

**REPUBLIC OF VANUATU
OFFICE OF THE OMBUDSMAN**

PUBLIC REPORT
on the
IMPROPER GRANTING
of
LAND LEASE TITLE 11/OE22/016
by the
FORMER MINISTER
PAUL TELUKLUK
and
FORMER DIRECTOR OF LANDS
ROGER TARY

This report contains the findings of fact, opinions, views and unlawful conduct and the recommendations of the Ombudsman pursuant to the Constitution of the Republic of Vanuatu and the Ombudsman Act No.14 of 1995.

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IMPROPER GRANTING OF LAND LEASE TITLE 11/OE22/016
BY THE
DEPARTMENT AND MINISTRY OF LANDS**

TABLE OF CONTENTS

PREAMBLE	3
1 SUMMARY	3
2 JURISDICTION AND SCOPE OF REPORT	4
3 METHOD OF INVESTIGATION	4
4 RELEVANT LAWS AND PROCEDURES	4
4.1 Section 6(1) of the Land Reform Act Cap. 123	4
4.2 Section 31 of Land Leases Act cap. 163.....	5
4.3 The Department of Lands' Procedure	5
4.4 Paragraph 9.15 of chapter IX of Vanuatu Public Service Staff Manual.....	5
4.5 Article 5 of the Constitution	5
4.6 Articles 66 and 67 of the Constitution and section 14(2)(g) of the Ombudsman Act No.14 of 1995	5
4.7 Sections 99 and 100 of Land Leases Act cap. 163.....	5
5 FACTUAL BACKGROUND	5
6 COMMENTS ON THE PRELIMINARY REPORT BY INDIVIDUALS AFFECTED	8
7 FINDINGS OF WRONGFUL CONDUCT AND DEFECTIVE ADMINISTRATIVE PRACTICE.....	9
8 RECOMMENDATIONS	10
<u>RECOMMENDATION NO.1 A COMPREHENSIVE POLICY SHOULD BE PUT IN PLACE BY THE GOVERNMENT ALLOWING FOR THE PROPER AND FAIR LEASE OF GOVERNMENT LANDS AT MARKET VALUE</u>	<u>10</u>
<u>RECOMMENDATION NO.2 MR TELUKLUK SHOULD NOT BE APPOINTED TO HOLD ANY MINISTERIAL PORTFOLIO IN ANY FUTURE GOVERNMENTS.</u>	<u>11</u>
<u>RECOMMENDATION NO.3 MR TARY SHOULD NOT BE PLACED IN CHARGE OF THE DEPARTMENT OF LANDS AGAIN, OR OF OTHER GOVERNMENT DEPARTMENT OR OF GOVERNMENT STATUTORY BODIES AS HE HAS PROVED HIMSELF TO BE INCAPABLE AND CORRUPT.</u>	<u>12</u>

RECOMMENDATION NO.4 MRS MULIAKI SHOULD BE REPRIMANDED BY THE PUBLIC SERVICE COMMISSION. 12

RECOMMENDATION NO.5 MRS COULON SHOULD ALSO BE REPRIMANDED BY THE PUBLIC SERVICE COMMISSION. 12

RECOMMENDATION NO.6 ALL OFFICERS IN THE DEPARTMENT OF LANDS SHOULD BE INSTRUCTED NOT TO ACCEPT ANY INSTRUCTIONS FROM THE MINISTRY OF LANDS IF THEY SEE THAT SUCH INSTRUCTIONS ARE ILLEGAL AND DO NOT FOLLOW THE DEPARTMENT'S PROCEDURE. 12

RECOMMENDATION NO.7 THE DIRECTOR OF LANDS SHOULD TAKE STEPS TO REVERSE THIS IMPROPER LEASE TRANSACTION, IN CONSULTATION WITH THE ATTORNEY GENERAL. 13

9 APPENDICES.....14

PREAMBLE

"Ye have corrupted the covenant, saith the Lord of Hosts, therefore have I also made you contemptible and base before all the people, according as ye have not kept my ways, but have been partial in the laws" Malachi 2 V 9.

The violation outlined in this report is clear and plain. Mr James had clear and unquestionable right to the full possession of a lease, but over a period of three years was shamefully treated by the officials responsible for seeing that law was carried out without prejudice or partiality.

The incident illustrates a pattern that has become familiar in many of our investigations, with Ministers and officials making up their own rules in order to favour relatives or friends. Mr James was clearly robbed of his rights by a conspiracy which was made possible by wrong doing at many levels by people who knew they were acting illegally against an innocent victim, an action described correctly by the scriptural writer as contemptible and base.

This report further confirms a major problem of undervaluation in the sale of government land that was already outlined in our recent report of the sale of government houses.

1 SUMMARY

This public report is about how a land title was improperly allocated to Mr Edmond Rory by former Minister of Lands Paul Telukluk and former Director of Lands Roger Tary on the basis of family relationships. This report highlights the need for a proper policy governing the lease of Government lands to ensure that it is done in accordance with Constitutional rights and Leadership Code Obligations, and that actual market values are used.

The Ombudsman investigated the matter following a complaint lodged by the occupant of the land, Mr James. Mr James applied to the Urban Land Leases Selection Committee for the land lease in 1991, following the established procedure. The Committee, including Mr Tary, approved his application; he was then issued a negotiator's certificate by Mr Telukluk. Mr James tried several times over three years to sign a lease with the Department of Lands but was repeatedly told that the valuation of the land was not yet ready. The Department of Lands, under Mr Roger Tary as the Director, deliberately chose not to help Mr James sign his lease for the land despite his earlier approval.

In 1994 Mr Edmond Rory approached Mr Tary about the land and was advised by Mr Tary that the land was free and that he should apply for a lease. Mr Telukluk then used his Ministerial power to issue a negotiator's certificate to Mr Rory. Mr Telukluk instructed the Department of Lands via Mr Tary to prepare Mr Rory's lease documents for his approval. Mr Rory's lease was finalised within a week, unlike Mr James who tried for years to sign a lease but was unsuccessful due to Mr Tary's and the Department of Lands' apparently negative attitude towards him.

