila, this 19th day of May 2023

BY THE COURT

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Hon. Chief Justice V Lunabek

