

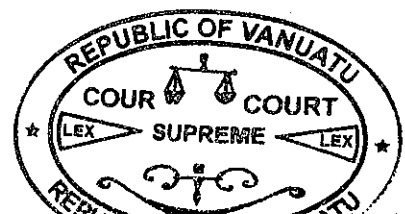
BETWEEN: Willie James Pakoa
Appellant

AND: The Republic of Vanuatu
Respondent

Date: Friday, 18 May 2018
Before: Justice G.A. Andrée Wiltens
In Attendance: Mr L. Tevi for the Appellant
Mr S. Aron for the Respondent

JUDGMENT

1. Mr Pakoa held an interest as lessee in Lease Title no. 11/OG32/075 from approximately 1996 until 2015, when the land was acquired for public purposes under the Land Acquisition Act [CAP 215].
2. As part of that acquisition, the Valuation Unit of the Department for Lands, with the assistance of the Acquiring Officer carried out a valuation of the lease, as required by section 9 of the Land Acquisition Act for the purposes of calculating the appropriate compensation payable to Mr Pakoa; and subsequently by letter of 12 August 2016, that valuation was communicated to Mr Pakoa through his son Donald James.
3. The valuation came to the figure of VT 700,000. Under the relevant provisions, Mr Pakoa had 30 days to protest the valuation – but he did not do so.
4. In his sworn statement Donald James deposes to not actually receiving the official advice of the compensation assessment until 29 August 2016, as the letter was generically addressed to him care of the Vanuatu Police Force Post Office box, and thereafter simply left on his



desk for him to find. Realising he had only a short time to challenge the valuation, and as he was about to be posted to work on Pentecost island, he contacted the lawyer Mr Eric Molbaleh and left with him written instructions to challenge both the acquisition itself and the valuation arrived at.

5. On his return from his Pentecost posting after some 10 days, Donald James had received a further letter from the Acquiring Officer, advising him that as he had not challenged the valuation within the 30 day grace period, that figure was now the final determination of the compensation payable. Donald James then checked to see what Mr Molbaleh had done – and discovered that apparently nothing had been done.
6. Mr Pakoa still considers the valuation figure should be significantly higher, something more like VT 4 million – and he has had an independent valuation prepared which supports his assessment.
7. Accordingly the appeal to the Supreme Court that was scheduled for hearing today was filed on 11 August 2017. Reliance was placed on section 12 of the Land Acquisition Act.
8. A jurisdictional issue was raised by Mr Aron. He correctly pointed out not only that the appeal was out of time being some 12 months after the determination had been made and communicated, and appeals under section 12 need to be filed within 30 days; but more significantly, that the Lands Acquisition Act was amended with effect from 30 June 2017. As from that date, appeals regarding the amount of compensation due are to the Valuer-General, and are not available any longer to the Supreme Court.
9. Mr Tevi accepted the correctness of that argument, and conceded that there was actually no jurisdiction for the Supreme Court to hear this appeal.
10. I dismissed the appeal accordingly.
11. I discussed with Mr Tevi whether he could apply for leave to file an appeal to the Valuer-General out of time, and suggested he get Mr Molbaleh's file and any notes he has pertaining to the instructions he received. If the delay could be satisfactorily explained, then the Valuer-General might be prepared to reconsider the issue of compensation – especially as Mr Pakoa has clear evidence of the market value of the lease, one of the more significant aspects to take into consideration when assessing compensation.
12. Mr Aron sought costs of VT 30,000 for successfully defending the appeal, which Mr Tevi accepted as reasonable in the circumstances. I therefore direct Mr Pakoa to pay costs in that amount within 30 days.

Dated at Port Vila this 18th day of May 2018

BY THE COURT

Gendri Uell
Justice G.A. Andrée Wiltens

