

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

CIVIL CASE No.179 OF 1997

BETWEEN: KALPERES BAKOKOTO

Plaintiff

**AND: TOM OBED
PIERRET CHARLEY
JOSEPH TATY
DAVID JOHN
SANO SUMBEI
TENSLEY BANJA
SAUL ISHMAEL
TONNEY MAKTU
GEORGE JAMES
TIMOTHY
HAM ZETH
THOMAS A.
and LOSLEYN MALTOK**

Defendants

- ① no agreement to lease
- ② impossibility
- terms of lease uncertain
- ③ custom owners Ifira
- ④ agreement to stay but no
rt to sell
- leases → leases
rt's to sell
- ⑤ ? - rt to rescind.
- ⑥ Land Leases Act applicability.

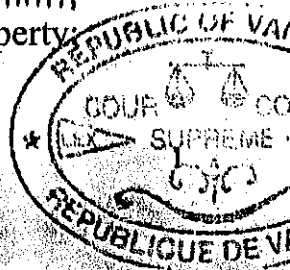
Coram: Acting Chief Justice Lunabek J.
Mr. John Malcolm for the Plaintiff.
Mr. Stephen Joel, Public Solicitor for the Defendants.

REASONS FOR JUDGMENT

I. INTRODUCTION.

(a) The Nature of Proceedings and Relief Sought.

By Summons dated 1st July 1997, the Plaintiff claims for:
(1) Rentals due and owing by the Defendants to the Plaintiff;
(2) An Order evicting the Defendants from the said property.



- (3) Costs; and
- (4) Interests.

By Counter-Claim filed on 1st October 1997, the Defendants claim for compensation for improvements and developments each of them has built on the Plaintiff's land and damages and costs.

(b) The Parties.

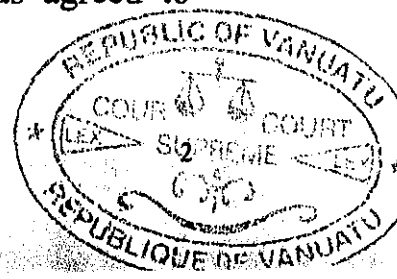
The Plaintiff, Kalperes Bakokoto of Port Vila, Efate, in the Republic of Vanuatu, is a custom land owner. The Defendants are all Ni-Vanuatu residents of Port Vila, Efate, who live on the Plaintiff's custom land called "TAMALAS LAND, TEBAKOR".

(c) Brief background leading to the dispute

The brief summary of the facts in this case shows that sometime between late 1993 and June 1995, the Plaintiff, having being approached by each of the defendants, had entered into an oral agreement with each of the defendants to the effect that the Plaintiff gives to each of the Defendants a plot of land for them to erect their houses and live on it. It was agreed between the Plaintiff and the Defendants, among other things, that each of the Defendants pays a rental of 4,000 Vatu per month. The Defendants, then, moved into the Plaintiff's land, build houses and live there. The Plaintiff attempted unsuccessfully to increase the rent to Vatu 6,000. The Defendants refused saying that it is not a term of the initial agreement they had with the Plaintiff.

The Plaintiff, then, attempted to put into writing the terms of the oral agreement he had with each of the Defendants. He then brought the written agreement to each of the Defendants for their signature. Some of the Defendants signed the agreement under the circumstances as they described in their evidence. Sano Sumbe is one of the Defendants who refused to sign the agreement on the basis that the terms providing for rental of 6,000 Vatu per month is not a term agreed to in the oral agreement.

The Plaintiff, then, filed an action against Sano Sumbe for failing to pay his outstanding rents of Vatu 6,000 per month before the Efate Island Court. On 5 September 1995, the Efate Island Court ordered the Defendant Sano Sumbe to pay his outstanding rents due and owing by him to the Plaintiff on the monthly rate of Vatu 4,000 as agreed to between the Parties but not Vatu 6,000.



It transpires from the Court file that the Plaintiff attached to his statement of evidence a document dated 10 August, 1994 from the Lands Survey Department as a plan showing a Title No. "12/0633/165" Exhibit "B", purported to be his leasehold Title on his custom land.

The Plaintiff attached also a document Exhibit "A" to his statement of evidence showing the receipt paid dated 9/10/97 for an application to lease fee of Vatu 2,000.

The above brief background information is useful to understand the dispute between the Plaintiff and the Defendants. The dispute between the parties is, inter alia, about the terms and conditions of the agreement between them and in particular the period of the tenancy agreement. In substance, the Plaintiff says the agreement between him (the Plaintiff) and the Defendants is a periodic tenancy of 5 years governed by the provisions of the Land Leases Act [CAP 163]? The Defendants on the contrary, say that there is no specific period agreed to. The agreement is that each of them will live on the Plaintiff's land and if they are tired and wanted to leave, then, they can leave and the land will be reverted back to the Plaintiff.

II. THE ISSUES.

The questions for the determination by this Court, are as follows:

1. Is the agreement between the Plaintiff and the Defendants, a periodic tenancy of 5 years governed by the provisions of the Land Leases Act [CAP. 163]?
2. If the answer to question 1 is in the negative, then:
Is the agreement between the Plaintiff and the Defendants a license for the Defendants to enter into the Plaintiff's custom land, erect houses and lived on it as they wanted, as licensees ?

