IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU
HELD AT PORT VILA
(Matrimonial Jurisdiction)

Civil Appeal Case No. 11 of 2003

BETWEEN:

DANIEL GUY JOLI
Appellant

AND:

PATRICIA MICHELLE JOLI
Respondent

Coram: Chief Justice V. Lunabek
Justice J. B. Robertson
Justice J. von Doussa
Justice D. Fatiaki
Justice O. Saksak
Justice P.I. Treston

Counsels: Mr. Juris Ozols the Appellant
Mr. Gary Blake for the Respondent

Hearing Date: Monday the 3rd November 2003

Judgement Date: 7th November 2003

JUDGMENT

The central issue in this case is the power of the Supreme Court of the Republic of Vanuatu to make orders regarding the settlement of matrimonial property after a divorce where those orders have the effect of adjusting the respective proprietary interests of the parties in property owned by them at the date of their separation. If such power exists a further issue is the approach which the Court should take when exercising it.

The matter comes before this Court by way of appeal against a ruling made be Coventry J. on 25th March 2003. The ruling was of an interlocutory nature, and accordingly leave to appeal to this Court was required. At the commencement of the present sitting of the Court Appeal, an order was made by consent. Issues raised by the appeal are important and in the public interest.

Following a divorce granted to the parties in a Magistrate's Court, the case was transferred to the Supreme Court. A notice of motion for relief was filed by the Respondent which included claims in respect of custody and access to children of the marriage, and maintenance. Thereafter the parties entered in to discussion about a property settlement. A dispute arose over which of their assets should be taken into account. A date was set by the Court to "define what are the

matrimonial assets for the purposes of a settlement". The parties sought this ruling so that their negotiation could go forward.

The parties identified particular assets which were the stumbling block in negotiations. It is sufficient to say that those assets, which included two leasehold titles, shares in certain companies, and three businesses, were claimed by the Appellant to be his sole assets. All these items of property were in his name alone. He contended that the Supreme Court lacked power to make any order that had the effect of transferring any part of his interest, legal or equitable, to the Respondent.

There seems to have been a degree of imprecision, if not confusion, in the defining at the outset the scope of the Appellant's arguments about the power of the Court. Even before this Court, the arguments of counsel at times questioned whether the Supreme Court had any power at all to make orders dealing with the settlement of the property, at times arguments conceded that under the general law the court would have power to determine and declare the legal and equitable interests of the parties in assets owned at the date of separation, and at other times appeared to acknowledge the power of the Court to adjust proprietary interests, and without identifying the source of that power, challenged how that power should be exercised.

The subject of particular complaint by the Appellant is the following passage in the ruling by Coventry J.-

> ***"In my judgment there is presumption that all such assets are beneficially owned jointly, no matter whose name they are in or who in fact paid for them, made then or acquired them. That presumption can be rebutted concerning any asset by showing that is was intention of the parties that at the time of its acquisition or subsequently both intended it should be the sole property of one.***
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> ***Upon reading the affidavits of both parties and hearing the evidence it is clear that indeed in his case they regarded their contributions and activities as building up the family assets and the use of those assets as being for the advancement of the welfare of the family as a whole. The petitioner pointed out that (one of the company's) was set up after the separation and, whatever the outcome, could not be a matrimonial asset. I am satisfied that it is a matrimonial asset. Work to set up the business started before the separation, it started trading afterwards."***

Coventry.J based this finding on concepts of equality between sexes which he drew from Article 5 and Article 1 (k) of the Constitution of the Republic of Vanuatu, and from the provisions of the Convention on the Elimination of All Forms of Discrimination against Women. Vanuatu is a signatory to that Convention which was ratified by Act No.3 of 1995 which came into force in Vanuatu on 14th August 1995.

