

BETWEEN: Moses Bebe & Aaron Lingi, Michael Siba,
Judah Siba, Arthur Nasia and Tony Hungai
Claimants

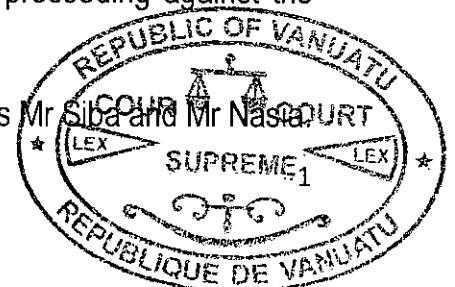
AND: Jerome Natu
Defendant

Date: 31 October 2023
Before: Justice V.M. Trief
Counsel: Claimant – Mr R. Tevi
Defendant – Mrs M.P. Vire

DECISION AS TO QUANTUM OF DAMAGES

A. Introduction

1. By the Claim, the Claimants Moses Bebe, Aaron Lingi, Michael Siba, Judah Siba, Arthur Nasia and Tony Hungai sought an order for the payment of the balance of compulsory acquisition compensation allegedly owed to them. The Government paid the compensation to the Defendant Jerome Natu who is the owner of JBN Estate and it was his responsibility to then make payments to the individual Claimants. The Claim is disputed.
2. This matter was listed for Trial on 21 April 2023. However, Mr Tevi requested and Mrs Vire agreed that this matter proceed by way of submissions as the only issue was the lessor's interest and how that would affect the quantum each Claimant was entitled to. In addition, four of the Claimants had already received payment in full and there were only two Claimants left – one who has received some payment and the other no payments.
3. Subsequently, on 24 April 2023, the four Claimants Moses Bebe, Aaron Lingi, Judah Siba and Tony Hungai filed Notice of Discontinuance of the proceeding against the Defendant.
4. This is the decision in respect of the Claim by the two Claimants Mr Siba and Mr Nasia.

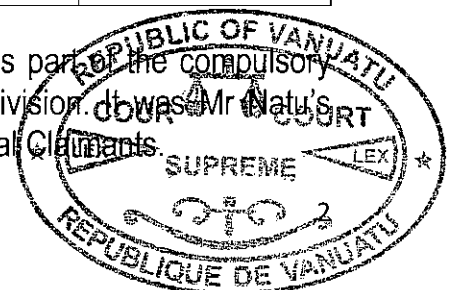


B. Background

5. The Claimants Mr Siba and Mr Nasia resided at Banban area at Luganville on Santo island on leasehold property owned by the Defendant Jerome Natu who is the custom owner of Biria custom land and owner of JBN Estates.
6. In 2017, Mr Natu commenced eviction proceedings against the Claimants alleging trespass as they had not purchased the property as required under the agreements that they had or at all.
7. In 2019, the Government notified the Claimants that the whole of JBN Estates' subdivision would be compulsorily acquired for the extension of Pekoa Airport. Government valuers then attended to the Claimants' residential premises and produced a statutory valuation report for each Claimant as follows:

Claimant	Lease title no.	Head of claims & Amount	Total claim
Michael Siba	04/3022/617	<ul style="list-style-type: none"> • Improvement – VT4,740,000 	VT4,740,000
Arthur Nasia	04/3022/594	<ul style="list-style-type: none"> • Agricultural Valuation – VT181,000; • Lessee's interest on lease – VT2,017,000; • Cost of Hardship caused by Acquisition – VT908,000; and • Relocation costs – VT600,000. 	VT3,706,000
Arthur Nasia	04/3022/596	<ul style="list-style-type: none"> • Agricultural Valuation – VT227,350; • Lessee's interest on lease – VT1,109,000; and • Cost of Hardship caused by Acquisition – VT449,000. 	VT1,785,000

8. The Government then paid VT350,000,000 compensation as part of the compulsory acquisition process for the whole of the JBN Estates subdivision. It was Mr Natu's responsibility to subsequently make payments to the individual Claimants.



9. Mr Natu made payments to the Claimants (except for Mr Siba, and of a lesser amount than that set out in each Claimant's statutory valuation report for reasons including that they were trespassers therefore not entitled to lessee's interest). Each Claimant signed an agreement with Mr Natu to the effect that the funds paid to them were in full and final settlement of compensation due to them and releasing Mr Natu from any further claims concerning the land. The Claimants' case is that those agreements were made in bad faith.
10. Mr Natu did not make any payment to Mr Siba on the basis that he had no right as he had voluntarily vacated the plot that he occupied and it was being taken up by another.
11. The relief sought in the Claim included orders for the payment of the balance that the Claimants are entitled to, damages, interest and costs.

