

**IN THE COURT OF APPEAL OF  
THE REPUBLIC OF VANUATU**

**NATURE OF JURISDICTION:**

**Appellate Jurisdiction**

**COURT FILE NO:**

**Civil Appeal Case No. ~~8~~<sup>13</sup> of 1998**

**DATE OF HEARING:**

**DATE OF DELIVERY OF JUDGMENT: 21<sup>st</sup> April 1999**

**THE COURT:**

**Hon. Justice Bruce Robertson  
Hon. Justice Jon von Doussa  
Hon. Justice Daniel Fatiaki**

**PARTIES:**

**SOCIETE CIVILE FAMILIALE**

**Appellant**

**AND**

**RORO SOPE & OTHERS**

**Respondents**

**ADVOCATES:**

**Appellant:**

**Mr. Gary Blake**

**Defendant:**

**Mr. Juris Ozols**

KEYWORDS:

**Assessment of compensation –  
Improvements to land –  
customary ownership**

**The Constitution Article 77 –  
Criteria for assessment of  
compensation – Appropriate to  
persons interests adversely  
affected.**

**Land Reform Act – Alienated  
Land Act – established criteria  
for assessment of  
compensation – determine by  
Land Referee – No person  
holding the office of Land  
Referee**

**Whether interest in chargeable  
on the compensation assessed  
– how should interest be  
assessed – what steps taken to  
enforce payments**

**Court of Appeal not the  
appropriate court – Judge's  
discretion to award appropriate  
compensation – revocation of  
inter locutory judgment –  
revocation of leave appeal –  
matter returned to the primary  
judge.**

IN THE COURT OF APPEAL  
OF THE REPUBLIC OF VANUATU

Appeal Case No. 13 of 1998

(Civil Jurisdiction)

BETWEEN: SOCIETE CIVILE FAMILIALE  
OHLEN LIMITED

Appellant

AND: RORO SOPE

First Respondent

AND: THE MINISTER OF LANDS

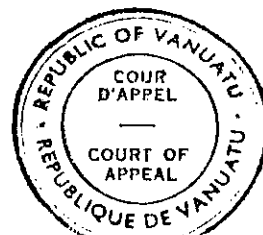
Second Respondent

Coram: Justice John Von Doussa  
Justice Bruce Robertson  
Justice Daniel Fatiaki

Mr. Garry Blake for the Appellant  
Mr. Juris Ozols for the First Respondent

JUGDMENT

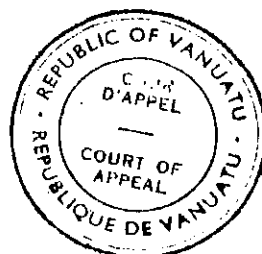
This matter has come to the Court of Appeal pursuant to leave to given by Hon. Justice Saksak to appeal from an interlocutory judgement which he delivered on the 21 September 1998.



The proceedings in the Supreme Court were commenced by the Plaintiff, by Specially Endorsed Writ of Summons, on the 22<sup>nd</sup> July 1996. The relief sought by the Plaintiff, who is the Appellant in these appeal proceedings, was for compensation in respect in all improvements which he has provided and made to all the land comprised in old title No. 60 at Devil Point, Efate. That land reverted to the custom owners under the provisions of the Constitution on the founding of the Republic of Vanuatu.

The Constitution, Article 77, envisaged that Parliament would prescribed criteria for the assessment of compensation and the manner of its payment as it deemed appropriate to persons whose interests were adversely affected by the provisions of Article 73 of the Constitution. Following Independence, Parliament first passed the Land Reform Act [CAP 123] and then the Alienated Land Act [CAP145]. That legislation and in particular the Alienated Land Act, established a regime for the assessment of compensation which required, in default of agreement after negotiation, a determination by a Land Referee appointed under the Lands Referee Act [CAP 148]. We are informed that the proceedings were commenced in this Court claiming compensation because at the time they were commenced, there was no person holding the office of Lands Referee. The office was vacant and apparently it has remained vacant since the proceedings were commenced.

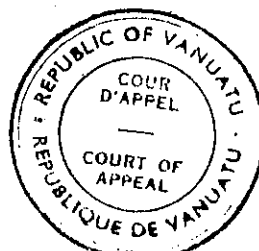
The primary Judge, it appears, was invited by counsel for the Plaintiff and the First Defendant to answer 7 specific questions which concerned issues that might arise in a valuation exercise. The questions asked as to the date on which improvements should be valued, whether interest is chargeable on the compensation assessed, how interest should be assessed and how steps might be taken to enforce payments. Although the questions were very specific ones, in our opinion they are not in themselves determinative of the issue of just



compensation. Rather, the answer appears to us to be in the nature of rulings in the course of the trial process.

Leaving aside matters yet to be mentioned about the jurisdiction of the Court, we do not think that it would be appropriate for this Court to consider the answers to the seven questions posed to the primary Judge at this stage in the proceedings, however helpful the answers might be to any one or other of the parties in preparing their evidence. These answers to the questions will not be necessarily determinative because at the end of the day, the Court, if it is appropriate for the judge to assess compensation, will have to exercise a broad discretion to arrive at an award of appropriate compensation, presumably having regard to the provision to the Alienated Land Act, the regime thereunder and also to the provision to the Article 5 (j) of the Constitution. As evidence is led, it is not unlikely that the trial Judge will consider it necessary to depart, in some respect, from the answers to the questions that presently appear to the parties to be relevant. Until that is done, and the award made, we do not think it is appropriate that the Court of Appeal should advise on steps within the assessment process. We therefore consider that the leave to appeal from the interlocutory judgment should be revoked, and the matter should be sent back to the trial judge.

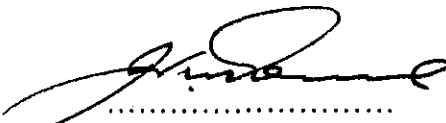
In the course of the argument before this Court, it has become apparent that the first Defendant, who is the Respondent to the appeal, wishes to raise a question about the jurisdiction of the primary Judge, and indeed of any Judge of the Supreme Court, to embark upon the assessment of compensation. That appears to us to be a stand, at least at the first glance, which is inconsistent with asking the Judge to decide the seven questions that he was asked to decide. A challenge to jurisdiction may raise difficult questions that require pleadings to raise the point and to identify why it is said that there is no jurisdiction. The challenge may also require factual evidence. For example, if it is said that the Supreme




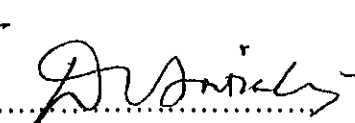
Court is required to act because there is no other way in which compensation can be assessed to fulfill the Constitutional requirement for compensation, it would be necessary for the Court to have evidence of the steps that have been taken to bring about the appointment of a Land Referee. Those are matters that it seems to us have not been adequately identified so far in the proceedings, nor adequately ventilated by the parties. The matter will go back to the primary Judge. If issues of jurisdiction are to be raised, they should be raised first before the primary Judge. In our view, it would not be appropriate for this Court at this stage, to embark on jurisdiction questions in the absence of pleadings and any evidence that might be necessary.

The order of the Court therefore will be that the leave to appeal is revoked and that the matter is returned to the primary judge. In our view there should be no order of costs to either party in respect of the proceedings in the Court of Appeal.

DATED AT PORT VILA this 21<sup>st</sup> Day of April 1999.

  
.....  
John von DOUSSA J

  
.....  
Bruce ROBERTSON J

  
.....  
Daniel FATIAKI J

