

REPUBLIC OF VANUATU
OFFICE OF THE OMBUDSMAN

PMB 9081
PORT VILA
Vanuatu

PUBLIC REPORT
ON THE
ALLEGED MIS-ALLOCATION OF A
LAND LEASE IN LUGANVILLE

2 May 2003

8210/2003/07

PUBLIC REPORT
ON THE
ALLEGED MIS-ALLOCATION OF A LAND LEASE
IN LUGANVILLE

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1. JURISDICTION

- 1.1 The Constitution and the Ombudsman Act allow the Ombudsman to look into the conduct of government and related bodies including the Lands Department and its officers. The Ombudsman can also look into defects in laws or administrative practices, including the grant of land leases.

2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED

- 2.1 The purpose of this report is to present my findings as required by the Constitution, Ombudsman Act and the Leadership Code Act.
- 2.2 The scope of this investigation is to establish the facts about the allocation of a land title 03/OJ83/020 in the Sarakata area, Luganville to Mr Joshua Bal in 1996 and whether Mr Ken Hutton should properly have been allocated the lease title instead.
- 2.3 This Office collects information and documents by informal request, summons, letters, interviews and research.

3. RELEVANT LAWS, REGULATIONS AND RULES

Relevant parts of the following laws are reproduced in **Appendix H**.

CONSTITUTION OF THE REPUBLIC OF VANUATU
OMBUDSMAN ACT NO.27 OF 1998
LAND REFORM ACT [CAP 123]
ALIENATED LAND ACT [CAP 145]

4. OUTLINE OF EVENTS

- 4.1 Prior to Vanuatu's independence in 1980, Mr Ken Hutton bought a section of land near Luganville, then known as title 479 lot 27, from the Société Française des Nouvelles Hébrides. His intention was to use the land as future housing for staff of his business, Santo Gas Centre Limited.
- 4.2 On 15 October 1982, Mr Hutton made an application to the then Luganville Urban Land Corporation for a registered certificate of negotiator in respect of lot 27 (**Appendix A**). A certificate was subsequently issued (**Appendix B**) and, although undated, it appears that the certificate was issued on or soon after 15 October 1982. No expiry date is noted on the certificate.
- 4.3 The title reference to the land was subsequently changed to 03/OJ83/020.
- 4.4 On 2 May 1995, Mr Joshua Bal made an application to lease land in respect of title 03/OJ83/020 (see **Appendix C**). The application was approved and a certificate of registered negotiator in the name of "Mr Joshua Bal" was issued dated 13 October 1995, valid for 12 months (**Appendix D**).
- 4.5 Subsequently the Urban Land Leases Selection Committee approved Mr Bal's application and a lease over the land for a period of 50 years commencing 30 July 1980 was entered into between the Minister of Lands and Mr Bal. The lease document (**Appendix E**) was dated 5 July 1996 and was registered on 20 August 1996. No lease premium was awarded for the land, although the Ombudsman has not been able to determine conclusively why.
- 4.6 Mr Hutton was not notified of Mr Bal's application for registration as negotiator, nor of his late application for a lease of the land.
- 4.7 In 1997, Mr Hutton discovered that Mr Bal had obtained a lease and built a house on the land.

4.8 On 6 September 1999 the senior Lands Officer, Urban Lands Unit, Santo wrote to the Ombudsman in response to a letter sent during this investigation (**Appendix F**). The letter states "How the alienator status of Mr Hutton was over looked is not known" and acknowledges the apparent breach of the Alienated Lands Act giving alienators priority over other applicants for land leases.

4.9 Mr Hutton requested that a replacement parcel of land be allocated to him, however the Lands Department refused up until the time when a working paper was issued to all parties by the Ombudsman in February 2003.

5. RESPONSES BY THOSE WITH FINDINGS AGAINST THEM

5.1 Before starting this enquiry, the Ombudsman notified all people or bodies complained of and gave them the right to reply. Also, a working paper was provided prior to preparation of this public report to give the individuals mentioned in this report another opportunity to respond

5.2 In response to the working paper, the Director of Lands sent the Ombudsman a letter (**Annexure G**) in which he advised that the Department would allocate another land title to Mr Hutton in lieu of 03/OJ83/020.

6. FINDINGS

6.1 **Finding 1: The Ombudsman finds that a lease over title 03/OJ83/020 should not have been granted to Mr Bal while Mr Hutton held a registered certificate of negotiator.**

6.1.1 Mr Hutton had made an application for, and been granted, a certificate of registered negotiator (**Application B**) before the commencement of the Alienated Land Act. Accordingly, under section 4(2), he was to be registered as an alienator.

