

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

**Civil**  
**Case No. 19/868 CIVIL**

**BETWEEN:** **Wilson Mala**  
Claimant

**AND:** **George Manses**  
First Defendant  
**Republic of Vanuatu**  
Second Defendant

*Dates of Trial:* 6 and 7 September 2020

*Before:* Justice G.A. Andrée Wiltens

*Counsel:* Ms A. Sarisets for the Claimant  
Mr A. Godden for the First Defendant  
SLO for the Second Defendant

*Date of Decision:* 11 September 2020

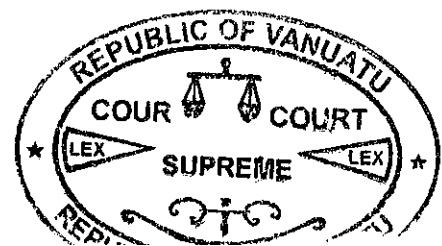
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**JUDGMENT**

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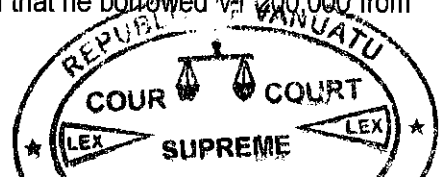
A. Introduction

1. This case revolved around the true ownership of land. It was a dispute between two family members. The involvement of the State is that it was responsible for the registration of the lease interest, and it was included as a party on the basis that rectification of the lease was sought. The State took no part in the matter, indicating it would abide by the Court's decision.
2. At the conclusion of the trial, I announced my decision as there was some urgency for the parties. I advised I would subsequently provide my reasons for arriving at that decision. These are my reasons and the formal decision.



B. Background

3. It is not disputed that in 1989-90 Mr Manses, the Defendant, pursued the purchase of the leasehold interest in a piece of land in the Nambatri area of Port Vila. It is described as Leasehold Title No. 11/0x12/009. The Department of Lands agreed to sell the leasehold interest to Mr Manses for VT 349,500. Originally Mr Manses was to pay that by 34 consecutive monthly payments of VT 10,000 and one final payment of VT 9,500. He was then employed at PWD and able to pay that. He occupied the land immediately.
4. However, in 1992 Mr Manses ceased his employment at PWD and went to Santo to study to become a Pastor. At the time of his departure, he was significantly in arrears with his payments for the land. There is some evidence to show he (or others on his behalf) had paid VT 110,000 by then.
5. By then also, other members of the extended family had moved onto the land. One of those was Mr Wilson Mala, the Claimant.
6. The versions of what occurred from this point on are divergent.
7. Mr Manses maintains that he permitted Mr Mala and another, Mr Terry Vano, to reside on the land and pay VT 5,000 each by way of rent to the Lands Department. In that way, the outstanding debt for purchasing the land would be extinguished. However, that is not what occurred.
8. Mr Manses alleges that Mr Vano did not pay the Lands Department any rent, but instead gave rent payments to Mr Mala. According to Mr Manses, not only did Mr Mala not pay the Lands Department the rent received from Mr Vano, but Mr Mala also did not pay his own rent to the Lands Department.
9. Accordingly Mr Mala sought to correct the position, and he states that as a result of his pressure Mr Manses took out a VT 200,000 bank loan to make good the outstanding rent owed. The loan proceeds were paid towards the purchase of the lease interest from the Lands Department, but that was to make good the outstanding rent, not to achieve a 50% share of the land.
10. Mr Manses explained that once payment in full had been made the land was registered in his name.
11. Mr Mala denied receiving rent from Mr Vano, or agreeing to pay rent to the Lands Department as part of the purchase price for the land. He stated that once Mr Manses had found the land he wished to purchase, he had insufficient funds to pay for it. Mr Manses then asked other members of the family to assist him.
12. Eventually, Mr Manses asked Mr Mala if he could/would assist them to pay for the land. An oral agreement was arrived at, whereby it was agreed that if Mr Mala assisted, the land would be registered in their joint names.
13. Mr Mala is somewhat aggrieved to find that not only did he end up paying the entire purchase price, but the lease contains no reference to him. He stated that he borrowed VT 200,000 from



ANZ Bank, paid a further VT 50,000 by way of a Westpac bank cheque subsequently, and he had repaid Mr James Yaviong the VT 99,000 he had contributed towards the purchase.

