

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU  
(Civil Jurisdiction)

Civil Case No. 103 of 2013

BETWEEN : THERESE TRAVERSO

Claimant

AND: THE REPUBLIC OF VANUATU

Defendant

*Coram:* Justice Aru

*Counsel:* Mr. S. Joel for the Claimant

Mr. L. Huri for the Defendant

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RESERVED JUDGMENT

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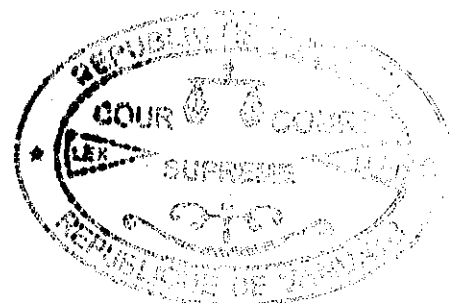
Background

1. This is a claim for damages against the State brought by Therese Traverso. She alleges that she is entitled to damages as a result of the failure by the Minister of Lands to transfer lease title 12/1031/013 (the 013 lease) to her. The parties filed an agreed set of facts on 4 March 2015 which sets out the background to this whole case as follows:-

- 3 July 1992

The 013 lease was registered between the Minister of Lands as lessor and S.C.H.D. Limited as lessee.

- 17 June 1993



The 013 lease was transferred by S.C.H.D. limited as lessee to Eruiti Islands Village Limited as lessee.

- 28 March 2003

Akau Kaltamat Joel wrote to the Minister of Lands alleging that there is no official lease bearing the 013 lease title. The letter in part states:-

*"mi attachem wetem leta ia samfala documents we I gud blo stadi long hem from oli shoem long opinion blo mi olsem custom ona long area serious maladministration we I gohed long department of lands over ol traditional lands blong epuen we I constitute colonial title 593 mo tu I involvement blong ol law firms blong entertainem land robbery long clear ples.*

1. Third Party mortgage

*Mortgage ia hemi registered long Lands Records mo karem no 495 of 1992*

2. Consent of transfer mo actual transfer of lease no 12/1031/013

*Tufala documents Land Records I registerem long 1993*

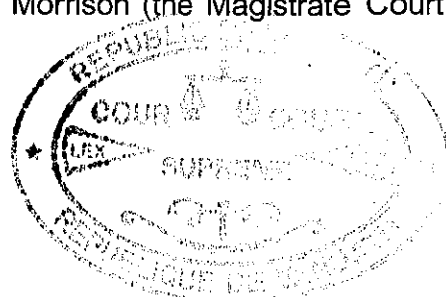
*Wan samting we I strange se INO GAT any official lease document we I karem title no 12/1031/013 long file ia.."*

- 23 April 2003

George Kirby John (Executive Officer, Department of Land Records) advised the Minister of Lands by way of a memorandum that the disputed lease is a registered lease. He said:-

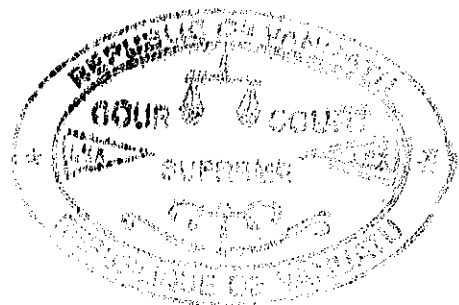
*"lease title 12/1031/013 does exist and is a registered interest in the land records office .."*

- Around 2005 Dominique Dinh (owner of Eruiti Island Village Limited) filed an urgent application to the Magistrate Court in Civil Case No 41 of 2005 against Mrs Traverso, Joel Kaltamat and Morrison (the Magistrate Court



proceedings) to restrain them and others from entering or trespassing on the property namely the 013 lease.