Relevant to his Lordship reasoning, Article 5(1) states that: -

> *"…all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of …sex…"*

Article 1 (k) guarantees *"equal treatment under the law or administrative action, except that no law shall be inconsistent with this sub- paragraph in so far as it makes provision for the special benefit, welfare, protection or advancement of females, children and young persons…"*

Under the Convention, Article 5 (1) requires State parties to take all appropriate measures:

> *"to modify the social and cultural patterns of conduct of men and woman, with a view to achieving the elimination of prejudices and customary and other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles of men and women.*

Article 16 of the Convention states:-

> *"1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:*
> *...*
> *(c) The same rights and responsibilities during marriage and its dissolution*
> *...*
> *(h) The same rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration".*

After making the finding of presumed joint ownership, his Lordship briefly reviewed evidence he had received about the contributions which each of the parties had made to the accumulation of the assets during the period of co-habitation, a period which extended over some twenty-two years. His Lordship concluded: -

> ***"I cannot find on the evidence anything to rebut the presumption that all the assets in dispute are beneficially owned by both parties. Accordingly I rule that all the assets listed as being in dispute are matrimonial assets for the purposes of negotiation for a settlement".***

We have already observed that the matter upon which the parties sought a ruling from the court was limited to the identification of assets that should be taken into account in a settlement. Although it was appropriate for the Court to have background evidence about the cases of each of the parties, the Court was not being ask at that stage to make any ruling upon how assets should be divided. His Lordships' evaluation of the evidence, went beyond the limited question on which a ruling was sought.

The appellant complains that the ruling of Coventry J purports to establish in Vanuatu a matrimonial property regime to fill a void in a law, and, however well intentioned the ruling might be, it is for Parliament, not the Court, to make new laws of this kind.

In our opinion the starting point must be an enquiry as to what if any law presently applies in Vanuatu concerning matrimonial property, and to determine if in reality there is a void which the ruling under appeal sought to fill. If there are existing laws that apply to regulate the settlement of matrimonial property, those laws must govern the matter and be applied accordingly.

There seems to be no dispute between the parties about the background development of the laws of Vanuatu, which are helpfully discussed in detail by Vaudin d'Immecourt CJ in *Banga v. Waiwo* [1996] VUSC 5; Civil Appeal Case No. 001 of 1996. See also "*What is the Matrimonial Property Regime in Vanuatu?*" Journal of South Pacific Law, working paper 4 of volume 5, 2001

by Ms. Sue Farran. Immediately before the Day of Independence on 30 July 1980, laws which applied in Vanuatu included statutes of general application in force in England on 1st January 1976 as well as the principles of the English common law and equity: see the High Court of the New Hebrides Regulations 1976. Under the terms of the Anglo French Protocol of 1914, those laws would not have applied to French citizens and "optants" to the French legal system. Their rights were governed by French law under the parallel legal system then in force. At Independence, laws in force immediately beforehand were continued in operation by Article 95 of the Constitution which provides:

> *"(1) Until otherwise provided by Parliament, all Joint Regulations and subsidiary legislation made thereunder in force immediately before the Day of Independence shall continue in operation on and after that day as if they had been made in pursuance of the Constitution and shall be construed with such adaptations as may be necessary to bring them into conformity with the Constitution.*
>
> *(2) Until otherwise provided by Parliament, the British and French laws in force or applied in Vanuatu immediately before the Day of Independence shall on and after that day continue to apply to the extent that they are not expressly revoked or incompatible with the independent status of Vanuatu and wherever possible taking due account of custom.*
>
> *(3) Custom law shall continue to have effect as part of the law of the Republic of Vanuatu."*

The effect of Article 95 was to make the law in force immediately after independence, whether derived from French law or English law or otherwise, law of general application to everyone within the Republic equally without distinction based on nationality or ethnic origin.

It is common ground between the parties that amongst the English statutes of general application in force in Vanuatu after Independence was the raft of English statutes governing divorce. In particular those laws included the Matrimonial Causes Act 1973 (UK) (the 1973 English Act) which was a consolidation and amendment of English statutes on the topic dating back to 1857.

Following Independence, the 1973 English Act was applied in Vanuatu under Article 95 (2) in many cases as the source of power for the Court to grant divorces. At the time of Independence, French law concerning divorce also applied in Vanuatu, and was applied in some instances. Examples of cases in both categories are cited by Vaudin d'Immecourt CJ in *Banga v. Waiwo*.

