

BETWEEN: DENIS SAVOIE

Claimant

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

First Defendant

AND: VANUATU PALM OIL LIMITED

Second Defendant

Coram: Mr. Justice Oliver A. Saksak

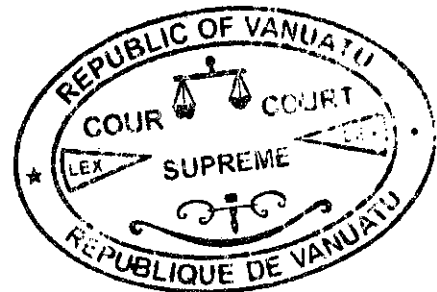
**Counsel: Mr. James Tari for Claimant
Mr. Kent Tari for First Defendant
Mr. Kiel Loughman for Second Defendant**

**Date of Hearing: 26th May 2014
Date of Judgment: 1st August 2014**

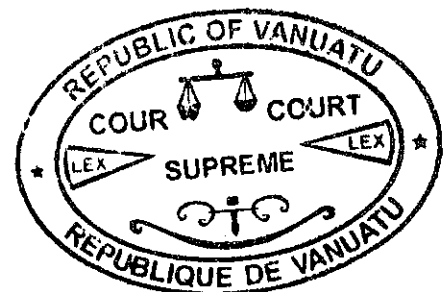
JUDGMENT

1. On 28th May 2013 the Claimant filed his claims against the Defendants herein seeking the following reliefs-
 - a) Declaration that there is a valid agreement lawfully made between the Claimant and the Defendant,
 - b) Specific performance of VT 200.000.000 for consideration under the agreement to be paid jointly and severally by the First and Second Defendants,
 - c) Interests from 1st October 2007 until April 2014,
 - d) Costs, and
 - e) Any other Orders as the Court deems necessary.

2. The Claimant alleges that-
 - a. On 20th July 2007 the First Defendant through its Council of Ministers decided to secure land for the operation of an Oil Palm Project to be operated by the Second Defendant.



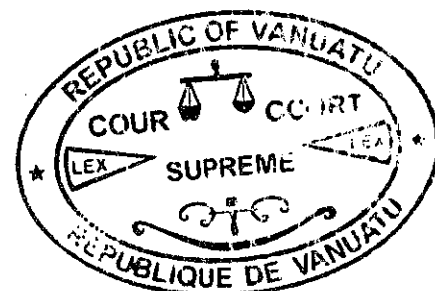
- b. The First Defendant through its Director of Forestry in trying to secure land, had offered to acquire part of land lease Title 04/2634/002 of which the Claimant is lessee, for the purpose of the operation of the Second Defendant.
 - c. The Claimant agreed for the First and Second Defendant to compensate the lessee's interests in the land comprised in lease Title 04/2634/002 for the operation of the Second Defendant.
 - d. The First Defendant in securing the land for the consideration for its benefit of the Ten Per cent (10%) profit on the proceed of the Oil Palm operation.
 - e. The First and Second Defendants agreed to compensate the Claimant in the sum of VT 200.000.000.
 - f. On 27th August 2007 the Claimant hired a consultant to do assessment of the land to decide on its suitability.
 - g. Pursuant to the agreement the Frist Defendant sent four surveyors between 1st - 20th October 2007 on to the Title to survey the part of it which was to be used for the operation of the Second Defendant.
 - h. Subsequently the First Defendant through its Director of Forestry brought a license agreement to Luganville to be signed by the Claimant and then for three copies to be signed by the First and second Defendants.
 - i. The Director of Forestry advised the Claimant that once every document was ready, copies of the agreement would be sent to the Claimant.
 - j. The Claimant made various attempts for the Defendants to comply with the terms of the agreement without success.
 - k. As a result, the Claimant suffered loss and damages.
3. The Claimant filed evidence in support of his claims by sworn statement dated 28th May 2013. He filed witness statements from Robinson Toka dated 13th May 2014 and from Kalsale William dated 13th May 2013. These were agreed into evidence on 26th May 2014.



4. The First and Second Defendants do not accept liability for the Claimant's claims and filed defences on 25th September 2013 (by first defendant) and on 6th August 2013 (by second defendant). The Defendant's defences are basically that-
 - a) There was no intention to compensate land owners, and
 - b) There was no agreement entered into, verbal or written between the Claimant and the first and second Defendant for compensation of the Claimant's land.
5. The First Defendant relies on the evidence by sworn statement of Livo Mele filed on 21st September 2013. The second defendant relies on the evidence by sworn statement of Dick Tomker filed on 25th May 2014. These were agreed into evidence on 26th May 2014.
6. On 26th May 2014 upon Counsel agreeing that facts were agreed and that all sworn statements filed by both the Claimant and the Defendants be admitted into evidence without cross- examinations. Both Counsel agreed and identified the only preliminary issue for consideration by the Court was whether or not there is a valid contract between the parties. Both Counsel agreed to 14 days being given to each party for written submissions.
7. The Claimant filed his written submissions on 10th June 2014. The first defendant filed written submissions on 2nd July 2014 and the second defendant filed written submissions on 3rd July 2014. The Court is grateful to all Counsel for their written submissions.

Discussions

8. As indicated earlier in the Judgment, the only preliminary issue for consideration by the Court is whether or not there is a valid agreement between the Claimant and the Defendants for the compensation of the Claimant's interests in Title 04/2634/002 in the sum of VT 200.000.000.
9. The onus of proof rests on the Claimant to produce evidence showing a valid agreement between him and the Republic. The standard of proof required is proof on the balance of probabilities.



