

(Civil Jurisdiction)

BETWEEN: BBV LIMITED

Claimant

AND: MOUNTAIN ESTATES LIMITED

First Defendant

**AND: GOVERNMENT OF THE REPUBLIC OF
VANUATU**

Second Defendant

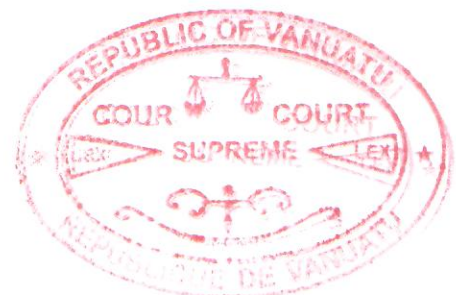
Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mr Nigel Morrison, Ridgway Blake Lawyers for the Claimant
Mr John Malcolm, Geoffrey Gee & Partners for the First Defendant
Ms Florence William, State Law Office for the Second Defendant

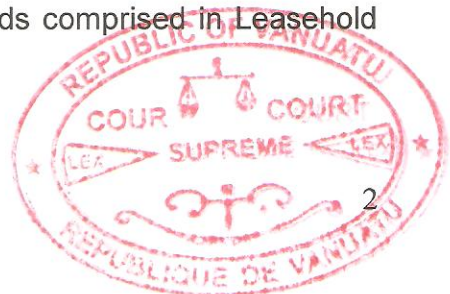
Date of Hearing: 27th April 2011
Date of Judgment: 15th June 2011

JUDGMENT

1. This dispute concerns the registration by the Second Defendant of the Claimant's urban leasehold title 03/H131/001 which adjoins and overlaps on the First Defendant's rural leasehold title 04/3022/247 by an area of some 92.554 m².
2. The First Defendant's lease was registered by the Second Defendant on 28th December 1999. It is an urban commercial lease covering 15 hectares 80 a of land.



3. The Claimant's lease was only registered by the Second Defendant on 26th June 2006. It is a rural commercial lease covering 16 hectares 15 a 88 ca of rural lands.
4. The Claimants allege that –
 - (a) The First Defendant has wrongfully asserted rights to parts of their title.
 - (b) The Second Defendant had no lawful power to grant lease title 03/H131/001 to the First Defendant.
 - (c) On 21st and 22nd June 2008, the First Defendant by their agents, servants and employees unlawfully entered the Claimant's lease with intent to erect a fence, cut down trees and clearing undergrowth, dug post footings and delivered sand and coral for building materials.
 - (d) The First Defendant's actions have caused past and continued loss and damage to the Claimants.
5. The Claimants seek –
 - (a) Damages, (b) Restraining Orders, (c) Rectification, (d) Interests and (e) Costs.
6. The First Defendant filed a defence on 12th September 2008 asserting that-
 - (a) It was the bonafide purchaser of all lands comprised in Leasehold Title No. 03/H131/001.



(b) It was the Claimants whose leasehold title overlaps their leasehold title.

(c) It had no knowledge of the Claimant's lease.

(d) It denied any wrong doing and damages on the title.

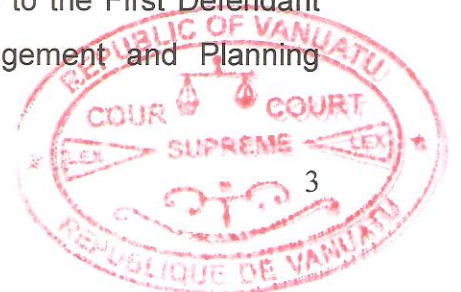
(e) It claimed protection of title under Section 100 (2) of the Land Leases Act Cap 163.

7. The Second Defendant filed a defence on 2nd October 2008 making some admissions and general denials and assertions.

8. The only evidence before the Court was provided by the Attorney General on behalf of the Second Defendant contained in the sworn statement of Mr Jean Marc Pierre filed on 11th November 2010. The Court determines the issues on the basis of this evidence only as no other evidence were adduced by either the Claimants or the First Defendant.

9.1. The first issue was whether the registration of the First Defendant's lease was done through or by mistake? Mr Morrison argued that registration was done by mistake in 1999 and made references to the various annexures in the sworn statement of Mr Jean Marc Pierre to prove mistake. Mr Malcolm on the other hand submitted and argued there was no knowledge of any mistake by the First Defendant.

9.2. Paragraph 5 of Mr Pierre's evidence is relevant. On 26 January 2000 Mr Garae, Senior Lands Officer wrote to the First Defendant informing them that the Luganville Management and Planning



Committee (the LMPC) had deferred their application pending more information on the survey plan. The letter is annexed as "JMP5".

9.3. Despite what the LMPC was doing in January 2000, something else was being done because paragraph 4 of Mr Pierre's statement shows that on 28 December 1999, the First Defendant had lodged an application for registration of an urban commercial lease title 03/H131/001 and that lease was registered on the same day. (See Annexures JMP2, JMP3 and JMP4).

