

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

Civil Appeal Case No. 4 OF 2015

BETWEEN: GREEN PEAK LIMITED
First Appellant

AND: COSTA BLANCA DEL MAR LIMITED
Second Appellant

AND: REPUBLIC OF VANUATU
Respondent

Coram: *Hon. Chief Justice Lunabek
Hon. Justice John von Doussa
Hon. Justice Ronald Young
Hon. Justice Daniel Fatiaki
Hon. Justice Oliver Saksak
Hon. Justice Dudley Aru
Hon. Justice Stephen Harrop*

Counsel: *George Boar for the Appellants
Frederick Gilu for the Respondent*

Date of Hearing: *27th April 2015*

Date of Judgment: *8th May 2015*

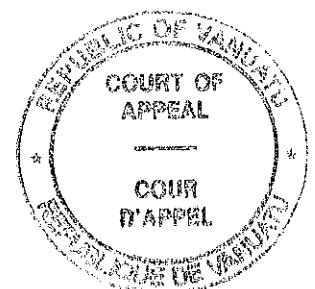
JUDGMENT

Introduction

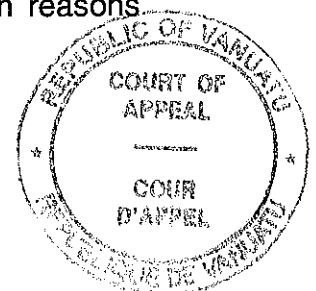
1. The appellants Green Peak Limited (GPL) and Costa Blanca del Mar Limited (CBDML) appeal the decision of the Supreme Court issued on 17 December 2014 dismissing their claim for judicial review.

Background

2. The appellants in the court below sought two specific orders. First, an order to quash the Director's decision to refuse registration of two lease titles, namely lease titles No 12/0411/008 (the 008 lease) and 12/0413/095 (the 095 lease) and secondly, a mandatory order to direct the Director to register the two leases.
3. The following chronology highlights how events unfolded leading up to the filing of the judicial review proceedings:-



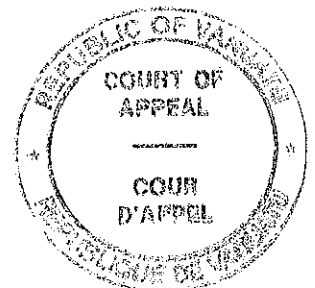
- 10 October 2006 – The Minister of Lands issued a negotiator certificate to Edmond Jonas and Yoan Mariasua to negotiate for the purchase of the land known as Takara Airport;
 - 11 May 2007 – Lease execution and registration fees were paid by Teouma Holdings Limited in the sum of VT1, 050, 000;
 - 29 June 2007 – The two leases were consented to and signed by the Minister. The parties to the 095 lease were Karaf family, Family Manapangamanua and B Ameara N' taen Kanas as lessors and GPL as lessee. The parties to the 008 lease were Karaf family, Family Manapangamanua and B Ameara N' taen Kanas as lessors and CBDML as lessee;
 - 7 August 2007 – the two leases were lodged with the Director of Lands for registration;
 - 21 January 2008 – The Director of Lands issued a letter to Edmond Jonas and Yoan Mariasua stating three reasons for refusing registration. These reasons are set out after this chronology;
 - 9 November 2012 – Edmond Jonas and Yoan Mariasua notified the Department of Lands to cancel the two leases and to reimburse all monies paid in respect of registration fees for the two leases;
 - 3 December 2012 – The Department of Lands reimbursed the sum of VT1,083,750 to Teouma Holdings Limited;
 - 1 August 2013 – Edmond Jonas and Yoan Mariasua wrote to the Director of Lands revoking their letter of 9 November 2012;
 - 30 August 2013 – Edmond Jonas paid the sum of VT 1,083,750 to the Department of Lands being the amount refunded to Teouma Holdings Limited for the registration of the two leases.
4. The full terms of the Director of Lands letter of 21 January 2008 are as set out at paragraph 18 of the judgment of the court below. The respondent relies on this letter to submit that the appellants were informed of the shortfalls of their application but did nothing. In brief the Director referred to three main reasons which led to the non-registration of the appellants' leases as follows:-



