



*Proposed Appeal & Summary
and Summary of
the Appeal.*
A.C. 16/10

BETWEEN: CLAUDINE REGONA
First Claimant

AND: ROSE VANUATU LIMITED
Second Claimant

AND: THE DIRECTOR OF LAND RECORDS
Defendant

Coram: Justice H. Bulu

Counsel: Mr. Robert Sugden for the Claimants
Mr. Justin Ngwele for the Defendants

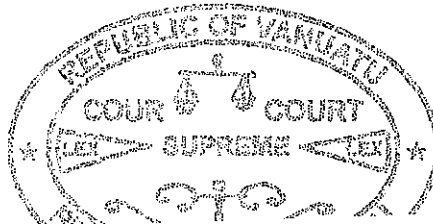
Date of Hearing: 12 September 2007

Date of Decision: 18 September 2007

RESERVED JUDGMENT

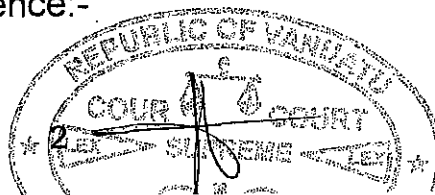
Introduction

1. The Second Claimant, Rose Vanuatu Limited, is the proprietor of the registered leasehold title 12/0944/200. The leasehold property is situated within the area of land commonly referred to as the Teouma Rentapau Land on Efate.
2. On 24 November 2006, the Supreme Court in Land Appeal Case No. 71 of 2006 issued certain orders prohibiting "*dealings of any kind or description in the land comprising the entire land in dispute which is commonly referred to as Teouma Rentapau Land*". The prohibition is however subject to two exceptions contained in paragraphs 3 and 4. The relevant exception for the purpose of this proceeding is the one contained in paragraph 4 which provides that:-



"The provisions of paragraph 2 of these orders do not apply to land being part of the land in dispute which is already the subject of a lawful current registered lease, which lease has been obtained and registered in accordance with the law and the provisions of the Land Leases Act [CAP. 163], as amended."

3. Sometime in or about December 2006 the Claimants had leasehold title 12/0944/200 surrendered and subdivided with the intention of creating five new titles of which 12/0944/240 would be transferred to the First Claimant.
4. The Defendant refused to register the transfer or the new dealings in that land covered by leasehold title 12/0944/200. Firstly, it would seem because of a caution that had been lodged in relation to the lease. The caution was removed. The Defendant however refused to register the transfer or the new dealings on the premise that he had received a document (order) that alerted the Department of Lands to the possible existence of an injunction over the land.
5. As a result of the Defendants' refusal the Claimants commenced proceedings by way of a judicial review claiming a mandatory order requiring the Director of Land Records to register under the Land Leases Act, a transfer from the Second Claimant to the First Claimant of the registered leasehold title No. 12/0944/240, and costs on an indemnity basis.
6. The Claimants want the Court to grant the orders they seek because:-
 - (a) The Order made by the Supreme Court in Land Appeal Case No. 71 of 2006, does not apply to prevent registration of the transfer.
 - (b) The refusal to register the transfer is unlawful.
7. The Defendant in his defence:-



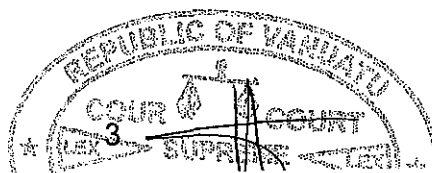
- (a) conceded that the caution was removed;
- (b) stated that he has "*not refused to register any dealing*".
- (c) submitted that he is considering whether to register the said dealings having regard to orders of the Court dated 24 November 2006 in Land Appeal Case No. 71 of 2006.
- (d) submitted that he had applied to the Court for directions in relation to the orders.