If the answer to question 2 is in the positive, then:

3. Is this a good case to evict the Defendants from the Plaintiff's land ?

III. THE EVIDENCE.

A. SUMMARY OF THE PLAINTIFF'S EVIDENCE.



The Plaintiff files a statement of evidence stating that he is the leaseholder of all that land Title 12/0633/0165. Each of the parties named herein, have been residing on his land on a sub tenancy basis. The tenancy agreements were all signed on 1st January 1994 by the Plaintiff and the tenants for a period of 5 years. The Plaintiff annexed also his demand for each of the Defendants to leave, dated 4th April 1997. In June 1997, he served on each of the Defendants, Trespass Notices. He finally state that some of the Defendants have paid rent but he wants his land back. In substance, he confirms this as his evidence in chief.

He also gave evidence that the Defendants are required to pay VT4,000 per month for rental. Some of the Defendants have outstanding rent to pay. His evidence shows that the following Defendants owe him money for rental: Tom Obed (VT200,000), Joseph Tabi (VT124,000), Tonny Maktu (VT60,000), Timothy (VT24,000) and Pierre Charley (VT100,000).

Further the Plaintiff gave also evidence that the following defendants have no outstanding rent: Sano Sumbe, Losleyn Maltok, Ham Seth and Tensley Banga.

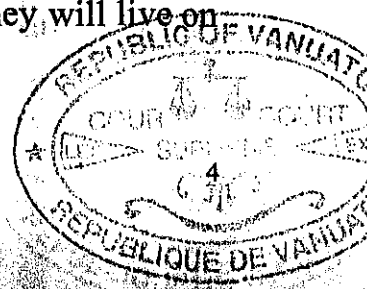
He denied that in 1994, when he signed the agreements with the Defendants, he promised to compensate them for any building.

Under cross-examination, the Plaintiff says although the date of the agreement between him and the Defendants is 1st January 1994, each of the Defendants come and live in his land on different times. He said he, as the custom owner of the land, has a right to make the agreement and put the date of 1st January 1994. He gave the example of James George who come on October 1994.

When he was asked : "Did you put the date on the agreement when James George signed it? He replied, he made the agreement after. The date of agreement was the date of the starting of the business. Defendant Ham Seth entered into the land in 1993. The Plaintiff said he put him on the same date as others.

He said all Defendants are under same agreement and with similar conditions. The rent was charged at VT4,000/month. They will live on the land for 5 years. They can renew for another period of 5 years.

He denied that he has a life tenancy agreement with each of the defendants. He made agreement with the defendants that they will live on the land for a period of 5 years.



He said he agreed for the defendants to build temporary houses to live in but not permanent houses. He has an agreement with Shefa Province which accepted temporary houses. He did not know whether his land is situated into a physical planning area. He said, he accepted the defendants to come and stay on his land, for business reasons and in order for them to get a permit, they must apply for building permit to Shefa Province. He admitted that the Building Permit is for the building of good houses and the defendants must have a plan approved by Shefa Province.

He confirmed also that he issued Trespass Notice in 1997 to all defendants including those who have no outstanding of rents to pay (Sano Sumbe, Losley Maltok, Seth M. and Tensley Banga).

The plaintiff's evidence show that there was a first agreement between himself and each of the defendants to pay a rent of Vatu 4,000. He decided to increase the rent to Vatu 6,000. The defendants refused to pay and he brought the defendants to Island Court and the Island Court decided on 5th September 1997 to the effect that the rental will remain at Vatu 4,000 per month as agreed between the parties.

He confirmed again that he put the date of 1st January 1994 on the agreement when the defendants lived already on his land.

He was then asked:

Q. Fest agriment we you mekem wetem olgeta defendants oli buildim house. Oli live go go taem oli taem oli go, takem back land blong you.

A. Mi putum 5 years limit. Oli payem rent of Vatu 4,000 per month. Sapos oli no faithful blong pem rent, then mifala i changem.

Q. Ol conditions ia you putum taem oli stap finis long land.

A. Agreement istap finis long 1994.

When he was asked as to why he did not allow the defendants road access to their houses in his land, he said the defendants decided to come and live on his land. It is not part of his duty to build houses so as to comply with the physical Planning Act and he did not decide yet to develop his land. He recognizes that some of the defendants' houses are concrete, some built in row material.



B. SUMMARY OF THE DEFENDANTS' EVIDENCE.

There are 13 defendants. 6 defendants did file affidavits. 7 did not. There is no difficulty in relation to this, since the legal issues will apply to all of the defendants. The defence called 5 witnesses.

The first defence witness is Tony Maktun.

He gave evidence that he went and lived on the plaintiff's land sometimes in 1994. Before he moved into the land, he said he had an agreement with the plaintiff to the following effect: the plaintiff told him to go and live on his land until he died and the land will revert back to him/plaintiff. As to rent, this witness said the plaintiff told him to pay Vatu 4,000 per month but when the plaintiff decided to increase the rental to Vatu 6,000, he stopped to pay the rents.

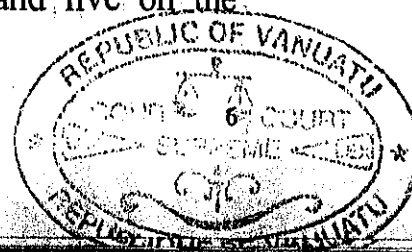
He also gave evidence that the plaintiff brought a paper for him to sign during a night. The plaintiff told him to sign. He said he did not know how to read. He gave evidence that the plaintiff brought this document for him to sign one year after he was already on the plaintiff's land and start to build his house. He is doing gardening but he does not live yet on the plot of land. During that period of 2 years he was occupying and using the plaintiff's land, he paid rental of Vatu 4,000 as initially agreed to by him and the plaintiff. This witness pointed out that there is no written agreement between him and the plaintiff. The plaintiff told him to pay the rent until he died. He said he stopped paying the rent because the plaintiff wished to increase the rents and also wished to evict the defendants from his property.