The two Lands Officers, Mrs Elizabeth Muliaki and Mrs Antoinette Coulon, although they knew about Mr James' interest in the land, went ahead to process Mr Rory's lease following Mr Telukluk's instruction. They also knew that the Urban Lands Committee never received any application from Mr Rory which is the required procedure of the Department of Lands.

This report illustrates another example of violation of an individual's constitutional fundamental rights. The action of Messrs Telukluk and Tary contradicted article 5(1)(k) which states that no one should be discriminated against on the grounds of place of origin, and that all persons should be treated equally under the law and administrative action. Messrs Telukluk, Tary, Mrs Muliaki and Mrs Coulon all abused the Department of Lands' required procedure by processing Mr Rory's lease without the Urban Lands Committee's consideration.

In addition, Mr Telukluk abused the ministerial power vested in him to fulfil the interest of his wantok. Both Mr Telukluk and Mr Tary, who were then leaders, breached the Leadership Code by putting the benefit of their family and friends the Rorys ahead of their official duties.

Mr Tary, Mrs Muliaki and Mrs Coulon abused their Department's procedure which the rest of the population are required to follow. They ignored this procedure to fulfil Messrs Telukluk and Tary's desire to grant the lease to Mr Rory. Along with Mr Telukluk, they treated Mr James unfairly and discriminated against him to serve the interest of Mr Rory.

2 JURISDICTION AND SCOPE OF REPORT

- 2.1 Pursuant to arts. 62 of the Constitution and s.14(1) of the Ombudsman Act, the Ombudsman has jurisdiction to investigate improper administrative practices and breaches of the Leadership Code.
- 2.2 Accordingly, the Ombudsman has jurisdiction to investigate Mr Lessa James' complaint to determine whether his allegation was true and whether the actions taken by the former Director of Lands Mr Roger Tary and former Minister of Lands Mr Paul Telukluk were in accordance with the laws of Vanuatu and the Department of Lands' procedure.
- 2.3 The Scope of the investigation was to determine the following:
 - (a) why Mr. James was not granted a lease although he was granted the first stage of the land acquisition and made several attempts to sign a lease for the land;
 - (b) why the Minister and the Department of Lands granted a lease to the Rorys, and whether this was proper;
 - (c) the responsibilities of Mr Telukluk, Mr Tary, Mrs Muliaki and Mrs Coulon in processing the Rorys' lease although they knew about Mr James approved application and negotiator's certificate;
 - (d) the real market value of the land, and any defects in existing policy allowing for such sale and valuation of government land.

3 METHOD OF INVESTIGATION

- 3.1 In accordance with Art 62(3) of the Constitution, the Ombudsman is empowered to request any person likely to assist to furnish her with information and documents needed for her inquiry. Based on these powers, documents and information were obtained from the Department responsible as well as other sources.
- 3.2 Under s.17(1) of the Ombudsman Act No.14 of 1995, it is the duty of the Ombudsman where it is possible to obtain evidence and information through informal request, with the cooperation of the parties concerned.

4 RELEVANT LAWS AND PROCEDURES

4.1 Section 6(1) of the Land Reform Act Cap. 123

- 4.1.1 The above provides that no alienator or any other person may negotiate with any custom owner concerning land unless he applies to the Minister and receives a negotiator's certificate from the Minister.

4.2 Section 31 of Land Leases Act cap. 163

- 4.2.1 It is mentioned in the above section that the Minister of Lands has the power to lease land to any person.

4.3 The Department of Lands' Procedure

- 4.3.1 The ULLSC was established as an advisory body to the Minister which is responsible for receiving and screening all applications for land leases in the urban sector. The applications do not go directly to the Minister. Upon receiving the ULLSC's instructions and recommendations, the Minister issues the negotiator's certificates to the applicants.
- 4.3.2 However, despite this established procedure, there have been occasions where some people ignored the Department of Lands and approached Mr Telukluk directly to allocate land titles to them.

4.4 Paragraph 9.15 of chapter IX of Vanuatu Public Service Staff Manual.

- 4.4.1 This rule states that public officers should not act in a way to disqualify them as public officers, they should not bring their office and service into disrepute and should not act against the laws of this country.

4.5 Article 5 of the Constitution

- 4.5.1 It is stated in the above article that people cannot be discriminated against on the basis of place of origin (among other things), and that they are entitled to be treated equally under the law and administrative action.

4.6 Articles 66 and 67 of the Constitution and section 14(2)(g) of the Ombudsman Act No.14 of 1995

- 4.6.1 The two above laws provide for the Leadership Code. They state that those who are leaders, including Ministers and Department Heads, must not act:
- (a) in a situation where there is a conflict of interest, or where the fair exercise of duties might be compromised;
 - (b) so as to demean his office or have his integrity called into question;
 - (c) so as to diminish respect for the Vanuatu Government; or
 - (d) so as to use his office for personal gain.

4.7 Sections 99 and 100 of Land Leases Act cap. 163

- 4.7.1 Section 99 allows the Director of lands to rectify the lease register if it appears to him "that any register does not truly declare the actual interest to which any person is entitled under this Act or is in some respect erroneous or imperfect". Section 100 allows the Court to rectify the register in circumstances of "fraud or mistake".

5 FACTUAL BACKGROUND

- 5.1 On 06.05.91 Mr James applied to the ULLSC to lease land title 11/OE22/016, with respect to the house that he was then occupying, and continues to occupy to this day.