6.1.2 The certificate of registered negotiator issued to Mr Hutton did not have an expiry date and accordingly was still valid when Mr Bal made his application in 1995.

6.2 **Finding 2: The Ombudsman finds evidence that oversight by the Lands Department and/or Urban Land Leases Selection Committee was responsible for the improper issue of a certificate of registered negotiator, and then a lease, to Mr Bal.**

6.2.1 While there was nothing improper in the way which Mr Bal's application was made or dealt with, records should have disclosed the prior registered certificate of negotiator and alienator status of Mr Hutton.

6.3 **Finding 3: The Ombudsman finds evidence that Mr Hutton has suffered loss as a result of maladministration by the Lands Department and/or Urban Land Leases Selection Committee and should be compensated for his loss.**

6.3.1 During this investigation, the Ombudsman asked the Lands Department to consider allocating a lease over a different block of land to Mr Hutton in lieu of the original title. Mr Hutton had indicated that he would accept this proposal.

6.3.2 Until a working paper was issued by the Ombudsman in February 2003, the Lands Department had refused to agree to this proposal.

6.3.3 However the Director has now indicated that a replacement land title will be allocated to Mr Hutton (**Annexure G**).

7. **RECOMMENDATIONS**

- 7.1 The Ombudsman notes the undertaking given by the Director of Lands in his letter dated 3 March 2003 (**Appendix G**) and applauds the Director's decision to adopt the Ombudsman's recommendation and resolve the matter in this way.
- 7.2 The Ombudsman also recommends that the Director of Lands review administrative procedures to ensure that certificates of registered negotiator are not improperly issued in the future.

Dated the 2nd day of May 2003.



Hannington G ALATOA
OMBUDSMAN OF THE REPUBLIC OF VANUATU

8. INDEX OF APPENDICES

- A Copy of application for lease by Kendall Alan Hutton made 15 October 1982.
- B Copy of certificate of registered negotiator issued to Kendall Alan Hutton, undated.
- C Copy of application to lease land by Joshua Bal dated 2 May 1995.
- D Copy of certificate of registered negotiator issued to Mr Joshua Bal dated 13 October 1995.
- E Copy of Lease between Minister of Lands and Mr Joshua Bal dated 5 July 1996.
- F Letter from Mr Ben Garae, Lands Department, to Ombudsman dated 6 September 1999.
- G Copy of letter dated 3 March 2003 from Director of Lands to the Ombudsman.
- H Relevant laws.

Appendix A

Handwritten notes: "Hutton Kendall Alan", "108.000 VT", "108.000 VT"

108.000 VT

Vacant Lot
LUGANVILLE
URBANI LAND
CORPORATION

SCHEDULE PART 4

FORM D

REPUBLIC OF VANUATU

Land Reform Regulation 1980

Application for a lease pursuant to 1980

I Hutton Kendall Alan or Santo
being the Alienator of Title No. 237 known as
Lot S.E.6 hereby apply for a registered
Certificate of Negotiator under Part 4, of the Land Reform Regulation
1980.

Made at Urban Land, Vanuatu this, 15 day of Oct 1982.

ADDRESS-

P.O. BOX 45 SANTO
or 1001 VHA

[Signature]

Signature of Applicant.

Appendix B

LAND REFORM REGULATION 1980 PART 5

13/1/5

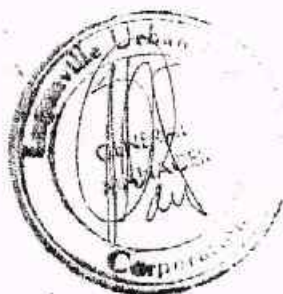
I hereby certify

NAME HUTTON KENDALL ALAN

ADDRESS BOX 45, SANTO

as a Registered Negotiator
of the Land described in

TITLE 479 LOT 27 SARA KATA EXTENSION 6



Appendix C

REPUBLIC OF VANUATU

LAND REFORM REGULATION No.31 (1980)

URBAN LAND LEASE SELECTION COMMITTEE.

