

**(Civil Jurisdiction)**

**BETWEEN: ANI TEIOLI SIBLEY  
Appellant**

**AND: JEPHLYN WOREG  
First Respondent**

**AND: THE GOVERNMENT OF THE  
REPUBLIC OF Vanuatu  
Second Respondent**

## **JUDGMENT ON APPEAL**

This is an appeal against the judgment of the learned Magistrate Bani dated 24 November 1998. In that judgment he ordered the Appellant to pay outstanding rent, vacate the premises concerned and pay costs. There have been enforcement proceedings concerning the rent. It is agreed the defendant left the premises a long time ago.

The grounds are set out in the Notice of Appeal. Mr. Nalial appeared for the appellant, Mr. Warsal for the first respondent and Mr. Boar for the second respondent.

The grounds of appeal are directed to the evidential matters and his alleged failure to consider properly the liability of the second respondent.

The amended Writ of Summons pleaded the agreement between the first respondent and the husband of the appellant. It alleged that the lease had expired, she had stayed on in the premises and failed to vacate them. The claim also alleged that the second respondent was the husband's employer and as such was paying the rent.

Copies of the rental agreement have been exhibited and agreed. That shows that the agreement was between the first respondent, and the appellant's husband. There is no mention of the appellant or the second respondent. If, as a matter of employment contract with the husband, the Government agreed to pay the rent that is a matter between them and no-one else. There was no lease or rental agreement between the first respondent and either the appellant or the second respondent, or both. Any action against either or both of them on the agreement must fail.

This point was not raised as a ground of appeal. The Court can and indeed in this case had to, raise this issue together with the ambit of the pleadings. The appeal was therefore adjourned part heard from 18<sup>th</sup> to 31<sup>st</sup> May for all parties to consider these and prepare arguments. Those further arguments were heard on 31 May.

The learned magistrate considered in detail many aspects of the evidence. He found that despite the Government willingness to help the appellant in the difficult circumstances she found herself there was "no legal issue binding the second defendant in this matter". I agree.

However, there is no basis on the amended statement of claim and evidence before him he could have found the appellant liable for the rent for the period she was in occupation. It might have seemed fair given she had the benefit of that occupation and the first respondent was getting no rent. It might be, and I stress no more than might be, that had other causes of action been clearly pleaded then the first respondent would have been successful.

This is particularly pertinent as the first respondent in her original statement of claim had alleged the appellant occupied the premises "as a trespasser" (*yet only specifically claimed eviction and return of the keys*). In the amended Writ, the claim for rent was against the second respondent and again there was no claim for rent or other payment for her occupation against the appellant. The allegation of being a trespasser was dropped.

I must therefore allow this appeal. I quash the first paragraph of the learned magistrate's order in which the appellant is required to pay the sum of Vatu 2,160,000 as arrears of rent. Paragraph 2 and 3 will stand, although they have been superceded by events. I will hear counsel concerning the question of costs both here and in the Court below and what orders, if any, I should make as a result of my findings.

Dated at Port Vila, this

6<sup>th</sup> day of June, 2000.

R. J. COVENTRY  
JUDGE.