- In the course of the Magistrate Court proceedings it was found that there was another proceeding in the Supreme Court namely *Eruiti Island Village Limited v Traverso* (2009) VUSC 9, the parties were the same people disputing the same subject matter as in the MAGistrate Court proceedings.
- Around 2006, the Supreme Court proceedings were discontinued.
- Around 2006, the claimant applied for a negotiator certificate despite her knowledge that there is an existing lease, the 013 lease over the area of land she is interested in.
- 8 May 2006  
The claimant was granted a negotiator certificate over the land the subject of the 013 lease including other titles.
- 10 May 2006  
The claimant received the valuation certificate prepared by the Valuation office that the land premium was valued at VT 570,460 and the claimant paid for the land premium.
- 19 May 2006  
The Minister of lands approved the claimant's lease for registration however the lease was not registered.
- Around August 2008



Several lease titles were put on notice for forfeiture including the 013 lease. As such Eruiti Island Village limited being the lessee of the 013 lease paid out its outstanding land rent and thus cancelling the notice of forfeiture against the 013 lease.

- 21 July 2009

An application for registration of a lease bearing title No "12/1031/013" was lodged at the department of lands for registration with the Minister of Lands as lessor and the claimant as lessee.

- 28 April 2011

The Minister of lands wrote to Dominique Dinh informing him not to enter the premises of the 013 lease.

- 6 May 2011

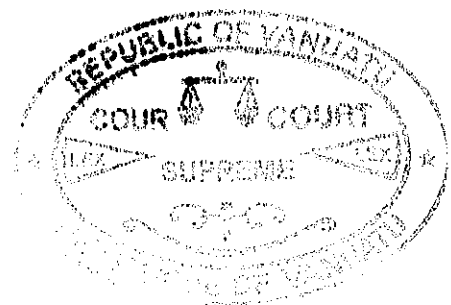
The Minister of lands wrote to the Director General of lands that the claimant paid the required fees in order for the lease bearing title No "12/1031/013" to be registered in her favour.

- 9 May 2011

The Director General to the Ministry of lands wrote a letter to the Director of Land Records as instruction to prepare forfeiture notices for the 013 lease.

- 13 September 2011

The Minister of lands instructed the Principal Registration Officer to formalize the registration process for the lease bearing title No "12/1031/013".



- 23 September 2011

The Principal Registration Officer advised the Minister of lands that the claimant's application for registration of lease cannot be registered because lease title No 12/1031 /013 is already an existing registered lease which was registered on 17 June 1993. The advice states:

*"Hon Steven Kalsakau*

*Minister of Lands*

*Port Vila*

*Honourable Minister*

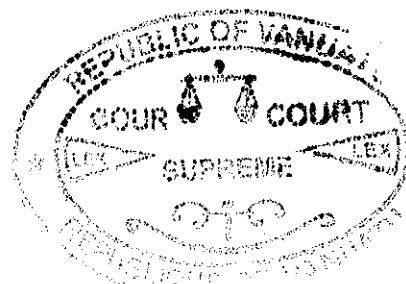
*Re: Urgent request to process registration of special lease title No 12/1031/013*

*We refer to your letter of 13 September 2011 instructing our officers specifically the Principal Registration Officer to formalise the registration process of the above land title as soon as possible.*

*On 8 September 2011, the Director of Lands Mr Jean Marc Pierre enquired to madam Traverso's unregistered lease which was lodged before registration. Office of the registry later confirmed to him that lease title 12/1031/013 is an existing lease registered on 17 June 1993 and was registered in the name ERUITI ISLAND VILLAGE LIMITED as the current lessee.*

*We also informed to the Director of lands that of our knowledge on a forfeiture notice being served but we are not made aware of when is the forfeiture of the subject lease effected nor have we in our possession a copy of the notice of forfeiture of Eruiti Island Village Limited prior to the finalization of Mrs Therese Traverso pertaining interest.*

*Therefore we kindly request responsible section by copy of this letter to please provide to the registry a copy of the forfeiture notice confirming that the company Eruiti Island Village Limited has been forfeited by the lessor in the case Minister of lands on behalf of the custom owners.*



*The registry will then as soon as possible cancel form the lease Register the land lease title 12/1031/013 and the land Survey will be informed as well to issue a new title to Madame Traverso.*

