

Between: Joseph Jacobe

And : Claude Rathier

Coram: The Honourable Mr. Justice F.G. Cooke  
Mr. P. Hudson for the defendant  
Maitre R. Cornette for the Plaintiff  
Mr. Oppy Interpreter  
Miss V. Millett Assistant Registrar

JUDGMENT

On the 7th February 1975 the Plaintiff leased to the Defendant for a period of nine years property described as "Parcelle F du Titre 170" consisting of ninety nine hectares six thousand seven hundred square metres located at Rentabao titile no. 817.

The lease to commence on the 1st January 1975. Under the conditions of the lease the lessee undertook to clear the undergrowth, repair all fencing, construct a stockyard, maintain the crops and pastures and provide water supply to all the tanks. Further he undertook in lieu of rent to spend 20,000VT per month on improvements to the property.

Therefore from the 1st January 1975 until the 30th June 1982 when the defendant left the property he should have spent 1,800,000VT on improvements to the property ie. ninety months at 20,000VT per month.

The contention of the Plaintiff is that not more than 800,000VT was spent on the property, the defendant was preparing to leave Vanuatu without informing the Plaintiff and giving proper notice that he was vacating the land; that he failed to comply with the conditions of the lease ie. he did not construct a stockyard, did not repair all fencing, did not maintain the crops and pastures; did not clear the undergrowth and did not provide water supply to all the tanks.

The Plaintiff therefore claims compensation totalling 1,000,000VT and costs. The Court with parties and their counsel and two experts Mr. Nichols and Mr. Rogers appointed by the Court visited the property on the 25th June 1982.

We did not visit all the property but I observed one pasture that was properly treated and contained lush grass, other parts of the property were badly maintained and had trees thereon at least three to six months old.

The fencing was broken in many places and most of the fencing I saw was rusty. There was only one watering place with water and that contained stagnant water. It consisted of a bulldozed hole in the ground with all the earth bulldozed to one end. I did not see any cattle on the land or was the defendant prepared to show me any. He merely observed that they must be somewhere but then again could have been killed.

The two experts submitted their reports to the Court. They differ considerably as to the cost of placing the property in a condition to abide by the terms of the lease. The two experts agree that the price of clearing would be 200,000VT and I accept that estimate.

Mr. Nichols states the fencing would cost 50,000VT whereas Mr. Rogers estimates it at 25,000VT. I think it would be fair to estimate this at a figure of 35,000VT. I cannot agree with Mr. Rogers that all the barbed wire was in good condition. What I saw was rusty and broken and in many places only one strand instead of the usual four seemed to be in existence.

The stockyard was according to the experts in poor condition. Mr. Rogers merely concentrates on repairs to the present stockyard but the lease agreement is for the construction of a new stockyard. Mr. Nichols the expert for the Plaintiff estimated that such a construction would cost 88,900VT. He did accept in answer to questions by the Court that much of the wood in the stockyard now on the land could be used for a new stockyard. I noticed that many of the planks were sound but had merely fallen away from a rotten ground pole.

In my opinion with use of the planks of the present stockyard, a new stockyard with all essentials necessary, nails additional wood and labour could be constructed for 60,000VT.

The experts vary considerably as to the maintenance of the cultivation and pasture land. Mr. Rogers estimates the cost at 185,000VT whereas Mr. Nichols estimates the cost at 420,000VT. The main difference between them seems to be the amount of slashing that can be done by a slashing machine in one day. Mr. Rogers considers two hectares per day whereas Mr. Nichols considers only one hectare can be cleared per day.

I am inclined to agree with Mr. Nichols that to slash two hectares a day would be difficult to maintain in view of the ground which is of coral and many large pieces of coral were strewn over the ground or appeared amongst the grass.

Again some of the shrubs seemed quite tough and a person using a slasher would have to be very careful otherwise the blades of the slasher would be damaged and cause delay to the operation.

In my opinion a reasonable price for slashing the required area ie. forty hectares would be nearly double that suggested by Mr. Rogers. I think the sum of 250,000VT would be a fair price.

The last item to be considered comes under the heading of "water to various basins".

Under the lease the lessee undertook to bring water to the water holes and basins.

According to the report submitted by Mr. Rogers he states "by local standards, the watering system was adequate especially given the amount of money required by the lease to be spent on the development of the property."

I am not too sure what Mr. Rogers means by the last portion of his statement considering 1,800,000VT was supposed to have been spent on the property when vacated by the defendant.

Mr. Rogers further states "In wet weather, the earth dam would provide sufficient water for the stock on the property, and in dry periods water would be pumped into the trough in the stockyard. There is a system of stock-routes to enable the cattle to proceed from the paddock they are grazing to the water. Even if the property were fully developed and stocked, this water-supply system is adequate by local standards for such a property."

It seems to me that the dam created could in wet weather supply water for the cattle but in dry weather something else is certainly required.

The lessee has certainly not attempted to bring water to the water holes and basins as required by the lease.

He has created two cement troughs one of which was cracked when I saw it and was situated near the stock yard. There seemed to be a well close by but no connecting pipes or pump from the well to the troughs. To ensure there was always water in the troughs or the dam some piping would be required to bring water to the troughs and dam from the well.

Mr. Nichols in his report stated "There was a waterwell near the buildings at one end of the property but without any means to piping. I saw a water-tank 2 or 3 metres high also a drinking-trough in cement. I went to see the site of the natural drinking-trough which must have been excavated and which is supplied by a neighbouring bog when the weather is wet. I did not see any construction of a water-main or other drinking troughs. It is also necessary to have a sufficiently large tank and a motor-pump to pump up the water."

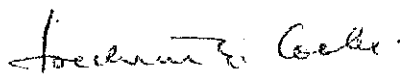
Mr. Nichols then set out his estimate of piping and joints to cost 228.540 VT two basins to cost 176.000VT and 1 tank to cost 237.664VT. Making up a total of 642.204VT. I consider this figure is much too high for what is required.

In my opinion if the dam and the troughs were constantly kept full of water there would be adequate water for a head of two hundred cattle. To ensure this, piping and a motor pump would be necessary. I think a total of 150,000VT would be sufficient to cover the cost of such.

There was supposed to be five cattle left on the property but apart from the odd foot-print near the water dam there were no cattle to be seen anywhere or did the defendant make any effort to produce any although I did mention to him at the property that it was his duty to show five on the property to the Plaintiff. His reply was that they could have been killed. I will award 500ovt for the five cattle.

I have not considered what profits or what the Plaintiff can do with the land now that it has been vacated by the Defendant. I do not consider such relevant to the matter before us. I accordingly make the following award to the Plaintiff.

1. Clearing -	200.000VT	
2. Fencing -	35.000VT	
3. Stockyard-	60.000VT	
4. Maintenance	250.000Vt	
5. Watering	150.000Vt	
6. 5 Cattle -	5.000VT	
Total	<u>700.000VT</u>	and costs.

  
Frederick G. Cooke.  
Chief Justice.

Dated this 19th day of July 1982.