APPLICATION TO LEASE LAND

APPLICATION NO. 15 13APPLICANT JO SHUA BALADDRESS N.D. HOSPITAL SHUA

EXT TITLE NUMBER

LEASE TITLE 09/0583/020

VALUE

ISLAND

TOTAL AREA

PREVIOUS STATUS

ALIENATOR STATUS

TITLE OF LEASE

(i RESIDENTIAL ✓

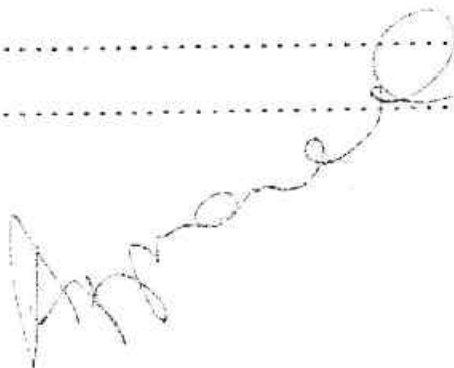
(ii COMMERCIAL

(iii INDUSTRIAL

(a HEAVY

(b LIGHT

(iv OTHERS:

LOCATION SARAKATA EX: 5ZONE RESIDENTIALPHYSICAL PLANNING UNIT COMMENT :URBAN LAND SELECTION COMMENT :VACANT LANDLAND RECORDS COMMENT:

THE LAND REFORM REGULATION NO. 31 OF 1980
SECTION 6

CERTIFICATE OF REGISTERED NEGOTIATOR

URBAN LAND UNIT

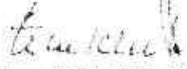
I, PAUL D. TELUKLUK Minister of Natural Resources of the
Republic of Vanuatu.

HEREBY CERTIFY THAT:

1. MR JOSHUA BAL. is the registered negotiator
for the land known as 03/0483/020 (SAGARATA EXT. 5)
in the town of LUGANVILLE

1. The objects of this negotiations are/ia for
RESIDENTIAL PORTOES

Date this 13th day of October 1995


PAUL D. TELUKLUK
MINISTER OF NATURAL RESOURCES

CERTIFICATE VALID FOR TWELVE (12) MONTHS ONLY

Appendix E - Page 1 of 7
REPUBLIC OF VANUATU
LAND LEASES ACT CAP 163

LEASE

(Section 31 and 35)

CLASS RESIDENTIAL

TITLE No. 03/OJ83/020

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

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

LESSOR(S)

THE MINISTER OF LANDS, MINES, GEOLOGY AND RURAL WATER
SUPPLY, In accordance with Section 8 and 9 of the Land
Reform regulation of 1980
(hereinafter called the Lessor)

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

LESSEE(S)

MR. JOSHUA BAL
N.D.H.
P.O. BOX 53
LUCANVILLE SANTO

* VANUATU FINANCIAL SERVICES *
* RECEIPT NO.: 5012805 *
* ASSESSMENT NO: 961826 *
* AMOUNT: 2,500.00 *
* DATE: 22/07/96 *

Delete this paragraph if
inapplicable

1. ~~The Lessor(s) has/have received from the Lessee(s) the sum of~~
~~(amount in words and figures)~~
~~..... (VT) 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 redged 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
30th day of July 1980

3. The Lessee(s) shall pay to the Lessor(s) the *yearly/*quarterly/
*monthly rent of (amount in words and figures) Four thousand vatu

(VT 4,000)

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

5. ~~The Lessee(s) is/are a joint proprietor(s) of the land~~
~~common in the following individual shares:-~~

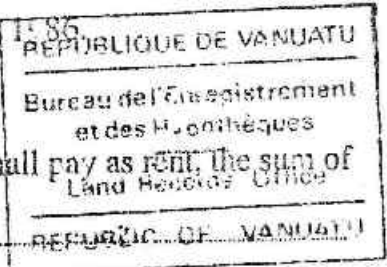
REPUBLIC OF VANUATU
Land Records Office
REPUBLIC OF VANUATU

REPUBLIC OF VANUATU
Bureau de l'enregistrement
et des hypothèques
Land Records Office
REPUBLIC OF VANUATU

Appendix E - Page 2 of 7
SCHEDULE

1277/86 5/8

This Lease is subject to the provisions of the Physical Act No. 2 of 1985



2. RENTAL TERMS :

- a) For the first five years from the date of the Lease, the Lessee shall pay as rent the sum of (amount in words and figures) FOUR THOUSAND VATU (VT 4,000) every year in advance. The first payment to be made on the date of execution of the lease.
- b) With effect from the Fifth Anniversary of the date of the lease and at five yearly intervals thereafter, the rent shall be reviewed in accordance with the provisions of the Land Leases Act No. 4 of 1983 (as amended) and the review may be initiated by either the Lessor or the Lessee.