- 5.2 On 27.09.91 the ULLSC approved Mr James' application. Mr Tary, Director of Lands, was a member of this Committee.
- 5.3 On 04.10.91 the Secretary of the ULLSC, Mr Billiam Jeiock informed Mr James that his application was approved and that he would soon be receiving his negotiator's certificate. (Refer to Appendix "A")
- 5.4 Sometime in November 1991, Mr James received his certificate, which was signed by Minister of Lands Paul Telukluk. Mr. James approached the Department of Lands to sign his lease but was advised to wait until the valuation of the property was done.
- 5.5 Sometime in June 1992 Mr James approached the Department of Lands for the second time and requested that the valuation of the property be done so that he could sign his lease. Nothing was done.
- 5.6 At the beginning of 1993, Mr James made the third approach to the Department of Lands only to see his request fall on deaf ears.
- 5.7 In May 1993, Mr James received a letter from the Department of Lands advising him to vacate the house as it would be repaired to accommodate the Vanuatu Officials involved in the South Pacific Mini Games during the Games. As Mr James was away on Malekula on official duties, his neighbour, a Mr Joel Kaltamat approached the Prime Minister's Office with Mr James' certificate to possibly help in sorting out the matter. The intervention by the Office of the Prime Minister allowed Mr James to continue to occupy the house. However, Mr James' negotiator's certificate was left with the Prime Minister's Office and was never returned to Mr James.
- 5.8 On 21.04.94 Mr Telukluk advised Mr Tary to process the Rorys' lease for him to sign, after having apparently personally granted the Rorys a negotiator's certificate. Mr Tary on his part verbally advised Mrs Muliaki to process the lease for the Minister's approval. (Refer to Appendix "B") Mrs Muliaki did so although she was aware of Mr James' negotiator's certificate.
- 5.9 On 23.05.94, Mr Emile Olsen, the Government Valuer from Valuation Section determined the value of the land to be VT 243,000 for 609 m², ie. a cost of VT400 per m² - (to compare with VT1375 per m² for the National Housing Corporation land for low income housing scheme.
- 5.10 On 15.09.94 Mr Telukluk signed the Rorys' lease documents which were witnessed and initialled by Mrs Muliaki and Mrs Coulon (Refer to Appendix "C"). Both Mrs Muliaki and Mrs Coulon were aware of Mr James' interest in the land and his negotiator's certificate.
- 5.11 According to Mrs Muliaki and Mrs Coulon, political pressure was put on them to process and sign the lease documents. They confirmed that Mr Tary knew about Mr James' application and the negotiator's certificate approved by ULLSC.
- 5.12 On 21.09.94 the lease was registered at the Land Records Office under the Rorys' names.
- 5.13 On 27.09.94 Mr Tary informed Mr James that a lease on land title 11/OE22/016 had been granted to the Rorys. He advised Mr James to approach the Rorys on any matter concerning the leased land.
- 5.14 On 09.01.96 Mr James wrote to the Attorney General's Chambers requesting them to look into the matter.
- 5.15 On 18.01.96 the Solicitor General, then Mr Oliver Saksak wrote to the Acting Director of Lands, Mr Michael Mangawai and requested him to provide all background information, particularly as to how the Rorys came to own the land.
- 5.16 On 11.07.96 Mr James reapplied for the leased land following the Department of Lands' advice.

- 5.17 On 23.07.96 acting secretary of the Urban Lands Committee, Mr Levi Tarosa advised Mr James that his application was unsuccessful as the land was already allocated to the Rorys.
- 5.18 On 12.08.96 Mr James visited the Attorney General's Chambers to help look into the matter. Mr Ham Bulu from the Chambers wrote to Mr Mangawai informing him of Mr James' visit and reminding him of the information requested from Lands Department in their letter of 18.01.96 signed by the Solicitor General, Mr Saksak.
- 5.19 On 28.08.96 Mr Mangawai responded to Mr Bulu's letter of 12.08.96 confirming that the lease was granted to the Rorys following Messrs Telukluk's and Tary's instructions. He further confirmed that the Rorys never applied for the land title. He requested the Attorney General's Chambers' advice on the matter.
- 5.20 On 20.11.96 Mr Mangawai wrote yet another letter to Mr Bulu as a follow up of his previous letter of 28.08.96 and requested that they provide the required information mentioned in the letter.
- 5.21 On 25.11.96 Mr James lodged a complaint with the Office of the Ombudsman.
- 5.22 On 10.12.96 Mr Saksak, the Attorney General, responded to Mr Mangawai's letter of 20.11.96 stating that one person had complied with procedural formalities but was not granted a lease. Another person did not comply with any procedures but was granted a lease. He went on to state that he found this beyond comprehension and that the lease should have been appropriately granted to Mr James who had complied with the required procedure. The Attorney General advised Mr Mangawai to take steps to have the register rectified under the Land Leases Act (Refer to Appendix "D")
- 5.23 5.24 On 14.01.97 the Ombudsman wrote to Mr Mangawai requesting him to provide all relevant information regarding land lease title 11/OE22/016.
- 5.24 On 23.01.97 Mr Mangawai provided the information requested. He stated that Mr Tary verbally instructed Mrs Muliaki and Mrs Coulon to process the Rorys' lease and further confirmed that the Rorys did not apply for the leased land. (Refer to Appendix "E")
- 5.25 On 27.03.97 the Ombudsman wrote to Mrs Muliaki asking her to confirm whether Mr Tary instructed her to process the Rorys' lease and whether the Rorys applied for the land following the Department of Lands' procedure.
- 5.26 On 07.04.97 Lands Officer, Mrs Muliaki confirmed Mr Tary's advice to her to process the lease and that the Rorys did not apply for the land. She also confirmed that she was aware of Mr James' negotiator's certificate but that the instructions from Messrs Telukluk and Tary ordered her process the lease. In her opinion, the above lease should have been granted to Mr James. (Refer to Appendix "F")
- 5.27 In his statement to this Office, Mr Tary stated that he only became aware of the Rorys' interest in the land when Mr Telukluk called him to tell him that the land was to be allocated to the Rorys. Mr Tary confirmed that the Rorys never approached him to lease the land and said they probably approached the Minister about it. He confirmed receiving the payment for the land from Mr Rory.
- 5.28 Mr Tary stated that he informed the Minister about Mr James' interest and said even the Minister himself knew that Mr James was occupying the land. Mr Tary also mentioned that he was in the Department of Lands to carry out the Minister's instructions. He went on to say that the officer who prepared the lease documents should have informed him upon realising that the procedure adopted to issue the lease was improper.
- 5.29 There were existing relationships between Mr Tary and Mr Telukluk and the Rorys. Mr Telukluk and the Rorys are related and they come from Vao Island in Malekula region. Mr Telukluk is close to the Rorys through a marriage which saw his elder

brother Mr Claude Telukluk marrying Mr Rory's cousin sister. Mr Claude Telukluk's wife is a daughter of Mr. Chanel Rory who is Mr Edmond Rory's uncle. Mr Tary was then living with Miss Josette Rory who is a niece of the Rorys.