He said when he started to build his house, he was requested to get a building permit from Shefa Province. His evidence is that the posts of his house is wood, cover. It is not completed. He stopped building his house when the plaintiff took them (defendants) to Island Court.

He paid 3,000 Vatu to get the permit building.

This witness denied that he owed the plaintiff Vatu 200,000 for rent. He paid 4,000 Vatu/month for a period of 1 year and he said he might have Vatu 90,000 outstanding for rentals. He said he is not sure about the amount.

This witness finally pointed out that there are 2 agreements: the 1st agreement is to the effect that the defendant will go and live on the



plaintiff's land and if the defendant decides to leave, the land is reverted to the plaintiff. The 2nd purported agreement is about rent of Vatu 6,000.

Under cross-examination, this witness confirmed that the agreement was brought to him by the plaintiff during the night. He could not read and write. The document was not read to him. The plaintiff told him he must sign it. The document, he referred to was the document containing 5 years lease. He further said that the plaintiff forced him to sign and told him that all of the defendants have signed the documents. So he said he signed without knowing the content of what he signed.

He further confirmed that he did stop paying rent when the plaintiff decided to increase the rent to Vatu 6,000 and brought them to Court.

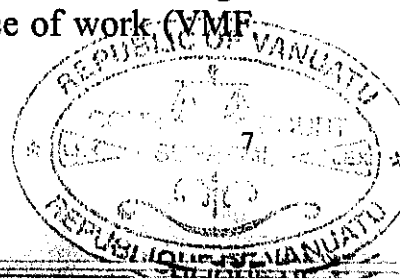
Under re-examination, this witness stressed that he just signed the document on the instructions given by the plaintiff. He said his intention is that he did not want to sign. Finally he confirmed that there are 2 different agreements. The first agreement is an oral agreement between the plaintiff and the defendant. The second agreement was put into writing by the plaintiff.

The second witness of the defence is Sano Sumbe – from Malo Island. He was a former member of the Vanuatu Mobile Force (VMF) and now unemployed. He is the deponent of an affidavit dated 11th March 1999.

He gave evidence to the effect that he moved into the plaintiff's land and lived there in March 1994. Before he moved into the land, he went with the plaintiff on the land and he asked the plaintiff about the conditions or policy or any document to sign.

He gave evidence that the plaintiff told him that he gave a plot of land to him. He will live on it and if he is tired and wishes to go then the land reverted to the plaintiff. He deposited Vatu 5,000 and the plaintiff told him to pay a rent of Vatu 4,000 per month. The plaintiff told him to clear the bush, to build his house and he will start to pay the rent on the 3rd month. So he started to pay rent of Vatu 4,000 on the month of May 1994. Other defendants (Ham Joseph and Tom) lived there already.

This witness gave also evidence that apart from the first agreement, the plaintiff on another time, took another paper to his house for his signature. He said at that time he worked and the plaintiff gave the paper to his wife (defendant's). The plaintiff forced the defendant's wife to sign but she brought the document to her husband at his place of work (VMF).



Fire Station) at 7.30 p.m. at night. He said that was back in 1995. He recalled because he said at that time he had already completed his house and he slept inside his house. He refused to sign and told her wife to tell the plaintiff that he would not sign the document.

This witness testified that he saw and read the content of the document and he refused to sign because the agreement is for 5 years and the house he built on the plaintiff's land is worth more than 5 years. He mentioned that if the plaintiff indicated his intention in the first place as it transpired in the document, he would not go and live inside the plaintiff's land.

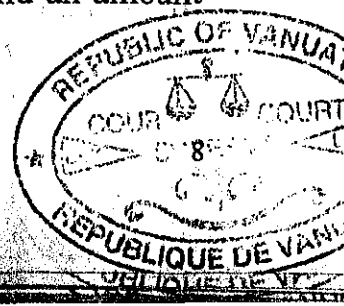
He gave evidence and reaffirmed that his wife brought the paper to him in 1995 not on 1st January 1994 as it is on the said paper because his house was already completed.

He reconfirmed that when he moved into the plaintiff's land, the plaintiff told him to deposit Vatu 5,000 and pay a rent of 4,000 Vatu per month. He will remain and live on the land if he is tired and want to leave, then the land will revert to him/the plaintiff. He said he asked the plaintiff about his house. The plaintiff told him to remove his house and to leave his land.

Shefa Province did request this witness to get a building permit. He paid an amount of Vatu 3,000 for deposit for permit and a physical planning officer told him to pay 3,000 Vatu. So he paid a total of Vatu 6,000 to get a building permit. He understands that there is a new law requiring for building permit and plan to be obtained for the construction of building in rural areas.

His evidence is that the plaintiff did not inform him about the problem of physical planning and the building permit. He said the plaintiff told him to clear the bush and to build his house at the same time. He said he went on building his house until the Shefa Province's authorities stopped him to continue building without a building permit until he got one. He described his house as a permanent house with cover – cement floor – tyle – louver glasses and water inside the toilet and kitchen.

He also said it was difficult for him to build his house and in particular he hired the services of other persons to assist him carrying the building materials from the main road to the land. He performed 3 different custom ceremonies to 3 different custom land owners to get water into his house. The custom ceremonies costed him one head kava and an amount



of 10,000 Vatu. He said he approached the plaintiff in the first place to get water. The plaintiff refused him access to water.

- This witness mentioned that after he refused to pay rent of Vatu 6,000, the plaintiff took him to Island Court. The Island Court has decided on 5th September 1995 that he will pay Vatu 4,000 rent per month.