14. Mr Mala became aware of the fact that his name was not on the title only much later. He brought this action in April 2019 to correct the position after he learnt that Mr Manses was intending to sell the land. That would have led to his eviction, and numerous other family members, and Mr Mala's legal rights being extinguished.
15. There is one further significant event that needs to be considered.
16. On 14 April 2012, there was alleged to be a family meeting on the land in issue. Hand-written minutes of such a meeting have been produced, and typed copies prepared from those notes. Mr Mala, and others, maintained that this meeting was called by Mr Manses, who also chaired the meeting.
17. Mr Manses is adamant he did not attend any such meeting.
18. The significance of the meeting is that the Minutes record Mr Manses as setting out the background to his purchase of the land in issue while asking the wider family group to financially assist him. That background is best not summarised – but equally the entire document does not require setting out.
19. The Minutes record Mr Manses as saying, among other statements:

“OK everyone, before I talk about my concern as title-holder of this land, I would like to take you back to the beginning of the land dealing with brother-in-law Wilson mala and brother-in-law Charlie mala.

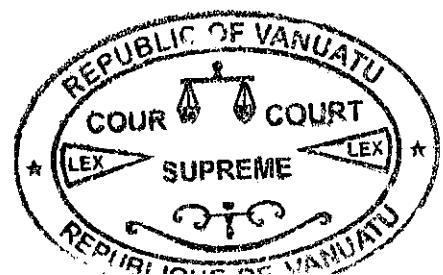
In 1989-90 I initiated the process relating to the land where we are now. When I found this land I was still working for PWD in Port Vila, Leisave was still at school, so I did not have enough money to pay for the land. In addition I was preparing to go to the TTI in South Santo to train as a paster. At that time I was looking for someone to help me pay off the land so that we would both have equal rights to it by way of a 50/50% share.

I sent my wife Lilian Manses being the sister of Wilson, Charlie and all the other uncles and relatives present her, to Nambatu Wallis, to the house of Robson Hungai from Paama that was rented by my brother-in-law Charlie, to ask Charlie if he could help me to pay for the land under Title No. 11/0x12/009. Lilian went but Charlie told her that he was not in a position to help me regarding the land. As a result, me George Manses, and my wife Lilian, had no other choice but to go to younger brother-in-law Wilson Mala. I, George Timothy Manses, was the only one to ask him for money (vatu), saying that he head to help me before the Lands Department sold the land to someone else.

....

The day I George Timothy Manses and my wife Lilian went to see brother-in-law Wilson, I made him a solemn promise that if he assisted me in paying off the land, then it would belong to both of us and we both fully agreed that all our family members could live there.

I George Manses also told him (Wilson Mala) at that time that the title to the land would be in both our names and neither of us should sell it to someone outside the family because in the future our families would expand and we need to have a block of land like this in Port Vila.”



20. The Minutes further record Mr Manses as telling those present that the agreement was oral only. He further announced that the next title holder was to Wilson Mala; and because of the background as he had explained it, that he had no intention of evicting anyone from the land.

C. Claim/Defence

21. Mr Mala sought rectification of the title on the basis of fraud. He alleged that to register the title in Mr Manses' sole name was counter to the oral agreement between them that the title would be registered in their joint names to reflect his contribution to the purchase price. He additionally sought costs.

22. Mr Manses disputed the oral agreement, maintaining that the land was rightfully his and his alone.

23. He also counterclaimed alleging that Mr Vano had paid Mr Mala VT 780,000 by way of rent over the intervening years, and that Mr Jean Yves Chabod had paid Mr Mala VT 150,000, both being sums which Mr Mala should have to disgorge to Mr Manses.