- 5.30 The Valuation Section of the Lands Survey Department advised this Office that it takes them approximately one day to have the value of a land determined and made available for collection. This raises questions about the advice Mr James repeatedly received for over two years when he attempted to have his lease prepared and signed.
- 5.31 The following information was obtained from all relevant documents submitted by the Department of Lands and a private Real Estate Agent:
- | | | |
|-------------|---|------------------------|
| Lease Title | - | 11/OE22/016 |
| Lease Type | - | Residential |
| Land Area | - | 609 sq. metre |
| Location | - | Stade/Tennis Club Area |
- 5.32 The Government valuer valued the land at VT243,000 using the cheapest rate of VT400 per square metre. Mr Olsen and his officers do not have any qualifications whatsoever in Valuation. A private Real Estate Agent contacted by the Ombudsman's Office she stated that the market rate for that particular location is VT1,000 per square metre. The market value as according to the Real Estate Agent would be VT609,000. There also was a small construction on the land.
- 5.33 Alternatively, if the National Housing Corporation's rate of VT1,375 per square metre was adopted the land value would be VT837,000. This is VT594,000 more than the above Government value.

6 COMMENTS ON THE PRELIMINARY REPORT BY INDIVIDUALS AFFECTED

- 6.1 S.16(4) of the Ombudsman Act states that the Ombudsman must give a right to reply or to comment on the accusations to all the parties complained of.
- 6.2 In accordance with the above, a preliminary report was issued on the 23 December 1997 to all individuals affected by this report. Replies received are attached as appendices to this report.
- 6.3 The Lands Officer Mrs Coulon was the first to respond (refer to Appendix "G"). Mrs Coulon reconfirmed that Mr Rory never applied for the land title. She confirmed that before she witnessed the signing of the lease, she took the initiative to see Mr Tary about the matter only to be informed by Mr Tary that the instruction to prepare Mr Rory's lease came from the Minister, Mr Telukluk. Despite her knowledge of Mr James' interest, Mrs Coulon did not address the matter with Mr Telukluk and went ahead to sign the lease.
- 6.4 Mr Rory was the next person to respond to our preliminary report. He stated that he submitted an application for the land to Mr Tary following Mr Tary's advice that he should apply for the land. He confirmed having a family relationship with Mr Telukluk and Mr Tary but he stated that he did not use this to acquire the land, he followed the procedure. He mentioned that maybe Messrs Telukluk and Tary used that relationship to allocate the land to him but that is something outside his knowledge. He went on to state that had Mr Tary told him someone else was interested in the land he would not have applied for it. This contradicted his statement where he mentioned at the beginning that he knew about Mr James' family residing on the land and paying the rent for the house to someone else (Refer to Appendix "H").
- 6.5 Mr Rory was Mr James' next door neighbour and he knew very well that Mr James and his family were and still are occupying the land. Mr Rory never approached Mr James or his family to discuss the lease.

- 6.6 Mr Telukluk, the main man behind this irresponsible deal, chose not to respond although he requested and was issued an additional copy of the preliminary report in French for his better understanding.
- 6.7 Mr Tary also did not respond to the preliminary report. He, along with Mr Telukluk initiated the whole affair but decided not to reply. We therefore have to consider that they are accepting the truth of the facts presented in our report.
- 6.8 Mrs Muliaki who was instructed by Mr Tary to prepare Mr Rory's lease did not respond to the preliminary report. However, during the investigation, Mrs Muliaki stated that Mr Rory did not apply and that she was aware of Mr James' negotiator's certificate. She also mentioned that in her opinion it was appropriate for Mr James to have been granted a lease.
- 6.9 Mrs Muliaki knew before preparing Mr Rory's lease documents that the action taken by Messrs Telukluk and Tary was unfair to Mr James. She also knew that the required procedure within the Department of Lands was not followed. It was irresponsible behaviour by Mrs Muliaki to have acted upon an instruction which she knew very well to be improper.
- 6.10 Mr Emile Olsen who was and is still responsible for recommending very low prices for all Government lands was sent a part of the report regarding his unrealistic values. He chose not to respond to the preliminary report.

7 FINDINGS OF WRONGFUL CONDUCT AND DEFECTIVE ADMINISTRATIVE PRACTICE

FINDING NO. 1: BREACH OF ART 5 OF THE CONSTITUTION BY MR TELUKLUK IN USING HIS MINISTERIAL POWER TO GRANT THE LEASE TO HIS RELATIVES MR AND MRS EDMOND RORY

- 7.1 Mr Telukluk breached Art 5 of the Constitution as he decided to use his Ministerial power to grant the lease to his relatives and people of his home island, Mr and Mrs Edmond Rory. Mr Telukluk did not treat Mr James fairly or equally under administrative action as required. Mr Telukluk decided to ignore Mr James' interest and the certificate he granted to him and put the interest of his relatives first even though Mr James had complied with the Department of Lands' procedure. This is a breach of Mr James' fundamental human right.

FINDING NO. 2: CONTRIBUTION TO THE BREACH OF ART 5 OF THE CONSTITUTION BY MRS MULIAKI, MRS COULON AND MR TARY

- 7.2 Mrs Muliaki, Mrs Coulon and Mr Tary on their part contributed to the breach of Art 5 of the Constitution in that they knew about Mr James' application and negotiator's certificate but did not take steps to ensure his fair and equal treatment. They helped in making sure that the interests of Mr Telukluk's relatives were put before Mr James who had followed the procedural formalities to acquire a lease and was living on the property.

