

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

Civil
Case No. 19/2727 SC/CIVL

BETWEEN: Yvonne Bidal (Briat Yvonne)
Claimant

**AND: Isabelle Waale & Families,
Friends & Associates**
Defendants

Date of Trial: 19 May 2021
Before: Justice V.M. Trief
In Attendance: Claimant – Mrs M.P. Vire
Defendants – Mr R. Willie
Date of Decision: 29 June 2021

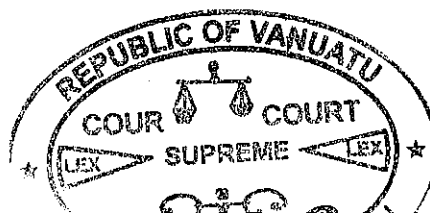
JUDGMENT

A. Introduction

1. This is an eviction claim by the Claimant Yvonne Bidal (also known as Briat Yvonne), the registered proprietor of leasehold title no. 03/OI71/021 over land situated at Luganville, Santo (the 'property'). Mrs Bidal seeks eviction of the Defendants and costs.
2. The Defendants Isabelle Waale and her families, friends and associates are the actual occupants of the property (the 'occupiers'). It is undisputed that despite the notice to quit given them by letter dated 2 November 2016, they remain. The occupiers dispute the Claim on the basis that they have an overriding interest under s. 17(g) of the *Land Leases Act* [CAP. 163] (the 'Act').

B. Preliminary Matters

3. Counsel requested to see me in Chambers before the trial began. Mr Willie stated that the Defendants were no longer pursuing their Counter Claim, only their Defence.
4. In closing submissions, Mrs Vire for the Claimant abandoned the claim for damages.



C. The Law

17. Section 17(g) of the Act provides:

17. *Unless the contrary is expressed in the register, the proprietor of a registered lease shall hold such lease subject to such of the following overriding liabilities, rights and interests as may, for the time being, subsist and affect the same, without their being noted on the register –*

...

(g) *the rights of a person in actual occupation of land save where enquiry is made of such person and the rights are not disclosed;...*

5. In *William v William* [2004] VUCA 16 at p. 8, the Court of Appeal explained the function of s. 17 as follows:

Section 17 is one of the provisions in Part IV of the Land Leases Act. That part contains the central provisions of the Act which establish and give effect to the notion of indefeasibility of registered titles.

Section 14 deals with the effect of registration. It provides that, "Subject to the provisions of this Act, the registration of a person as a proprietor of a lease shall vest in that person the leasehold interest..."

Section 15 provides that the rights of a proprietor of a registered interest shall be rights not liable to be defeated

"except as provided by this Act, and shall be held... subject... to such of the liabilities, rights and interests as are declared by this Act not to require registration and are subsisting..."

These sections lead into the provisions of s. 17 and give emphasis to the exceptions and limitations to indefeasibility that are provided for in the Act. Section 17 then provides for

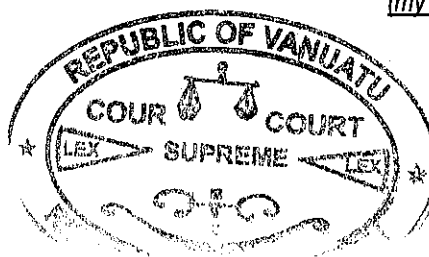
"overriding liabilities, rights and interests as may, for the time being, subsist and affect the same, without their being noted on the register..."

18. The Court of Appeal further said (at pp 8-9, *William v William*):

It is clear from the nature of the liabilities, rights and interests described in paragraphs (c), (d), (f) and (h) that they may subsist indefinitely into the future. Paragraph (e) has within its terms a limit on the duration for which liabilities, rights and interests subsist as overriding once in the absence of a notation on the register. As paragraph (e) is the only paragraph which expresses a limitation on duration, and as other paragraphs may extend indefinitely, we consider paragraph 17(g) should also be construed as being capable of operating indefinitely.

In a particular case, how the provision operates to give overriding effect as to the rights it protects will depend on the nature of the rights. For example, and pertinent to this case, if the person "in actual occupation of land" is there pursuant to an equitable proprietary interest, the protection will subsist as long as the equitable interest continues. In such a case, the nature and duration of the equity will have to be determined. Where the interest is one acquired through or under a previous proprietor of a registered lease, the interest may continue for as long as the term of the lease.

(my emphasis)



6. To determine the nature and extent of the right asserted requires an examination of the evidence and findings of facts: *William v William* at p. 10.

D. Evidence

7. On 23 November 2012, Mrs Bidal was registered as the proprietor of the property [Annexure "GL2" to Mr Lecerf's sworn statement, "**Exhibit C1**"]. The lessee is the Minister of Lands as the land is public land at Luganville.

8. Mrs Bidal lives in New Caledonia. She authorised Gaetan Lecerf under a Power of Attorney, registered on 19 July 2018, to act for her in dealings in relation to the property [Annexure "GL1" to Mr Lecerf's sworn statement, "**Exhibit C1**"].

9. Despite the notice to quit given the Defendants by letter dated 2 November 2016, they remain. In the letter, Mrs Bidal said she was sorry to send the letter but wanted to sell the property as the doctor had now amputated both her husband's legs. The letter also gave them an option to purchase the land for VT2,500,000 [Annexure "GL3" to Mr Lecerf's sworn statement, "**Exhibit C1**"].

10. Mr Lecerf stated in re-examination that he is only helping Mrs Bidal in relation to the property because her husband's legs have been amputated and they need money to purchase prosthetic legs for him. Otherwise he would not be involved.