In the present case the parties are both francophone and culturally came from a French background although both are Ni- Vanuatu citizens. Neither before this court nor before Coventry J was it suggested that the rights of the parties were to be determined according to principles of French law that may still operate in Vanuatu under Article 95 (2) of the Constitution.

Accordingly it is unnecessary for us to investigate that possibility.

It is pointless to speculate as to why the parties do not wish to explore this possibility, although possible reasons appear from Ms. Sue Farran's paper: the records of what French law applied at Independence have been lost, and French law may not have a practical result that differs much from English law in this case.

As we understand the argument of the counsel for both parties, the relevant course of legal history which brings about the application of the 1973 English Act in Vanuatu following Independence is accepted. However, Counsel for the Appellant contended that the 1973 English Act ceased to have any operation in Vanuatu after the Matrimonial Causes Act [CAP 192] (CAP 192) came into force on 15th September 1986. Counsel contended that by passing the CAP 192 the Parliament of Vanuatu, within the meaning of Article 95 (2) "otherwise provided".

The 1973 English Act contains comprehensive provisions for the adjustment of property rights between parties to divorce. The development of those provisions occurred over a long period of time. Relevantly, the Married Womens Property Act 1882 (UK) recognised the property rights of married women, but that Act gave no power to Courts to pass proprietary interests from one former spouse to another on divorce: see *PETTITT v. PETTITT* [1969] All ER 385. However, the powers of the Court were significantly expanded by the Matrimonial Proceedings and Property Act 1970 [UK] and, in turn, by Part II of the 1973 English Act. Part II of that Act contains provisions dealing with financial relief for both parties to a marriage, and for children of the family. The provisions empower the Court to make property adjustment orders in connection with divorce proceeding. Property adjustment orders are defined in s.21 as orders dealing with the property rights available under s.24 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family on or after the grant of a decree of divorce, nullity of marriage, or judicial separation. Relevantly, s.24 provides: -

> ***"Property adjustment orders in connection with divorce proceedings, etc.***
>
> *(1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say-*
>
> > *(a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;*
> >
> > *(b) an order that a settlement of such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;*
> >
> > *(c) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage;*
> >
> > *(d) an order extinguishing or reducing the interest of either of the parties to the marriage under such settlement;*
>
> *subject, however, in the case of an order under paragraph (a) above, to the restrictions imposed by section 29 (1) and (3) below on the making of orders for a transfer of property in favour of children who are have attained the age of eighteen.*

(2) The Court may make an order under subsection (1) (c) above notwithstanding that there are no children of the family.

(3) Without prejudice to the power to give a direction under section 30 below for the settlement of an instrument by conveyancing counsel, where an order is made under this section on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute."

It is s.24 that contains the power for a Court to adjust proprietary interests in assets owned by one or both parties. Section 25 prescribes matters to which the Court is to have regarded in deciding how to exercise its power under s.24. We return to the provisions of that section later in these reasons.

We think the central issue in the present appeal is whether the passing of CAP 192 rendered all of the provisions of 1973 English Act no longer applicable in Vanuatu, or, as the Respondent contends, only rendered inapplicable those provisions that dealt specifically with the aspects of matrimonial law covered by CAP 192.

The scope of the 1973 English Act is sufficiently identified for present purposes by reference to the headings to its several parts. The Act in Part I deals with divorce, nullity and other matrimonial suits. In particular s.1 provides for divorce on the ground that the marriage has broken down irretrievably. Adultery is no longer a specific grounds for divorce under the 1973 English Act.

Part II of 1973 English Act makes provision for financial relief for parties to a marriage and for children of the family. Part III makes provision for protection custody and supervision of the children. Part IV contains miscellaneous supplementary provision covering such things as declarations of legitimacy of children, matrimonial relief and declarations of validity in respect of polygamous marriages, evidence, and procedural matters dealing with matrimonial suits. The decisions in Vanuatu where the 1973 English Act had been applied after Independence and before Cap 192, referred to by Vaudin D'Immecourt CJ in *Banga .v. Waiwo*, are cases where the grounds of divorce specified in Part 1 of the 1973 English Act were applied.