- (a) The negotiator certificate was issued by the Minister of Lands to Edmond Jonas and Yoan Mariasua whereas the leases named GPL and CBDML as lessees to the two leases;
 - (b) There was no evidence that GPL and CBDML existed as per rule 6 of the Land Leases General Rules;
 - (c) He had received complaints from some landowners over lack of consultation before the leases were prepared and the withdrawal of signature by a representative of one of the custom owners who had signed the lease.
5. The appeal is advanced on three grounds as follows:-
- (1) that the judge erred in dismissing the appellants' claim on the basis that the Director of Lands did not receive the appellants' Certificate of Incorporation and Articles and Memorandum of Association;
 - (2) that the judge erred in dismissing the appellants' claim when there was evidence that the appellants did not receive the Director's letter of 21 January 2008;
 - (3) that the judge erred by failing to place reliance on section 8 (g) of the Land Leases Act which requires the Director to state or reserve any question for the Court.
6. The appellants' submissions in this Court have been directed primarily to reasons (b). However, to succeed on the appeal the appellant must also address reasons (a) and (c) advanced by the Director of Lands. We shall however deal first with reason (b) that relates to a failure on the part of GPL and CBDML to lodge certificates of their incorporation with the application for registration.

Proof of incorporation

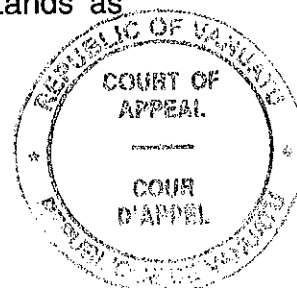
7. Under Grounds (1) and (2) of the Notice of Appeal the appellants say that the judge in the court below fell into error in dismissing their claim on the basis that the Director of Lands did not receive the appellants' certificate of incorporation when he did not request such information to be provided by the appellants. Secondly they say that they did not receive the Director's letter of 21 January 2008.
8. The Judge at paragraphs 49 to 52 and 55 of her judgment said:-



- "49. I note from the further sworn statement of Mr. Edmond Jonas filed on 7 April 2014, that he has provided documents to confirm that Green Peak Limited and Costa Blanca Del Mar Limited were incorporated at the Vanuatu Financial Service Commission on 25 May 2007 and 11 May 2007 respectively. At paragraph 3 of his sworn statement, Mr. Edmond Jonas confirmed that he and Mr. Yoan Noel Mariasua remain as directors and beneficial owners of Green Peak Limited and Costa Blanca Del Mar Limited since 2007 and he annexed "EJ5" and "EJ6" which are true copies of the Annual Return for the year 2014.
50. Be that as it may, however, I am inclined to accept the Defendant's submission that although such evidence is adduced to this Court in 2014, it was never a matter that was brought to the attention of the Director at the time when the leases were lodged for registration. There is also no evidence to suggest that after the letter of the Director on 21 January 2008, the Claimants purported to furnish the Director with the documentation required to establish the incorporation of the two companies.
51. Pursuant to subsection 4 (2) (b) of the Land Registration General Rules No. 9 of 1986, it shall be lawful for the Director to refuse to accept any application for registration of any matter if the relevant instrument and documents do not accompany the application, unless such instruments, or documents are proved to the Director's satisfaction to be already in the Land Records Office.
52. Judging from all the evidence adduced, I find that at the time that the Claimants lodged annexure "PG3", which is their application for registration of their leases, they did not produce a copy of the memorandum and articles of association and the certificate of incorporation certified by the Registrar of Companies or other evidence of incorporation satisfactory to the Director of Land Records as envisaged by subsection 30 (5) of the Land Leases Act [CAP 136]. Furthermore, section 8(c) of the Land Leases Act also specifies that the Director of Lands may refuse to proceed with any registration if any instrument, or other documents or plan, information or explanation required to be produced or given is withheld or any act required to be performed under this Act is not performed.
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55. In the final analysis, it is my considered view that it was lawful for the Director to refuse to register the leases lodged in favour of the Claimants. In the circumstances, the Claimants' Judicial Review Claim fails and it is hereby dismissed with costs to the Defendant on the standard basis to be taxed if not agreed."