FINDING NO. 3: BREACH OF THE LEADERSHIP CODE BY MESSRS TELUKLUK AND TARY

- 7.3 Messrs Telukluk and Tary breached the Leadership Code as they were leaders under Art 67 of the Constitution and S14(2)(g) of the Ombudsman Act No. 14 of 1995. They placed themselves in a position of conflict of interest between their official duties and their desire to advance the interests of their relatives and wantoks. By not following the established procedures for land lease titles, in favour of the Rorys and in violation of Mr James' fundamental rights, Messrs Telukluk and Tary demeaned their positions and allowed their integrity to be called into question.

FINDING NO.4: BREACH OF PARAGRAPH 9.15 OF CHAPTER IX OF VANUATU PUBLIC SERVICE STAFF MANUAL BY MR TARY, MRS MULIAKI AND MRS COULON

- 7.4 Mr Tary principally and Mrs Muliaki and Mrs Coulon breached paragraph 9.15 of chapter IX of the Vanuatu Public Service Staff Manual in that they decided to follow Mr Telukluk's instruction issued by applying his Ministerial power unfairly for the benefit of his relatives. The Public Service Staff Manual rule states that public officers should not act in a way to disqualify them as public officers, they should not bring their office and service into disrepute and should not act against the laws of this country. The officers did not comply with the rule.

FINDING NO. 5: MALADMINISTRATION AND UNFAIRNESS TO SELL GOVERNMENT LANDS AT DISCOUNTED PRICES DETERMINED BY GOVERNMENT VALUATION OFFICE

- 7.5 Government land, whose lease and rental is one of the biggest sources of Government revenue, have been undervalued by Mr Olsen from the Government Valuation Office. This is unfair to the people of Vanuatu as the money collected by the Government from land values and rents should be used to fund essential services to the people. By undervaluing all Government lands, the people of Vanuatu continue to lose a lot of money. Their assets are being improperly managed and undervalued for the benefit of just a few and forgetting the rest of the population.

FINDING NO. 6 LACK OF POLICY TO SELL GOVERNMENT LANDS AT UNDERVALUED PRICES

- 7.6 There is no policy in place for the sale of Government land. Because of the lack of appropriate policy, those who are in the system are able to misuse their power by allocating very cheap land titles to their relatives and wantoks, discriminating against the rest of the population. The only social institution for land which exists is the National Housing Corporation (NHC) which subdivides and sells land for low-housing projects. The rate applied by NHC since 1994 is VT 1,375 per square metre, (much higher than the rates applied by Government Valuation Section on all Government lands) and these blocks are to be allocated to ni-Vanuatu with low income. Outside of NHC, Government lands have been sold at very cheap prices and we have not been able to understand the logic. We have not been able to find who is authorised to apply for government land and who is not.
- 7.7 Without policy, Government land can be sold at very cheap prices in favour of selected people. It is a breach of section 5 of the Constitution which guarantees equal treatment for all, and frequently also of the Leadership Code.

8 RECOMMENDATIONS

RECOMMENDATION NO.1 A COMPREHENSIVE POLICY SHOULD BE PUT IN PLACE BY THE GOVERNMENT ALLOWING FOR THE PROPER AND FAIR LEASE OF GOVERNMENT LANDS AT MARKET VALUE

- 8.1 This is the most urgent measure for the Government to take and implement. The Government should create a proper policy and procedure, in the form of Rules under the Land Leases Act, to govern the lease of Government land.
- 8.2 The policy and procedure must respect the Constitution (particularly equal treatment in s. 5 and the Leadership Code in s. 66), and must maximize the revenue (both lump sum and ongoing lease payments) for the benefit of the people of Vanuatu. As such, the policy and procedure must be designed to ensure that:

- Individual applicants are treated equally and without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex
- Favourable status may only be given in accordance with a program designed to benefit women, children, young persons, members of under-privileged groups or inhabitants of less developed areas
- The discretion available to the Minister or other person or Committee to pick and choose among applicants is either eliminated entirely (for example, leased to occupant or by lottery) or kept to a minimum by utilizing strict criteria
- The Minister or other persons empowered to approve applicants may not make such decisions where they have a personal connection to the applicant or property, where there is or appears to be a conflict of interest, or where there may be personal gain
- Valuation of government land leases must be based on **actual market value**, as assessed by qualified Valuation Officers, and in any event no less than the value attained by applying the National Housing Corporation rate
- Lands Officers are authorized to suspend the processing of a lease if it is not in accordance with the policy, Rules, Constitution or other laws of Vanuatu

8.3 Land is a Government asset and should be leased in accordance with proper procedures. The people of Vanuatu have not been treated fairly when it comes to the lease of Government lands. Land should not have been leased on favourable terms to the wantoks of people in power. The Government (and hence the people) has lost and continues to lose a lot of revenue through very cheap valuations produced by Mr Emile Olsen as Principal Valuer. The valuations affect both the lump sum payments for the land lease as well as the lease payments made annually into the future. The Government should ensure that valuation officers are properly trained and qualified in Valuation; ideally, more than one officer would assess each title and the average value would be used.

RECOMMENDATION NO.2 MR TELUKLUK SHOULD NOT BE APPOINTED TO HOLD ANY MINISTERIAL PORTFOLIO IN ANY FUTURE GOVERNMENTS.

- 8.4 Mr Telukluk should never be appointed again to hold any ministerial portfolio in any future governments for doing the following as mentioned in this report:
- (a) abused the Department of Lands' procedure by approving and granting Mr Rory a lease in breach of the Leadership Code in favour of a relative as openly against someone who had followed all the procedures. Mr Telukluk was trusted with his ministerial powers and he has shown himself not to be trustworthy by the people of Vanuatu;
 - (b) abused his ministerial power to discriminate against Mr James for the benefit of Mr Rory to whom he has family connection, both of them originating from the same island. Mr Telukluk breached article 5(1) of the Constitution which states that people should not be discriminated against on the grounds of place of origin and language. Mr Telukluk must respect people's fundamental constitutional rights.
- 8.5 Mr Telukluk has had previous findings of maladministration made against him. (See Illegal Ex gratia Payments to 23 1988 Former MPs and Improper Sale of Government houses).