3. The Lessee agrees to use the Leases Land for RESIDENTIAL purpose only and shall construct RESIDENTIAL DWELLINGS AND OTHER ANCILLIARY FACILITIES IN COMPLIANCE WITH BY-LAWS OF THE LUGANVILLE MUNICIPAL COUNCIL such development to commence within three (3) years and be completed within five years from the date of the Lease.

4. The Lessee agrees not to use or permit the use of the leased land for any noxious, noisome or offensive act, trade business or occupation or calling or in any such manner as to cause annoyance, nuisance or inconvenience to occupiers or owners of adjacent premises or the neighbourhood.

5. The Lessee agrees to insure and keep insured against damage or destruction by fire, lightning, flood, storm, hurricane and earthquake to their full value thereof all buildings and in the event of their damage or destruction to use the money received in respect of such insurance in replacing the same.

6. The Lessee agrees to take the risk of all operations undertaken on the land and to indemnify the Lessor against any claim, cost, damage or proceeding whatsoever caused arising either directly or indirectly from the Lessee's act or omissions.

7. In the event of any intended transfer of the Lease, the Lessee, in addition to seeking the Lessor's consent in accordance with the provisions of the Land Leases Act 1983, will also notify the Lessor in writing of the price at which the Lease is intended to be transferred and the Lessor shall for the space of six weeks from the date of the receipt of such notice, have the right or option to repurchase the Lease at the said price, the purchase price being payable within one month of the exercise by the Lessor of its rights to repurchase. PROVIDED that in the event that the Lessor does not exercise its rights to repurchase, the Lessee shall not subsequently be entitled to transfer the Lease at a price lower than previously notified to the Lessor without first reoffering the Lease to the Lessor at such lower price in the same manner as hereinbefore provide.

8. Not to assign, sublease, subdivide, mortgage or part with possession of the Lease land or any part thereof without the prior consent in writing of the Lessor. Such consent shall not be unreasonably withheld. Provided that where the Lessee is a company, partnership or otherwise shall ownership or control in the Lessee to some other person or persons together or otherwise shall be made without the prior consent in writing of the Lessor.

Bureau de l'Enregistrement
et des Hypothèques

[Signature]

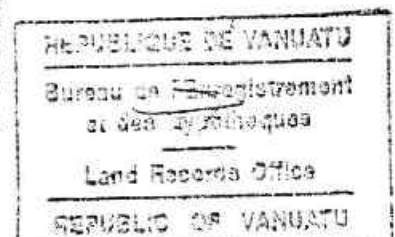
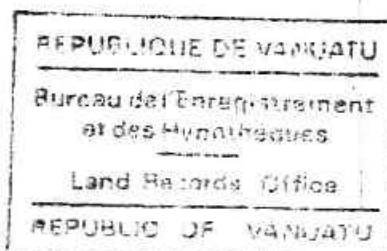
SUPPLEMENTRY SCHEDULE

- 1.. The Lessor (s) has/have received from the lessee (s) the sum of (amount in words and figures).....VT.....) as part premium with an obligation to pay an additional (amount in words and figures).....VT.....) for the grant of this lease.

RESTRICTIVE AGREEMENT

PREMIUM SCHEDULE

1. The Lessee agrees to pay a monthly/fortnight Premium Instalment of (amount in words and figures).....(VT.....) to the Lessor.
2. The Lessor reserves the right to terminate the lease for Non-Payment of the Premium Installment if the lessee fails to make the appropriate payment in 3 consecutive Installment periods.
3. The Lessee shall not Transfer/Sell/Sublease/Subdivide the said land until he/she has completed the required premium.
4. Agreements 1,2, and 3 above is to be determined upon the full completion of the required premium paid by the Lessee.



SCHEDULE
Appendix E - Page 4 of 7

1277/96

5/8

The purpose and use for which the land is leased and the development conditions, if any, in addition to those set out in any Rule under the Act, MUST be set out below).