Statutory framework

9. The statutory framework is provided for under the Land Leases Act [CAP 163] (the Act) and its subsidiary legislation, the Land Leases General Rules (the Rules).
10. Section 8 of the Act sets out the general powers of the Director of Lands as follows:-



"8. General powers of Director

The Director may exercise the following powers in addition to any other powers conferred on him by this Act –

- (a) he may require any person to produce any instrument or other document or plan relating to the registered interest and that person shall produce the same;
- (b) he may summon any person to appear and give any information or explanation respecting a registered interest, and such person shall appear and give such information or explanation;
- (c) he may refuse to proceed with any registration if any instrument, or other document, or plan, information or explanation required to be produced or given is withheld or any act required to be performed under this Act is not performed;
- (d) he may administer oaths or take a declaration in lieu thereof, and may require that any proceeding, information or explanation affecting registration shall be verified on oath or by declaration;
- (e) he may order that the costs, charges and expenses incurred by him or by any person in connection with any investigation or hearing held by him for the purposes of this Act shall be borne and paid by such persons and in such proportions as he may think fit;
- (f) he may, at his discretion, dispense, with the production of any signature, or the supply of any information or any advertisement or notice required by this Act; and
- (g) he may state any case or reserve any question for consideration by the Court."

11. Section 30 (1) and (5) provide:-

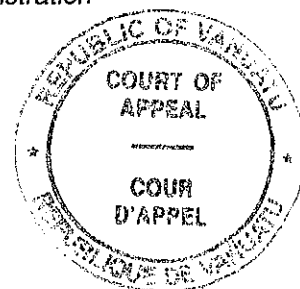
"30. Corporations

- (1) In favour of any person dealing with a registered interest a corporation shall be deemed to have the same powers of acquisition and disposition as a natural person of full age and legal capacity.
.....
.....
- (5) An application for registration of an instrument whereby a corporation acquires a registered interest shall be accompanied by such evidence of incorporation or such other evidence as the Director may require."

12. Under the Rules, rule 4 (2) (b) provides:-

"4. Lodgement for registration

- (2) t shall be lawful for the Director to refuse to accept any application for registration of any matter –
.....



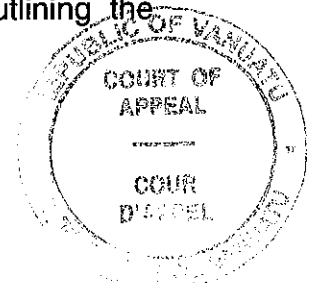
- (b) *if the relevant instrument and documents do not accompany the application, unless such instruments, or documents are proved to the Director's satisfaction to be already in the Land Records Office;"*

13. Rule 6 provides:-

"6. Evidence of incorporation

An application for registration of a dealing whereby a corporation acquires an interest shall be accompanied by a certificate of incorporation or by a copy of the statute, charter etc., creating the corporation, duly certified as a true copy by a permanent officer or solicitor of the corporation, or by such other evidence of incorporation as the Director may require (as provided by section 30(5) of the Act)."

14. The gist of the appellants' arguments on the incorporation issue is that when their leases were lodged for registration, the Director of Lands did not request any additional information but instead refused to register their leases. The respondents on the other hand argue that section 30 (5) makes it mandatory for the appellants to provide all documents in support of their application for registration at the time of lodgement of the application. When this was not complied with, the Director then informed them by his letter of 21 January 2008.
15. Section 30 (5) requires the appellants at the time of their application to register their two leases to also provide evidence of their incorporation or such other evidence as the Director may require if the Director requires this of an applicant. This did not occur in this case. The Rules which are subject to the Act provide for the administration and operation of the Land Records Office. Rule 4 (2) (b) recognizes that it is lawful for the Director to refuse to accept an application for registration without the relevant supporting documentation. Rule 6 restates section 30 (5) of the Act but goes further to specify that a certificate of incorporation or a certified copy of the company's statute, charter etc must accompany the application or such other evidence of incorporation as the Director may require. This may be ultra vires the Act however this argument has not been raised. So whether or not the 21 January 2008 letter was received is irrelevant. The appellants denied receipt, but Rule 6 required them to provide proof of incorporation regardless of whether they were alerted to that by the letter.
16. We are not satisfied that the Director's letter of 21 January 2008 meets the purposes of s 30 (5) where the Director has the discretion to require the appellants to provide evidence in support of their application. As discussed below the letter in our view attempts to give reasons for the non-registration and raises issues which are beyond the scope of the Director's powers. A simple letter outlining the