The Claimants' case

- 8. The Claimants through their counsel, submitted that on the evidence before the Court, the Claimants surrendered 12/0944/200 in order to create 5 new titles of which 12/0944/240 would be in the name of the First Claimant, the intended transfer was for a sum of \$AU90,000.00, the Defendant refused to register the dealings because of the order of 24 November 2006 in Land Appeal Case No. 71 of 2006.
- 9. The Claimants further submitted that the conduct of the Defendant amounts to a refusal to register the new dealings.
- 10. The Claimants further submitted that the order does not prohibit new dealings on leasehold title 12/0944/200 as the wordings of paragraph 2 and 4 read together makes it clear that the prohibition do not apply to "*land being part of the land in dispute which is already the subject of a lawful and current registered lease, which lease has been obtained and registered in accordance with the ... provisions of the Land Leases Act ...*"

Defendant's case

- 11. Mr. Ngwele submitted on behalf of the Defendant:-

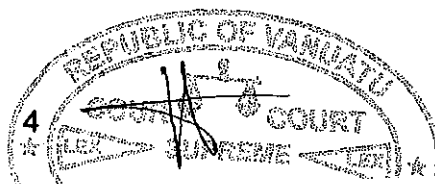


- (a) that the Defendant did not refuse to register any new dealing concerned over the new land. The orders of the Court in Land Appeal Case N. 71 of 2006 prevented the registration of any dealings with respect to Teouma Rentapau custom land. As a consequence the Defendant did not proceed to register the dealings.
- (b) the Defendant wanted the Court to clarify the orders in Land Appeal Case No. 71 of 2006 given that any registration of the land dealing would result in contempt. As a result they filed an application for the purpose. The case of *Seaward v. Patterson (1897) 1 ch.545* was cited as authority for the proposition that eventhough the Defendant was not a party to the Land Appeal Case No. 71 of 2006 any registration of a deal on the land by the Defendant would result in contempt.
- (c) that paragraph 4 of the order does not refer to new leases which are a product of a surrendered lease.
- (d) that pursuant to section 49 of the Land Leases Act the effect of the surrender of a lease is the cancellation of the registration of that lease and the creation of a new lease. And that is prohibited by the order.

Discussions

12. The Defendant is not a party in Land Appeal Case No. 71 of 2006. A copy of the order made pursuant to that proceeding on 24 November 2006 was drawn to his attention. The relevant paragraphs of the order are set out fully below:-

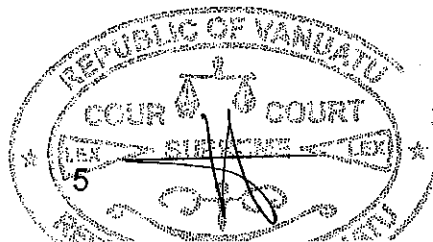
"2. *Pending final determination of all the appeals in Land Appeal Case No. 71 of 2006, subject to the exceptions which are specifically described in and set out in paragraphs 3 and 4 below, there shall be no dealings of any kind or description in the land comprising the entire land in dispute which is commonly referred to as TEOUMA RENTAPAU LAND ...*



3.

4. *The provisions of paragraph 2 of these orders do not apply to land being part of the land in dispute which is already the subject of a lawful and current registered lease, which lease has been obtained and registered in accordance with the law and the provisions of the Land Leases Act [CAP. 163], as amended.” Underlining mine.*

13. I have listened to counsels and read their written submissions as to the proper interpretation of the orders I have referred to. I prefer the interpretation by Sugden on behalf of the Claimants. In my view, paragraph 2 of the orders does two things. Firstly, it imposes an embargo, a prohibition on all dealings of whatever description in the land comprising the entire land in dispute. Secondly, it allows exceptions in paragraphs 3 and 4. It allows dealings in land being part of the land in dispute to proceed unhindered so long as that land was at 24 November 2006 is “*already the subject of a lawful and current registered lease ...*”.
14. Hence paragraph 4 starts by saying the “*provisions of paragraph 2 ... do not apply to land being part of the land in dispute which is already the subject of a lawful and current lease ...*” In other words, the prohibition do not apply to leases lawfully issued and subsisting under the Land Leases Act within the Teouma Rentapau Land as at the date of the order.
15. If it was the intention to cover such lands over which leases have been granted under the Land Leases Act, the wordings of the order in paragraph 4 would have been worded to include words such as “*but will apply to any new dealings upon the surrender of an existing valid lease and creation of new dealings.*”
16. The interpretation preferred by the Defendant would cause more problems than solve current ones. It will have the following effects:-