REPUBLIQUE DE VANUATU

Bureau de l'Enregistrement
et des Hypothèques

Land Records Office

REPUBLIC OF VANUATU

REPUBLIQUE DE VANUATU

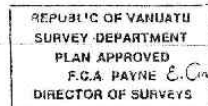
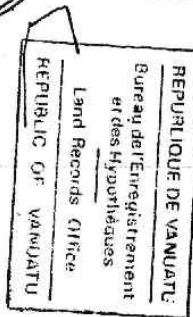
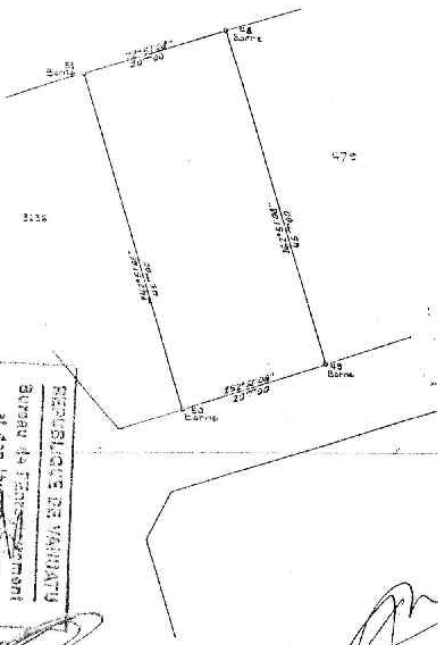
Bureau de l'Enregistrement
et des Hypothèques

Land Records Office

REPUBLIC OF VANUATU

REPUBLIC OF VANUATU • REPUBLIQUE DE VANUATU

Verified to be a true copy of the Original Plan
 D'après certifier conforme au Plan Original



I. SANTO LUGANVILLE

Title Titre 03/0J83/020

Name of Property
 Nom de la Propriété

Area Superficie 0 ha 09 a 00 ca

Scale Echelle 1/500

Date 23 DEC 1985

Survey Department		Service Topographique	
Surveyed by Sca. Topo. Lévé par	Computed by Sca. Topo. Calculé par	Checked by Vérifié par	S.H.
Drawn by E. Ombler Dessiné par	Checked by Sca. Topo. Vérifié par	Approved by Approuvé par	E.G. 3285

D.O.S System

Dated at Luganville this 5th day of July 1996

1277/96

2/8

SIGNED by the Lessor(s)

HONOURABLE MINISTER OF LANDS, MINES, GEOLOGY
AND RURAL WATER SUPPLY

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. JOSHUA BAL

in the presence of
Signature of witness

Name of witness

LINGI JEREMIAH

Address

URBAN LANDS DEPARTMENT, LUGANVILLE, SANTO

I certify that the above-named MR. JOSHUA BAL

appeared before me at Luganville this

day of July 19 96

* 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

REPUBLIQUE DE VANUATU

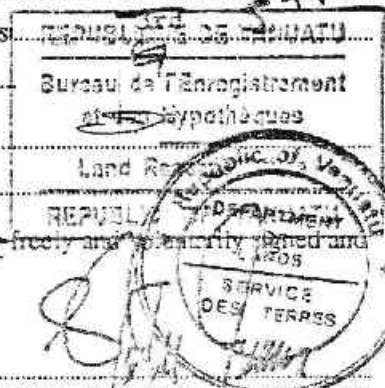
Bureau de l'Enregistrement
des Hypothèques

Land Records Office

REPUBLIC OF VANUATU

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

MR. STEVEN TAHI
PRINCIPAL LANDS OFFICER (NO)

WE
JB

JL

JL

NOTES

- 1277/96
8/3

1. **Alterations:** Do not rub out or write over any words. If you have made a mistake draw one line through it (so that it can still be read) and write or type clearly above it the new words. Everyone who signs the instrument should also sign again at the side near to the alteration.
2. **Signing:** Both parties to the instruments must sign. If a party consists of more than one person and they cannot get to a person authorised to complete the verification certificate at the same time or place it will be necessary for separate verification certificates to be prepared, completed and attached to this instrument. In such cases the persons completing the separate certificates should also sign at the end of the instrument. Persons authorised to complete verification certificates in Vanuatu include Secretaries to Local Government Councils, Magistrates, Barristers, Solicitors, Notaries Public, Commissioners for Oaths and Managers of Banks. A full list is contained in the Act.
3. **Execution by corporations:** The form should be changed by crossing out the words "Signed by" etc... and substituting the usual form of words recording the affixing of the corporation's seal. No verification certificate is required.

Approved this

fifth (5th)

day of

July

19

96.

