

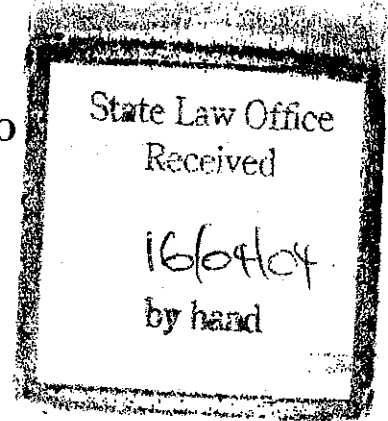
BETWEEN: **GOVERNMENT OF VANUATU**

- Plaintiffs

AND: **JOANNA ROVO**

- Defendant

Mr Frederick Gilu appeared for the Plaintiffs,  
Mr George Nakou appeared for the Defendant



**JUDGMENT**

This matter came before the Court by way of a Magistrates Court Claim filed on the 14<sup>th</sup> July 2003. The Plaintiffs claim is for an order for the Defendant to vacate the premises i.e. dwelling house No.93 Bahai Street at Lycee area Port Vila forthwith. An order for possession of the premises by the Plaintiff together with costs.

In response to the Plaintiff's claim the defendant dispute part of the claim and filed a defence on the 26<sup>th</sup> October 2003 and a counterclaim on the 16<sup>th</sup> September 2003. The Defendant claims (i) Specific performances against the Claimant to comply with the terms of the Sale Agreement in respect of property dwelling House No.93 at Lycee area; (ii) an Order for damages in respect of employment entitlements of the Defendant's husband, and (iii) Injunction against the Claimant from interfering with the Defendant and the Defendant's children, relatives and agents.

**Brief facts of the Case**

The Government house marked as house No. 93 at Bahai Street was originally allocated to Mr Jim Rovo who was the late husband of the Defendant as part of the condition of his employment. Mr Rovo died on the 20<sup>th</sup> May 1996. The Government of Vanuatu has paid off his death benefit to her widow, the defendant. On the 30<sup>th</sup> November 1999 the Housing Committee issued an eviction notice to the Defendant giving her one-month notice to vacate the house. On the 18<sup>th</sup> January 2000 and 18<sup>th</sup> December 2002 the Plaintiff gave further notice to the Defendant for the Defendant to evict the house. Despite services on the Defendant notices to vacate the premises the defendant remained in the house.

The Plaintiff then filed proceedings in Court on 14<sup>th</sup> July 2003.

During the pleadings the parties have sorted out the last death benefit of the defendant's husband therefore the only issue left to decide on is as to whether the defendant has a right to the house No.93 at Bahai since 12% of her salary has been deducted since 1997

which was back dated to collect the areas from May 20, 1996. And whether the Plaintiff has power to evict the Defendant from the premises.

The court then made directions for the counsels to make submissions only in relation to the one issue left.

The Plaintiff's Counsel submits that the house was located to the Defendant's husband and not to the Defendant. After the death of the defendant's husband the Public Service Commission Housing Committee decided to evict the Defendant. This was effected upon the service of notice to the Defendant giving her one-month notice to vacate the premises. First notice was issued on the 20<sup>th</sup> May 1999; further notice was issued on the 18<sup>th</sup> January 2002. Until to day the Defendant had failed to move out therefore the Plaintiff's argument is that she is living unlawfully on the property. The Plaintiffs stated that because Vanuatu does not have a Landlord and Tenant Tenancy Act, their case relied on the common law principle.

The Plaintiff's case is that the said House was allocated to the Defendant's husband and not the Defendant. According to their records the house was never allocated to the Defendant, i.e. before and after the death of the husband.

The Plaintiff referred to **Hill and Redman's Law of Landlord and Tenant (15 Ed)** at page 3 which stated that the creation of tenancy at common law arise where one person (Landlord) with the intention confers to another (Tenant) exclusive possession of the building. In the Halsbury's Laws of England (vol. 27 par. 3) it states that at common law the relationship of a Landlord and Tenant is based on a contract. Therefore, if there is a written agreement containing provisions, which are consistent with a tenancy so that the substance of the agreement is the creation of a tenancy, then an employee under such agreement is a tenant. But their submission is that in this case the applicable law is where the Defendant is a Licensee and not a Tenant.

The Plaintiff went on to make distinction of a Licence from a Tenant or Lease. An English Case of **Errington -v- Errington [1952] 1 All ER 149 at 154** where Lord Denning stated that the difference between a licence is therefore that in a tenancy an interest passes in the land whereas in a licence it does not. Another case which they have relied on is the case of **Cobb v Lane [1952] All ER 1199**.

With those propositions the Plaintiff submitted that the arrangement and nature of having the Defendant's husband and then the Defendant occupying the housing is one of the licence and not a tenant. And that a licence can be revoked at any time, provided that the licensee is given reasonable time to vacate the premises. Where there is no contract in place to provide for the terms and condition of the licence one has to look at the circumstances surrounding the case.

In their submission the plaintiff submits that the circumstances surrounding this present matter does not give rise to the fact that the house allocated to the Defendant was with the intention that the defendant would have exclusive possession of the property.

