

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

CIVIL APPEAL CASE NO. 03 of 2013

**BETWEEN: PRESBYTERIAN CHURCH
TRUST ASSOCIATION**
First Appellant

AND: THE REPUBLIC OF VANUATU
Second Appellant

AND: AGNES MOORE
Respondent

Coram: Hon. Chief Justice Vincent Lunabek
Hon. Justice John Von Doussa
Hon. Justice Ronald Young
Hon. Justice Robert Spear
Hon. Justice Daniel Fatiaki
Hon. Justice Dudley Aru
Hon. Justice Mary Sey

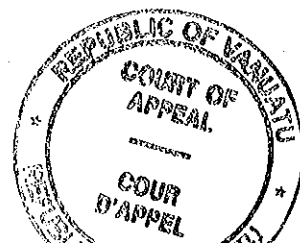
Counsel: Mrs. Mary Nari Grace for the First Appellant
Mr. Tom Loughman for the Second Appellant
Mr. George Boar for the Respondent

Hearing: 19 April 2013

Judgment: 26 April 2013

JUDGMENT

1. This is an appeal by the Presbyterian Church Trust Association (PCTA), and the Republic of Vanuatu against the judgment of the Supreme Court made on 6 February 2013 rectifying the land leases register in respect of lease title No 03/0183/015 pursuant to section 100 (1) of the Land Lease Act [CAP 163] in favour of Agnes Moore.
2. On 30 March 2007, the PCTA was registered as lessee of the land. Mrs. Moore claimed that she had purchased the leasehold interest in 1991. The Supreme Court



concluded that the PCTA had obtained registration of the lease by mistake. It ordered rectification so that Mrs. Moore became the lessee.

First Appellant's grounds of appeal.

3. The primary grounds of appeal were :

- a) That the Supreme Court erred in law and fact by ordering rectification of lease title 03/0183/015 when there was no proof that Mrs. Moore did in fact purchase the said title in 1991.
- b) That the Court erred in law and fact by ordering the rectification of the said lease in the name of the PCTA to Mrs. Moore when there was no finding of fraud or mistake against the PCTA.

Second Appellant's grounds of appeal.

4. The Second Appellant's grounds of appeal were that:

- a) The trial judge fell into error when he held that Mrs. Moore had purchased lease title 03/0183/015. There was no evidence of any receipt for moneys paid; no application for the title; no certificate of registered negotiator and no valuation certificate.
- b) The trial judge erred when he ordered that leasehold title 03/0183/015 be rectified to the benefit of Mrs. Moore, in that:
 - i) The mistake alleged by Mrs. Moore was not one that could render the lease invalid.
 - ii) Mrs. Moore had not established on a balance of probabilities that the registration had been obtained by mistake.

5. We add a further ground of appeal on which the judgment is susceptible. The judge in the Supreme Court concluded that pursuant to section 100 (2), the PCTA had knowledge of the mistake which gave rise to their registration. Thus the prohibition against rectification to a bona fide purchaser for value in section 100 (2) would not apply. We raised with Counsel whether the Supreme Court had evidence on which to reach this conclusion.

Background

6. The background and chronology of events as accepted by the court below are that



on 10 June 1991, Agnes Moore purchased the plot of land comprising leasehold title No. 03/0183/015 from the Development Bank of Vanuatu pursuant to a mortgagee sale.

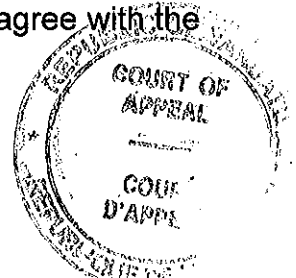
7. On the same date, Officers of the Lands Department in Luganville prepared a Lease which she then signed. They later discovered that she had signed a lease in respect of another title, leasehold title No. 03/0183/031 which was a title already registered to Johnny Botleng. Mrs. Moore later voluntarily surrendered this lease acknowledging the error. From then on she tried unsuccessfully to get the Lands Department to rectify the land lease register so that she was the lessee of lease, 03/0183/015.
8. Since the date of purchase, Agnes Moore paid land rents in respect of lease title No. 03/0183/015 until 1995. She did not pay land rents in 1996 but resumed payments in 1997 until 2011. She made the last payment of land rents in March 2011.
9. On 10th April 2006, lease title 03/0183/015 was approved by the Minister of Lands and on 30 March 2007 it was registered by the Lands Department in favour of the PCTA.
10. On 3rd April 2008, Agnes Moore lodged a caution over title No 03/0183/015 but the application was rejected and not registered on the basis that she had no interest in the title.