Minister responsible for Lands



REGISTERED at

Port Vila - 9.20

hours this

20th

day of

August

19

96

REPUBLIQUE DE VANUATU

Bureau de l'Enregistrement
et des Hypothèques

Land Records Office

REPUBLIC OF VANUATU

Director of Land Records

DEPOSE LE

LODGED ON THE

SOUS NO

1277/96

TITRE NO

03/0583/020

DROITS

FEES

Vn 4.000 x 50 ym x 20% = 4.000 Vn.

TOTAL

DIRECTOR OF LAND RECORDS

DIRECTOR OF LAND RECORDS
REPUBLIC OF VANUATU

REPUBLIQUE DE VANUATU

Bureau de l'Enregistrement
et des Hypothèques

Land Records Office

REPUBLIC OF VANUATU

**SERVICE DES TERRES
LUGANVILLE - SANTO****LANDS DEPARTMENT
LUGANVILLE - SANTO**MINISTERE DES TERRES, GEOLOGIE, MINES,
ENERGIE ET DES EAUX RURALESMINISTRY OF LANDS, GEOLOGY, MINES,
ENERGY AND RURAL WATER SUPPLYP.O.Box 140 - Luganville - Santo
Tel: (678) 36459 / 36164 - Fax: (678) 36986

Date: 6th September, 1999.

N-O / Ref: LDU 03/OJ83/020/BG/am

V-Y / Ref:

Mrs Patricia Kalpokas,
Senior Investigator,
Officer of the OMBUDSMAN,
P.M.B. 081,
PORT VILA.

Dear Sir,

RE : ALLOCATION OF LAND TITLE 03/OJ83/020.

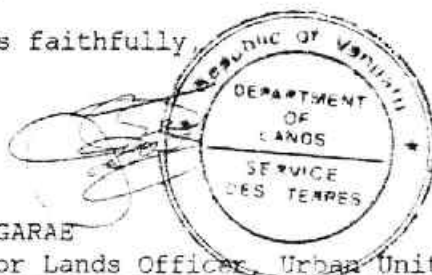
I refer to the Director of Lands letter of August 17th 1999, to you and which was copied to me relating to the above caption.

On the eighteenth (18th) day of July 1995, the Urban Land Leases selection Committee convened in Luganville and approved Mr Joshua Bals application for the subject property (see copy of minute attached). The Committee was then chaired by the former director of Lands Mr Roger Tari. There is no information in file either to explain the Committees decision. How the alienator status of Mr Hutton was overlooked is not known. Though the committees decision "appears to be in violation of the Alienated Land Act, which gives priority to alienators over others applying for land leases" as you have stated in your letter, it also appears that the decision of the committee was covered by the Land Reform regulation cap 123. Mr Hutton Kendall has applied to register his alienatorship status and he was given a registered negotiator certificate in 1982. Being equipped with that instrument, he did not have to re-apply. All he needed to do is to come to the Urban Land Office and negotiate to register his interest. He did not make any attempt until fourteen (14) years has elapsed to see Mr Joshua Bal register the property under his name in 1995.

Our records do not also provide any information on any arrangements made between Hutton Kendall and our office to resolve the matter through granting of another title to him.

I hope these informations will suffice your queries.

Yours faithfully,



BEN GARAE
Senior Lands Officer, Urban Unit, Santo.

cc : Director of Lands, Vila.

Appendix F - Page 2 of 2

FAXIN
15.9.99

9. Applicant: Tony NALIUPIS
Land title: 03/0I91/038
Location: Canal du Second II
Zone Residential
Application deffer blong faenem ast aipose ibin kat some previous applicants long Area ia.
10. Applicant: Ben DERU
Land title 03/0I91/015
Location: Canal du second II
Class: Residential
Application deffer (nem comment long application no.9)
11. Applicant: Mr. Patrick MARK
Land title: 03/OK72/032
Location: Boutellier subdivision
Class: Residential
Application approved.
12. Applicant: Mrs. Eveline KAIMALAPA COULON
Land title: 03/OK72/023
Location Sarakata Ex no.5
Class: Residential
Application emi refus follem Ban we istap se Area emi mentein bifo finis olsem "water protection zone".
Mrs. KAIMALAPA emi advaes blong re-applae from nun narafalla taetol.
13. Applicant: Joshua BAL ~~BA~~
Land title: 03/0J83/020
Location: Sarakata Ex 5.
Class: Residential
Application approved.
14. Applicants: Katville Marcelline & Francois John
Land title: 03/OM74/013
Location: Solway
Class: Residential
Applicant emi interest lunas blong buildim wan Residential building long Area ia.
Application approved.
15. Applicant: Kennery ALVEA
Land title: 03/0J72/033
Location: Sarakata Ex 5
Class: Residential
Application refused follem Ban we emi stay long Area ia we title ia andap intap insaed (water protection zone).
Applicant emi advaes blong re-applae from narafalla taetol.
16. Applicant: Anata LINC
Location: Canal du second II
Land title: 03/0I92/024
Class: Residential
Application deffer mo reffer igo long ol previous applications befor long title i

