

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

Civil Case No .16/3115

BETWEEN: VMB INDUSTRIES LIMITED
Claimant

AND: REPUBLIC OF VANUATU
Defendant

Coram: Mr. Justice Oliver A. Saksak

*Counsel: Mary Grace Nari for the Claimant
Jelinda Toa for the Defendant*

Date: 19th August 2019

JUDGMENT

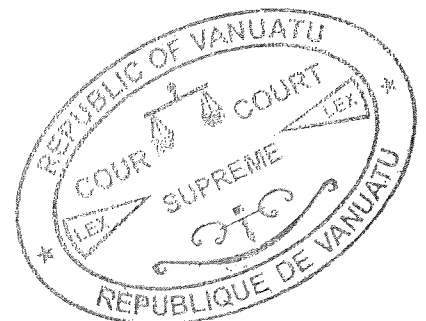
Introduction

1. This is a claim for damages in the total sum of VT 34,565,000 made up as follows-

(a)	Loss of 9 months turnover	VT 6,885,000
(b)	Current stock holdings	VT 1,850,000
(c)	Loss of loan for company investment	VT 25,000,000
(d)	Depreciation costs	VT 5,000,000
(e)	Legal costs	VT 330,000
	Total	VT 34,565,000

Relevant Facts

2. On 10th August 2010 an investment agreement was signed between the custom-owner and the claimant giving the claimant, rights to extract quarry from and on their customary land for brick-making. The brick making business and activity were to be done on Lease Title 04/3024/099 (Lease 099).



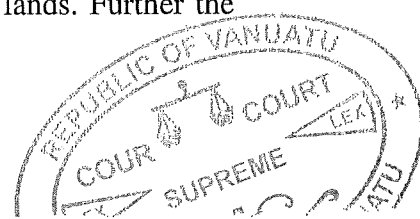
3. On 21st March 2013 the Claimant was granted and issued with a Negotiator Certificate. The custom owner named in the certificate is James Tura.
4. On 17th September 2013 lease document was prepared for Lease 099 and lodged for registration with the Lands Department.
5. Stamp duty was paid in the sum of VT 79,100 on 3rd December 2015. Lease 099 was registered on 9th December 2015 some 6 days later. The Advice of Registration Document records this date.

Pleadings

6. The claimant says in his claim that the Director of Lands had initially refused to register Lease 099 because there were proceedings relating to the said land.
7. Further the Claimant says that from February 2016 there was consent from land claimants that Lease 099 be registered. The claimant says this was communicated to the Director but nothing was done.
8. The Claimant says a search was made on 18th July 2016 at the Land Registry when it was found the State Law Office had advised in favour of approving Lease 099 for registration.
9. As a result of the delay in registration of Lease 099 the claimant lost his brick-making business and claimed for losses from January 2016 to September 2016 in the sum stated in paragraph 1 above. This was the period the Department of Mines and Minerals had issued a quarry permit to the Claimant which expired in December 2016

Defence Case

10. The defendant says the delay was caused by current Court orders restraining developments within the area Lease 099 is situated (including the quarry site) and the proceedings concerning disputes as to custom ownership of those lands. Further the



defendant says that any loss of business on the claimant's part was due to those customary land disputes and any responsibilities or liabilities for business losses could not be attributed to the Republic.

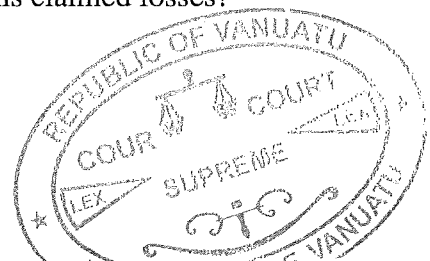
11. In the alternative the defendant says if the Court holds in favour of the Claimant, that damages be reduced to an average of 20 working days per month at VT 28,000 daily for 369 days with a total loss or damages of VT 10,516,500 instead.