Issues

11. From the appeal grounds two main issues arise which require consideration in determining this appeal. The issues can be stated as follows:
 - (i) Whether the registration of lease title No 03/0183/015 to PCTA could subsequently be defeated?. This raises these questions. Did Agnes Moore purchase the leasehold title? If so was the registration in favour of PCTA a mistake in terms of section 100 (1)? If it was a mistake did PCTA know about the mistake before registration? (S. 100(2)).
 - (ii) If the title is not to be rectified is Mrs. Moore entitled to compensation for her loss? (sections 101 and 102 of the Land Leases Act)

Did Mrs. Moore purchase the leasehold title

12. We agree with the judge in the Supreme Court that there was ample evidence that Mrs. Moore had purchased the leasehold title. She gave evidence she had done so, she had paid land rents relating to the property, she had become (by mistake) the lessee of another piece of land at this time and she had complained to the Lands Department about their failure to register her lease 03/0183/015. We agree with the



Primary Judge that there was ample evidence to conclude that Mrs. Moore purchased the lease.

Was the registration of PCTA a mistake

13. Pursuant to section 100 (1) of the Land Leases Act, a court may order rectification of the register and order cancellation of a registration if it has been obtained by mistake. We are satisfied that the registration of the lease in favour of PCTA was a mistake. Mrs. Moore was entitled to be registered as the lessee. She had purchased the lease many years before and had presented the lease for registration many years before the PCTA. It was a mistake to register the lease in the name of PCTA when Mrs. Moore was entitled to registration.

Did the PCTA know about the mistake at the time of registration of their lease

14. Section 100 (2) of the Land Leases Act provides:

"The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the interest for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default."

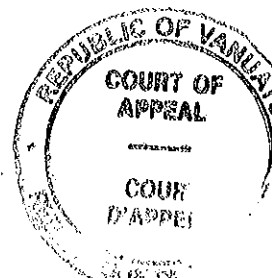
15. The judge in the Supreme Court said:

".....it is highly probable that on 23 June 2004 when the Memorandum of Intention was duly executed by the First and Second Defendants by clause vi) the Second Defendant would have known by being informed or advised by the First Defendant that the Claimant had interests over....title 03/0183/015 .

The Court is therefore satisfied that the Second Defendant had knowledge of the Claimant's interests in title 03/0183/015....."

16. The judge therefore concluded that PCTA had knowledge of the mistake and therefore there was no prohibition against rectification.

17. There is no evidence that the Lands Department told the PCTA about Mrs. Moore's interest in the land before registration of the lease. Nor is there any clear evidence that Mrs. Moore told the PCTA of her interest before registration of the lease in 2007. It is clear that the Lands Department knew of Mrs. Moore's claim to the title from as early as 1991 when the mistaken registration was discovered. But there is no evidence to show that they told the PCTA about her claim.



18. In her sworn statement of November 2011 in support of her Supreme Court claim , Mrs. Moore states that the:

"defendants were well versed on my claim and pleas for registration..."

19. However she presents no evidence to support this claim . She further states in her sworn statement:

"I confirm the PCTA also knew about my claim for registration over leasehold title o3/0183/015 however through their church member Benual Tabi, the Senior Lands Officer at Luganville Santo fraudulently registered the PCTA to Lease Title 03/0183/015."

20. From April 2007 and beyond there is correspondence between Mrs. Moore and the Lands Department and Government Ministers about the lease and registration. This evidence does not establish that the PCTA knew of Mrs. Moore's interest in the lease at registration in March 2007. The fact that a church member was also an employee of the Lands Department and may have known of Mrs. Moore's claim is not knowledge by the Presbyterian Trust. There is no evidence of any connection between the church member and the Trust, nor is it an available inference that he would have told the Trust of Mrs. Moore's interest.

21. We are therefore satisfied that the judge was wrong to infer knowledge of the mistake on behalf of the PCTA. We consider there was no evidence which established such knowledge. Given that conclusion we are satisfied that Mrs. Moore's claim for rectification of the leasehold title must fail given the requirements of section 100(2).

