

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

CIVIL CASE No.207 of 2007

BETWEEN: THE GOVERNMENT OF THE REPUBLIC OF
VANUATU
First Claimant

AND: THE MINISTER OF LANDS
Second Claimant

AND: SAM MAHIT
Defendant

*Ms Jennifer Harders & Mrs Viran Molisa for the First and Second Claimants
Mr Nigel Morrison for the Defendant*

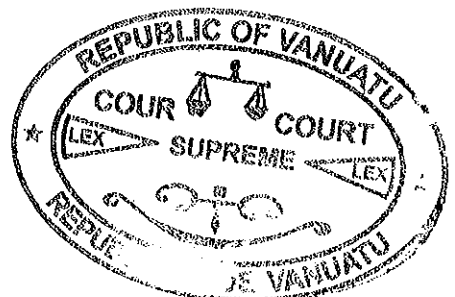
REASONS FOR SUMMARY JUDGMENT

The Attorney-General filed a Summary Judgment application under Rule 9.6 on 16 January 2008 on behalf of the First and Second Claimants against the Defendant.

The Applicants/Claimants say the Defendant has no real prospects of defending the Applicants' claim because:

1. The Defendant admits to the execution of the Deed.
2. The Defendant's defence upon the allegation that the Deed is vitiated by either:
 - (a) His alleged inability to speak English;
 - (b) His alleged unilateral mistake as to the effect of the Deed; or
 - (c) Some unspecified form of alleged "coercion";Does not disclose an effective defence.
3. Further and alternatively, the Defendant's defence is so shadowy that leave to defend ought not to be given.

There is no opposition to the summary application.



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The position in the present case is that the Claimants' claim is made on the basis of contractual arrangement between the Claimants and the Defendant. It is part of the implied terms of the agreement that the Defendant would surrender his lease in consideration of payment of Vatu 58,000,000 by way of compensation by the Claimants. It is an implied term that the Defendant will execute the surrender of his lease by signing the required Form (Form 7) under the Land Leases Act.

There is no suggestion that the Defendant did not sign the Deed or that he did not received payment of Vatu 58 millions.

) The first Claimant received nothing in consideration of payment of Vatu 58 millions.

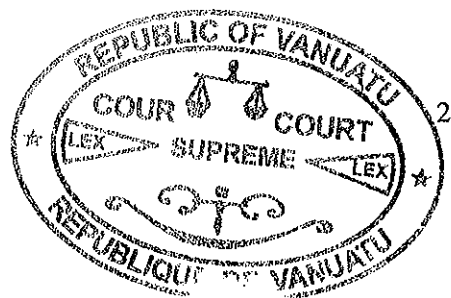
The Defendant breaches the terms of the Deed of Release and Surrender by:

- Failing to vacate the land lease property;
- Refusing to vacate the property (despite notices to vacate);
- Refusing to sign any instrument to transfer the Lease hold title.

On the strength of the Claimants' case, the case of the Claimants is unchallenged by evidence. In the circumstances, the Claimants must be entitled to summary judgment.

) Even if there is a generous consideration with the Defendant's position, on the strength of his defence, the Defendant has no prospect of defending the claim because:

- He has not repaid 58 millions Vatu paid to him.
- There is no evidence to support his defence of his inability to speak English.
- His allegations of unilateral mistake or some form of coercion are not specified in his defence.
- There is evidence that the Defendant does understand English. This is evidenced through a letter to the Claimants written by the Defendant dated 2



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February 2006 exhibited in the sworn statement of Russel Nari filed 28 January 2008 ("RN1"). The said letter was written in very good English.

- Further there is evidence that the Defendant was represented by a lawyer at all material times.
- There is evidence of a letter attached to the sworn statement of Russel Nari ("RN4") dated 5 February 2007 in which the Defendant sought payment of the Second instalment due to him under the Deed. This leads to a rational inference that the Defendant understood how much he is owed and he understood the terms of the Deed.

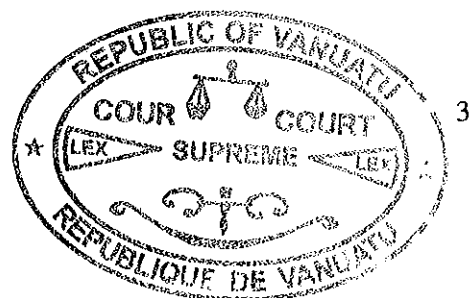
None of the Defendant's defence is available to him unless he repays Vatu 58 millions paid to him.

The Civil Case No.184 of 2006 is a case in support of the present case. It is about the lease interest sold, contract of sale was signed by Claimants' administrator, and order seeking to have the lease returned to the Claimant was refused because the pleadings do not attack the validity of the contract of sale and the pleadings nor affidavits made no offer to refund the purchase price of the land. Order sought to have the return of the lease is refused.

In the present case, the Defendant has no real prospect of defending the claim. Summary judgment application is therefore granted. Following orders are made:

ORDERS

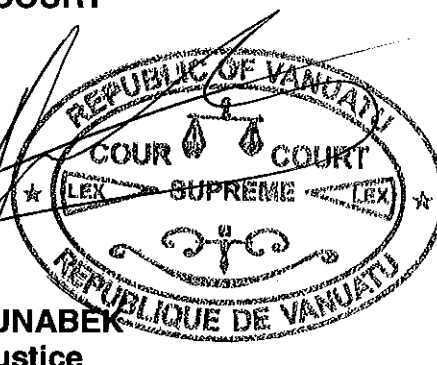
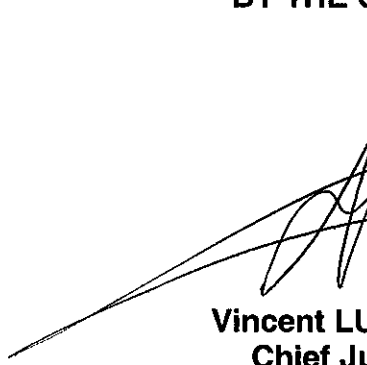
1. An order for specific performance requiring the Defendant to execute an instrument of surrender in favour of the First Claimant.
2. Claimants are entitled to damages and exemplary damages to be assessed.
3. Claimants are entitled to costs as taxed or agreed.
4. The Claimants are entitled to interests on damages consequent upon the assessment of damages.



5. The matter is adjourned for conference on damages on 12 March 2009 at 2.00PM o'clock.

DATED at Port-Vila this 3rd day of February 2009

BY THE COURT



Vincent LUNABEK
Chief Justice

The seal is circular with the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom. In the center, it features a scale of justice and the words "COUR SUPREME" and "COURT SUPREME". There are also two small boxes containing the word "LEX" on either side of the central text.