

(Civil Jurisdiction)

BETWEEN: AGNES MOORE

Claimant

AND: REPUBLIC OF VANUATU

First Defendant

AND: PRESBYTERIAN CHURCH TRUST ASSOCIATION

Second Defendant

Mr Justice Oliver A. Saksak

Mr George F. Boar for the Claimant

Mr Justin Ngwele for the First Defendant

Mrs Mary Grace Nari for the Second Defendant

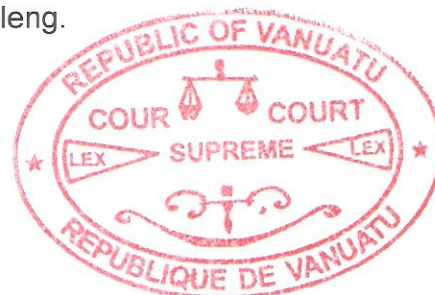
Date of Hearing: 7th September 2012

Date of Judgment: 6th February 2013

JUDGMENT

Background Facts

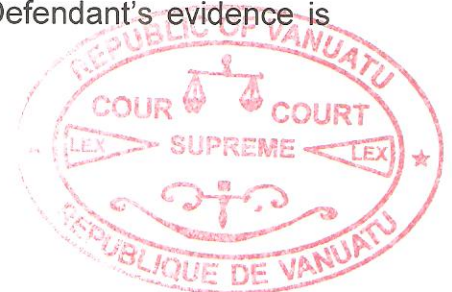
1. The claims by the Claimant arose out of a purchase of land on 10 June 1991 from the Development Bank of Vanuatu. The Bank is no longer in existence. The purchase was done pursuant to a Mortgage sale. Land is comprised in Leasehold Title No. 03/0183/015 (the Title).
2. On the same date, Officers of the Lands Department in Luganville prepared a Lease Agreement and summoned the Claimant into office to sign the Lease Agreement. The Claimant signed the Lease Agreement but discovered later that she had signed the Agreement in respect to Leasehold Title No. 03/0183/031 which was the title registered in favour of Johnny Botleng.



3. Since the date of purchase, the Claimant had paid land rents until 1995. She did not pay land rents in 1996 but resumed payments in 1997 until 2011. She paid a total of VT337.583. She made the last payment of land rents in March 2011.
4. The Claimant is a widow. Her husband the late Jack Moore who died of a heart attack in July 1998.
5. Leasehold Title 03/0183/031 has been surrendered by the Claimant and registered in favour of Johnny Botleng.
6. Title 03/0183/015 has been registered by the First Defendant in favour of the Second Defendants on 10th April 2006.
7. On 3rd April 2008, the Claimant lodged a caution over Title 03/0183/015 but the application was rejected on the basis that she had no interest in the Title.
8. It is against those background facts that the Claimant filed proceedings on 30th June 2011 initially only against the First Defendant.
9. Paragraphs 10 and 11 of the Claimants claims raise assertions of mistake which implicate the Second Defendants which necessitate the Court granting leave for them to be joined as Second Defendants to afford them the opportunity to respond and be heard.

The Evidence

10. The Claimants evidence is contained in her sworn statements dated 11th August and 11th November 2011 (Exhibits C1 and C2).
11. The First Defendant's evidence in defence is contained in the sworn statement of Peter Pata dated 30th May 2012 (Exhibit D1) but excluding paragraphs 9 and 10 and the last sentence of paragraph 8 which were objected to as being argumentative and opinion evidence. And the Second Defendant's evidence is



contained in the sworn statement of Paiaporou Antafalo dated 3rd August 2012 (Exhibit SD1).

12. At the end of hearing on 7th September 2012, the Court directed Counsel to file written submissions within 7 days by the Claimant and within a further 7 days thereafter by the Defendants.

13. The Claimant filed written submissions on 10th September 2012 at the Registry in Port Vila. These were received at the Registry in Luganville on 6th November 2012. The Second Defendant filed written submissions on 18th September 2012. The First Defendant has not filed any written submissions.

Discussions And Considerations

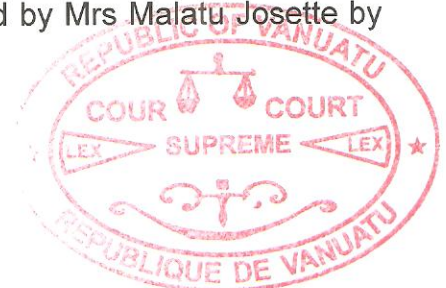
14. The Claimant's main complaints are against the Government and the State. She alleges mistake on the part of the officers of the Government in the Department of Lands either in Luganville or in Port Vila.

15. She has the burden of proof on the balance of probabilities.

16. The first issue appears to be whether the Claimant has shown in evidence the servants of the First Defendant had committed mistake.

17. Her relevant evidence in relation to this issue is that on 10th June 1991, the Claimant and her husband purchased Title 03/0183/015 from the Development Bank. That on the same date she was summoned by the Officers of the Lands Department in Luganville where she executed a lease Title 03/OI83/031 which she believed to be Title 03/0183/15. This was the first clear mistake.

18. It was the Claimant's clear evidence also that she made rental payments from 1995 up until March 2011. She produced copies of invoices and receipts that clearly indicate that the land rents were in respect of Title 03/0183/015. Payments by the Claimant to Development Bank was confirmed by Mrs Malatu Josette by



letter dated 28th March 2010 annexed as AM12 (Exhibit C1). This evidence was not challenged or rebutted by the defendants.