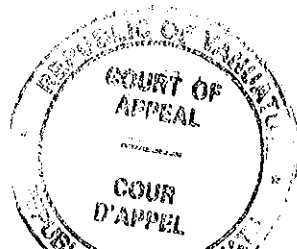
22. The appeal is therefore allowed and the order rectifying title 03/0183/015 quashed.

Indemnity

23. Section 101 of the land Leases Act provides:

"101. Indemnity

- (1) *Subject to the provisions of this Act and of any law relating to the limitation of actions any person suffering damage by reasons of –*
 - (a) *any rectification of the register under this Act;*
 - (b) *any mistake or omission in the register which cannot be rectified under this Act; or*
 - (c) *any error in a copy of or extract from the register or any copy of or extract from any document or plan in each case certified under this Act;*



shall be entitled to be indemnified by the Government.

(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 fraud or negligence or who derives title, otherwise than under a registered disposition made bona fide for valuable consideration, from a person who so caused or substantially contributed to the damage;*

(b) *in respect of any loss or damage occasioned by the breach of any trust; and*

(c) *in respect of any damage arising out of any matter into which the Director is exonerated from enquiry under section 24.”*

24. The Primary Judge did not need to consider any section 101 indemnity claim given his decision to rectify the register. We have allowed the PCTA's appeal and so the question of indemnity under section 101 arises given Mrs. Moore in her pleadings sought damages from the Republic of Vanuatu as the Second Appellant should her claim for rectification fail. We are satisfied in terms of section 101(1) that Mrs. Moore has suffered damage from rectification and that the law relating to limitation does not prohibit her claim.

25. As to the limitation point, Mrs. Moore's cause of action arises only when the PCTA's registration occurs. Until that time it was possible for her to become the registered lessee. No cause of action accrues until another becomes registered lessee of the land preventing her registration. Registration of the PCTA's interest occurred on 30 March 2007. These proceedings were commenced on 29 June 2011. Section 3 (1) (a) of the Limitation Act [CAP212] provides for a 6 year time limit for such an action. These proceedings were therefore within that time limit.

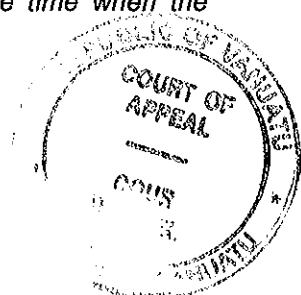
26. For the reasons we have given relating to Mrs. Moore's interest in the land we are satisfied she has suffered damage in terms of section 101 of the Land Lease Act.

27. The amount of indemnity to be awarded is to be calculated as set out under section 102 which provides:

“102. Amount of indemnity

(1) *Where an indemnity is awarded in respect of the loss of any registered interest it shall not exceed –*

(a) *where the register is not rectified, the value of the interest at the time when the mistake or omission which caused the damage was made; or*



(b) where the register is rectified, the value of the interest immediately before the time of rectification.

(2) Every award of indemnity shall include interest thereon at 5 per centum per annum from the date of the award up to the date of payment."

28. The procedures for claiming indemnity are set out in section 103 as follows:

"103. Procedure for claiming indemnity

Any person who considers that he has a right to indemnity under the provisions of section 101 may apply to the Court which shall hear and determine the matter and subject to the provisions of section 102 shall make such award, if any, including costs and expenses as it thinks fit. "

29. The relevant date for the valuation of the land and the calculation of the loss appears to be the date of registration of the PCTA's interest 30 March 2007. There was no evidence before the Supreme Court as to the value of the land at this date. We therefore make the following orders:

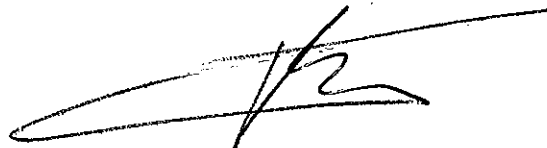
ORDERS

30. (a) The order for rectification of lease title 03/0183/015 is quashed .

(b) The proceedings are returned to the Supreme Court to assess damages in accordance with sections 101, and 102 of the Land Lease Act. To facilitate the hearing in the Supreme Court we order the Valuer- General prepare a report on the valuation of the leasehold interest of the land as at 30 March 2007.

(c) Costs. Given we have concluded that the PCTA and Mrs. Moore were the recipients of negligent conduct of the Republic through the Lands Department, we consider the Republic should pay the standard costs in the Supreme Court and this Court to both the PCTA and Mrs. Moore.

FOR THE COURT



Hon. Chief Justice Vincent Lunabek