He gave evidence that today he has no rental outstanding. He owes the plaintiff no money. But in 1996, he owed the plaintiff some money due to the fact that he was in prison. At that time, he owed the plaintiff 44,000 Vatu for rent. After prison, he paid all of his outstanding rents.

Under cross-examination, this witness confirmed that he did not sign the document which was brought by the plaintiff to his wife. The signature is not of his wife.

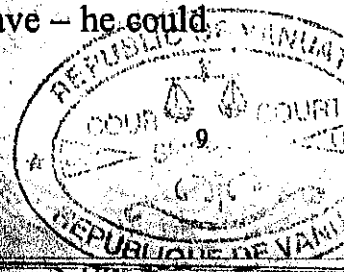
He said he did receive a letter notifying him to leave when he was in jail. He then made an agreement with the plaintiff to pay all his rent and will remain on the land.

The third defence witness is Timothy M. A. of Paama Island. He sworn an affidavit as evidence in this case. He gave evidence to this effect. He lives on the plaintiff's land since 1994. Before he moved into the land, he asked the plaintiff to get a plot of land. The plaintiff accepted and told him to move into his land, build a temporary shelt and then built a proper house to live in. He said the plaintiff gave him a grace period of 2 months to pay the rent of Vatu 4,000. So he started to pay rent on the 3rd month after he moved in. On 7th May 1994, he built a small shelt and lived in. He then built a proper house. After he started to build his house, the Physical Planning Officer of the Shefa Province told him to get a building permit.

He said he mentioned to the land owner (the plaintiff). The plaintiff told him to go on building and the Physical Planning Officer of the Shefa Province come back to him (witness). He said the plaintiff told him not to get a building permit but he must pay his rent.

As to the construction of his house, this witness says that he went on building his house based on what the plaintiff told him to do.

This witness says there is no written agreement. The plaintiff told him to make a deposit of Vatu 5,000 and pay Vatu 4,000 for rent. The plaintiff told him to stay and live on the land and if he wanted to leave - he could



go and the land is reverted to the plaintiff. He gave also evidence that, if he decided to go, he will remove his house and leave the land. This witness has a hurricane proof house – a permanent house. His house is made of cover on the wall, plan, concrete floor and louvers around. He built the toilet seat inside. He spent 5 to 6 months to built his house.

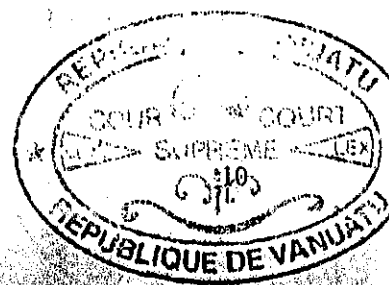
He also gave evidence that he did remember that the plaintiff sometime in 1995, come with one of his friends in the night with a torchlight and asked him to sign a document. He said he remembered because in 1994, he had completed his house and lived in it. He asked the plaintiff if he could allow him time. The plaintiff refused and told him that this is the agreement he (the plaintiff) made when (the witness) moved into the land. He told him to sign it. He gave evidence that when the plaintiff come, he referred to him about the 1st agreement they made before he (witness) moved into the land. But the plaintiff did not talked about Vatu 6,000 for rent. He was aware about the fact that the written document was about the rent of Vatu 6,000 per month on the next day because he did not read the paper. The plaintiff did mention to him that the agreement is for 5 years. The plaintiff told him to sign the agreement which is based on the first agreement which is for him (witness) to make a deposit of Vatu 5,000 and pay Vatu 4,000 for rent. He mentioned further that the plaintiff's friend confirmed what the plaintiff said and held the torch light for him (witness) to sign.

This witness says, he is a French speaking citizen, did not speak English and he had no chance to peruse or read the paper. He pointed out that he is not clear as to the meaning of the document and he is not prepared to change his 1st agreement with the plaintiff.

There is no other light when he signed the document. He was having his shower outside his house and he confirmed he signed the document in a torchlight.

He insisted, he remembered he signed the document sometimes in 1995 but not on 1st January 1994 as it transpired on the plaintiff's document.

He gave evidence that he paid Vatu 4,000 for rent and owed the plaintiff 20,000 Vatu for rent. As to why he has an outstanding rent of Vatu 20,000 he said sometimes in mid 1997, he asked the plaintiff permission for building a water tank. The plaintiff told him to build a temporary tank and sent him (witness) to Sethy, a custom land owner of Ifira island to get access to his land to get water.



Sethy charged him to pay 6,000 Vatu for this. He bought 24,000 Vatu for water pipe and Vatu 19,000 for water metric from Unelco. The plaintiff then told him to stop everything. He said he was not happy because the plaintiff allowed him to get water from a different custom owner and relying on this acceptance he incurred expenses and thereafter, the plaintiff refused and stopped everything. Escale refunded him Vatu 18,000 and Unelco refunded him Vatu 17,000. He gave evidence that he is ready to pay Vatu 20,000 to the plaintiff if the plaintiff paid him Vatu 6,000 he (witness) paid to get access to Sethy's land to get water.

Finally he said if the Court granted the eviction order against him, he requested that the plaintiff compensates him.

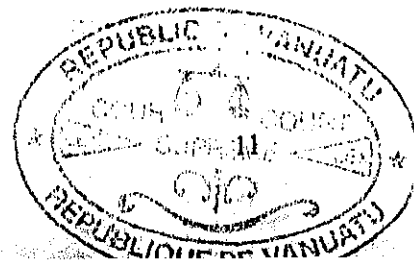
Under cross-examination, he said he received a letter in April 1997, notifying him to leave the land. He also specify that he did sign the document in 1995 but he stressed that the signature appearing on the documents (as in Exhibit P4) is not his signature. He did not received any letter from the plaintiff's counsel.