C. Evidence – Mr Siba's claim

12. **Mr Siba** in his Sworn statement filed on 8 November 2021 deposed that he occupied lease title no. 04/3022/617, made developments on that land and has not been paid any of the compensation payable. He attached as **Attachment "MS1"** a copy of the statutory valuation report for lease title no. 04/3022/617. It is stated in clause 2.1 of the report as follows:

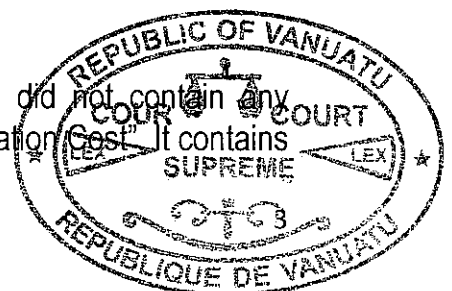
2.0 Description of Property and site details

2.1 *The subject property is an improved property with an incomplete seven bedroom house. The property has being [sic] developed by a previous owner and later sold to another Lessee.*

13. Mr Siba deposed that he wanted only compensation for the improvements that he made on the land. The report assessed the "Improvements" at VT3,253,125 which added to "Lessee's interest (land)" of VT1,487,270 totalled a valuation of VT4,740,000 for "Lessee's Interest on Lease".
14. **Mr Natu** in his Sworn statement filed on 8 September 2021 deposed that he had to file eviction proceedings against the Claimants but Mr Siba was not included because he had abandoned his plot which was (presumably, then) sold out.
15. In his Further Sworn statement filed on 7 July 2022, Mr Natu deposed that at all material times, he was the lessee of the properties the Claimants claimed for. The Claimants on the other hand were trespassers hence are not entitled to "Lessee's interest on lease" or "Cost of Hardship caused by Acquisition". All they are possibly entitled to is "Agricultural valuation", "Forest valuation" and/or "Relocation Cost".

D. Consideration – Mr Siba's claim

16. The statutory valuation report for lease title no. 04/3022/617 did not contain any valuation for "Agricultural valuation", "Forest valuation" or "Relocation Cost". It contains



valuations for “Improvements” and “Lessee’s interest (land)” only which were then added up and the total stated to be the valuation for “Lessee’s Interest on Lease”.

17. Mr Siba was a trespasser on the land therefore he is not entitled to any of the compensation paid for “Lessee’s interest (land)”. His only entitlement is to the whole or part of the compensation paid for “Improvements”.
18. Mr Siba did not specify in his evidence the exact improvements that he made on lease title no. 04/3022/617. However, by relying on the statutory valuation report to prove his claim, I infer that the incomplete 7-bedroom house referred to in clause 2.1 of the report was built by Mr Siba. There is certainly no evidence from Mr Natu to the contrary.
19. There was suggestion that Mr Siba had abandoned the plot and it was sold to another. There is no evidence from Mr Natu that lease title no. 04/3022/617 was actually sold to a third party and who that person was, nor is there any evidence as to any payments (if any) that he made to that third party.
20. In the circumstances, I find that Mr Siba has proved his claim on the balance of probabilities for an order that he be paid VT3,253,125 in respect of improvements that he made to lease title no. 04/3022/617.
21. Neither counsel made submissions as to an award of general, exemplary or punitive damages. I decline to award such damages.
22. Mr Siba is entitled to costs and interest.

E. Evidence – Mr Nasia’s claim

23. **Mr Nasia** in his Sworn statement filed on 10 November 2021 deposed that he occupied lease title no. 04/3022/594 and lease title no. 04/3022/596. Further, that he made developments on the land but has not been paid the whole of the compensation payable. He attached as **Attachment “AN2”** copies of the statutory valuation reports for each lease title.

24. It is stated in clause 2.1 of the report for lease title no. 04/3022/594 as follows:

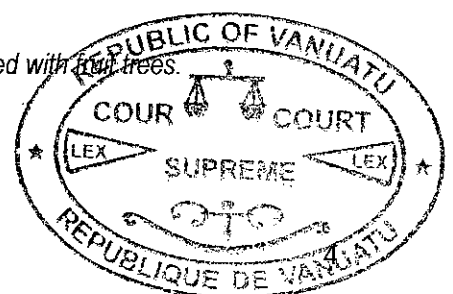
2.0 Description of Property and site details

2.1 *The subject property is an improved property with semi-permanent building, an incomplete house with any underground well and an ongoing bakery business.*

25. Clause 2.1 of the report for lease title no. 04/3022/596 states as follows:

2.0 Description of Property and site details

2.1 *The subject property is vacant property but covered & maintained with fruit trees.*



26. Mr Nasia deposed that he wanted only compensation for the improvements that he made on the land. The lease title no. 04/3022/594 report contained the following summary of valuation:

4.0 Summary of Valuation

Head of Claims	Amount in Vatu
<i>Agricultural Valuation</i>	VT181,000
<i>Lessee's Interest on Lease</i>	VT2,017,000
<i>Cost of Hardship caused by Acquisition</i>	VT908,000
<i>Relocation Cost</i>	VT600,000
TOTAL CLAIM:	VT3,706,000

