

In the Supreme Court
(Civil Jurisdiction)

Civil Action No. 5/2009

Between:	Renata Bernicke & Ors	Appellant
And:	RON Phosphate Corporation	1 st Respondents
And:	Secretary for Justice	2 nd Respondents

Mr. Pres Nimes Ekwona for the Appellant

Mr. David Aingimea for the Respondents

Mr. David Lambourne, Secretary for Justice

Date of Hearing: Friday 21st May 2010.

DECISION

The plaintiffs claim they have been under-paid rent for land of which they are co-owners and which has been leased by the Government and now by assignment by Central Utilities. The land is in the Aiwo District and known as Phosphate Land Portion 315. The land is either non phosphate land or worked-out phosphate land.

The plaintiffs claim rent payable is treble that originally agreed. Their problems in establishing this claim are the Lease Agreement and section 10 of the Lands Act.

The relevant clauses of the Agreement:-

Clause 4 – RENTAL RATE

*The rental rate payable to the Lessors under this Agreement are the rates specified in the Third Schedule to the **Lands Act 1976**, as revised by the Cabinet under section 16 of the Act, or at a rental rate agreed upon by parties.*

Clause 10 – APPLICATION OF THE LANDS ACT 1976

The provisions of the Lands Act 1976 shall apply to this Agreement, unless otherwise clearly stated to the contrary in the terms of the Agreement.

The Second Schedule to the Lease sets the standard rate of \$1.20 per square meter making a total annual rental for this piece of land of \$6,576.00.

Section 10 (1) of the Lands Act provides for the payment of rent at this rate “unless express provision to the contrary is contained in the lease”. There is no express provision to the contrary contained in the Lease.

The rates may have been increased by the government but it doesn't help the plaintiffs who are bound by the terms of their Lease. Despite Mr. Nimes arguments that concludes the matter.

The Lease however does provide (clause 5) for review of the rental rate ‘every five years whether or not Cabinet has revised it’. The dates for review are 31st of March 2005, 31st of March, 2010 and 31st of March, 2015.

The plaintiffs have never made application for review. It is too late for the 2005 review but the Court suggested that it may not too late to apply for the 2010 review.

The Government in 2005 assigned the lease to the second defendant Central Utilities. Mr. Nimes complained that the written consent of the Plaintiffs was not given to the assignment as required by clause 6 of the Lease. That may be so but is not relevant to these claims.

During the hearing the Assignee, through the Secretary for Justice, acknowledged that it had underpaid the plaintiffs since the assignment. That acknowledgement was later withdrawn. However Mr. Nimes has submitted that both defendants, even at the rate of \$1.20 per square meter have under paid his clients. That is a matter which should be capable of agreement by reference to the parties' records. I give the Registrar jurisdiction to hear and determine, if necessary, that matter.

Otherwise the action against both defendants is dismissed.

Hon. Robin Millhouse QC

CHIEF JUSTICE