

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**

*(Civil Jurisdiction)*

Civil Case No. 16 of 2009

**BETWEEN: SIDNEY PATRICK MCGREAL**  
*Claimant*

**AND: HELEN STARKEY as representative of the Estate of  
Starkey Charlie**  
*First Defendant*

**AND: GEORGE KALOA**  
*Second Defendant*

**AND: THE MINISTER OF LANDS**  
*Third Defendant*

**AND: THE DIRECTOR OF LAND RECORDS AND  
SURVEY**  
*Fourth Defendant*

**AND: BRENTON ERNEST WISES AND SHARON WIESE**  
*Fifth Defendant*

**Hearing:** *Friday 12 December 2014*

**Judgment:** *Monday 26 January 2015*

**Coram:** *Justice Stephen Harrop*

**Appearance:** *Claimant in person (PO Box 1419, Port Vila, email:  
[lancome@vanuatu.com.vu](mailto:lancome@vanuatu.com.vu))*

*No appearance for the First and Second Defendants (Daniel Yawha)*

*No appearance for the Third and Fourth Defendants (Christine  
Lahua (SLO))*

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**RESERVED JUDGMENT OF JUSTICE SM HARROP  
FOLLOWING FORMAL PROOF HEARING**

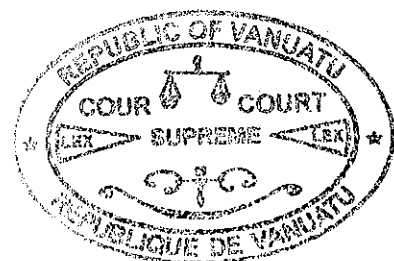
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**Introduction**

1. The claimant issued this proceeding on 4 February 2009 seeking cancellation pursuant to section 100 of the Land Leases Act of the registration of a lease registered against leasehold title 09/1823/002.



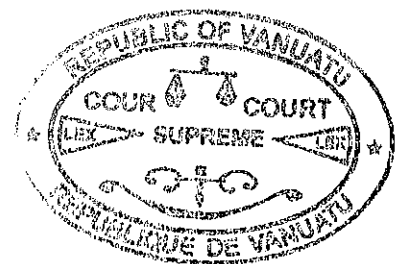
2. On 5 December 2011, Justice Spear recorded that the position between the defendants had been settled and by consent there was a declaration made that the fifth defendants were the correct lessees instead of George Kaloa (the second defendant) and Starkey Charley (the first defendant) in respect of commercial tourism lease dated 28 August 2008 which had been registered against that leasehold title. Justice Spear ordered that the land register was to be rectified pursuant to section 100 of the Land Leases Act so that the leases were changed from Mr Kaloa and Mr Charley to Brendon and Sharon Wiese. This was required as a result of fraud perpetrated by the first and second defendants.
3. Earlier, on 13 October 2011, Justice Spear entered judgment in favour of Mr McGreal against the first and second defendants as to liability for:
  - a) *Reimbursement to the claimant of all payments made by the claimant to the first or second defendants for the intended purchase by the claimant of leasehold interests in land known as Awei Island and Maheh Land, Malekula together with,*
  - b) *All incidental and necessary expenses incurred, interest and costs as determined by the Court in the ordinary course.*
4. As recorded in Justice Spear's Minute of 13 October 2011, this was discrete issue from those affecting the lease of the property and it was further recorded that Mr McGreal had been a victim of fraud perpetrated by senior members of the Department of Lands.
5. Justice Spear, also in the Minute of 13 October, noted that the identity of the first defendant needed to be regularised. This was because Starkey Charley had died in early 2009. He was survived by his widow Helen Starkey and their children but as far as Justice Spear was advised at that time there had been no appointment of an administrator of his estate. By consent and as an interim measure his widow Helen Starkey was appointed as representative of the estate for the purpose of the proceeding pursuant to rule 3.12 on the basis that either Mrs Starkey or a senior member of the family would then seek to be appointed administrator of the estate.
6. Despite the estate or at least Helen Starkey being represented by Mr Yawah, the Court was not informed until independent enquiries were made at my instigation in June 2014 that a grant of administration of Starkey Charley's estate had been made on 23 September 2009 by Master Dawson under Probate case 26 of 2009 in favour of Marie Charley.



7. The only remaining issue after Justice Spear's rulings on 13 October and 5 December 2011 was what was the appropriate sum for reimbursement to Mr McGreal. He claimed Vt 15,497,032 but in addition sought his legal costs.
8. The question of the costs was finalized by me in a Minute on 3 March 2014, when I fixed costs in the sum of Vt 2,783,641 in favour of Mr McGreal against the first and second defendants. I had also ordered a further sum of Vt 20,000 for wasted costs in Mr McGreal's favour against those two defendants on 12 February 2014.
9. For various reasons it has taken quite some time for Mr McGreal to put before the Court the appropriate formal proof evidence in support of his claim for reimbursement of the various payments he made to the first or second defendants relating to the intended purchase by him of the leasehold interests in Awei Island and Maheh Land. However, he has supplied a detailed summary of his claim, that was filed on 11 April 2014. In addition there have been submissions dated 28 May 2014 which I understand were prepared by Mr Sugden on Mr McGreal's behalf.
10. Following consideration of those documents, I directed that Mr McGreal file a sworn statement deposing as to his having incurred the various costs he mentioned in his claim and supporting his own sworn evidence with such other evidence as he was able to provide. He duly did this in his sworn statement of 28 November 2014.