27. The lease title no. 04/3022/596 report contained the following heads of claims valuations:

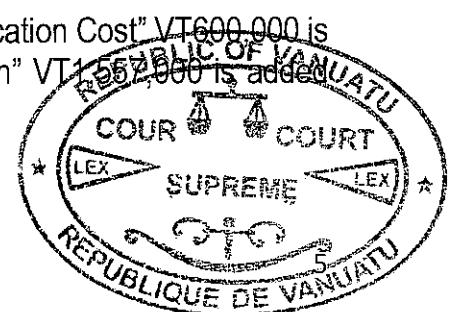
4.0 Summary of Valuation

Head of Claims	Amount in Vatu
<i>Agricultural Valuation</i>	VT227,350
<i>Lessee's Interest on Lease</i>	VT1,109,000
<i>Cost of Hardship caused by Acquisition</i>	VT449,000
TOTAL CLAIM:	VT1,785,000

28. **Mr Natu** in his Sworn statement filed on 8 September 2021 deposed that he has paid Mr Nasia VT1,573,252 in respect of compensation payable for lease title no. 04/3022/594 and VT659,600 in respect of compensation payable for lease title no. 04/3022/596 (totalling VT2,232,852). He attached a copy of the disbursement advice for Mr Nasia dated 3 March 2021 in **Attachment "JN6"**.

F. Consideration – Mr Nasia's claim

29. Mr Nasia was a trespasser on the land therefore he is not entitled to any of the compensation paid for "Lessee's interest (land)". He is entitled to the whole or part of the balance of the compensation paid.
30. The quantum of "Agricultural Valuation" assessed for the land occupied by Mr Nasia lease title no. Mr Nasia was VT181,000 and VT227,350 therefore total of VT408,350.
31. The "Cost of Hardship caused by Acquisition" assessed was VT908,000 and VT449,000 therefore total of VT1,557,000.
32. The "Relocation Cost" assessed was VT600,000.
33. The total for "Agricultural Valuation" VT408,350 and for "Relocation Cost" VT600,000 is VT1,008,350. When "Cost of Hardship caused by Acquisition" VT1,557,000 is added on, the total is VT2,565,350.



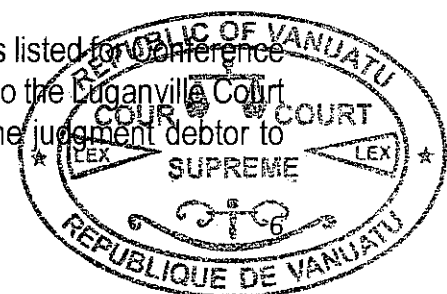
34. Accordingly, despite Mr Natu's evidence that a trespasser cannot be entitled to compensation paid for "Cost of Hardship caused by Acquisition", the compensation that he has already paid over to Mr Nasia totalling VT2,232,852 must have included some portion if not all of the quantum payable for "Cost of Hardship caused by Acquisition". I conclude that contrary to Mr Natu's evidence, he has embarked on payment to Mr Nasia of all of the quantum assessed for "Cost of Hardship caused by Acquisition" totalling VT1,557,000.
35. Accordingly, the total that Mr Nasia is entitled to is VT2,565,350. Mr Natu has paid him VT2,232,852 therefore there is a shortfall in payment of VT332,498.
36. In the circumstances, I find that Mr Nasia has proved his claim on the balance of probabilities for an order that he be paid VT332,498 being the shortfall in compensation payable to him in respect of lease title no's 04/3022/594 and 04/3022/596.
37. Neither counsel made submissions as to an award of general, exemplary or punitive damages. I decline to award such damages.
38. Mr Nasia is entitled to costs and interest.
39. Interest will be calculated from 3 March 2021 when clearly Mr Natu had received compensation funds from the Government and had begun disbursing them to occupiers of his leasehold titles, but not to Mr Siba and not completely to Mr Nasia.

G. Result and Decision

40. Judgment is **entered** for the Claimants Michael Siba and Arthur Nasia and it is **ordered** that the Defendant make payment as follows:
 - a. The Defendant is to pay Mr Siba VT3,253,125 being the compensation payable to him in respect of improvements that he made to lease title no. 04/3022/617; and
 - b. The Defendant is to pay Mr Nasia VT332,498 being the shortfall in compensation payable to him in respect of lease title no's 04/3022/594 and 04/3022/596 (total of VT3,585,623 being the 'judgment sum').
41. The Defendant is to pay interest of 5% per annum on the judgment sum from 3 March 2021 until the judgment sum is fully paid.
42. Costs are to follow the event. The Defendant is to pay the Claimants' costs as agreed or as taxed by the Master and once set, within 28 days.

H. Enforcement

43. Pursuant to rule 14.3(1) of the *Civil Procedure Rules*, this matter is listed for Conference **at 1.15pm on 30 November 2023**, including by phone/video link to the Eganville Court House, to ensure that the judgment has been executed or for the judgment debtor to



explain how it is intended to pay the judgment debt. For that purpose, this judgment must be personally served on the Defendant and proof of service filed.

**DATED at Port Vila this 31st day of October 2023
BY THE COURT**


Justice Viran Molisa Trief

