

IN THE SUPREME COURT OF NAURU

CIVIL ACTION NO.: 08/2006

BETWEEN:

BOBBY EOE &ORS

PLAINTIFFS

AND:

SECRETARY FOR JUSTICE

1ST DEFENDANT

AND:

NAURU TELECOM CORPORATION

2ND DEFENDANT

Dates of hearing: 29 June 2007
12 March 2008
8 April 2008

Mr. Pres Nimes Ekwona for the Plaintiff
Mr. Robert Kaierua for the 1st Defendant
Mr. Ruben Kun for 2nd Defendant

DECISION
(EX TEMPORE)

In 2000 landowners, the Plaintiffs in this action, entered into a lease with the Government, its successor in title being the second defendant Nauru Telecom Corporation, for the lease of an extra area of the land known as Portion 25. In the Schedule to the lease the total leased area is said to be 0.7445: based on that area the rent was calculated at \$26,802.00. Annexed to the lease is a plan dated 29 September 1989 which shows the area of Portion 25 already leased to the Government with the extra area to be leased. The plan must be regarded as part of the lease agreement: otherwise the agreement is meaningless.

The Plaintiffs complain that suddenly the lessee has reduced the rent from \$26,802.00 to \$5,681.00. The defendants assert that the area expressed in the lease was wrong: they have recalculated the rent based on the correct area: they counterclaim for rectification of the lease agreement.

The counterclaim must succeed. Mr. Porthos Bop, Director of Lands, has prepared a fresh plan with measurements. This shows the total area of Portion 25 as 0.49492 ha and the hachured areas leased, marked "C" and "A" as having an area of 0.1868 ha. It is on that latter area the rent should be calculated.

Mr. Bop's plan also shows an area marked "B", hachured in blue, below the old high water mark. This land has accreted. In the absence of any authority to the contrary, I hold that the

landowners of Portion 25 own "B". The land has accreted to their benefit. If it is to be leased by the second defendant then the area on which rent is calculated is increased.

Mr. Nimes took a number of points. First, that the lease had not been properly entered into as not all landowners had signed it. I do not accept this argument, two landowners had signed on behalf of all. Secondly, he argued that the Government had leased the whole of Portion 25, even though using only "A" and "B". There is nothing to support the argument. Even if it were correct the area expressed in the lease agreement – 0.7445 ha – is greater than Mr. Bop's plan shows – 0.49492 ha – for the whole of Portion B.

I direct that the lease agreement, undated but probably to be taken as made on 31 March 2000 be rectified by substituting 0.1868 ha as the area leased for 0.7445 ha set out in the Schedule. Order accordingly.

Dated this 8th day of April 2008

Robin Millhouse
THE HON. ROBIN MILLHOUSE, QC.,
CHIEF JUSTICE