RECOMMENDATION NO.3

MR TARY SHOULD NOT BE PLACED IN CHARGE OF THE DEPARTMENT OF LANDS AGAIN, OR OF OTHER GOVERNMENT DEPARTMENT OR OF GOVERNMENT STATUTORY BODIES AS HE HAS PROVED HIMSELF TO BE INCAPABLE AND CORRUPT.

- 8.6 Mr Tary abused his Department's own procedure by following Mr Telukluk's instruction to prepare Mr Rory's lease even though he knew that the matter was never discussed by the ULLSC. He did this to serve the interest of Mr Telukluk's relatives and wantoks as he also has family connection with Mr Rory and Mr Telukluk.
- 8.7 Mr Tary is also implicated in the Ombudsman's report on the improper sale of government houses. In addition, Mr Tary was convicted and jailed in July 1996 (when he was still the Director of Lands) for misappropriation of public funds.

RECOMMENDATION NO.4

MRS MULIAKI SHOULD BE REPRIMANDED BY THE PUBLIC SERVICE COMMISSION.

- 8.8 Mrs Muliaki should be reprimanded by the Public Service Commission for doing the following:
- (a) she decided to follow Mr Telukluk's improper instruction as instructed by Mr Tary although she knew very well that it did not follow the Department of Lands' required procedure. She also abused her Department's procedure.
 - (b) by following Mr Telukluk's instruction, Mrs Muliaki has helped him to apply the ministerial power vested in him in a very discriminatory way against Mr James for the interests of Mr Rory.
 - (c) Even if she could not oppose the Minister, some official reminders could have been sent and she could have refused to be part of it.

RECOMMENDATION NO.5

MRS COULON SHOULD ALSO BE REPRIMANDED BY THE PUBLIC SERVICE COMMISSION.

- 8.9 Mrs Coulon is to be reprimanded by the Public Service Commission due to the following:
- (a) although she took the initiative to see Mr Tary about the matter and knew that the required procedure was bypassed, she went on to sign the lease documents as a witness.
 - (b) Mrs Coulon, like Mrs Muliaki, helped Mr Telukluk to use his ministerial power to discriminate against Mr James by witnessing the lease documents for Mr Telukluk's signature.
 - (c) She could have refused to witness the lease.

RECOMMENDATION NO.6

ALL OFFICERS IN THE DEPARTMENT OF LANDS SHOULD BE INSTRUCTED NOT TO ACCEPT ANY INSTRUCTIONS FROM THE MINISTRY OF LANDS IF THEY SEE THAT SUCH INSTRUCTIONS ARE ILLEGAL AND DO NOT FOLLOW THE DEPARTMENT'S PROCEDURE.


- 8.10 Officers should inform the Minister and give their reasons as to why they are not complying with the instructions. Although the Minister of Lands has his own power, all Lands Officers should check every ministerial instruction to make sure that

ministerial power is not used unfairly and in a discriminatory way as it would go against the Constitution. The officers should also in such a case contact the Attorney General for advice.

RECOMMENDATION NO.7 **THE DIRECTOR OF LANDS SHOULD TAKE STEPS TO REVERSE THIS IMPROPER LEASE TRANSACTION, IN CONSULTATION WITH THE ATTORNEY GENERAL**

- 8.11 The lease transaction in favour of the Rorys may possibly be reversed by rectification of the lease register under s. 99 or 100 of the Land Leases Act, or nullified as having been made contrary to law (in violation of the Constitution). The current Director of Lands, with the advice and assistance of the Attorney General, should proceed with efforts in this regard. This may ultimately give Mr James, who followed the correct procedure at the time and who continues to occupy the land, the opportunity to obtain the land lease title at a reassessed market value through proper procedures.

Dated this 9th day of April 1998.

A handwritten signature in dark ink, appearing to be 'Marie-Noëlle Ferrieux Patterson', written over a horizontal line.

Marie-Noëlle FERRIEUX PATTERSON
OMBUDSMAN OF THE REPUBLIC OF VANUATU

RÉPUBLIQUE DE VANUATU

SERVICE DES TERRES
PORT VILA

MINISTÈRE DES AFFAIRES FONCIÈRES



REPUBLIC OF VANUATU

LANDS DEPARTMENT,
PORT VILA

MINISTRY OF LANDS

PRIVATE MAIL BAG 907

Telephone : 22692

DATE: 4 th, October, 1991.

N-O/Ref. LDU: 409/3/BJ/cj

V-Y/Ref. _____

Mr. James Iessa,Geology Mines & RuralWater Supply,PMB 007 Port Vila.

Lands Department had acknowledged your application to Lease Land Title
Part 120 located at Pompiduo area for residential
 purposes.

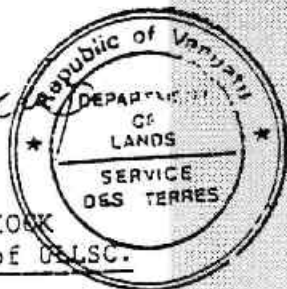
At the ULLSC meeting of 27TH September 1991 committee had grand approval
 to your application.

Your Certificate of Registered Negotiator will be send to you in due Course.

Thank you for applying.

Regards.

William Jeiock
 BILLIAM JEIOCK
 Secretary of ULLSC.



GOUVERNEMENT
DE LA REPUBLIQUE
DE VANUATU



GOVERNMENT
OF THE REPUBLIC
OF VANUATU

MINISTERE DES AFFAIRES FONCIERES,
DES RESSOURCES MINERALES ET DES PECHEES

MINISTRY OF LANDS, MINERAL
AND FISHERIES

Our Ref: 202/85/1

21st April 1994

Mr. Roger Tary
Directeur des Terres

Objet : Consentement de Bail a Mr. Edmond Rory - Titre
11/OE22/016

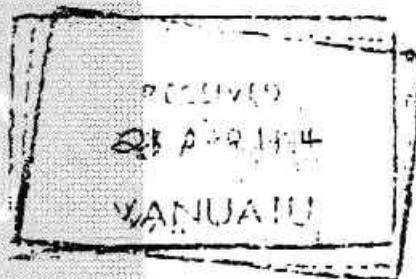
Monsieur le Directeur,

Je tiens a t'informer de ma decision, de consentir un Bail, objet
du titre 11/OE22/016 (partie du Titre 120) sis au quartier Stade,
a Mr. Rory Edmond.