The second last defence witness is Mrs. Losleyn Maltok. She is employed as typist at the Vila Police Station. She sworn an affidavit in support of this case dated 12th March 1999.

She had a verbal agreement with the plaintiff in 1994. The plaintiff and this witness had discussions behind the Police Station, closed to Family Association Health's office. She deposited Vatu 1,000 and she paid rents of Vatu 4,000 per month and she moved into the land. She withdraw a deposit she made at Fresh Water for the purchase of another plot of land there.

She gave evidence that the plaintiff did not mention to her about the period of tenancy. She said the plaintiff just mentioned to her that she moved into the land and live there. If she wanted to leave, she could leave and the land will be reverted to him. The plaintiff and this witness held discussions in May 1994. She started to pay Vatu 4,000 for rent in July 1994 and she moved into the land in October 30, 1994.

She started to build her house on 6th or 7th July 1994, Shefa Physical Planning Officer stopped the building of the house and requested her to get a building permit. She applied and paid Vatu 3,000 for the fees. The construction of the house is not completed. She moved in and lived in the incomplete house. She gave evidence that the completed part covered the floor, concrete wall-copper, ceiling, one room is completed with louvers – three rooms are still to be completed with ceiling.



She said she is aware that the plaintiff did not accept the intervention of the Shefa Province. She gave evidence, she sign a document but she did not read the content. She knew about the increase of the rent on the next day after she had signed. She moved into the plaintiff on 30th October 1994 and she received the letter (agreement) about March or April 1995. She is paying Vatu 4,000 rent per month on the basis of the first agreement.

She gave also evidence that if the Court granted the order to evict her from the land, she will remove her house and the copper and leave the empty land to the plaintiff. She said the plaintiff told her that if she is evicted he will pay for her building. She has no outstanding rent owing to the Plaintiff.

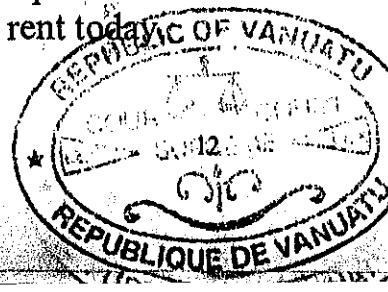
While cross-examined, she said she did not receive any letter from the plaintiff to leave the land. She received the trespass notice but she said she did not trespass on to the plaintiff's land. The plaintiff told her to stay because she paid her rents.

The last defence witness is James George. He sworn an affidavit in support of this case. He became a tenant and rent the land to the plaintiff at the end of May 1995. He was the last person to move into the plaintiff's land.

This witness's evidence is that he asked the plaintiff for a plot of land and on a Saturday, the plaintiff showed him a plot for him to live on it. He asked the plaintiff permission to build a house. The plaintiff allowed him to do so. He applied for a building permit at the Shefa Province and the plaintiff told him not to get a permit but to go on building.

The plaintiff asked this witness to pay Vatu 6,000. He refused in the first place. But the plaintiff told him if you refused then I will evict everybody on the land because I have the intention to increase the rent to Vatu 6,000. The plaintiff gave him a paper to sign. He refused. He said the plaintiff forced him until he finally signed to pay rent of Vatu 6,000 per month. He paid rents since June 1995 at Vatu 6,000 per month. He said after Island Court decision in October 1997, he was not a party but he then paid Vatu 4,000 like others.

He said he remembered he signed an agreement with the plaintiff sometimes in June 1995. The plaintiff came to see him in the night and requested him to sign. If he refused to sign the document the plaintiff will remove him out of the land, he said. He had no outstanding rent today.



He gave evidence that his house is not yet completed. The house is of timber, concrete floor and wall. He has built a well after he asked permission to the plaintiff.

This witness says, the plaintiff says nothing to him as to whether there is understanding between him and the plaintiff that he will stay on the land as from May 1995. The paper he signed said that the agreement is for 5 years. He says according to his knowledge and understanding, the 5 years means, you stay five years and then you can renew for further years.

He also gave evidence that the plaintiff told him also that he (witness) will live on the land and if he wanted to leave, then he could go but the land will be reverted back to him (plaintiff). This witness says he paid rents and if he has no outstanding rentals to pay and the Court ordered him to evict the plaintiff's land as requested then the plaintiff must compensate him for his hard work and labour.

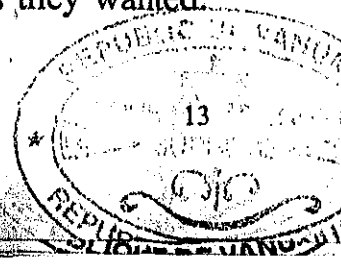
He admitted he received a copy of the plaintiff's letter requesting him to leave the land and also Trespass Notice.

That is the end of the defence case and the end of the evidence in this case.

IV. THE FACTS FOUND BY THE COURT.

The plaintiff, as a custom land owner, has entered an oral agreement with each of the defendants amounting to a contractual license. It is not disputed that sometimes between late 1993 and June 1995, each of the defendants approached the plaintiff requesting a piece of land for each of them to erect a house and live on it. I found that the plaintiff and each of the defendants entered into an oral agreement between late 1993 and June 1995 to the effect that each of the defendants moved into the plaintiff's land, clear bushes, build their houses and lived there. If any of the defendants wishes to leave, he could go but leave the plaintiff's land. I found also that one of the oral terms and conditions of the agreement is that each defendants will pay a deposit of Vatu 5,000 (with the exception of Mrs. Losleyn Maltok who pay a deposit of Vatu 1,000) and pay a rent of Vatu 4,000 per month and most of them have a grace period of 2 months to allow them to build their houses.

