

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

Civil  
Case No. 17/674 SC/CIVL

AND: ENOCK BULE  
Claimant

AND: HARRY JOHN & WILLIE HARRY  
Defendants

*Before:* Justice Saksak

*In Attendance:* Jack I Kilu for Claimant  
No appearance for Defendants ( Gregory Takau)

*Date of Hearing :* 25<sup>th</sup> June 2019

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## JUDGMENT

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### Introduction

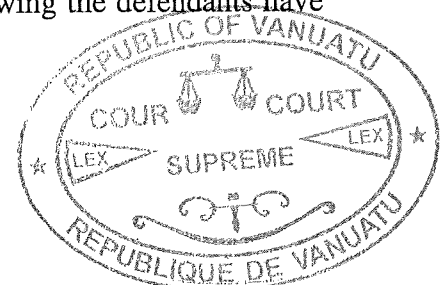
1. This judgment is entered in favour of the Claimant under Rule 12.9 (1) (c ) of the Civil Procedure Rules No. 49 of 2002. This rules states:

*"If a defendant does not attend when trial starts*

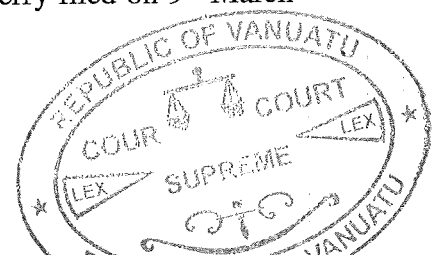
*( c) the claimant, with permission of the Court, may call evidence to establish that he or she is entitled to judgment against the defendant"*

### Background

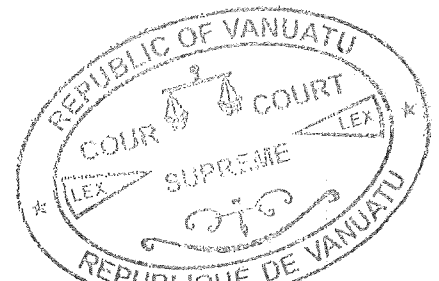
2. On 27<sup>th</sup> February 2019 the case was fixed for hearing. Mr Takau was present when the Court made the fixture following Mr Kilu's request for adjournment on the basis counsel was traveling overseas. Parties were Ordered to pay their hearing fees of VT 15.000.
3. Invoices were issued on 3<sup>rd</sup> June 2019 to Mr Takau and Mr Kilu. Mr Kilu paid hearing fees earlier on 9<sup>th</sup> April 2019. There is nothing showing the defendants have paid their portion of the hearing fees.



4. The defendants filed a defence on 9<sup>th</sup> April 2018 stating the claimant failed to pay the balance of VT 3,500,000 at the end of August 2015 thus breaching the terms of the Sale and Purchase Agreement. They said the claimant had paid the balance of VT 3,500,000 to Ishmael Berry instead without their consent. They denied appointing Ishmael Berry to act on their behalf. They said the Claimant is not entitled to any reliefs claimed. They both filed their sworn statements in support of the defence on 11<sup>th</sup> April 2018.
5. The Court had on application by the Claimant issued ex parte orders on 23<sup>rd</sup> February 2018. The defendants applied to have these orders set aside on 9<sup>th</sup> April 2018. They filed their statements on 8<sup>th</sup> and 9<sup>th</sup> April 2018 in support of that application.
6. On 14<sup>th</sup> August 2018 the Court heard the application in the absence of Mr Kilu and vacated the orders of 23<sup>rd</sup> February 2018 and ordered the claimant to file responses to the defendants statements of 11<sup>th</sup> April 2018.
7. The claimant filed sworn statement in support of his claim on 21<sup>st</sup> March 2017 on the same date he filed his claim.
8. The matter was managed to trial which was originally fixed for 27<sup>th</sup> March 2019 but adjourned to 10<sup>th</sup> April 2019 with further adjournment to 27<sup>th</sup> May 2019. A further adjournment was made to 25<sup>th</sup> June 2019.
9. Today only Mr Kilu and the Claimant were present. Mr Kilu told the Court he had tried contacting Mr Takau but was not able to get through. The Court Clerk also tried contacting Mr Takau several times prior to the hearing to no avail.
10. The Court gave leave to the Claimant to produce his evidence. The Claimant took the oath and was examined in chief by Mr Kilu. He identified his sworn statement filed on 21<sup>st</sup> March 2017. He confirmed his signature and the contents as the truth. He tendered his statement together with its annexures as Exhibit C1.
11. The Claimant relied also on the sworn statement of Ishmael Berry filed on 9<sup>th</sup> March 2018 in support of his case.



12. Mr Kilu made oral submissions. He submitted that on the evidence, the claimant had paid VT 5,000,000 as agreed but the defendants had not transferred the property in accordance with their agreement. He submitted the Claimant made the last payment of VT 3,180,000 on 12<sup>th</sup> January 2017 under a Sale and Purchase Agreement signed between the Claimant and Harry John on that day. The Agreement was witnessed by Mr Kilu himself, Ismael Bule and Joseph Bule. The receipt of payment is disclosed as Annexure EB4 on Receipt No. 083. Mr Kilu sought leave to correct the Lease No. by removing 006 and replacing same with 037. The correct Title No. is therefore 11/OG31/037.
13. Mr Kilu sought judgment and an order for specific performance, damages for breach of contract, common law damages and rentals of 6 apartments at VT 12,000 per month from September 2015 to date, together with interest and costs.
14. From the evidence before me, I am satisfied there existed an Agreement of sale and purchase between the claimant and the defendants I am satisfied also that the claimant had paid the sum of VT 5 million as agreed. I am not satisfied that the defendants have performed in accordance of the terms of the contract. The defendants are therefore in breach of the contract. And the claimant is entitled to an order for specific performance and for damages for breach of contract.
15. I therefore enter judgment in favour of the Claimant and order as follow:-
1. An order for specific performance requiring the defendant Harry John to forthwith cause and procure the transfer and registration of Lease Title No. 11/OG31/037 in favour of the claimant, Enock Bule.
  2. The Director of Lands shall facilitate the transfer of Lease Title NO. 11/OG31/037 within 7 days from the date of this judgment.
  3. The Claimant is entitled to rentals at VT 12,000 per month from January 2017 to June 2019 in the total sum of VT 2, 088, 000 to be paid by the defendants.



4. The claimant is entitled to 5% interest on the sum of 104,400 Vt x 2 years = VT 208,800
5. The claims for damages for breach of contract is declined because the claimant himself failed to pay the balance of the purchase price until January 2017. Despite that failure, the defendant did not serve any notice to terminate the agreement pursuant to clause 7.
6. The claims for common law damages and for specific damages are declined and dismissed.
7. The defendants by themselves, their families, relatives agents and representatives be hereby prohibited from entering the property and from threatening, harassing, abusing, or intimidating the claimant, his relatives, families, agents or representatives in anyway whatsoever, and they shall keep away from the claimant and his relatives and families and the property by a distance of 100 meters.
8. The defendants shall pay the claimant's costs of and incidental to this proceeding on the standard basis as agreed or taxed.

**DATED at Port Vila this 1<sup>st</sup> day of July 2019**

**BY THE COURT**

  
**OLIVER.A.SAKSAK\***

**Judge**

