



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

Civil Case No. 55 of 2007

BETWEEN: AIDEN LAWRENCE
Claimant

AND: MONIQUE STEVENS
First Defendant

AND: THE MINISTER OF LANDS
Second Defendant

AND: THE DIRECTOR OF LAND RECORDS
Third Defendant

Hearing: 28 & 30 November, 2, 8 & 9 December 2011

Before: Hon. Justice Robert Spear

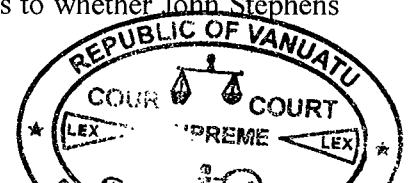
Appearances: Robert Sugden for the Claimant

Edward Nalyal for the First Defendant

~~Justine Ngwele for the Second and Third Defendants~~

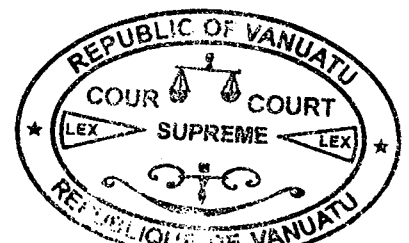
INTERIM JUDGMENT (Ex Tempore)
9 December 2011

1. This case concluded today in so far as the evidence and counsel's submissions are concerned. The claim is principally for the rectification of the Lands Register (under section 100 of the Land Leases Act) in respect of a lease granted to Mrs Stephens in 2007 of approximately 80 ha of land in Turtle Bay on Santo. Counsel have indicated that this is a valuable block of land.
2. Mrs Stephens is the widow of John Stephens who died in 1994. John Stephens was the older brother of the claimant, Aiden Lawrence. There are other members of the family who have an interest in the case although they have not taken an active part in it.
3. John Stephens is said to have acquired this land in about 1989 pursuant to an agreement reached with the custom owner, Paul Toa. There is a dispute as to whether John Stephens

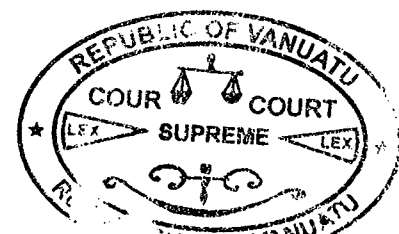


was acting for just for himself or whether indeed he was also acting on behalf of Aiden Lawrence and other members of the wider family. Be that as it may, the land was undeveloped in 1989 and the family then became involved in its development at different times. In the mid 1990s, some 60 hectares had been cleared and was being actively farmed. There is a dispute as to who carried out that development; that is, whether it was only John Stephens or on his account or whether it involved Aiden Lawrence and other members of the wider family.

4. After John Stephens' death in 1994, his widow (Mrs Stephens) took some steps to formalise the position of her family in respect of the land. She obtained a negotiator's certificate from the Minister of Lands but that was valid only for 12 months. However, she did not, at that time, take any substantial steps towards concluding negotiations with the custom owners or otherwise obtaining a lease over the land.
5. It appears that in the mid-1990s, a division occurred between Mrs Stephens and her immediate family and Aiden Lawrence and other members of the wider family. There appeared to have been a number of issues that contributed that division but it is unnecessary to address them at this stage.
6. In 2004, Mr Lawrence and other members of his family moved onto the farm and actively farmed it for about 2 – 3 years. A Manager was appointed at some stage. Mr Lawrence intended to develop the full 200 hectares that was available and to this extent he applied in 2005 to the Department of Lands in Santo for a lease. That application was heard by the local land management planning committee although the date of that meeting is not entirely clear from the copy of the minutes produced. In any event, a certificate of registered negotiator was issued to Aiden Lawrence in August 2006. That identified the custom owners as comprising four families and that was in respect of the full 200 hectares identified in Mr Lawrence's application for lease. Mr Lawrence then arranged for a surveyor to prepare a plan for registration so that a lease could be settled and registered. However, when that survey plan was lodged for registration in about October 2006, it was rejected on the basis that another survey plan had very recently been lodged for registration by Mrs Stephens.