Appendix G

REPUBLIQUE DU VANUATU

SERVICE DES TERRES
PORT VILA

MINISTERE DES RESSOURCES NATURELLES



REPUBLIC OF VANUATU

LANDS DEPARTMENT
PORT VILA

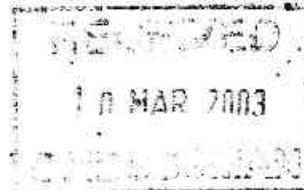
MINISTRY OF NATURAL RESSOURCES

N-O Ref: LD: 03/OJ83/020/MM/mm

Date: 3/03/03

V-Y Ref: 3248/821/L81/dl

Hannington Alatoa
Ombudsman
PMB 081
PORT VILA



Dear Sir,

**SUBJECT: WORKING PAPERS ON ALLEGED MIS ALLOCATION OF A LAND LEASE
IN LUGNAVILLE**

The working papers for this land is in order and herby advice that Lands Department will resolve this matter by re allocating another plot of land to Ken Hutton.

Could you please advice Mr Hutton about how stand and also to advice him of any land matters and it formalities to contact Lands Department for that matter.

Thank you for your understanding.


Michael Mangawai
DIRECTOR OF LANDS


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CONSTITUTION OF THE REPUBLIC OF VANUATU

ENQUIRIES BY OMBUDSMAN

62. (1) The Ombudsman may enquire into the conduct of any person or body to which this Article applies—
- (a) upon receiving a complaint from a member of the public (or, if for reasons of incapacity, from his representative or a member of his family) who claims to have been the victim of an injustice as a result of particular conduct;
 - (b) at the request of a Minister, a member of Parliament, of the National Council of Chiefs or of a Local Government Council; or
 - (c) of his own initiative.
- (2) This Article shall apply to all public servants, public authorities and ministerial departments, with the exception of the President of the Republic, the Judicial Service Commission, the Supreme Court and other judicial bodies.

OMBUDSMAN ACT NO. 27 OF 1998

FUNCTIONS OF THE OMBUDSMAN

11. (1) The Ombudsman has the following functions:
- (a) to enquire into any conduct on the part of any government agency;
 - (b) to enquire into any defects in any law or administrative practice appearing from any matter being enquired into;
- (4) To avoid doubt, conduct on the part of any officer, employee, member or agent of a government agency in his or her capacity as an officer, employee, member or agent of the government agency is taken to be conduct on the part of the government agency.

LAND REFORM ACT [CAP 123]

INTERPRETATION

- 1 In this Act unless the context otherwise requires—

"alienator" means a legal or natural person or persons who immediately prior to the Day of Independence and whether or not their rights were registered in the Registry of Land Titles provided for in the Anglo/French Protocol of 1914—

- (a) had freehold or perpetual ownership of land whether alone or jointly with another person or persons; or
- (b) had a right to a share in land by inheritance through will or operation of law where no formal transfer of that land had taken place; or
- (c) had a life interest in land; or
- (d) had a right to land or a share in land at the end of a life interest; or
- (e) had a beneficial interest in land:

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Provided that-

- (i)
 - (a) where there is more than one alienator in respect of a piece of land they shall be included in the expression "the alienator" for the purposes of the provisions of this Act;
 - (b) one alienator may represent himself and the other alienator or alienators by agreement among them for the purposes of this Act;
 - (c) the Minister may appoint an alienator to represent his co-alienator or alienators for the purposes of this act;
- (ii) a person shall not be an alienator of land unless-
 - (a) there is a person in physical occupation of it being an alienator or a licensee, tenant or lessee of an alienator; and
 - (b) the land and improvements thereon have in the opinion of the Minister been up to the Day of Independence maintained in reasonably good repair and condition; and, where applicable,
 - (c) rates and taxes due in respect of the land are not in arrears for 6 months or more on the Day of Independence;
- (iii) a person shall be an alienator within the meaning of this definition if the Minister is satisfied that he is unable to satisfy any of the conditions in paragraph (ii) because of the deliberate act or omission of another person or persons;
- (iv) a person shall be an alienator within the meaning of this definition if he has been substituted for an alienator with the consent of the Minister in accordance with section 8(2)(a):

ENTITLEMENT OF ALIENATOR TO REMAIN ON LAND

3. Every alienator shall be entitled to remain on land occupied by him on the Day of Independence until such time as either he enters into a lease of the land or a part thereof with the custom owners of the land or receives payment for improvements to or on that land:

Provided that where such land is undeveloped land, an alienator, without prejudice to his right to enter into a lease of that land, shall not be entitled to remain on such land.