Ainsi, je demande a ce que ton service fasse le necessaire,
suivent la procedure normale, d'etablir ledit bail pour ma
signature.

Veuillez agreer Monsieur le Directeur, mes sincerres salutation.

Teletype
Hon. Paul B. Teukimin
Ministre des Ressources Naturelles



APPENDIX "B"

TRANSLATION

Our Ref: 202/85/1

4 September 1997

Mr. Roger Tarry
Director of Lands
Port Vila

**Reference: Consentment of Lease to Mr Edmond Rory -
Title 11/OE22/016**

Sir,

I would like to inform you of my decision, to consent a lease, Title No. 11/OE 22/016 (part of Title 120) located at Stade, to mr. Rory Edmond.

Sir, I request that your office does the necessary, following normal procedures, to prepare the above mentioned lease for my signature.

Yours faithfully.

Hon. Paul B. TELUKLUK
Minister of Natural Resources

REPUBLIC OF VANUATU

LAND LEASES ACT CAP 163

LEASE

(Section 31 and 35)

CLASS RESIDENTIALTITLE No. 11/OE22/016

(PLEASE READ THE NOTES ON BACK PAGE BEFORE COMPLETING THIS FORM)

Full name(s)
description(s)
and address(es)
in Vanuatu

LESSOR(S) MINISTER OF NATURAL RESOURCES IN
ACCORDANCE WITH SECTIONS 8 & 9 OF
THE LAND REFORM REGULATION OF 1980
(HEREIN AFTER CALLED THE LESSOR)

Full name(s)
description(s)
and address(es)
in Vanuatu

LESSEE(S) MR. EDMOND RORY AND NELLY RORY
STADE STATION
PORT VILA

Delete this paragraph if
inapplicable

1. The Lessor(s) has/have received from the Lessee(s) the sum of
(amount in words and figures) TWO HUNDRED AND FOURTY THREE
THOUSAND VATU (VT 243.000) for the grant of this
Lease.

* Delete whichever
asterisked phrase if inapplicable

2. The Lessor(s) lease(s) to the Lessee(s) the land - *comprised in the
above-mentioned title*

OR

*shown edged green in the attached plan certified by the Director of
Surveys and signed by the persons signing this instrument* for
the term of FIFTY (50) years commencing on the
15th day of September 19 94

3. The Lessee(s) shall pay to the Lessor(s) the *yearly/*quarterly/
*monthly rent of (amount in words and figures) FOUR THOUSAND EIGHT
HUNDRED AND SIXTY VATU

(VT 4.860)
reviewable in accordance with the provisions of the Act and payable
on the 30th day July each year (date(s) rent is to be paid).
in advance.

* Delete as appropriate

4. This Lease is granted subject to the provisions of the Land Leases
Act and of any Rule relating to leases made thereunder and to those
agreements and conditions specified in the Schedule hereto.

Delete if Lessee is a single person or
corporation. If paragraph is not
deleted, delete whichever
asterisked phrase is inapplicable.

The Lessees holds this Lease as *joint proprietors/*proprietors in
common in the following undivided shares :-

NR
PB

APPENDIX "C"

Dated at PORT VILA this 15th
day of September 19 94

SIGNED by the Lessor(s) }

HON. PAUL B. TEEUKLUK
MINISTER OF NATURAL RESOURCES



in the presence of
Signature of witness

Name of witness

Address

I certify that the above-named

appeared before me at

this

day of

19

* being identified to me by

of

* or being personally known to me and that *he/ *she/ *they freely and voluntarily signed and appeared fully to understand this instrument.

* Delete the underlined
alternatives
inapplicable

Signature, name, designation and seal/stamp
of office of person completing certificate.

SIGNED by the Lessee(s) }

MR. EDMOND RORY

MRS. NELLY RORY

in the presence of
Signature of witness

Name of witness ANTOINETTE CCULON - Lands Officer

Address

LANDS DEPARTMENT, VILA

I certify that the above-named LESSEES AND THE WITNESS

appeared before me at

PORT VILA

this

19th

day of

September

19 94

* being identified to me by

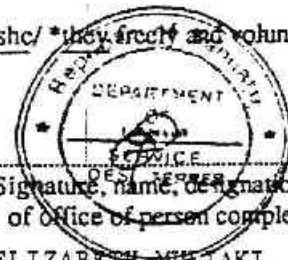
of

* or being personally known to me and that *he/ *she/ *they freely and voluntarily signed and appeared fully to understand this instrument.

* Delete the underlined
alternatives
inapplicable

Signature, name, designation and seal/stamp
of office of person completing certificate.

ELIZABETH MULLIAKI
Lands Officer (Urban)



13700 E

13750 E

REPUBLIC OF VANUATU • REPUBLIQUE DE VANUATU



I. EFATE PORT-VILA

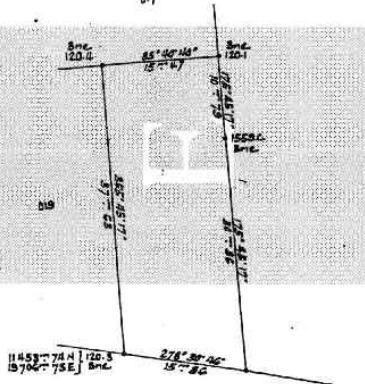
Title Titre 11/0E22 /016

Name of Property
Nom de la Propriété

Area Superficie 0 ha 06 a 09 ca

11500 N

017

RORY
RORY
 REPUBLIC OF VANUATU
 SURVEY DEPARTMENT
 PLAN APPROVED
 E ARTHUR
 DIRECTOR OF SURVEYS

26 JUL 1988

Scale
Echelle

Date

DLS
ORIGINAL
PLAN

TM 1977

Survey Department		Service Topographique	
Surveyed by See Topp Lévé par	Computed by See Topp Calculé par	Checked by Vérifié par	S.R.
Drawn by SK.I.T.BB Dessiné par	Checked by See Topp Vérifié par	Approved by Approuvé par	4637

APPENDIX "C"

APPENDIX "D"

ATTORNEY GENERAL'S CHAMBERS

MEMORANDUM

FROM : Attorney General
TO : Acting Director of Lands

OUR REF : AG. 10/1/OAS-1w

YOUR REF :

DATE : 10th December 1996.