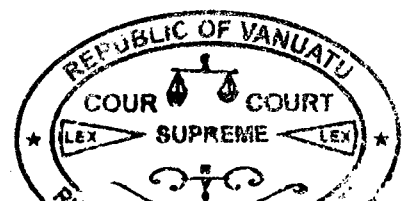


7. That survey plan from Mrs Stephens was for just 80 hectares of the 200 hectares in which Mr Lawrence was interested. That 80 hectare block was all that had been developed at that time. Mrs Stephens somehow managed in a surprisingly short period of time to obtain a lease signed (on 9 February 2007) by the then Minister of Lands pursuant to section 8 (1) (b) and 2 (b) of the Land Reform Act. That was on the basis that there was a dispute as to custom ownership.
8. It is of particular significance that, in August 2006, and only 2 months prior to Mrs Stephens' lease being lodged with the Department of Lands at Santo for processing towards being signed by the Minister of Lands, that same Minister of Lands had issued a certificate of registered negotiator to Aiden Lawrence which specified the custom owners of the land and it made no mention of any dispute as to ownership. It is of fundamental importance here that the Minister of Lands can only execute a lease on behalf of (what is termed by the Land Reform Act) the *custom group*; that is, the claimants in dispute as to custom ownership. The Minister has no power to execute a lease if there is no such dispute.
9. The sworn statements presented by Aiden Lawrence included sworn statements from Abraham Toa and Jimmy Toa – the sons of the original custom owner Paul Toa who had dealt with John Stephens. Their evidence was met by further sworn statements filed subsequently on behalf of Mrs. Stephens from the same Abraham and Jimmy Toa and which contradicted and were otherwise in direct conflict with the evidence they had given in their earlier sworn statements. Essentially, the Toa brothers asserted that they had made their earlier sworn statements, supporting the case for Mr Lawrence, on the basis of some kind of vague financial inducement that had been offered to them by an intermediary acting supposedly on behalf of Mr Lawrence. This development raised certain difficulties which was addressed by ruling that the evidence of the two brothers Toa was not admissible as clearly being unreliable. That is, on their own respective admission, it would appear that they were at one stage prepared to give false evidence on the promise of financial benefit from the claimant. Whether that, in fact, is true or whether there was some other intervention that encouraged them to change their evidence by their second sworn statement is a matter that I did not have to address. The reality is that the credibility of the brothers Toa was destroyed by their second sworn statements. It was likely to been



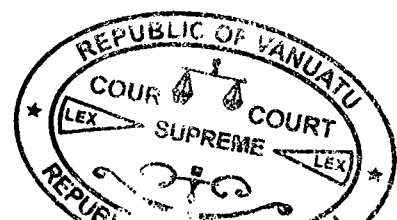
impossible to determine whether they are lying on the first sworn statement or the second sworn statement. This approach as to admissibility was endorsed by all counsel.

10. The Toa brothers' evidence apart, the evidence is clear to the point of being overwhelming that there was no dispute as to custom ownership at the time that Mrs Stephens' lease was executed by the Minister. There were suggestions made in letters produced to the Court that there was a dispute but there is far clearer evidence that that was not the case. Furthermore, there have been no steps taken to determine custom ownership through the Island Court or the Land Tribunal in respect of this 200 hectares block of land.
11. Mr Nalyal and Mr Ngwele most responsibly conceded the point; that is, that at the time that the Department of Lands started to process Mrs Stevens' lease right through to the point where the Minister of Lands executed it (purportedly to his powers under section 8 of the Land Reform Act) there was no dispute as to the custom ownership of the land. This is a significant and fundamental mistake made by the Minister (albeit one made in accordance with advice from his officials that there was a dispute) that, in my view, pervades the entire process towards the formation and registration of Mrs Stephens' lease. The Minister of Lands has the power to sign such a lease only where there is a dispute as to custom ownership and that was not the case here.
12. Having reached that view, my concern turned to the consequences that might flow from such a determination and I have canvassed that concern with counsel today. In particular, my concern was in respect of the relief (indicated by Mr Sugden) that was sought by Mr Lawrence that Mrs Stephens' lease should be removed from the Lands Register leaving the parties with the opportunity to negotiate with the custom owners for a new lease. There are a number of difficulties with this approach.
13. Either the Stephens family, or the Lawrence family, or that wider family group, or some of it, have spent a lot of time and money developing this block of land. If the lease is cancelled then at best those who are occupying it will be occupying it on a periodic tenancy. That would permit the custom owners to give 3 months notice to quit. That could mean that the Lawrence/ Stephens families could be evicted from the property without compensation for all the work that has gone in to the development of the property. They would be at risk of losing everything to do with that land. It could mean that the custom



owners would be able to treat with other people for a lease of this land and, of course, that is now substantially developed land with both a house and, no doubt, farm buildings, fences and pasture. If that occurred then everyone here in this case would lose. It may leave them with remedies against the Republic (pursuant to section 101 of the Land Leases Act) but no-one wishes to have to go down that track unless they are left with no option.

14. What has been raised with counsel today is the pressing need for the parties to discuss a sensible outcome that avoids exposing them to the risk of losing everything that they have put into Turtle Bay. What should colour those discussions is a conclusion that I have had no difficulty reaching on a related issue. That is, that Mr Lawrence has proven on the balance of probabilities that the money paid by John Stevens to the original custom owner Paul Toa back in 1989 for the land came from funds held in a shipping company owned by Mr Lawrence and other members of his family and which redirected its business assets from about 1989 towards property ownership. The implications of that I leave to work through if that is required.
15. Counsel agree that the sensible course is for the parties to meet and to see whether they can resolve their differences to their mutual benefit rather than expose themselves to the real and not insubstantial risk of losing everything that they have put into the land at Turtle Bay. This interim judgment reflects only some of the conclusions and determinations that are required in this case but they should be sufficient to provide an incentive to the parties to discuss their differences and to discuss how they can resolve them. These appear to be family matters that should be resolved by the family if at all possible.
16. Accordingly, this interim judgment will place this proceeding on (what may only be) a temporary hold while the parties discuss what should happen from this point. I am available to counsel and if necessary to the parties to see if those issues can be worked through with some direction from me. In the end, however, if the parties are unable to agree on an outcome that brings this case to a complete end, then I will issue a more detailed decision and make any orders that I consider are.
17. Counsel confirm that the matters that I have raised in this interim judgment cover all matters that need to be addressed at this stage. I leave it for counsel to contact my secretary either to arrange for a conference or to indicate that the discussions have broken



down and that a full decision is now required. For counsel's benefit, I will be away from 18 December 2011 through to 1 February 2012.

BY THE COURT