24. The counterclaim also sought the immediate eviction of Mr Mala and everyone else residing on the land; and further, that Mr Mala immediately account for all the money received by way of rent in respect of the land.

D. Law

25. This was a civil trial. The standard of proof was accordingly that of "on the balance of probabilities".

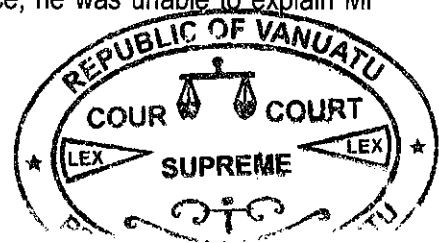
26. To succeed with this Claim, Mr Mala was required to establish that the registration of Lease Title No. 11/0x12/009 in the name of Mr Manses alone had been made by fraud. The evidence needed to establish that the registration was "more likely than not" made by fraud. Mr Manses had no obligation or onus to establish anything to the contrary.

27. On the other hand, to succeed on the counterclaim, Mr Manses was required to establish it "more likely than not" that what he alleged was true in relation to rent owed and/or received but not paid to the Lands Department initially and to him as registered owner. Mr Mala had no obligation or onus to establish anything to the contrary.

E. Evidence

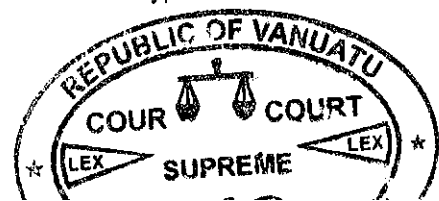
28. Mr Wilson Mala confirmed his sworn statement as being true and correct. He was challenged as to the payments he stated he had made. He denied agreeing to pay rent to the Lands Department or collecting rent from Mr Vano for that purpose. It was his position that Mr Vano would pay rent directly to Mr Manses.

29. Mr Mala maintained the payments he had made towards the purchase of the land were (i) VT 200,000 by means of the ANZ Bank loan he took out, Exhibit WM1, (ii) VT 50,000 by way of a Westpac bank cheque, Exhibit WM2, and (iii) VT 99,000 reimbursement to Mr Yaviong, Exhibit WM3. Despite claiming to have paid the entire purchase price, he was unable to explain Mr



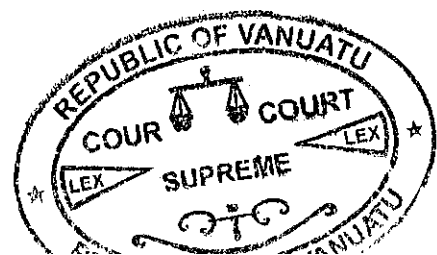
Manses' documentary exhibits, GM 2 and GM3, which indicated that Mr Manses had paid VT 110,000 towards the purchase price.

