



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

Civil Case No. 55 of 2007

BETWEEN: AIDEN LAWRENCE
Claimant

AND: MRS. MONIQUE STEVENS
First Defendant

AND: THE MINISTER OF LANDS
Second Defendant

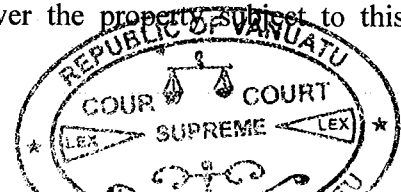
AND: THE DIRECTOR OF LAND RECORDS
Third Defendant

Hearing: 16 February 2012
Before: Justice RLB Spear
Appearances: Robert Sugden for the Claimant
Edward Nalyal for the First Defendant
~~Alain Obed for the Second and Third Defendants~~
John Malcolm for the Vanuatu Agricultural Development Bank

JUDGMENT COURT/ CONSENT ORDERS

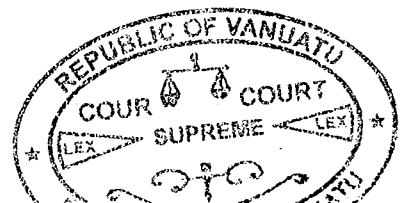
1. The claimant Mr Lawrence applied on an urgent basis for the following orders:-
 - a) That the third defendant ensure that, until further order, the claimant's caution registered against registered title 04/2214/004 on 7 May 2007 is not removed from the Land Leases Register;
 - b) That the third defendant not register the mortgage of the Vanuatu Agricultural Development Bank dated 31 January 2012 against registered title 04/2214/004.
 - c) Costs

2. This application is supported by the sworn statement of the claimant, Aiden Lawrence. The application is made out of a abundance of caution because Mr Lawrence has just ascertained that Mrs Stephens has borrowed the sum of Vt 5,370,000 from the Vanuatu Agricultural Development Bank offering a mortgage over the property subject to this



proceeding as security for that loan. It is not entirely clear when the loan monies were advanced but there was some suggestion this was about 2 December 2011. That, of course, was the third day of the hearing of the substantive claim in this case.

3. The decision reached so far, and as evidenced in the interim judgment of 9 December 2011, is that the leasehold interest in the land does not belong solely to Mrs Stephens. Furthermore, the Minister of Lands of that time was mistaken when he granted the lease to Mrs Stephens as he had been led to believe by his officials at the Department of Lands that the custom ownership of the land was in dispute when that was clearly not the case.
4. Mr Nalyal (for the first defendant, Mrs Monique Stephens) does not oppose the application in relation to orders 1 & 2 which of course protects the position of the claimant in so far as his interest in the land is concerned. Of course, exactly how that interest is to be identified, as well as how Mrs Stephen's interest is to be identified, remains for determination.
5. Mrs Stephens was in attendance at this hearing. I have informed her that I am astonished that she proceeded with this loan during the hearing of Mr Lawrence's claim.
6. While it should be unnecessary for these orders to be made, given the caution registered against the title by Mr Lawrence, it is important that the Court clarifies the position so that there can be no dispute either by the Government Departments or the parties as to where this case is and where the respective interests in the leasehold estate is between Mr Lawrence and Mrs Stephens might be.
7. Mr Obed assures me that he will bring this decision to the attention of the Director of Lands so that the interest protected by the caution lodged by Mr Lawrence remains in place.
8. Mr Malcolm, who was permitted to appear at this hearing as a courtesy, had just been instructed by the Vanuatu Agricultural Development Bank. Mr Malcolm questioned whether it was necessary for the second order to be made as to registration of the mortgage given that it could rank behind the interests identified by the caution. That is not appropriate. The decision of 9 December 2011 (a copy of which was provided today to Mr



Malcolm) does not resolve exactly where this case is going in so far as the lessee's interest is concerned. However, the expectation (when matters concluded on 9 December 2011) was that Mr Lawrence and Mrs Stephens would initiate discussions between the wider family members as to what should become of the land at Turtle Bay that they have been developing and farming for many years. One approach (to recognize the mistake made by the Minister in granting the lease to Mrs Stephens) would be simply to cancel the lease and that was the relief initially sought by Mr Sugden on behalf of Mr Lawrence. However, that would place at distinct risk all the investment made by the families of Mr Lawrence and Mrs Stephens over the years and that would no doubt leave the custom owners free to negotiate a new lease for the improved farm land without further reference either to claimant or first defendant.

9. My suggestion to the parties was that the case have an outcome whereby Mrs Stephens is declared to hold the land in trust for the wider family (to be identified) and for that then to be assigned to a company to be formed with the shareholding to reflect the varied interests of the family in Turtle Bay. However, that is simply an option and a matter that should be considered by the warring parties.
10. In short, however, Mrs Stepphens had no right to offer the farm as security for the loan by Vanuatu Agricultural Development Bank and it will be necessary for her to deal directly with the bank in relation to its current security position for that loan.
11. Orders 1 and 2 are made without opposition.
12. Costs are in the cause but the question as to whether the costs in respect of this application should be on an indemnity basis or not is reserved.

BY THE COURT