Each of the defendants gave evidence that it was a term of agreement that upon paying the rental, they build houses and could live as they wanted.



This amounts to a license/permission for the Defendants to occupy and use the Plaintiff's custom land for an indefinite period. I found that this is the first agreement between the plaintiff and the defendants as testified by the defendants.

I found also that, the plaintiff attempted to put into writing the terms of the first oral agreement with each of the defendants. However, in doing so, the plaintiff put into the agreement (2nd agreement) new terms and conditions which are not discussed and agreed to by both the plaintiff and each of the defendants in the oral agreement (first agreement). I believe and accept the defendant's evidence when they say that there is no mention about 5 years period tenancy. If that was the case, then, they would not commit themselves (see evidence of Sano Sumbe, Timothy M. A.). I find and accept also that Vatu 6,000 for rent per month is not a term/condition as discussed between the plaintiff and the defendants. This finding is supported by the evidence of the plaintiff who says that, he is the custom landowner, and as such he can put the date and fixe such conditions which is what he did here. Further I find that the document which was exhibited in "B" to the Plaintiff's statement of evidence, shows a plan with a Title No. 12/0633/165 but there in no mention about the name of the Title Leaseholder, nor the name of the property referred to in the said plan. In respect to the application to lease fee paid as exhibited in "A" to the Plaintiff's statement of evidence, dated 9/10/1997, I find that it related to an application to lease fee paid for unspecified property.

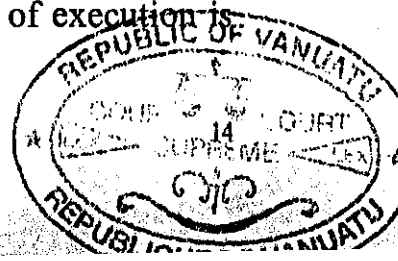
It is not disputed that subsequently, the plaintiff approaches each and everyone of the defendants and executed the rental agreement.

I find further that the plaintiff requested the defendants to sign the new agreement during the night by forcing them to sign, otherwise, they must vacate his land. I finally find that the defendants on reliance upon their first agreement with the plaintiff, moved into the plaintiff's land, build houses and, thus, incurred expenses in so building and related expenses such as for example, building permit, water pipe allowing the Defendants to take water from outside the plaintiff's land and digging and establishing well system of water in the Plaintiff's land. I therefore reject the evidence of the Plaintiff on the basis of these findings.

V. SUBMISSIONS BY COUNSELS.

A. SUBMISSIONS FOR THE PLAINTIFF.

Mr. Malcolm submitted on behalf of the plaintiff that the evidence show that the agreement as to the rent was executed. The date of execution is



irrelevant. The important date which is relevant, is the date of commencement. This submission was made on the basis that the contract itself is for 5 years period and a monthly rent of Vatu 6,000. It is a monthly tenancy.

It is further said for the plaintiff that in April 1997, each and everyone of the defendants were given notice to leave the land and further in June 1997, a Notice of Trespass was issued to each and everyone of the defendants.

It is also submitted for the plaintiff that this tenancy agreement involves leasehold title No. 12/0633/165. The relevance of this, it is put, is that the land is governed by the Land Leases Act [CAP. 163]. It is not a custom land. The relevant sections are sections 48, 41, 35 and 33 of the Land Leases Act.

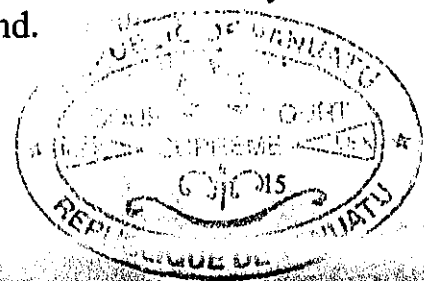
It is said that this agreement is a periodic tenancy governed by Section 33 of the said Act. There is, therefore, no reasons why the plaintiff should not give 1 month notice. The periodic tenancy should be terminated on 1 month notice. The position is that after 5 years, there is no need to issue a notice.

It is further submitted for the plaintiff that the defendants are not entitled to any compensation. The compensation is possible only where the plaintiff and the tenants agreed to it. In any event, it was said that there is no evidence before the Court on money actually spent and more evidence is needed to be given. It is finally said that the defendants cannot remove their houses from the plaintiff's land. It is a fixture to the land. The plaintiff relies on the case of *Harwan v. N. W. Towson* (a Fijian case). Therefore, it is said, the defendants are not entitled to remove houses and the Court, it is requested, will give the defendants reasonable time to take non fixed chattels.

It is also conceded on behalf of the plaintiff that the plaintiff is entitled only to Vatu 80,000 in respect to the defendant Timothy Mathew.

B. DEFENCE SUBMISSIONS.

Mr. Joel, on behalf of the defendants, submitted in substance that the first agreement between the plaintiff and the defendants is a verbal agreement for the defendant to move into the plaintiff's land and live there until they decide to leave, they can go and leave the plaintiff's land.



