

BETWEEN: Isaach Tariliu
Appellant

AND: Plantations Limited
First Respondent

AND: Republic of Vanuatu
Second Respondent

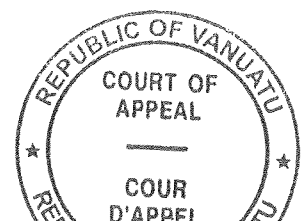
Date of hearing 6th May 2019
Date of Judgment: 10th May 2019
Coram: Hon. Chief Justice Vincent Lunabek
Hon. Justice John Von Doussa
Hon. Justice Ronald Young
Hon. Justice Daniel V. Fatiaki
Hon. Justice Gus Andrée Wiltens
Hon. Justice Dudley Aru
Hon. Justice Stephen Felix

In Attendance: Colin B. Leo for the Appellant
John Malcolm for the First Respondent
Sami Aron for the Second Respondent.

JUDGMENT

Introduction:

1. On the 29th of November 2009, the second respondent registered a lease over land on South Epi in the names of Willie Bahao as Lessee and Mary August as Lessor as Land Title NO. 10/1322/001
2. On the 25th of January 2010, leasehold title NO.10/1322/001 was transferred and registered in the name of the First Respondent, Plantations Limited as Lessee.
3. On the 5th of September 2012, another Lease title 10/1431/001 was registered in the Appellant's name as Lessee.
4. After wards, it was accepted by all that there was an error on the survey plan of the Lease title 10/1431/001 which had encroached onto the land in Lease title 10/1322/001.



5. In July 2013, the Director of Lands exercised his powers under Section 99 and Section 11 of the Land Leases Act, rectified the Lease title 10/1431/001 by removing from that lease all of the land in lease 10/1322/001

Pleading in the Supreme Court

6. The First Respondent then, in attempting to enforce its rights of enjoyment and occupation of the restored land in the Leasehold title 10/1322/001, commenced proceedings in the Supreme Court claiming damages, vacation of property and costs against the Appellant.
7. The Appellant in response counterclaimed and sought cancellation of the Lease title 10/1322/001 under section 100 of the Land Lease Act, cancellation of the Director's Rectification of the Lease title 10/1322/001 and / or indemnity against the Second respondent under section 101 of the Land Lease Act.

Judgment under Appeal

8. The primary Judgment identified the following four (4) issues:
 - a) Is the lease 10/1322/001 valid or was it obtained by fraud and / or mistake?
 - b) Has the appellant standing to challenge the validity of the Lease title 10/1322/001?
 - c) Is the first respondent entitled to damages?; and
 - d) Is the Appellant entitled to indemnity against the second respondent?
9. The trial Court found that the lease title 10/1322/001 was validly registered from the commencement of the lease to the transfer and registration into the first respondent's name. There was no evidence of fraud or mistake. The Court also held that the first respondent was a bona fide purchaser for value in possession under the transfer.
10. The Claim for damages by the First Respondent was dismissed for lack of sufficient evidence.
11. The Claim for indemnity by the appellant against the second respondent was also dismissed.
12. The trial Court confirmed the rectification by the Director of Lands and ordered the eviction of the appellant, "his families, relatives, friends agents and representatives". We will return to the form of this order at the end of this Judgment.

Appeal Grounds and Discussion

13. The appellant raised a number of issues which he said established that the original lease of 1322 had been registered as a result of mistake, and the trial Judge was therefore wrong in this conclusion. He submitted that if this Court accepted that



proposition then Plantations Limited was not a bona fide purchaser for value in possession of the land and so the protection given to such persons under Section 100 of the Land Leases Act was not available to Plantations Limited.

14. Before we consider the issue of mistake the appellant raised an issue relating to calling a witness at trial. The Court found that the survey of the land to support the lease had been completed by Mr. Jerry Moli and that the Department of Lands approved the survey.
15. In his sworn statement before the Supreme Court Mr. Tariliu attached two letters from Mr. Moli. In one letter dated 5 April 2015 Mr. Moli said... "I did not do the survey" relating to lease 1322.
16. In the second letter he said he did complete the survey but he had been forced to do so by Government Officers for the monetary gain of the custom owner.
17. During the trial the Judge, for understandable reasons, said that the two letters were inadmissible hearsay. Mr Tariliu then apparently summoned Mr. Moli to come to court as a witness. There is some uncertainty about whether Mr. Moli in fact attended Court. However the Judge in his record of the trial noted "Court will dispense with Jerry Moli's evidence".
18. The appellant's complaint is that he was not therefore given an opportunity to call an important witness in support to his case.
19. Whatever the circumstances were which gave rise to the Judge dispensing with Mr. Moli's evidence we do not consider the appellant was thereby prejudiced. Mr. Moli had undermined his credibility by contradictory letters. In those circumstances we do not consider the appellant was prejudiced by the Judge's decision to dispense with Mr. Moli's evidence.