SUBJECT

Re: LAND TITLE 11/0E22/016 - JAMES LESSA.

ADOL

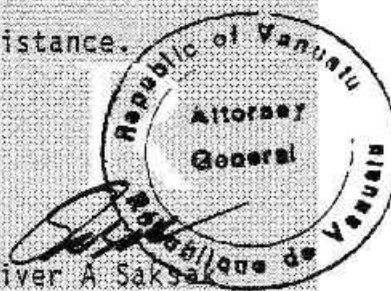
Replied
18/12/96
ygg

I refer to your Memorandum of 20th November about the abovementioned.

We have two persons involved here. One complied with procedural formalities and was refused. The Other did not comply with any procedures but the lease was granted to him. I find that beyond comprehension.

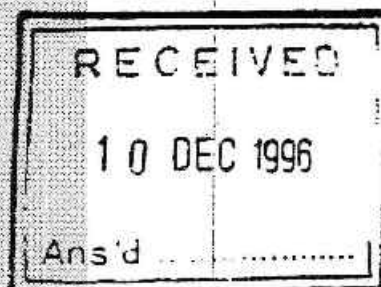
I think the lease should have been appropriately granted to Mr Lessa. But as it is the only way to undo the matter is to have the register rectified. The matter should be brought to the attention of the Director of Land Records to enable him to hear the matter under Section 99 of the Act. If that fails, I think Mr Lessa should proceed to the Court to order rectification under Section 100 of the Act.

I trust that I have been of assistance.



Oliver A Saksa
Attorney General.

cc: Director of Land Records
: Mrs James Lessa
C/- Geology & Mines.



Attn: Jean Marc Pierre

FAXIN
019-97

RÉPUBLIQUE DU VANUATU

SERVICE DES TERRES
PORT VILA



REPUBLIC OF VANUATU

LANDS DEPARTMENT
PORT VILA

MINISTÈRE DES RESSOURCES NATURELLES

MINISTRY OF NATURAL RESSOURCES

Private Mail Bag 090, Port Vila, Vanuatu
Telephone: (678) 22892 / 24171 / 24172 / 24820
Fax: (678) 27708

Date: 23rd January, 1997

N-O/Ref: LDU - 11/OE22/016/MM

V-Y/Ref:

Marie Noelle Ferrieux Patterson
Office of the Ombudsman
Po Box 126
PORT VILA

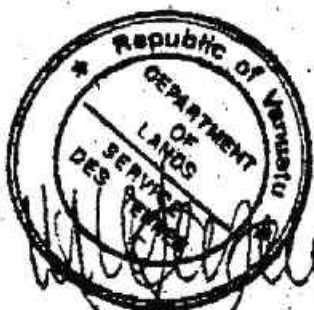
Dear Madame,

Re: Land title 11/OE22/016 - State Area,
Port Vila

Refers to your letter of 14th January 1997 your references OMB063/97-13/03, our department would like to advice you as follows: that :-

- 1) The Department of Land proceed Mr. Rory' lease document through an instruction letter from the former Minister of Lands (Paul B. Telukluk) instructing former Director of Lands (R. Tary) to execute a lease on this property (see copy of instruction letter from former Minister of Lands attached).
- 2) Roger Tary, the former Director of Lands was the person who instructed Mrs. Coulon and Mrs. Muliaki to sign these lease documents. (This was confirmed by Mrs. Muliaki on the 23rd of January, 1997).
- 3) Mr. Rory did not apply for this land therefore there wasn't any Negotiators Certificate been issued and or granted to him.
- 4) Mr. Rory got his valuation of this property through the Department of Lands Survey (see copy of their letter to Mrs. Muliaki on the 23rd of May, 1994).

Thank you for your attention and should you need further information regarding this issue, do not hesitate to contact the signatory herein under.



Michael Mangawai
Acting Director of Lands
(Urban)

CC: First Secretary
Ministry of Lands

S

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APPENDIX "F"

RÉPUBLIQUE DU VANUATU

**SERVICE DES TERRES
PORT VILA**

MINISTÈRE DES RESSOURCES NATURELLES



REPUBLIC OF VANUATU

**LANDS DEPARTMENT
PORT VILA**

MINISTRY OF NATURAL RESSOURCES

Private Mail Bag 090, Port Vila, Vanuatu
Telephone: (678) 22892 / 24171 / 24172 / 24820
Fax: (678) 27708

Monday
Date: 7th April 1997

N-O / Ref: LDU - 11/0E22/016/EM:wt

V-Y / Ref:

Office of the Ombudsman
P.O. Box 126
Port Vila
VANUATU

Attention: Mr. Jean Marc Pierre

Dear Madam,

Re: Land Lease title : 11/0E22/016 (Mr & Mrs Rory Edmond

You letter dated 27th March 1997 ref: OMB 778/97-13/06,
concerning the above reference.

I hereby give you the following answers :

1. Yes I was advised verbally by Former Director of Lands, Mr. Roger Tary, to execute the lease documents.
2. No application was made by Mr. Rory Edmond, he didn't follow the normal procedure of the Lands Department.
3. Yes, he has (see copy of receipt attached).
4. I was aware of Mr. James Bambu Lessa's certificate, but former minister of Lands Mr. Paul Barthelemy Telukluk gave us instruction to process the Lease Documents in the name of Mr. Rory Edmond (see copy of instruction letter, dated 21st April 1994).
5. See 4.
6. Yes, see 4.
7. In my opinion, the lease document should have been appropriately granted to Mr. James Bambu Lessa.

rust that I have been of assistance.

urs Faithfully,



Elizabeth Mulaiki
Director of Lands

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