information required to support the application would have sufficed. Apparently both companies CBDML and GPL were incorporated in May 2007.

17. The standoff finally led to registration fees being refunded in 2012 and to the commencement of judicial review proceedings on 15 March 2013 to challenge the Director's refusal to register the appellants' leases. On 30 August 2013, the registration fees were again paid to have the two leases registered. For reasons we discuss below, we consider that neither of reasons (a) and (c) given by the Director of Lands for his refusal to register the leases provide a lawful reason for refusal. The sole ground which justified the non-registration of the leases at the time was the failure to produce the certificates of incorporation. We are however of the view that when the evidence of incorporation was provided or became available to the Director, he was then duty-bound to register the appellants leases without hesitation, as the complaint before the court below was over his (historical) refusal to register. That evidence became available to him at the latest when the certificates of incorporation were filed in these proceedings. In the context of the judicial review application, the mandatory order directing registration ought to have been granted.

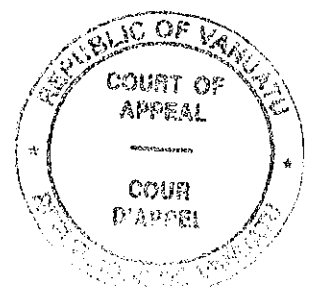
The names in the negotiators certificates

18. Section 6 (1) of the Land Reform Act [CAP 123] provides:-

"No alienator or any other person may enter into negotiations with any custom owners concerning land unless he applies to the Minister and receives a certificate from the Minister that he is a registered negotiator."

19. The Director of Lands correctly identified that the leases lodged for registration were not in the names of the people to whom the negotiator certificates had been granted by the Minister. However, the Director in raising this as a ground for refusing to register the leases (reason (a) above) has overlooked subsection 6 (3) of the Land Reform Act which provides for the event that negotiations are completed with custom owners without compliance with subsection 6(1). Subsection 6(3) relevantly provides:-

"If negotiations are completed without compliance with subsection (1) the Minister may refuse to approve the agreement between the custom owners and the unregistered negotiator..."



20. The power to refuse approval or grant approval to a lease agreed with the custom owners is a power vested in the Minister, not the Director of Lands. In the present case the Minister had granted his approval to the leases to GPL and CBDML and the requirements of section 6 of the Land Reform Act had thereby been fulfilled.

Complaints from landowners and withdrawal of a lessor's signature

21. The third of the reasons given by the Director of Lands (reason (c) above) raises issues that do not provide grounds for refusal of registration. The leases lodged for registration were regular in form and had been signed by the lessors who became bound by them on execution. If thereafter the lessors wish to raise questions about the efficacy of the leases their remedy, if any, lies through the processes of the Courts, not in the functions of the Director of Lands.

22. As to ground 3 of the Notice Appeal all that needs to be said is that section 8 provides for the general powers of the Director and it states that the Director may exercise this power in addition to "any other powers conferred on him by this Act". We are of the view that specific powers were available to the Director when considering applications for registration under section 30 (5) of the Act which he exercised. The occasion for the exercise of his general powers under section 8 of the Act did not arise.


Conclusion

23. The appeal is allowed and the judgment of the court below is set aside. We quash the Director's decision to refuse to register the leases to the extent that it related to the period after he received proof of incorporation and we direct him forthwith to register the two leases.

24. Costs are awarded to the appellants against the respondent on the standard basis.

DATED at Port Vila this 8th day of May 2015.

FOR THE COURT


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Hon. Vincent Lunabek
Chief Justice.