9.4. Annexure JMP3 shows a copy of the Lease Title.

Clause 1 states –

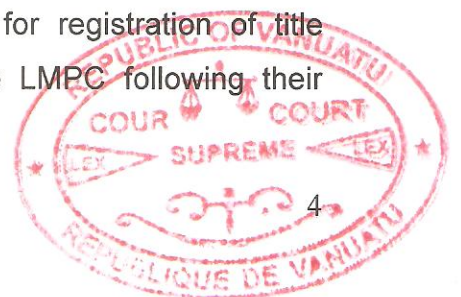
"The Lessor(s) has/have received from the Lessee(s) the sum of Four Million Five Hundred Thousand Vatu (VT4,500,000) for the grant of this lease."

However at paragraph 6 of Mr Pierre's statement he says that only VT3,000,000 was paid and he annexes as "JMP6" a copy of a receipt of payment.

9.5. The Lease Title (JMP3) attaches a copy of the survey plan showing this title covers an area of land specified as 15 hectares and 80 acres. It is clearly marked where this 15 hectares start and where it ends. It does not show any overlapping onto the Claimant's rural lands. This survey plan was produced by one M. Bakeo and verified by one J. Sam.

9.6. So what are the inferences the Court can safely draw from all these evidence? In my considered view they are –

(a) The First Defendant proceeded to apply for registration of title without first receiving any decision of the LMPC following their



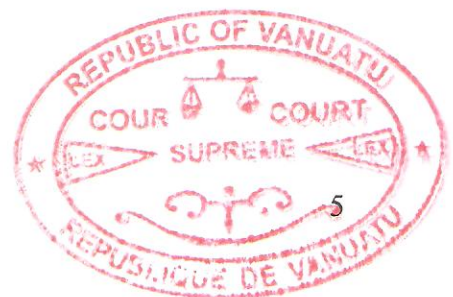
second application. Their first application was refused on 2 December 1998 (see paragraph 3 and annexure JMP1 of Mr Pierre's statement).

- (b) The First Defendant dealt directly with the Minister instead of passing through the LMPC.
- (c) The First Defendant lodged their application for registration on 28 December 1999 with a different survey plan and not that as annexed as part of "JMP3".
- (d) That the Lessors had received VT4,500,000 for the grant of the lease was an untruth.
- (e) As at 23rd December 1999, the First Defendant knew they had an urban commercial lease only. (See "JMP4").
- (f) The First Defendant had not negotiated for any extended lease over rural lands to necessitate any overlapping.

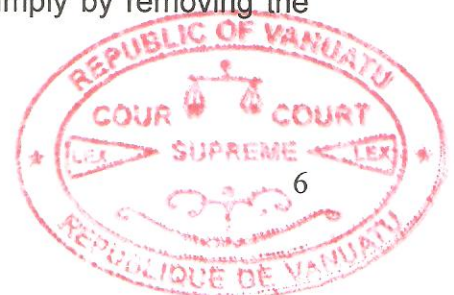
9.7. The Court therefore, on the basis of the evidence and the inferences drawn there-from, concludes that it is satisfied on the balance of probabilities that the First Defendant's lease title No. 03/H131/001 was registered by mistake.

9.8. As to who was responsible for the mistake, it clear in the view of the Court that both the First and Second Defendant knew of the mistake and were responsible for it occurring.

10. The second issue is whether the Claimant is entitled to an order for rectification? The answer is in the affirmative.



11. The third issue is whether the Second Defendant is protected under Section 100 (2) of the Land Leases Act Cap 163? The answer is in the negative.
12. The fourth issue is whether the First Defendant had trespassed and wrongfully asserted rights to parts of the Claimant's land? The answer is in the affirmative.
13. The fifth issue is whether the Second Defendant had any lawful power or authority to grant lease title 03/H131/001 to the First Defendant in so far as it purported to grant leasehold title over custom rural lands? The answer is in the negative.
14. The sixth issue is whether the Claimant is entitled to recover damages for trespass against the First and Second Defendant?
As against the First Defendant, the answer is in the affirmative. As against the Second Defendant the Claimant has on record indicated it will not pursue this claim against the Second Defendant, and so the answer is in the negative.
15. The Claimants have succeeded and judgment is entered in their favour. However, damages must be assessed upon further filing of sworn statements to that effect by the Claimants within 14 days from the date hereof. The First Defendant will file and serve responses within 14 days thereafter. The Court will allocate a further hearing date for hearing of submissions as to damages.
16. The Court hereby orders that the Second Defendant cause and procure the rectification of the Register in respect to Leasehold Title No. 03/H131/001 forthwith. This can be done simply by removing the



area of 92,554 m² from the First Defendant's lease which overlaps onto the Lease Title 04/3022/247 granted in favour of the Claimants.

17. Costs are reserved.

DATED at Luganville this 15th day of June 2011.

BY THE COURT


OLIVER A. SAKSAK
Judge