It is also put for the defendants that, it is not disputed that the plaintiff has a lease. The point for dispute is that when the plaintiff made the agreement with the defendants, there was no lease. The evidence show, it is submitted, that the land in question, is the custom land of the plaintiff. Therefore, none of the provisions of the Land Leases Act apply to this case. The law to be applied is the contract law based on the agreement between the parties that "*oli stap long land, oli taet bae oli aot and leavem ground blong plaintiff istap*". ("*They lived on the land if they are tired, they can leave and the land is reverted back to the Plaintiff.*")

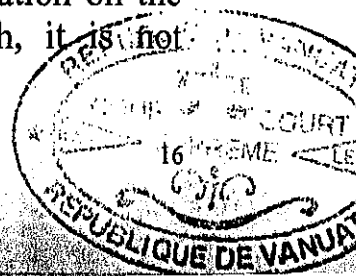
It is also disputed on behalf of the defendants that the plaintiff's written agreement was signed by each and everyone of the defendants on 1st January 1994. It is said in support of this argument that (1) the plaintiff at that time has no registered lease title No. 12/0633/165; (2) most of the defendants did not move into the plaintiff's land on 1st January 1994. They moved into it between March and June 1994; (3) the evidence show that the land concerned is a custom land of the plaintiff. It is therefore submitted that the agreement is an agreement between the plaintiff and the defendants based on the custom land of the plaintiff. The Land Leases Act does not apply.

It is also said that the defendants did not agree that the tenancy agreement is for a period of 5 years because if they knew it, they would never move into the plaintiff's land between March or June 1994 pay rent of Vatu 6,000 per month, apart from defendant James George who moved into the land on 30th October 1995.

It is also submitted for the defendants that there is already an agreement between the plaintiff and the defendants before the plaintiff attempted to change the terms of the said agreement in the written agreement as contained in his evidence which is not enforced until now. The defendants say the written agreement (2nd agreement) is not enforceable.

It was conceded for the defendants that they owe outstanding rent to the plaintiff for one reason or another and it is put that the reason why the defendants owed rents to the plaintiff is due to the plaintiff's behaviour as testified by the defendants which put the defendants into unsecure situations.

It is finally submitted for the defendants that if the Court finds that the defendants failed to pay rent, thus, eviction order be granted against each of them, then the defendants should be entitled to compensation on the basis of substantial justice. The defendants say, although, it is not



disputed that houses constitute fixtures on the plaintiff's land, the agreement is between the plaintiff and the defendants based on the custom land of the plaintiff.

It is then submitted that if the defendants be evicted from the plaintiff's land without any compensation, it would not be fair to the defendants. In justice, the plaintiff would benefit on the developments and the plaintiff has not taken any risks at all. Justice be well served if the defendants be compensated.

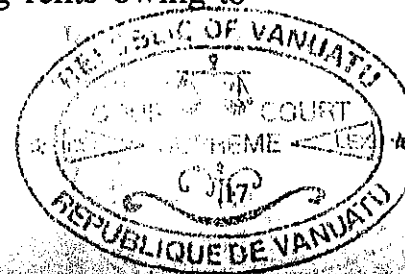
VI. APPLICATION OF THE LAW TO THE FACTS.

In this case, the law to be applied is the law of contract but not the Land Leases Act [CAP. 163]. I do accept the Defendants' submissions that the law to be applied is the contract law based on the agreement between the Plaintiff and each of the Defendants to the effect that each of the Defendants moved into the Plaintiff's custom land, clear bushes, build houses and lived there. If any of them wishes to leave, he/she could leave but the land will be reverted back to the Plaintiff. The second agreement based on the subsequent leasehold title on the Plaintiff's customary land, has no relevance to this case. It is, therefore, rejected as the correct law to be applied in this case and as such unenforceable.

Further, since the oral agreement between the Plaintiff and the Defendants is based on the custom land of the Plaintiff, which is not registered under the Land Leases Act [CAP 163] at the time of the agreement between the parties, none of the provisions of the Land Leases Act shall apply to this case.

Finally, the agreement between the Plaintiff and the Defendants is not a periodic tenancy of 5 years governed by the provision of the Land Leases Act [CAP. 163]. In my view, the agreement between the Plaintiff and the Defendants constitutes a contractual license for the Defendants to occupy and use the custom land of the Plaintiff as licensees under the terms and conditions as agreed to between the Plaintiff and the Defendants. One of the terms and conditions agreed to by the parties is monthly rent of Vatu 4,000.

The evidence establishes that five (5) Defendants owe outstanding rents to the Plaintiff and this was due to the Plaintiff's own conduct to the Defendant and four (4) Defendants have no outstanding rents owing to the Plaintiff.



1. The Plaintiff's claim for outstanding rents

The Defendants concede that the following Defendants owe outstanding rents to the Plaintiff:

• Tom Obed	200,000VT
Joseph Tabi	124,000VT
Tonny Maktu	60,000VT
Pierre Charley	100,000VT
Timothy Mathew	80,000VT

<u>TOTAL</u>	<u>564,000VT</u>

The Plaintiff will be entitled to an amount of vatu 564,000 for outstanding rents due and owing to him by the above-named defendants.

• The Plaintiff then, applies for an Order evicting all the Defendants on his custom land.

• 2. The application for an order evicting the Defendants from the Plaintiff's land.

The Plaintiff served on each of the Defendants a demand for each of them to leave, dated 4th April 1997 and he did also serve on each of the Defendants Trespass Notice, notwithstanding that the Defendants (Sano Sumbe, Losleyn Maltok, Ham Seth and Tensley Banga) have no outstanding rents due and owing to the Plaintiff. But, as he said in his evidence, he wanted his land back.

It must be understood that the Plaintiff has no cause of action against a Defendant who has paid his rents and has no outstanding rents due and owing by the Defendant to him.