### **Discussion and Determination**

11. In brief, having regard to the evidence now before the Court I am satisfied that each of Mr McGreal's claims is sufficiently supported by evidence, even if in many cases it is simply his own sworn assertion of payment. Generally there is an explanation for the absence of any supporting documentation.
12. I accept the point that is made in the submissions filed on 30 May 2014 that although the particular expenses now sought were not originally pleaded, the facts that are pleaded clearly justify in principle the remedy sought by Mr McGreal in this part of the claim. Justice Spear, I



note, also proceeded on this basis in entering judgment as to liability. The sole concern in this judgment is the assessment of the *amount* for which judgment should be entered.

13. I turn to deal with the particular aspects of the claim which Mr McGreal makes:

**Payments made to Starkey Charley or at his request to representatives of the Custom owners – Vt 3,795,179**

Mr McGreal has detailed the various payments totalling the above sum made by him in 2005, 2006, 2007 and 2008. These details appear in exhibit A to his most recent sworn statement. In overview, I am satisfied that all of these payments were made either by Mr McGreal or his staff members at Geomatic Solutions under his supervision. I also accept Mr McGreal's evidence that the overall arrangement he had with Mr Charley was that these payments would be deducted from the premium for the leases and the Maheh Land. I record here that these details and indeed the others supporting the claims which I will deal with subsequently were set out in the bound document prepared by Mr McGreal as long ago as 24 November 2011, a copy of which was served on Mr Yawha as counsel for the first and second defendants. At no stage has there been any challenge to any of this evidence.

**Amounts paid to Geomatic Solutions in respect of their surveys – Vt 3,721,420**

The details of these payments are set out in annexure B to Mr McGreal's latest sworn statement. They relate to 17 payments made between 3 March and 29 December 2006. Again I am satisfied that these payments were made by Mr McGreal to Geomatic Solutions for surveying work which had been carried out by that company for Starkey Charley and the custom owners.

**Payments made on behalf of Mr John Good and Ms Alana Sardelich to Starkey Charley as representative of George Kaloa and the custom owners of Awei Island – Vt 4,000,000**

I understand that Mr Good and Ms Sardelich are New Zealanders who wished to invest in a lease of a custom land at Awei Island. They gave Mr McGreal money effectively on account of their investment and he acted as their agent in dealings with Starkey Charley who in turn was representing George Kaloa and the custom owners of Awei Island. The first payment of



Vt 1,000,000 was made to Starkey Charley on 21 December 2007, a further payment of Vt 1,000,000 was made in February of 2008 and the third payment of Vt 2,000,000 was made in May of 2008. Again, on the information which has been provided by Mr McGreal I am satisfied that he as agent for Mr Good and Ms Sardelich is entitled to be reimbursed for the payments made which have turned out to be without consideration in return on the part of the custom owners.

**Other payments made by Mr McGreal to Starkey Charley and to Geometric Solutions for the benefit of the Custom Owners – Vt 2,000,000**

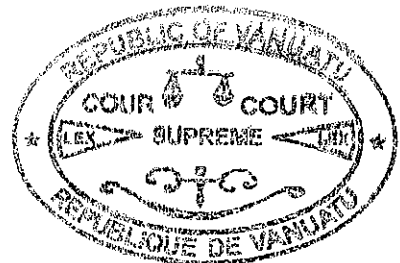
On 10 March 2008, Mr Charley provided Mr McGreal with a quotation for the cost of processing the lease for Awei Island. The total amount payable was Vt 5,639,350. Mr McGreal was not prepared to accept this amount in total in advance but he agreed to pay some Vt 2,000,000 as a form of deposit with the balance to be paid on the execution of all documents lodged at the Lands Department and the Vanuatu Financial Services Commission. Mr McGreal claims that Vt 2,000,000 under this head although in his sworn statement he says the amounts paid totalled Vt 2,198,100 by three separate payments in June and July 2008 which were personally handed to Starkey Charley.

In the circumstances, I am not prepared to award Mr McGreal more than the Vt 2,000,000 he claims under this head. This is not to say that I do not accept his evidence but rather than the claim he makes and which has been served on the first and second defendants should have contained all that he wished to claim.

**Payments made by Mr McGreal to Starkey Charley and Geomatic Solutions for the benefit of custom owners – Vt 1,980,443**

Mr McGreal details the various payments he made under this heading at paragraph 4 of his most recent sworn statement and explains that the receipts for these payments are either missing or have been stolen from his office records. Given his evidence about these payments I accept he is entitled to payment for the sum claimed under this head.

**Summary and Conclusions**



14. I accept that Mr McGreal is entitled to judgment against the first and second defendants in the sum of Vt 15,497,042 together with the two sums for costs mentioned earlier which total Vt 2,803,641. Overall then a total of VT18,300, 683.
15. Because there was originally no monetary claim, there has been no express claim for interest but in my view it is self-evident that Mr McGreal should be reimbursed at the usual rate of 5% per annum on the various sums claimed from the date of filing the proceedings namely 4 February 2009 to the date of payment. That sum is to be applied to the judgment sum of Vt 15,497,042 but not to the sum awarded for costs.
16. I enter judgment in favour of Mr McGreal against the first and second defendants jointly for the above sums.
17. The identity of the first defendant has been complicated by Starkey Charley's death and second by the failure of Mr Yawha to bring to the Court's attention that a grant of administration had been made in September 2009 in favour of Marie Charley. She however, in that capacity, has not taken any part in this proceeding and is therefore not aware of the claim against the estate, unless through informal channels Helen Starkey has informed her of this. In those circumstances, while I am prepared to enter judgment against the estate I record, as I advised Mr McGreal at the hearing, that he will not be permitted to enforce the judgment against the first defendant without leave of the Court. He says it is unlikely that there will be any attempt to enforce the judgment against the first defendant so such an application is unlikely to be made. If it is made, I would envisage directing service of all relevant documents on Marie Charley in giving her an opportunity to be heard on the question of enforcement and indeed on application to set aside judgment against the estate if she wished to make one.

BY THE COURT

*Joseph M. Adams*