Discussion

12. The facts of this case are not in dispute. On 4th May 2017 the Court issued directions requiring parties to file a Memorandum of Agreed Facts and Issues and written submissions by latest 16th June 2017. These were not done because parties had attempted to reach settlement.
13. By 9th February 2018 there appeared to have been a stalemate between the parties. The Court issued further directions for submissions to be filed as to assessment of damages by 23rd March 2018 latest.
14. Further sworn statements were filed instead of submissions until another conference was called on 6 December 2018. Further directions were issued until 27 May 2019 when final directions were issued requiring submissions to be filed by 10 June 2019, latest.
15. The Claimant filed its submissions on 2nd March 2018. The defendant filed its written submissions on 7 June 2019. The claimant did not file any supplementary or responding submissions.

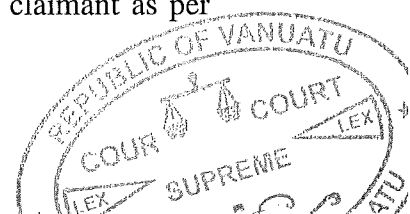
Issues

16. The defendant raised two issues (a) whether the delay in registering Lease 099 is reasonable on the part of Department of Lands and (b) whether the delay caused the closure of the claimant's brick-making business thus resulting in his claimed losses?



Consideration and Findings

17. The Claimant's pleadings. At paragraph 7 the Claimant pleads that Lease 099 has not been registered. This is incorrect and misleading. The evidence of Paul Gambetta filed on 2 April 2019 annexes the Advice of Registration as " PG1". It shows the registration date as 9 December 2015 and it is duly stamped. Stamp Duty was paid on 3 December 2015 at VT 79.100.
18. The statement of Roman Moulonturala filed on 2 May 2019 responding to Mr Gambetta's statement annexes as "RM1" this same advice. It is dated 9 December 2015 and it is duly stamped.
19. The statement of Roman Moulonturala is given in support of the Claimant's claim. And it shows the Claimant had a registered lease since 9 December 2015 and he had an advice in relation to it. He paid stamp duty on 3 December 2015. With all this evidence it is incorrect and misleading to claim that lease 099 had not been registered.
20. The Claimant's submission at paragraph 4 that the lease was only registered on 15 June 2017 is therefore untenable in light of clear documentary evidence that supports registration on 9 December 2015.
21. The statement of Mr Gambetta at paragraph 13 which states that the application for registration of lease was lodged on 9 December 2015 is correct but it is incorrect that the lease registration process was completed on or about 15 June 2017. That is inconsistent with the Advice of Registration he annexes which is dated 9 December 2015. The Court recognizes the Advice of Registration dated 9 December 2015 as the final document proving registration of Lease 099. It is duly stamped. There cannot be two registrations of the same lease instrument. If there are or should be two, then the earlier registration prevails over the latter.
22. So was there a delay in registration of lease 099? The answer is obviously yes, there was a delay of about 2 years 3 months from 17 September 2013 to 9 December 2015 when it was registered. That was not for 3 years as claimed by the claimant as per



paragraph 15 of the claimant's submission. But the difficulty for the claimant is that he is claiming for one year from January 2016 to September 2016 which is the wrong period.

23. The evidence is clear. The Claimant had the lease registered as at 9 December 2015. There was no delay from the period being claimed for. And even if there was, it is obvious from the evidence the various proceedings pending before the Courts and the restraining orders issued by the Magistrate's Court annexed as "PG5" could be a contributing factor. But this order was issued only on 29th October 2018, well outside the period being claimed for.

24. I find therefore that there was no delay in the registration of Lease 099. Even if there was, the claimant has not claimed for that period. Secondly as there was no such delay, the closure of the claimant's business could not have been attributed to such a delay but by other factors which the Court does not have to concern itself with.

Conclusion

25. The Claimant's claim is misconceived. It is accordingly dismissed. The claim has put the defendant to costs. I order the Claimant to pay the defendants costs of and incidental to this proceeding on the standard basis as agreed or taxed by the Master.

DATED at Port Vila this 19th day of August 2019

BY THE COURT

OLIVER.A.SAKSAK

Judge