*Again with respect Hon Minister the office of the registry will not proceed to register Mrs Traverso lease until such time the current company's lease is properly cancelled from the registry of titles. This is to avoid duplication of titles in the registry.*

*Yours faithfully*

*Willie Gordon*

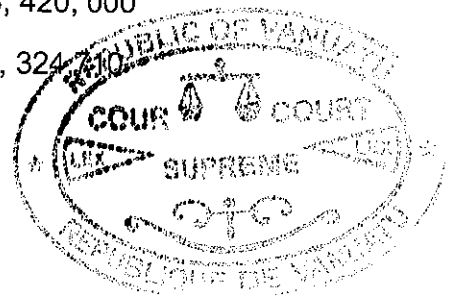
*Principal Registry Officer"*

### Claim

2. The gist of the claimants claim as set out at paragraph 13 and 14 of the Supreme Court claim filed on May 2013 is that following the making of her application for registration of her lease, the defendant allowed her to enter the 013 lease for the purposes of development and she allegedly used machinery to clear the farm, plant and improve pasture and commenced the rearing of cattle on the 23 hectares of land at a cost of VT 18,420,000.
3. She alleges that as a result of the defendant's failure to make good their undertaking that she will be given the 013 lease she suffered the following losses and damages:-

- Cost of valuation – VT2,250
- Stamping – VT15,000
- Premium – VT 570,000
- Cost of lease preparation – VT 100,000
- Follow ups – VT 200,000
- 23 hectares 7 years pasture improvement – VT18, 420, 000

Total –VT19, 324, 750



4. The relief is for an order for damages at VT 19,324,710 with interest at 10% and costs.

#### Defence

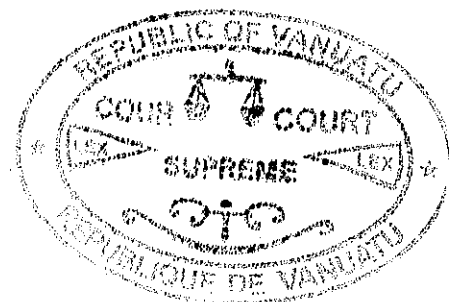
5. The defendant says that the 013 lease was never forfeited although a notice was issued and to date the lessee is still Eruti Island Village Limited. The defendant says that the claimant is only entitled to reimbursement of the payment for stamp duty, land premium and the valuation certificate as all along she knew that there was an existing over the land.

#### Evidence

6. The claimant relies on her sworn statement filed on 4 March 2015 and the defendant relies on the sworn statement of Paul Gambetta filed on 3 September 2013.

#### Issues

7. The issues as agreed by the parties in their agreed statement of facts and issues are:-
  - 1) Whether or not there is an existing lease over the land in dispute?
  - 2) Whether or not (if there is) that disputed lease has been forfeited?
  - 3) Whether or not the defendant is right in not registering the disputed lease with claimant as lessee?



- 4) Whether or not the claimant had the right to enter the disputed lease and develop it?
- 5) Whether or not the claimant has the right to be ordered interest on monies paid to the defendant in respect of the disputed lease plus related costs of follow ups?
- 6) Whether or not the claimant is entitled to be reimbursed or for reasonable expense for development she has carried out on the disputed lease?

Law

8. The following provisions of the Land Leases Act [CAP 163] (the Act) are relevant for consideration.

- 1) Section 14

**"14. Interest conferred by registration**

*Subject to the provisions of this Act, the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease together with all implied and expressed rights belonging thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease."*

- 2) Section 15

**"15. Rights of proprietor**

*The rights of a proprietor of a registered interest, whether acquired on first registration or subsequently for valuable consideration or by an order of the Court shall be rights not liable to be defeated except as provided in this Act, and shall be held by the proprietor together with all rights, privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject –*





(a) to the encumbrances and to the conditions and restrictions shown in the register;

(b) unless the contrary is expressed in the register, to such of the liabilities, rights and interests as are declared by this Act not to require registration and are subsisting:

*Provided that nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as trustee."*