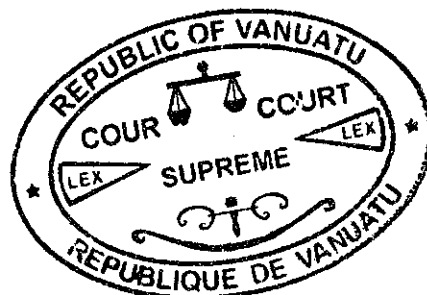
10. The Claimant's evidence by sworn statement dated 28th May 2013 discloses the decision of the Council of Ministers No 66/2007. It is annexed as "DS2" but that is not an agreement and it is irrelevant evidence. Further the Claimant annexes a Request for Execution of Survey Information dated 17/01/13 signed by surveyor Kalsale William (Annexure "DS3") and the plan, but this is not an agreement and it is irrelevant evidence. Next the Claimant annexes as "DS4" a Report by Toka Consultancy Services dated 27/08/07. But this is only a Report and is not an agreement. The recommendations made on page 2 of the Report states clearly that-

- a) "Negotiation is yet to be determined between the parties on the compensation of the Solway Plantation".- paragraph 2
- b) "A licence Agreement is to be drawn and be executed between parties following the negotiation with Mr Savoie" – paragraph 4.
- c) " A licence Agreement will be pending proper survey plans" – paragraph 5,
- d) "The Survey department to finalise survey plans for the sublease" - paragraph 6.

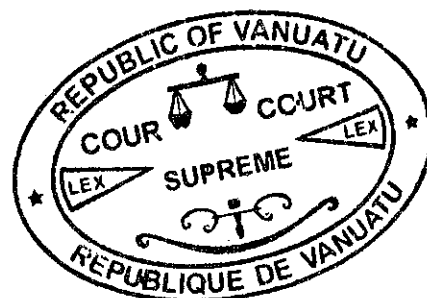
10.1 None of those recommendations had been carried out.

10.2 Next the Claimant annexed as "DS5" a copy of a licence Agreement. It is undated. It purports to be an agreement between Denis Savoie (Claimant) as "licensor" of part Title 04/2634/002 and Vanuatu Palm Oil Limited as the "Licensee". However the definition in clause 1 gives the Government of the Republic of Vanuatu as the Licensor and not the Vanuatu Palm Oil Ltd. The license Agreement is not signed, witnessed or dated on its final page. It is therefore not an agreement binding any of the parties to it.

10.3 The Claimant relies on the evidence by sworn statement of Robinson Toka filed on 6th May 2014 who annexed the same Report dated 27/08/07 as "DS4" as "RT1". His evidence is irrelevant and does not assist the Claimant in relation to the issue of whether or not there is a valid agreement in existence.



11. The Republic (First Defendant) relies on the evidence by sworn statement of Livo Mele, Director of Department of Agriculture filed on 27th September 2013 in support of their defence. This witness discloses Decision No 66/2007 dated 20th July 2007 as "LM1". Further he discloses sample Joint Venture Agreements currently in existence between Land lords and the Vanuatu Palm Oil Limited (VPO) and the Vanuatu Ministry of Agriculture as "LM2". The First of these is between Belcu Tomker and the VPO, the second is between Fred Isaiah and VPO. The third is between Betty Joindy and VPO. The Fourth is between Kaisei Sul and George Nial and VPO. All Landlords here are custom landowners.
12. The purposes of those sample joint venture agreements is to show that if there was to be any negotiation leading to or resulting in a validly binding agreement between the Claimant and the Defendants-
- a) It was to be a Joint Venture Project.
 - b) It required that the Claimant be a custom- land owner which he clearly is not.
 - c) It was Mr Livo who would have negotiated with the Claimant prior to a license agreement being drafted and entered into
13. The evidence of Dick Tomker by sworn statement filed on 25th May 2014 in support of the second defendant's defence confirms all the evidence of Livo Mele.
14. Based on those evidence by the witnesses for the first and second Defendants the Court accepts the submissions of Counsel that there was no valid agreement between the Claimant and the defendants.
15. The Claimant has failed to discharge the onus of proof vested in him to produce a valid agreement existing between him and the defendants.

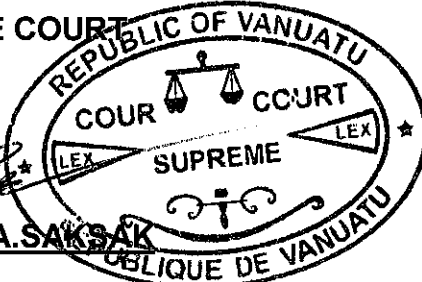


Conclusion

16. The final conclusion is that all the claims of the claimant fail and accordingly they are dismissed.
17. The First and Second Defendants have been put to considerable costs in defending a claim which is ill-conceived. The Court awards costs in favour of the Defendants. Costs are awarded on the standard basis as agreed or be determined by the court. The Claimant is Ordered to pay the Defendant's costs of and incidental to this proceeding.

DATED at Port Vila this 1st day of August 2014.

BY THE COURT



The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The words "REPUBLIC OF VANUATU" are written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. The words "COUR" and "COURT" are on either side of the scale, with "LEX" and a star on the far left and right. The word "SUPREME" is written across the center of the seal.

OLIVER.A.SAKSAK

Judge