The evidence show that the Defendants: Sano Sumbe, Losleyn Maltok, Ham Seth and Tensley Banga have no outstanding rents due and owing by them to the Plaintiff. There is no basis for the Plaintiff to apply for an eviction order against each of the above-named Defendants. This constitutes a breach of the agreement (1st agreement) by the Plaintiff in respect to the above-named Defendants.

Further, the evidence show that Defendants: Tom Obed, Joseph Tabi, Tonny Maktun, Pierre Charley and Timothy Mathew have outstanding



- rents due and owing by them to the Plaintiff. However, as the evidence of the Defendants show and accepted by the Court, those Defendants stop to pay rentals of 4,000 Vatu due and owing to the Plaintiff, because of the Plaintiff's own conduct towards the Defendants. Therefore, at best, it is only against those above-named Defendants that the eviction Order, if appropriate, can be sought by the Plaintiff.

It is quite clear that upon assessing all the evidence as found by the Court, the fact that some of the defendants have outstanding rents to pay to the Plaintiff, is not really a matter for the Plaintiff, because as he admitted in his evidence, the Plaintiff wanted to have his land back.

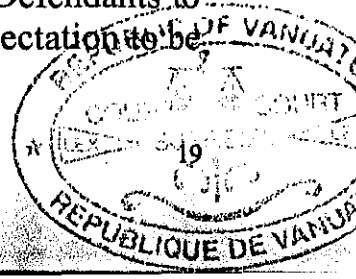
In effect, the Plaintiff succeeded to achieve his goal, by putting the Defendants in a very difficult position to execute the agreement so that as a result some of the Defendants were disappointed and stop paying their monthly rents. This is a bad excuse for the Plaintiff to have the Defendants evicted on his land.

- Therefore, as it appears, the Plaintiff applies for an eviction order against all the Defendants together without distinguishing between those who have no outstanding rents and those who have outstanding rentals due and owing to the Plaintiff. The only explanation is that the Plaintiff wanted his land back as shown by the evidence and on the Plaintiff's own admission. This amounts to an attempt to terminate the agreement between the Plaintiff and the Defendants by the Plaintiff.

The Defendants do argue about the basis of the eviction Order. They say that some of the Defendants, who failed to pay rentals to the Plaintiff, have failed to do so due to the Plaintiff's conduct towards each of them and since, they are unsure about the future of their contractual relationships with the Plaintiff, they decided to stop paying rents. Further, the Defendants lodged a counter-claim for compensation against the Plaintiff in the event that the eviction Order is granted.

The court's approach in cases of this kind is first to inquire what is the equity due to the licensees and then to consider how best to satisfy it.

- It is quite plain from the evidence in this case, that if the Plaintiff allows the Defendants to build houses and live on his land, it amounts to expanding money on the land under expectation created or encouraged by the Plaintiff that the Defendants will be able to remain there. That raises an equity in the licensees (Defendants) which entitles the Defendants to stay on the Plaintiff's land. The Court will not allow an expectation to be



defeated where it would be inequitable to do so. The present Plaintiff is bound by this equity which is recognised by law to arise from the expenditure of money by the Defendants in actual occupation of the land when they are led to believe by the Plaintiff/custom landowner that, as a result of that expenditure they will be allowed to live on the land.

In my judgment, the Defendants have an equitable right and/or interest in the Plaintiff's land. The conduct of the Plaintiff as established by the evidence, constitutes a breach of the Defendants' equitable rights and/or interests.

In this case, the order sought by the Plaintiff to evict the Defendants on his land, must be refused. The Defendants will remain on the Plaintiff's land and the Plaintiff will be ordered to convey his land to the Defendants by way of proper registered leases under the Land Leases Act [Cap.163].

There is no need for me to consider the Defendants' counter-claim for compensation and damages.

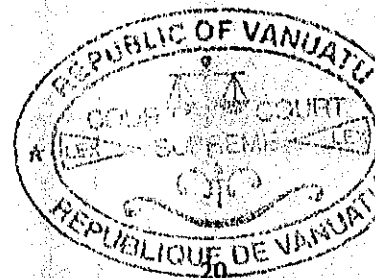
VII - THE DECISION

1. That the rentals due and owing by the following Defendants to the Plaintiff:

- Tom Obed.....	VT	200,000
- Joseph Tabi.....	VT	124,000
- Pierre Charley.....	VT	100,000
- Tonny Maktu	VT	60,000
- Timothy Mathew	VT	80,000
Total	VT	<u>564,000</u>

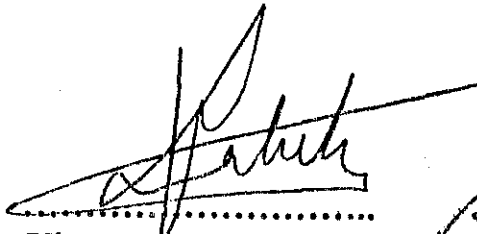
Each of the above-named Defendants are ordered to pay rentals due and owing by each of them to the Plaintiff as set out above. They have to pay within a period of 6 months as from the date of this Judgment.

2. That the Order to evict the Defendants from the Plaintiff's land is refused.



3. That the Defendants will remain on the Plaintiff's land as initially agreed to between the Plaintiff and the Defendants.
4. That the Plaintiff is ordered to convey his land to each of the Defendants on the basis of the properly registered leases under the Land Leases Act [Cap.163].
5. That there is no Order as to costs.
6. That there is no interests awarded.

DATED AT PORT-VILA, this 12th DAY of NOVEMBER, 1999



**Vincent LUNABEK J
Acting Chief Justice**