11. Isabelle Waale evidenced [in her sworn statement, "**Exhibit D1**"] that she and her family, including the other Defendants, have resided on the property since 1980. She evidenced that:

a. She is related to Mrs Bidal. She considers Mrs Bidal as her daughter because Ms Waale's mother Korkorlea Woaale (deceased) and Mrs Bidal's grandmother Amy Woaale (deceased) were biological sisters;

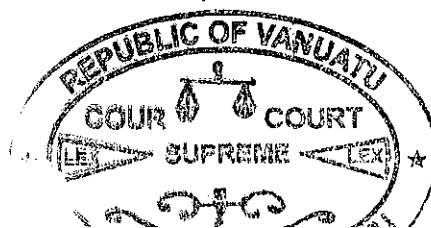
b. Before Independence, her parents Arthur Batuntun (deceased) and mother were invited to live on the property with Mrs Bidal's grandmother;

c. Just before the Santo Rebellion, in about 1979, Mrs Bidal and her mother moved to New Caledonia but they requested that Ms Waale's parents live on the property and look after it;

d. When the tension became too high, Ms Waale's parents had to be evacuated and were only allowed to return after Independence. Ms Waale's father asked her and her sister Evelyne Woaale to accompany him back to Santo to take care of the property;

e. They had to clean up the property because all the houses were damaged during the Santo Rebellion. They even had to stop trespassers and investors from taking over the property for themselves;

f. Ms Waale's father paid land rent for the property. The receipts attached show intermittent payments from 1995 to 2013. A Department of Land Management

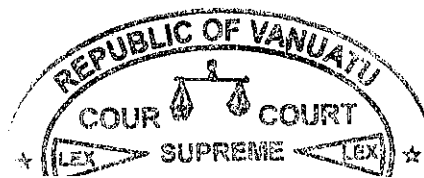


letter dated 21 May 2012 enclosed a statement of unpaid land rents for the last 14 years totalling VT418,519;

- g. When Mrs Bidal obtained the registered lease in 2012, she was aware of the Defendants' struggle to maintain the property and their occupation of it since she moved to New Caledonia prior to the Santo Rebellion;
 - h. The Defendants have sacrificed a lot to develop and maintain the property for over 40 years and their interest in the land is protected by s. 17(g) of the Act; and
 - i. The Defendants propose that they will vacate the property only if Mrs Bidal compensates them VT20 million for looking after the property since 1979.
12. No evidence has been filed to contradict Ms Waale's evidence therefore I accept her evidence.
13. In cross-examination, Ms Waale stated that it was fine that Mrs Bidal obtained the registered lease over the property in 2012 because the land had belonged to Mrs Bidal's mother. She explained that the Defendants claim a right under s. 17(g) of the Act because Mrs Bidal and her mother, who they are directly related to, asked them to stay on the property and look after it and the Defendants agreed to. She said that Mrs Bidal visited them once and told them it was fine for them to live there. Mrs Bidal also bought a piece of land at Fanafo for the Defendants to garden at.
14. Ms Waale clarified in re-examination that the Defendants paid land rents for the property to prevent their removal from the land. So their payments of land rents enabled them to keep hold of the property. They only knew that Mrs Bidal had obtained the registered lease when Mr Lecerf told them.

E. Discussion

15. The Defendants are the actual occupants of the property.
16. Mr Willie submitted that the Defendants are not trespassers as they were invited onto the land by Mrs Bidal's relatives. The invitation is indefinite because of Mrs Bidal's grandmother's invitation made in 1979. Further, that the Defendants paid land rents up until Mrs Bidal obtained the registered lease otherwise they would have had to move out.
17. Mrs Vire submitted that Ms Waale stated twice in cross-examination that the Defendants were looking after the land for Mrs Bidal's mother. She submitted that the Defendants do not have a right under s. 17(g) as up to 2012, there was no lease over the land therefore the Defendants were squatters on the land. Mrs Vire submitted that compensation is not available to the Defendants as they abandoned the Counter Claim.
18. The Defendants have established that they were invited onto the land by Mrs Bidal's relatives. The land has been public land since 1982. As there is no evidence as to what rights of ownership or otherwise that Mrs Bidal's relatives had over the land, I must assume that they did not have any ownership rights and were therefore squatters and



trespassers. Accordingly their invitation to the Defendants to reside on the subject land does not give the Defendants any *established* right or interest associated with their actual occupation so as to make the Claimant's holding of the lease subject to their occupation by virtue of s. 17(g) of the Act: *Ishmael v Kalsev* [2014] VUSC 88 and *William v William* [2004] VUCA 16.

19. Finally, the Defendants may have a claim for compensation against Mrs Bidal in relation to their payments of land rents which prevented their removal from the land and thereby safeguarded possession of the land until Mrs Bidal's lease was registered. Given the Defendants abandoned their Counter Claim, this is a matter for separate action, if any.

F. Result and Decision

20. Judgment is entered for the Claimant.
21. The Defendants are to vacate leasehold title no. 03/OI71/021 within 2 months from the date of service of this judgment.
22. The Claimant is entitled to her costs on the standard basis to be agreed or taxed by the Master. Once settled, the costs are to be paid within 21 days.

G. Enforcement

23. Pursuant to rule 14.37(1) of the *Civil Procedure Rules*, I now schedule a Conference at **8.40am on 19 August 2021**, including by video link to the Luganville Court House, to ensure the judgment has been executed or for the Defendants to explain how it is intended to comply with this judgment. For that purpose, this judgment must be personally served on the Defendants.

DATED at Port Vila this 29th day of June 2021
BY THE COURT


.....
Viran Molisa Trief
Judge