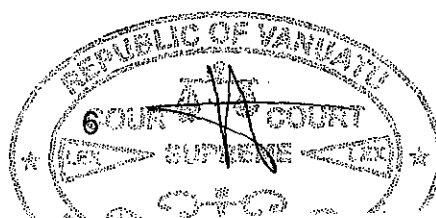
- (a) create a dispute for leases properly granted under the Land Leases Act;
- (b) place a prohibition on the lawful exercise of the Minister under the Land Leases Act over dealings in leases properly granted under that Act. This would be an unreasonable effect of the order on a lawful exercise of a power by the Minister or Director pursuant to a statute.

17. It is clear from the wordings of the order dated 24 November 2006 that:-

- (a) leases subsisting within the disputed area at that date issued pursuant to the Land Leases Act are not in dispute. No party in that proceeding was challenging their validity.
- (b) the prohibition in paragraph 2 do not apply to leases subsisting at that date and issued pursuant to the Land Leases Act.

18. Construing the orders of 24 November 2006 to include lease validly issued under the Land Leases Act would, in my view, amount to an unreasonable veto on the exercise of lawful functions under the Land Leases Act. A proper analysis of the order and its effect on the lawful exercise of powers of the Minister under the Land Leases Act would, in my view, reach a conclusion that this is not the proper construction of the orders.

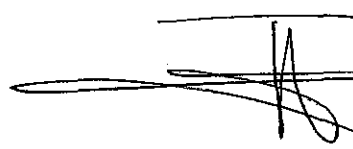
19. The case of *Seaward v. Paterson* was cited as authority that the Defendant cannot register the new dealings as an injunction is in place and if the Defendant went ahead to register the deals then he could be held in contempt of the orders of 24 November 2006 eventhough he was not a party to that case. In my view, that case and the principle in it do not apply in this case. The facts of this case is distinguishable. The orders of 24 November 2006 allowed for dealings in land within the disputed

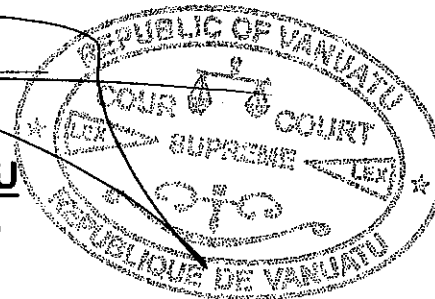


area the subject of leases granted under the Land Leases Act to continue without disturbance.

20. The Defendant also raised section 49 of the Land Lease Act in so far as it relates to surrendering of a lease and the creation of a new lease or more leases. That when the original lease is surrendered, its life ends and what comes out at the end of that process are new dealings. For reasons I have given I do not think that section 49 applies in the circumstances of this proceeding.
21. Finally, the Defendant also submitted that he had applied to the Court for clarification of the orders of 24 November 2006. I, however, have not been able to locate a copy of such application in the Court file. No copy has been annexed to the only sworn statement filed in this matter.
22. For reasons I have given, it is my view that the orders of 24 November 2006 do not prohibit dealings in valid leases subsisting as at 24 November 2006. The orders of the Court are:-
 - (a) The Defendant to register a transfer from the Second Claimant to the First Claimant the leasehold title number 12/0944/240 within 7 days of today.
 - (b) Costs of this proceeding and incidental thereto to be borne by the Defendant on an indemnity basis.

DATED at Port Vila, this 18th day of September, 2007.


H. BULU
Judge.



The seal is circular with the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom. In the center, it says "COURT SUPREME" and "COURT". There are decorative elements and a central emblem.