3) Section 43

**"43. Lessor's right of forfeiture**

(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 lessee 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 –*

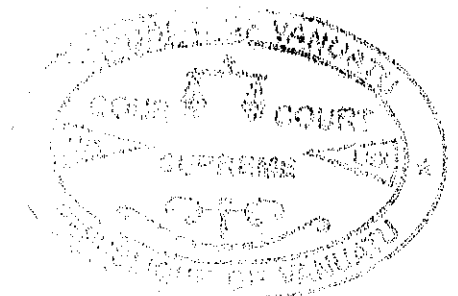
(a) *exercised, where neither the lessee nor any person claiming through or under him is in occupation of the land, by entering upon and remaining in possession of the land; or*

(b) *enforced by a reference to the Valuer-General.*

(3) *The right of forfeiture shall be taken to have been waived if –*

(a) *the lessor accepts rent which has become due since the breach of the agreement or condition which entitled the lessor to forfeit the lease or has by any other positive act shown an intention to treat the lease as subsisting; and*

(b) *the lessor is, or should by reasonable diligence have become, aware of the commission of the breach:*



*Provided that the acceptance of rent after the lessor has commenced a reference to the Valuer-General under subsection (2) shall not operate as a waiver."*

4) Section 45

*"45. Notice before forfeiture*

*Notwithstanding anything to the contrary contained in the lease, no lessor shall be entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease, whether expressed or implied, until the lessor has served on the lessee and every other person shown by the register to have an interest a notice in writing which –*

- (a) shall specify the particular breach complained of; and*
- (b) if the breach is capable of remedy, shall require the lessee to remedy the breach within such reasonable period as is specified in the notice; and*
- (c) in any case other than non-payment of rent may require the lessee to make compensation in money for the breach;*

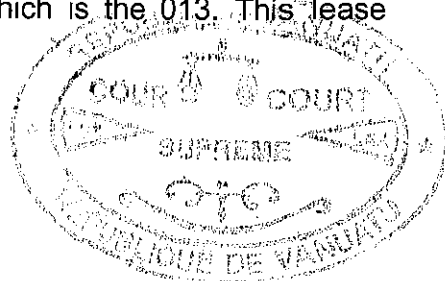
*and the lessee has failed to remedy the breach within a reasonable time thereafter, if it is capable of remedy, and to make reasonable compensation in money if so required."*

Discussion

9. The parties agreed that no trial was required and that they will proceed by way of submissions.

Issue 1 - Whether or not there is an existing lease over the land in dispute?

10. The answer is – yes. In their submissions, both parties agree that there has always been a lease over the area in dispute which is the 013. This lease

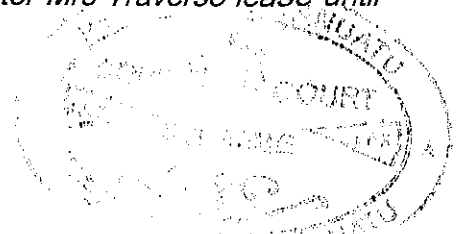


existed before the claimant became interested in the land. At paragraph 5 of her sworn statement , the claimant admits it and says that :-

*"For the purpose of this claim I know or learnt in 2006 that the lease title no 12/1031/013 belongs to Eruiti Island Village Limited ..."*

Issue 2 - Whether or not (if there is) that disputed lease has been forfeited?

11. The simple answer is – No. The 013 lease was never forfeited. The claimant in her submissions accepts that the lease has not been forfeited. It is an agreed fact that on 9 May 2011, the Director General to the Ministry of Lands instructed the Director of Land Records to prepare forfeiture notices for the 013 lease. Paul Gambetta's evidence in his sworn statement at paragraph 17 and 24 which is not disputed says Eruiti Island Village Limited then paid out its outstanding land rent and as a result the forfeiture notice was cancelled.
12. Section 43 of the Land Leases Act provides for the lessors right to forfeiture and subsection (3) provides that the right to forfeiture shall be taken to have been if the lessor accepts rent which has become due since the breach of the agreement or condition which entitled the lessor to forfeit the lease.
13. Paul Gambetta confirms that the 013 was never forfeited and that to date the lease is a registered instrument in existence between Eruiti Island Village Limited as lessee and the Minister of lands as lessor.
14. It is also an agreed fact that on 23 September 2011, the Principal Registration Officer advised the Minister of lands that the claimant's application for registration of the new lease cannot be registered because lease title No 12/1031 /013 is already an existing registered lease which was registered on 17 June 1993. He said *"..the office of the registry will not proceed to register Mrs Traverso lease until*