CERTIFICATE OF REGISTERED NEGOTIATOR

- 6.(1) No alienator or other person may enter into negotiations with any custom owners concerning land unless he applies to the Minister and receives a certificate from the Minister that he is a registered negotiator.
- (2) A certificate issued in accordance with subsection (1) shall-
- (a) state the names of the applicant and of the custom owners;
 - (b) give brief details of the land in respect of which negotiations are registered; and
 - (c) state the object of the negotiations.
- (3) If negotiations are completed without compliance with subsection (1) the Minister may refuse to approve the agreement between the custom owners and the unregistered negotiator and if he is an alienator may declare the land unsettled land.

ALIENATED LAND ACT [CAP 145]

INTERPRETATION

1. In this Act, unless the context otherwise requires-
...
"alienator" shall have the same meaning as in the Land Reform Act, Cap. 123;

APPLICATIONS TO BE REGISTERED AS ALIENATORS

- 3.(1) Any person who claims to be an alienator shall apply either personally or through an agent to be registered as such within 3 months of the coming into force of this Act.
- (2) A person who applies for registration as an alienator shall furnish the Minister with-
 - (a) a description of the land of which he claims to be the alienator;
 - (b) sufficient evidence to establish that the applicant is an alienator of such land;
 - (c) a statement setting out the options referred to in section 16(3) for which the applicant wishes to negotiate; and
 - (d) such other information including documents as the Minister may require to satisfy himself that the applicant is an alienator.
- (3) Any person who has made an application before the coming into force of this Act on Form A for a certificate of registered negotiator under section 6 of the Land Reform Act, Cap. 123 shall be considered to have made an application under subsection (1) on the day of the coming into force of this Act.

REGISTRATION OF ALIENATOR

- 4.(1) If the Minister is satisfied that an applicant under section 3 is an alienator he shall register him as an alienator.
- (2) An alienator issued with a certificate of registered negotiator before the coming into force of this Act shall forthwith after its coming into force be registered as an alienator.

APPLICATION UNDER SECTION 3 TO BE APPLICATION UNDER SECTION 6 OF THE LAND REFORM ACT

7. An application under section 3 shall be considered to be an application also under section 6 of the Land Reform Act, Cap. 123.

LOSS OF RIGHTS OF ALIENATOR

8. A person who does not make an application in accordance with section 3(1) shall not have any rights as an alienator in respect of any land.

VACATION OF ALIENATED LAND

- 24.(1) Subject to subsection (2) a person shall vacate and, surrender to the Minister land occupied or claimed by him as an alienator either in person or through agents.-
 - (a) if he does not make application under section 3(1) in which case he shall vacate and surrender up the land not... later than 3 months after the coming into force of this Act; or

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- (b) if he is a person to whom section 5(2) applies but he does not make a reference thereunder in which case he shall vacate and surrender up the land immediately on the expiration of the 30 days referred to in that section; or
 - (c) if he is a person who makes a reference under section 5(2) in which case: he shall vacate and surrender up the land within 30 days of the decision of the Court that he is not an alienator of the land;
 - (d) if the custom owners of the land indicate to the Minister in accordance with section 16(2) that they are willing only to negotiate payment for improvements to such land in which case he shall vacate and surrender up the land within 60 days of notification to him by the Minister of the wishes of the custom owners; or
 - (e) within 60 days of a referral by the Minister under section 20.
- (2) Any person referred to in section 9 shall vacate and surrender up to the Minister all land of which he or it claims to be the alienator within 30 days of the coming into force of this Act.
- (3) Where any person who has been required by the Minister to vacate or surrender land as required by the provisions of section 24(2) fails, neglects or refuses to do so, a warrant may be issued by a magistrate authorizing the police to use such force as is necessary to remove such person or persons from the property named or described in the order of the Minister.