19. The Claimants evidence that despite those payments, in 2006 the Minister responsible for Lands approved Leasehold Title 03/0183/015 to the Second Defendants. The Officers of the Lands Department were aware of the Claimant's payments. Her evidence shows that on 18th April 2007 the Minister of Lands Maxime Carlot Korman had acknowledged her faithfulness in paying Lease payments upon the receipts produced and gave her assurances of making enquiries and restoring back her title. (See annexure AM5 – Exhibit C1). Interestingly, it was the same Minister who signed as Minister and lessor on 10th April 2006 to grant the lease over Title 03/0183/015 in favour of the Second Defendant. (Annexure PP3 – Exhibit D1).

20. The evidence of Paiaporou Antfalo confirms the lease in respect to Title 03/0183/015 being granted to the Second Defendant under a Memorandum of Intention dated 24th June 2004. This document is challengeable but the legality of it has not been raised by the Claimant therefore, the Court does not have to be concerned with determining it. However, the evidence of Pastor Antfalo fails to show that since 2005 to 2011 the Second Defendant has been paying land rents in respect of Title 03/0183/015. On the contrary it is the Claimant who has paid land rents up until March 2011.

21. Clearly the Claimant has shown that the Government committed the second mistake. These mistakes have been acknowledged in the Director's letter dated 14th September 2011, and 18th June 2002 respectively.

22. The law as to mistake or fraud is found in section 100 of the Land Leases Act Cap. 163 as follows:-

"1. Subject to subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended



where it is so empowered by this Act or where it is satisfied that any registration has been obtained, made or omitted by fraud or mistake

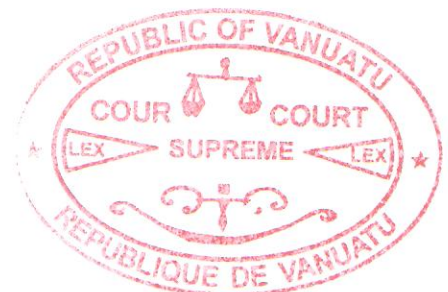
2. *The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the interest for valuable consideration, unless such proprietor had knowledge of the omission fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.”*

23. Applying the law to the facts, it is highly probable that on 23rd June 2004 when the Memorandum of Intention was duly executed by the First and Second Defendants, by Clause vi, the Second Defendant would have known by being informed or advised by the First Defendant that the Claimant had interests over pre-independence title 1766 (now 03/0183/015). As such, both parties should have given her the opportunity to be heard but there is no evidence that they did. Such omission amounted to neglect on the part of both the First and Second Defendants.

24. The Court is therefore satisfied that the Second Defendant had knowledge of the Claimant's interests to Title 03/0183/015 and contributed to the mistake of the Government through omission and/or its neglect to afford the Claimant the opportunity to be heard or make due representations. I am satisfied that the Claimant has discharged the onus of proof placed on her by the Case of Rogara v. Takau CAC 25 of 2004.

25. I am further satisfied that on the basis of Ifira Trustee v. Kalsakau CC 25 of 2008 the Claimant had established her interests in Title 03/0183/015 by her payments of premiums in 1991 and land rents thereafter until 2011 to entitle her to –

- (a) Register a caution (which was rejected); and



(b) To file proceedings against the defendants.

26. Under those circumstances, the two issues raised by Counsel for the Claimant namely:-

(a) Whether the Claimant has standing – the answer is in the affirmative; and

(b) Whether the Defendants committed mistake or fraud – the answer is in the affirmative.

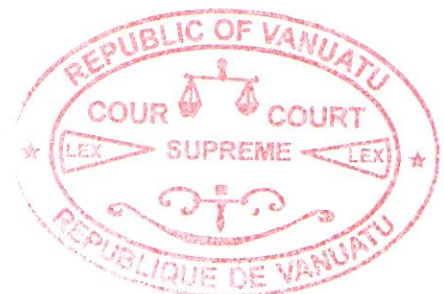
27. The Second Defendant's submissions on these issues are rejected.

28. From the evidence I find that the Claimant was grossly and unjustly treated by the First Defendant's agents or servants in light of the following evidence:-

(a) That she and her late husband Jack Moore paid premium to the Development Bank. On the evidence of Mariana Tamata and Marie Louis Temakon as confirmed by Malatu Josette make it highly probable, that they paid premium. On the other hand, there is no evidence the Second Defendant paid any premiums. They might have thought that the Memorandum Intentions dated 24th June 2004 exempted them from doing so. However, they were mistaken as clause xiii requires that -\

"All transactions and dealings on this land (old title 1766) will be governed by the laws of Vanuatu."

(b) That from 1993 until March 2011, the Claimant had received invoices in relation to land rents in Title 03/0183/015. She paid them off even after the said lease was already registered under the Second Defendant's name. There is no evidence the Second Defendants were issued invoices and paid land rents from 2007.



- (c) Despite the Minister of Lands concerns, acknowledgment, clear directives for information and written assurances that her title would be restored which raised her expectations, her continued pleas thereafter were made in vain.
- (d) All these went on for some 19 odd years. Those actions, failures and/or omissions are inexcusable.

Conclusions

29.1. Judgment is therefore entered in favour of the Claimant.

29.2. The Claimant is entitled to the following Orders:-

- (a) An Order requiring the Director to rectify the Register in relation to the Title 03/0183/015 by cancelling the Presbyterian Church Trust Association as Lessee and inserting the name of the Claimant Agnes Moore as Lessee within 7 days from the date of this Order.
- (b) The First Defendant be hereby Ordered to pay all the Claimant's costs of and incidental to this action on an indemnity basis.

DATED at Luganville this 6th day of February 2013.

BY THE COURT


OLIVER A. SAKSAK

Judge

