

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU

Civil Case No. 22 of 2010

(Civil Jurisdiction)

**BETWEEN: ZAKIAS BATU LIVO**

Claimant

**AND: RACHEL VATARUL**

First Defendant

**AND: MATHEW WOON**

Second Defendant

**AND: GOVERNMENT OF THE REPUBLIC OF  
VANUATU**

Third Defendant



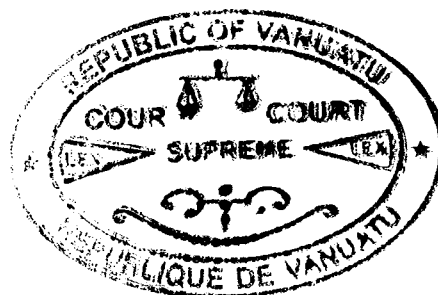
Mr Justice Oliver A. Saksak  
Mrs Anita Vinabit – Clerk

Mr Tom Joe for Claimant/Applicant  
Mr Daniel Yawha and Mr Britten Yosef for First Defendant  
No appearance by Second Defendant  
Justin Ngwele for the Third Defendant

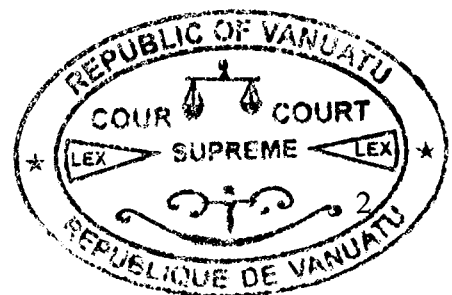
Date of Hearing: 7<sup>th</sup> June 2011  
Date of Decision: 8<sup>th</sup> June 2011

## DECISION

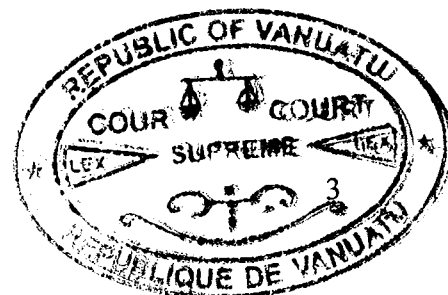
1. Two separate applications were made to the Court yesterday. The first is an application to suspend interlocutory orders issued on 16<sup>th</sup> November 2010. That is an application filed on 2<sup>nd</sup> March 2010 by Mr Yawha on behalf of the First Defendant. The Second is an application by Mr Joe on behalf of the Claimant to stay proceedings. It was filed on 23<sup>rd</sup> May 2011.



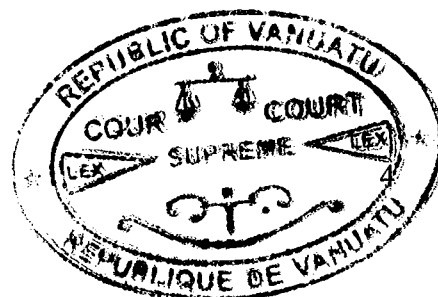
2. The Order of 16<sup>th</sup> November in paragraph 2 thereof stated that –  
*“All monies paid as rentals to the First Defendant Rachel Vatarul in relation to Leasehold Titles No. 04/3033/005, 004/3312/003, 04/3312/002 and 04/3033/002 be paid into the Court’s Trust Account maintained by the Registrar in Port Vila pending further orders of the Court.”*
3. Paragraph 3 of the Order states –  
*“Until further orders of the Court the First Defendant by herself, her sons namely Sope Paul, John Early, Joseph Livo and Willie Tavuti, her agents, representatives and relatives be hereby restrained from trespassing and/or threatening Mr Mathew Woon and his employees, agents and/or representatives in any manner.”*
4. These are the only orders that concern the First Defendant.
5. The First Defendant argued that she is the lawful lessor of titles 04/3033/005, 04/3312/003, 04/3312/002 and 04/3033/002 and as such she is entitled to receive land rents in respect thereof.
6. The Claimant seeks orders to stay the proceeding pending determination of his claims against the First Defendant as Administrator.
7. The evidence in support of that assertion is in the affirmed statement of Zaki Batu Livo filed on 7<sup>th</sup> June 2011 under paragraph 3. He annexes a copy of the Supreme Court Claim under Probate Case No. 6 of 2011. This is made under Section 24 of the Queens Regulation 1972.



8. Paragraphs 4, 5, 6, 7 and 8 inclusive and in summary allege the First Defendant had since being granted Administration, failed in her duties as administrator of the Claimant's father's estate as required by law.
9. Also annexed as part of Annexure 2BL2 is a copy of the Claimant's urgent application seeking two injunctory orders and one mandatory order to require the First Defendant to provide full accounts of the estate. This is made under Section 40 of the Queens Regulation 1972.
10. Two other grounds were advanced for seeking an order for stay of proceeding. These were (a) that the Claimant was claiming against the Supenatavuitano Council of Chiefs and (b) claiming for rectification of titles 04/3312/002 and 04/3033/002. There was however no evidence that these proceedings have yet started.
11. The Third Defendant relied on previous submissions and indicated support for the Claimant's application and further that they would simply abide by any Court Orders.
12. The Second Defendant's position is indicated in Counsel's letter of 20<sup>th</sup> May 2011 that they would not oppose the First Defendant's application to suspend orders of 16<sup>th</sup> November 2010. They have not expressed any views in respect of the Claimant's application for stay of proceeding.
13. From the evidence filed in support of both applications and the arguments and submissions made by Counsel, the Court must be satisfied whether –
  - (a) Civil Case 22 of 2010 has ended.
  - (b) There has been new proceedings filed.



- (c) There has been proper application made.
  - (d) Undertaking as to damages given.
  - (e) There are legal basis for the application.
14. The Court is satisfied that Section 24 and 40 of the Queens Regulation provide the legal basis for the Claimant filing his Supreme Court Claim in Probate Case No. 6 of 2011 and the Urgent Application annexed as 2BL2 to the affirmed statement of Mr Livo.
15. The Court is further satisfied that –
- (a) Civil Case 22 of 2010 has not ended. A judgment has been made but the Orders of 16<sup>th</sup> November 2010 are still alive.
  - (b) A new proceeding has been filed Probate Case No. 6 of 2011 alleging breaches of fiduciary duties on the part of the First Defendant as Administrator.
  - (c) There has been undertaking as to damages given.
16. Having reached those conclusions the Court decides that –
- (a) The application to suspend orders of 16<sup>th</sup> November 2010 by the First Defendant fails and is hereby dismissed.
  - (b) The application to stay proceeding in Civil Case No. 22 of 2010 by the Claimant is successful.
17. The formal Orders are –



(a) Civil Case No. 22 of 2010 be hereby stayed pending the determination of the Claimant's claims against the First Defendant as Administrator in Probate Case No. 6 of 2011.

(b) The Claimant's Urgent Application be heard forthwith.

(c) The First Defendant pays the Claimant's costs of and incidental to the application as agreed or taxed by the Court.

DATED at Luganville this 8<sup>th</sup> day of June 2011.

BY THE COURT

  
OLIVER A. SAKSAK  
Judge

