

(Civil Jurisdiction)

BETWEEN: GILBERT DINH

Claimant

AND: MENZIES SAMUEL of Valuer-General

First Defendant

AND: DIRECTOR OF LANDS RECORD

Second Defendant

AND: SILVER HOLDINGS LIMITED

Third Defendant

AND: JOHN PAMAVARI

Fourth Defendant

**AND: ALLEN PALMER AND GEORGE
PALMER**

Fifth Defendants

Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mr Felix K. Laumae and Mr Paul Jerry Boe for the Claimant/Applicant
Mr Justin Ngwele for First and Second Defendants – No Instructions
No Appearances by Third, Fourth and Fifth Defendants

Date of Hearing and Judgment: 28th July 2009

ORAL JUDGMENT

This is a claim for judicial review filed on 24th October 2006 in Port Vila as Civil Case No. 195 of 2006. When the Case was transferred to the Santo Registry it was re-numbered as No. 9 of 2009.

The Claimant seeks to challenge the legality of the Determination made by the Valuer-General dated 31st May 2006 pursuant to his powers under Section 43(2) of the Land Leases Act [Cap. 163] (the Act).

This section reads:

“LESSOR’S RIGHT OF FORFEITURE

43.(1) Subject to the provisions of Section 45 and to any provision to the contrary in the lease, the lessor shall have the right to forfeit the lease if the lessees commits any breach of, or omits to perform any agreement or condition on his part expressed or implied in the lease.

(2) The right of forfeiture may be –

(a) (Not relevant)

(b) Enforced by a reference to the Referee.”

Section 1 of the Act defines “Referee” to mean (the Lands Referee appointed under the Lands Referee Act Cap. 148).

Mr Laumae submitted a two limb arguments.

First, he argued that the Valuer-General had acted without any powers conferred by an Act of Parliament and that he had acted with ulterior motives. Further, he argued there was no order made by the President under Section 29 of the Interpretation Act to appoint the Valuer-General or another public officer to exercise the powers of the Lands Referee for the purposes of Section 43(2).

Secondly, Mr Laumae argued that even if the Valuer-General was authorised to exercise the powers of the Referee, he did not afford the Claimant any right to natural justice by not giving him the opportunity to answer any charges or

allegations made against him. Further, that in the exercise of that power the Valuer-General was acting as an Arbitrator and he was bound to apply rules of procedural fairness. On these two primary grounds, Counsel sought a quashing order under Rule 17.9(d) of the Civil Procedure Rules and sought a further order that the lease be re-instated to the Claimant.

The Claimant relied on the sworn statement of Gilbert Dinh and its annexures.

The issues appear to be –

- (a) Whether the Valuer-General acted ultra vires the Act?
- (b) Whether he acted contrary to rules of natural justice?

The Court has discovered an Act of Parliament called the (Valuation of Land Act No. 22 of 2002 [Cap. 288]). Its commencement date is 10th March 2003.

Section 37 of that Act reads –

“A reference in any other Act or instrument to the Lands Referee is taken to be a reference to the Valuer- General.”

Section 38 of that Act reads –

“Repeals

The following are repealed:

The Lands Referee Act [Cap. 148];

The Rating Valuation (Entry on Premises) Act [Cap. 93]”

The Valuer-General is appointed by the President on the advice of the Judicial Services Commission (Section 2).

Section 3 of that Act provides for the role of the Valuer-General. It reads –

“The general role of the Valuer- General is:

- (a) Not relevant;***
- (b) Not relevant; and***
- (c) To act as a land referee in disputes regarding rentals and land values.”***

This dispute includes to some extent rentals and land values in respect to Leasehold Title 04/2952/002.

Section 4 under Division 2 provides for the Functions of the Valuer-General. It reads –

“The functions of the Valuer-General include the following:

- (a) Not relevant;***
- (b) Not relevant;***
- (c) Subject to this Act, such other functions conferred or imposed on the Valuer- General by or under this or any other Act or law”***

One of those functions is that provided by Section 43(2) of the Land Leases Act.

Section 5 under Division 3 provides for the jurisdiction of the Valuer-General to act as land referee. It states –

“The Valuer-General has jurisdiction to determine the following matters:

- (a) Not relevant;
- (b) Not relevant;
- (c) *Any matter referred to the Valuer-General by any party to a lease of land relating to the interpretation of a provision in the lease;*
- (d) *Any matter which is by any other Act or law directed to be determined by the Valuer-General."*

Section 6 states that the referee is to act as an expert and not as arbitrator. It states –

- "(1) In exercising jurisdiction under Section 5(a) and (b), the Valuer-General is to act as an expert and not as an arbitrator. The Valuer-General must consider any valuation and reasons submitted to him or her by the parties to an application but is not in any way limited or fettered by that valuation and is to reach his or her decision in accordance with his or her own judgment.*
- (2) In exercising jurisdiction under Section 5(c) and (d), the Valuer-General may act as arbitrator."*

Based on these legal provisions, the Court rejects the Claimant's argument that the Valuer-General had acted ultra vires his powers. The Court concludes that the First Defendant did have powers to make the Determination dated 31st May 2006.

In respect to the second issue of procedural fairness and natural justice, the Valuer-General made clear references to Section 45 of the Land Leases Act in his determination at paragraph 4. Section 45 provides for Notice Before

Forfeiture. In his own sworn statements the Claimant discloses documents which were served on him by the lessor in compliance with Section 45. These raised the breaches alleged and requested the lessee to make good the breaches within the time specified. The lessee did not do that.

In the Court's opinion, the Lessor's complying with Section 45 of the Act amounted to giving the Claimant an opportunity to make representation but it appears he did not do that. He cannot therefore complain that natural justice was not afforded to him.

For this reason, the Court finds no breaches of natural justice or procedural unfairness. The Claimant's application fails in its entirety and is hereby dismissed.

There will be no order as to costs.

There is a right of appeal.

DATED at Luganville this 28th day of July 2009.

BY THE COURT


OLIVER A. SAKSAK

Judge