30. Mr Mala was sure that Mr Manses had called and attended the April 2012 family meeting. His evidence was that hand-written notes of the meeting (Exhibit C6) were later typed up by the note-taker and signed the following day. He explained that Mr Manses had not returned the following day, and hence had not signed the typed version(s) of the minutes. He explained that everyone who was living on the land had signed the minutes (there were 18 signatures), and that not everyone signed as there had been children present at the meeting. The minutes recorded that 30 individuals had attended the meeting, and he confirmed that to be correct. It was his evidence that the minutes accurately recorded what had occurred.
31. Given the significance of the alleged family meeting, I asked exploratory questions of Mr Mala. He told me the original minutes had been kept by Mr Charlie Mala, but that everyone present had received a copy when they signed. He was unable to explain how it was that the scribe knew which 18 names to type on the document for signing, given that it occurred later in time than the actual meeting.
32. Mr Charlie Mala confirmed his sworn statement was true and correct. I excluded paragraphs 4-11, and 16-17 as they were hearsay. He confirmed he had attended the family meeting arranged by Mr Manses in April 2012, and that the Minutes were accurate. He said there were no children in attendance. He did not sign the minutes as his name was not typed at the conclusion of the document – there was nowhere for him to sign. He further stated that he received a copy of the minutes when the current land issue arose, in or about November 2018. He was given the original by Chief Kalsong Mantas, which he considered would still be on counsel's file.
33. Mr Mala confirmed that Chief Kalsong Mantas had taken the hand-written notes away for them to be typed up. He confirmed the signing of the typed minutes took place the following day. Once everyone had signed all 3 copies, the original had been retained by the Chief. He made no mention of 17 copies.
34. Mr Gideon Mala confirmed his sworn statement was true and correct. He confirmed he had attended the family meeting in April 2012. He said that there also children in attendance. He stated that the signing of the minutes had occurred on the following Monday – the meeting was on Saturday. He said that there were 2 copies of the typed minutes, but he had signed only one copy. His explanation for not all 30 who had attended signing the minutes is that some individuals did not want their names listed.
35. Mr Mala was shown two slightly different versions of the typed minutes, and that he had apparently signed at different places within the documents for that reason. He maintained that he had only signed his name once, and could not explain the difference between the two versions.
36. Chief Kalsong Mantas confirmed his sworn statement was true and correct. He has lived on the land in issue since 1993. He was the minute-taker. He gave his notes to his brother-in-law Charlie to get them typed up and have copies made. He had read the typed minutes and confirmed they matched his hand-written notes. He received the 3 typed versions of the minutes perhaps 3 or so days after the meeting. He denied that the typed notes had been



created and signed in 2018. He confirmed that Mr Manses had been present at the meeting and had in fact chaired the meeting. He could explain why Mr Manses had not signed the minutes – he ought to have in his view. He was asked to recall the matters raised at the meeting and related that Mr Manses was seeking financial assistance from the rest of the family.

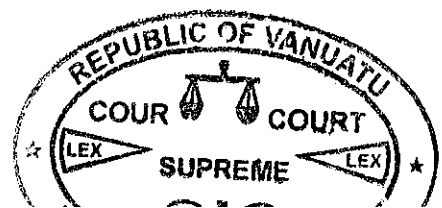
37. In re-examination he also recalled the background to the purchase of the land being raised at the meeting, with Mr Manses raising the agreement he had made with Mr Wilson Mala – as recorded in the Minutes.
38. Mr Mantas returned on the second day of the trial – bringing with him the original hand-written notes of the April 2012 meeting. He was closely challenged on the provenance of the minutes. It was even suggested to him that he had created the minutes overnight – he denied that. He went into detail about what was discussed at the meeting, and his evidence remained consistent. He was challenged whether he could read and write – he was asked to read out the passages in the minutes relevant to the discussion he said had related to the land purchase agreement. He read out, fluently, part of the passage referred to earlier in this judgment; demonstrating not only that he could read, but also that he was aware what the minutes related to.
39. When it was explained that Mr Manses denied being at the April 2012 meeting, Chief Kalsong Mantas suggested that perhaps Mr Manses had simply forgotten. The Chief was sure that Mr Manses had attended the meeting with 29 others; and that he had stated the statements attributed to him in the minutes. He denied creating the minutes after this current land issue arose in late 2018. At that time, he had made further copies of the minutes.
40. Mr Terry Vano confirmed his sworn statement was true and correct. He stated that he paid VT 5,000 rent per month to Mr Manses and/or members of his family, not to Mr Mala. He maintained that was no agreement for him to pay rent towards the purchase price.
41. Mr George Manses confirmed his sworn statement was true and correct. He advised that he alone negotiated the purchase of the land in issue. He denied sending his wife to ask Mr Mala for financial assistance. He denied arranging for or attending the April 2012 family meeting.
42. Mr Manses agreed the VT 200,000 loan from the ANZ bank to Mr Mala was put towards the purchase of the land. He said that after he returned from Santo he came to know that no rent had been paid and that there were arrears owing relating to the purchase. He then made Mr Mala take out this loan to correct the position.
43. Mr Manses agree that while still living on the land and working for PWD, prior to going to Santo, he fallen into significant arrears in terms of the purchase by instalments agreement. He considered the rent from Mr Mala and Mr Vano would rectify that.
44. Mr Manses was sure the VT 50,000 bank cheque was not Mr Mala's money, but he said he could no longer recollect the full position. He disputed the signature on Exhibit WM3 – Mr Yaviong's receipt to Mr Mala for VT 99,000. He maintained he knew Mr Yaviong's signature well, and this was a forgery.