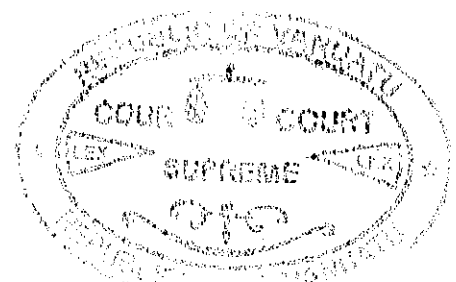
*such time the current company's lease is properly cancelled from the registry of titles . This is to avoid duplication of titles in the registry."*

Issue 3 - Whether or not the defendant is right in not registering the disputed lease with the claimant as lessee

15. The answer to this question is - yes. The defendant was right in not registering the claimant as lessee as there is an existing lease with Eruiti Island Village limited as lessee. Section 14 and 15 of the Act protect Eruiti Island Village limited as registered proprietor of the 013 lease. It's *"rights (are) not liable to be defeated except as provided in this Act" (s15)*.
16. Had the 013 lease been forfeited, that would have defeated Eruiti's interest as registered proprietor and the defendant would have been wrong in not registering the claimant's lease after that. However that is not what happened and as stated in response to issue 1 above, the 013 lease was never forfeited. In her submissions the claimant acknowledged that the defendant was right in not registering her lease

Issue 4 - Whether or not the claimant had the right to enter the disputed lease and develop it

17. The answer is -No. The claimant had no right to enter the 013 lease and develop it as she was not the registered proprietor. She had full knowledge that the registered proprietor of the 013 lease was Eruiti Island Village limited and the lease had never been forfeited. The right to enter and develop the land is only acquired upon registration of a person as the registered proprietor of a lease and that right is protected by section 14 and 15 of the Land Lease Act. In this case the claimant was not the registered proprietor of the 013 lease and therefore had no right to enter and develop the land.



Issue 5 - Whether or not the claimant has the right to be ordered interest on monies paid to the defendant in respect of the disputed lease plus related costs of follow ups?

Issue 6 - Whether or not the claimant is entitled to be reimbursed or for reasonable expense for development she has carried out on the disputed lease?

18. In dealing with these two issues together, the claimant knew all along that there was an existing lease and had the opportunity to obtain legal advice on the consequences of her actions before incurring expenses. She acted with full knowledge to her own detriment. Good common sense would have been to wait until registration was obtained in her name before incurring expenses. She is therefore not entitled to the interest.
19. The onus is on the claimant to prove her case on the balance of probabilities. She claims damages in the sum of VT 18,420,710 for 7 years pasture improvement of 23 hectares. There is no evidence put by the claimant to show or prove her claim that she is entitled to damages in the sum of VT 18, 420, 710. The defendant on the other hand concedes that the claimant is entitled to be reimbursed for monies paid to the department. In addition to that as the Ministry led her to believe that she was getting the lease by issuing a negotiator certificate, a reasonable amount for follow up costs should be awarded and I award a sum of VT 100,000.
20. Judgement is given for the claimant in the sum of VT VT 787,710.

Being for:-

- 1) Cost of valuation – VT 2,250
- 2) Stamping – VT 15,000
- 3) Premium – VT 570,460



4) Cost of lease preparation – VT 100,000

5) Subsequent follow ups – VT 100,000

21. Given the unfortunate set of circumstances, each party should bear their own costs.

DATED at Port Vila this 3<sup>rd</sup> day of October 2017

BY THE COURT

.....  
D. Aru

Judge

