IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil
Case No. 11/76 SC/CIVL

BETWEEN: JONE ROQARA AND LEON LALIET
Claimant

AND: REPUBLIC OF VANUATU
Defendant

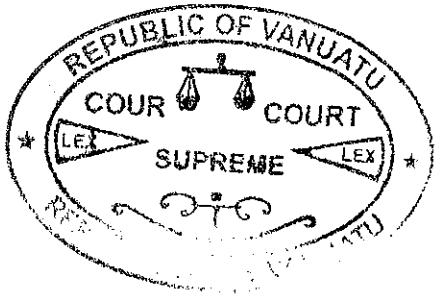
Date of Hearing:	***22 November 2018***
Before:	***Justice S. Felix***
Counsel:	***Ms. M. Nari for the Claimants***
	Mr. S. Aron for the Defendant
Date of Judgment:	***13 January 2021***

JUDGMENT

A. Introduction

1. This case commenced before Justice M. Sey in 2011. It was subsequently passed on to Justice Felix. Upon his leaving the Supreme Court, the file was passed onto me. The file appeared to be complete but for a decision. Counsel have agreed in October 2020 that a decision on the papers be made, despite my lack of previous knowledge of the matter. Accordingly, what follows is my decision, making the best of the available material and relying solely on counsels' written submissions to augment the written statements comprising the evidence.

2. This case concerns a claim for indemnity following the rectification of two leases situated at Teouma, Efate. The applications are made pursuant to section 101 of the Land Leases Act [Cap 163]. The adjacent leases concerned were issued at the same time and have been dealt with together throughout this litigation.



B. Background

3. On 23 May 1999, the then Minister of Lands acting for the Custom Owners, as permitted by section 8 of the Land Reform Act [Cap 123], approved Lease Title No. 12/1011/002 ("Lease 002") to the Claimant Mr Jone Roqara and Lease Title No. 12/1101/005 ("Lease 005") to the Claimant Mr Leon Lailie. Both leases were duly registered with the Minister of Lands as lessor and the respective claimants as lessee on 3 June 1997.

4. Custom ownership of the land was disputed, which led to litigation in the Supreme Court and the Court of Appeal. Ultimately, at the second time of asking, Justice Saksak in a judgment of 1 December 2004, ruled that the leases had been granted by mistake and ordered cancellation of both leases from the Lands Registry. That decision was upheld by the Court of Appeal.

5. Accordingly, both leases have been rectified with the result that the claimants say they are considerably "out of pocket" for their costs and expenses, for which they seek indemnity from the State.

C. Discussion

6. Although the first Supreme Court decision determined the leases had been issued as a result of fraud, that finding was over-turned when the Court of Appeal remitted the matter to the Supreme Court for re-hearing. Accordingly, it is Justice Saksak's "mistake" determination which must be considered, not the earlier determination which found "fraud".

7. Justice Saksak identified two areas of mistake, and expressly held that there was no proof of fraud. The mistakes Justice Saksak identified are critical to the disposition of this case.

8. Firstly, it was held that the then Minister of Lands had erred in not having regard to an Efate Island Court decision relating to the land. That Efate Island Court order stipulated that until the Efate Island Court determined the true custom owners, the land in question was not to be developed or sold. In evidence, the then Minister of Lands stated to Justice Saksak that he had received or seen no information prior to signing the two leases – he stated further that he could not recall seeing a file, only the 2 applications made by the claimants for the leases to issue. He expressly denied seeing the Efate Island Court Order or a letter by the Claimants' lawyers accompanying their applications for the leases to issue. He said he had signed the leases when he was alone. The Minister's evidence was unchallenged.

9. Secondly, there was held to be an error on the part of the Claimants, in that their applications for the leases to issue were incomplete. As Justice Saksak commented: "It is not difficult to see that not all questions were answered....he [Mr Roqara] had basically answered only about 10% of the questions he should have".

10. Both Claimants did not dispute this, and their evidence was to the effect that neither of them knew how to complete the application for leases to issue, and therefore they had relied on another to do so for them.

11. Justice Saksak summarised his findings as follows: "The Court can only conclude that the granting of the leases by the Ministers was done through mistake".

12. The Court of Appeal critically dealt with this aspect as follows:

> "Although the final sentence of the passage set out above (as in paragraph 11) forms part of a larger paragraph, we construe his Lordship's judgment to indicate that he held both the Minister's failure to see the Island Court Order, and the failure of the Appellants [Claimants] to complete the application forms.....were both omissions which constituted mistakes causing the registration of the subject leases".

13. The significance of there being two mistakes involved in the registration process is obvious when section 101 of the Lands Leases Act is considered.

14. Subsection (1) sets out that persons generally suffering damages by reasons of the rectification of the register shall be entitled to be indemnified by the Government. However, subsection (2) records:

> "(2) No indemnity shall be payable under this section –
>
> (a) to any person who has himself caused or substantially contributed to the damage by his .....negligence".

15. Mrs Nari submitted that the sole or major cause of the registration by mistake was the Minister's. Mr Aron saw the position from an opposite perspective.

16. The reality, however, and this is binding on the Supreme Court, is that the Court of Appeal considered that there were two mistakes, both of which caused the registration to occur.

17. For Mrs Nari's view to prevail, the legal position would have to be that the Efate Island Court Order was binding on the Minister. The Court of Appeal has expressly stated otherwise. Accordingly, even if the order had been made known to the Minister, he was legally empowered to issue the leases in any event. His error therefore is not greater than the error of the Claimants in not properly completing their applications.

18. It follows, in my view, that the claimants each "substantially contributed" to their damages by their own negligence.

19. While that may appear iniquitous to the Claimants, the plain words of the legislation must be given full effect.

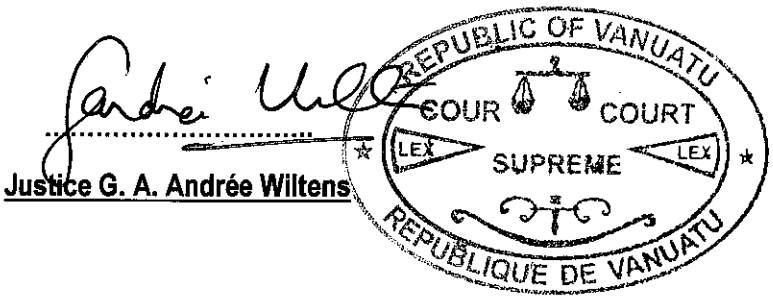
D. Result

20. For the reasons set out above, this Claim fails and is dismissed.

21. Costs are to follow the event. I set them at VT 120,000. The claimants are to pay the costs on a joint and severable basis within 21 days.

DATED at Port Vila this 13th day of January, 2021.

BY THE COURT



Justice G. A. Andrée Wiltens