Cancellation for mistake

20. The appellant identified the following factors as establishing lease 1322 had been registered by mistake and therefore should be cancelled.
21. First the appellant submitted that the lease should not have been registered at all because the survey plans provided no access road to the property. This, the appellant said was a requirement of a survey of land for a new lease.
22. The survey plan for lease 1322 did not have an access road.
23. However counsel for the appellant could not identify any statutory or regulatory requirement that required an access road in this circumstance. We reject this ground



of challenge. Next the appellant submitted that there was not a proper Negotiators certificate completed before the lease was surveyed and completed as required by the Land Lease Act.

24. The second respondent produced a photocopy of a Negotiators certificate which it said related to the relevant lease and was issued by the relevant Minister on 17 August 2009. Unfortunately the photocopy was poor and much of the detail on the Negotiators certificate was obscured.
25. However part of the obligations of the Director of Lands before approval for registration of the lease was to confirm an appropriate Negotiators certificate was complete. We have no reason to doubt that the Director only approved the lease after sighting the original Negotiators certificate and that it was properly completed.
26. We therefore reject this ground of challenge.
27. The appellant submits the survey plan should not have been accepted by the Director because it was inaccurate, because of boundary concerns, because it included part of the sea and because it did not show river width. The survey plan does not show the title intruding into the sea. It shows the boundary at the mean high tide mark as is appropriate.
28. If the other concerns are indeed errors, although we were not pointed to any trial evidence to support the claims, the Director of Lands has authority to amend the survey to account for any such errors (see S. 49 Land Surveyors Act CAP 195). We reject this challenge.
29. The appellant claimed the transfer of the lease to Plantations Limited was invalid because the party signing the transfer, Mr. Teleman Joseph as lessor, was not in fact the lessor. He submitted the lessor had not given Teleman Joseph any power of attorney in respect to the 2010 leasehold transfer to Plantations Limited. Thus the appellant submitted there had never been a valid transfer of the lease to Plantations Limited.
30. There was evidence that the custom owner of the land (and lessor) Mary August gave Mr. Teleman Joseph a specific power of attorney on 28 September 2009 relating to lease 1322 to Willie Bahao as lessee.
31. It has been brought to our attention by the appellant that in fact there is also a general power of attorney relating to the transfer to Plantations Limited. And the lessor herself has never challenged this transaction as not representing her intention. We reject this ground of challenge.
32. By a letter dated 6 November 2009 the Minister of Lands sent the executed lease and a letter confirming custom ownership and asked that the Director proceed with



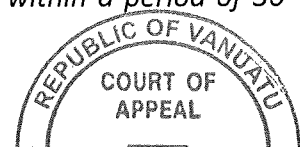
registration of lease 1322. The appellant submits that given Mr. Moli's survey plan was dated 27 November 2009 the lease could not have been executed by 6 November as the Minister claimed.

33. Whatever the explanation for this apparent discrepancy and it may be nothing more than a wrongly dated letter, it does not affect the integrity of the lease. There is no effective challenge to the Director of Lands conclusion that all documents were in order entitling Mr. August and Mr. Bahao to register the 1322 lease. We therefore reject this ground of challenge.
34. We are therefore satisfied the Judge was correct that lease 1322 was not registered as a result of any mistake.

Section 100(2) Land Lease Act

35. However if we had concluded the lease between Mr. August and Mr. Bahao was registered by mistake we are satisfied that Plantations Limited was in possession of the land did not know of any mistake and had acquired the lease for valuable consideration thereby protecting their interest under S. 100 of the Land Lease Act.
36. The appellant called no evidence that Plantations Limited was aware of any of the alleged defects giving rise to the allegation of mistake.
37. Plantations Limited paid a VT 10,000,000 premium for the lease and so there could be no dispute they had paid "value" for the lease.
38. Finally possession. Plantation's evidence was that they had planted trees on the land, had grazed cattle and employees were looking after the stock. The appellant's challenge to this evidence of possession was that there were some other people living on the land with some buildings.
39. Plantations Limited evidence clearly established possession. The fact that some other people may have been living on the land did not detract from the evidence that Plantations Limited were in possession.
40. We are therefore satisfied Plantation were purchasers of lease 1322 without knowledge of any mistake for value and in possession of the leased land.
41. The appeal is therefore dismissed.
42. In the Supreme Court the Judge made an order as follows:

"The defendant by himself his families, relatives friends, agents and representatives remove themselves, their houses, buildings and other structures they have erected on the 467 hectares of the Plantations Limited Lease 10/1322/001 within a period of 30



days from the date hereof (by 26th March 2019). Failure to complying with this order will result in the claimant applying for an Enforcement Warrant to the Master.”

43. Other than Mr. Tariliu, the appellant, none of his family, relatives, friends, agents and representatives were a party to this proceeding. And so no orders could be made with respect to them. The trial Judge was wrong to do so.

44. We therefore amend the order of the Supreme Court so that it reads:

“Isaac Tariliu will leave and will remove any houses or other structures erected by him on lease 10/1322/001 within 30 days from 10th May 2019.”

45. The appellant will pay costs to both respondents as agreed or as taxed.

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

BY THE COURT



Chief Justice Vincent Lunabek