The defendant argued and submitted that the reason of evicting the Defendant is unreasonable on the basis that the plaintiff had not given any proper reasons why the Defendant and her family members should be evicted. In their submission the Defendant admitted that they have not really got the fact to the case that who allocated the house to Mrs Rovo in 1993. Mr Nakou submitted that, was it the Teachers Service Commission or the Housing Committee, he, on behalf of the defendant said that the Housing Committee must have been the one who allocated the house to Mrs Rovo, which he said because they have activated her salary in 1997 and have backdated it to May 1996. In response to this the Plaintiff said that this was because of the areas of rent. Debt owed to the Government and if it were for the next fortnight then there would be to pay next fortnight. In their submission the plaintiff said the only reason why the defendant continues to pay rental areas is because she continues to reside on the premises. Mr Gilu stated it clearly that it would be prejudicial to the Plaintiff to try and recover rental areas if the Defendant was not paying the rental areas, which the Court agrees with him in saying so.

In his written submission the defendant's counsel submitted that the applicable law is Chapter 7 of the Teaching Service Staff Rule. This rule provides that "*an officer occupying a house at the level of Government provision where 12% of salary is payable, i.e. mainly in town and other centers, or in schools with permanent housing, and with provision of water and electricity, shall pay a monthly rent of 12%.*" This was rebutted by Mr Gilu where he said that the Teaching Service Staff Rule should not be raised now as it has never been raised before in this case.

The Defendant further submitted that the plaintiffs have no good reason why they should evict the defendant but submit that if the court is satisfied that the defendant should evict the house then the housing committee should basically give the appropriate forms to stop the defendants salary and that the defendant with the Ministry of Education to get the payment of Vatu 15,000 to find another house to rent.

#### Applying the facts to the law

The defendant is a teacher and teachers are governed by the Teachers Service Staff Rules. Chapter 7 of the rules provides for housing. Rule 7.2 states that *All school official housing throughout Vanuatu shall be allocated by the school council or school committee in collaboration with the Local Government Council of the area. These Councils should elect their own housing committees which shall allocate such houses as are assigned to it by the Minister responsible for education.*"

Rule 7.3(a) states that *"An officer occupying a house at the level of Government provision where 12% of salary is payable, i.e. mainly in towns and other centers, or in schools with permanent housing, and with provision of water and electricity, shall pay a monthly rent of 12% of his salary which shall be deducted from his salary and credited to a housing account with the Local Government Council, or the School Council, or the School Committee, as appropriate."*

The rules do not say that neither the Public Service Commission nor the Housing Committee shall allocate any house to teachers. The rules is simply clear, that is, **throughout Vanuatu official housing shall be allocated by the School Council or School Committee in collaboration with the Local Government of the area.**

The Public Service Housing Committee allocates houses to employees that are governed by the Public Service Staff Manual. Therefore, the Public Service Housing Committee had allocated the house No. 93 at Bahai Center to the Defendant's husband when he was working for the Government and after he died the Plaintiff had not transferred nor allocated the house to the Defendant. The 12% deductions from the Defendant's salary was effected because the defendant had refused or neglected to comply with the Notice to vacate the premises and that the outstanding was increasing and in good will the Plaintiff had commence deduct this 12%. Although the defendant is said to be a public servant, she is a teacher and teachers are governed by Teachers Service Staff Rules and not governed by Public Service Staff Manuel.

**Courts findings:**

The court findings are as follows: -

1. That there is no dispute as to the Defendant receiving all the death benefits of her late husband.
2. That the house No.93 at Bahai Street was allocated to the Defendant's husband as part of the terms and conditions of his employment;
3. That there are no records that show that the house is transferred to the Defendant at anytime after the death of her husband;
4. That allocating the house to the Defendant's husband was never intended to be a tenant but rather it was an arrangement in the nature of a licence, which can be revoked by the plaintiff giving reasonable notice to the Defendant;
5. That the plaintiff had given reasonable notice to the Defendant with clear reasons through letter which states that the house had come under the responsibility of the defendant' deceased husband.
6. That all death entitlements were paid off to the Defendant and that the right to occupy the premise has therefore ceased.
7. That there is no dispute as to the deduction of the 12% from the Defendant's salary;
8. That the defendant continues to pay rental areas, i.e. 12% deduction from her salary as she continues to live on the premises.

9. That it is logical and fair to continue to pay the rents because it would be prejudicial to try and recover rental arrears if the Defendant was not paying the rental areas;
10. That it is not the duty of the Public Service Housing Committee to allocate any house to the Defendant as it is clear in the Teachers Service Rules that the School Council or School Committee allocates housing to teachers, therefore, it is the duty of the defendant herself to approach appropriate authorities in relation to her right to housing;
11. That the defendant's right to reside on the premises ceased when the husband died and her benefits were paid to her, Therefore the Court finds that the defendant now lives unlawfully on the premises (house) No. 93 at Bahai Center.

Having stated the above the Court makes the following orders:-

1. Having being satisfied that all death benefits of the deceased husband were all paid to the Defendant, the defendant's counterclaim is hereby dismissed;
2. That the Defendant has 30 days from the date of this order to vacate the premises (house) No. 93 at Bahai Center;
3. Thereafter the Plaintiffs have possession immediately;
4. That the 12% deductions from the Defendant's salary be seized from the date on which the Defendant vacates the premises (house) No. 93 at Bahai Center;
5. That the parties shall pay their own costs.

DATED AT PORT VILA this 15<sup>th</sup> day of April 2004

BY THE COURT

*Nesbeth Wilson*

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**NESBETH WILSON**  
Magistrate