45. Mr Manses did not agree with the content of the Minutes. He did not agree with the evidence given by the Claimant's witnesses. He pressed ahead with his counterclaim allegations. In the end, he stated that he had contributed VT 50,000 towards the purchase price of the land. He agreed that the names of those listed as being at the meeting were living on the land.
46. The several inconsistencies within the evidence as to the manner in which the April 2012 family meeting minutes were created and produced largely fell away once the original hand-written notes were produced. They are the original, and accordingly the best evidence. I rely on those original minutes as the record of the meeting. How the typed versions came to be produced and signed is but of limited relevance to the issues at hand. Who signed the typed versions of the minutes, and who did not and why is also not of significance.
47. I acknowledge that there are discrepancies between the witnesses and their recollections of the April 2012 meeting. Given the lapse of time, that is hardly surprising. However, there remains an overwhelming body of evidence to establish that Mr Manses called the meeting, chaired it and participated to the extent set out in the minutes. The content of the minutes sits squarely with the recollections of Mr Wilson Mala and Mr Charlie Mala. There is no inconsistency between that body of evidence and the evidence of Mr Vano – but there is consistency between his account and that of Mr Wilson Mala.
48. Significantly, all the above evidence combines to undermine the credibility and reliability of Mr Manses. He specifically denied having possibly forgotten about attending the meeting – he maintained there was no such meeting arranged by him or attended by him. That denial, in the face of the overwhelming evidence to the contrary, leaves me with having to put his evidence to one side – I reject it.

F. Discussion

49. It has been established that Mr Manses had insufficient funds to pay for the land in 1989-90. Not long after that, he made an arrangement with Mr Mala. Mr Mala was to assist financially in return for a 50% share of the property. That was an oral agreement, but it was to be recorded by registering the leasehold interest in their joint names.
50. The exact position as to whom paid what towards the purchase price remains unclear. However, I am satisfied that Mr Mala has established that he made a significant contribution towards the purchase. To also have his name on the title as one of the registered owners accordingly strikes me as fair and reasonable.
51. Mr Manses did not register the property in their joint names. Instead, he held out, fraudulently, that he was the sole owner and entitled to be registered as such. He advised the Lands Department of the registration details, and that was duly actioned. There is no fault on the part of those who completed the registration. They were not to know of the oral agreement. Mr Manses acted deliberately and dishonestly to deprive Mr Mala of his true interest in the land to reflect his significant financial contribution.
52. There is no merit in the counterclaim. I do not accept there was ever an arrangement for Mr Mala to pay rent towards the purchase price. It has not been established that Mr Vano or Mr Chabod paid money to Mr Mala which he was then obligated to pass onto Mr Manses. In fact it



has not been established that Mr Mala had agreed to pay rent. The counterclaim must fail in its entirety.

G. Result

53. The Claim succeeds.

54. Leasehold Title No. 11/0x12/009 is to be rectified so that it records two registered owners, Mr Wilson Mala and Mr George Manses as 50%/50% owners.

55. The counterclaim is dismissed.

56. Costs: The Claim having succeeded and the counterclaim failed, it is right that Mr Manses pays costs to Mr Mala. I set that at VT 150,000. The costs are to be paid within 21 days.

**Dated at Port Vila this 11th day of September 2020  
BY THE COURT**

*Gandra Uilo*  
Justice G.A. Andrée Wiltens