The scope of the provisions in CAP 192 are more restricted. Part I deals with nullity of marriage. Part II provides for the dissolution of marriage. In particular the grounds for divorce set out in s.5 are much narrower than the grounds provided for in Part 1 in 1973 English Act. In Vanuatu under s.5 the grounds are restricted to adultery, desertion for at least 3 years, cruelty, incurable unsoundness of mind for at least five years, or separation for a period exceeding 7 years in circumstances giving rise to a presumption of death.

Part III of CAP 192 makes provisions for alimony and maintenance in the case of divorce and nullity of marriage, and for the custody and maintenance of children. Part IV contains supplementary provision which empower the court to award damages to a Petitioner in a divorce on the ground of adultery.

Plainly Part I and II of CAP 192 make comprehensive provision for decrees of nullity of marriage and divorce which replace part I of 1973 English Act as the Law of Vanuatu. More difficult is the question whether the provisions of Part III of CAP 192 render wholly inapplicable those parts of the 1973 English Act which deal with orders for ongoing financial provision in the

nature of maintenance and alimony for former wives, and for children. The powers given to Supreme Court under ss.14 and 15 of CAP 192 are expressed in very general terms, and should therefore be broadly construed in determining their scope. We think the conclusion must be reached that CAP 192 does replace all those provisions of 1973 English Act which deal with topics addressed in ss.14 and 15.

It is necessary to consider the scope of each section separately. Section 14 gives the Court wide power to order the husband to pay the wife, until her re-marriage, such weekly, monthly or annual sum for her maintenance and support as the court may think reasonable.

Under s.15 of CAP 192 the Court may from time to time, either before or after the final decree, make such provision as appears just with respect to the custody maintenance and education of the children of the marriage. This is a wide power, and we think it would extend to ordering one or other of the parties to the marriage to transfer money or other assets to or for the benefit of a child for the purpose of maintenance or education. We think that power, must be interpreted as indicating that Parliament intended that s.15 to provide comprehensively in Vanuatu for orders providing for the maintenance and support of children.

Whilst s.14 of CAP 192 makes broad provision for the payment of weekly, monthly or annual sums of for maintenance and support of a wife, it does not purport to deal with the division of property between the parties of the former marriage. In our view, it cannot be construed as containing a power to adjust proprietary interests as part of a property settlement. To construe CAP 192 as evidencing a Parliamentary intention to completely cover the field in relation to ancillary matters following a decree of nullity or dissolution of marriage would leave an obvious gap in the law. We accept the Appellant's argument that the Parliament would have recognised that there would be many citizens in Vanuatu whose assets and affairs on dissolution of marriage would not require the Court to make orders for the settlement of matrimonial property. However, we think that Parliament would have been equally well aware of the fact that there will also be other citizens of the Republic, and expatriate members of the community, who in the event of breakup of their marriage would need the law to regulate the division and settlement of propriety held by them at the time of their separation, and would not legislate in a way that left them out of account.

In our opinion Cap 192 does not operate as a comprehensive code for all ancillary property matters that arise in connection with decrees of nullity or dissolution of the marriage under the Part I and II of CAP 192. We consider that the 1973 English Act has a residual operation which empowers the Supreme Court to make property adjustment orders under the provision of Part II of the 1973 English Act to bring about a division or settlement of property between the parties to the former marriage.

The expression "matrimonial property" is frequently use in this area of discourse. A similar expression, "matrimonial assets" was adopted by Coventry J. in posing the question which he sought to answer in the ruling now under challenge. For the purposes of this case, we understand those expressions to mean assets held by both parties to the marriage at the time of their separation, whether the relevant proprietary interests are legal or equitable in nature.

Our conclusion is consistent with the obiter remarks of this Court in *Kong v. Kong*, Civil Appeal Case No. 10 of 1999 where at page 20/21 the Court observed that the CAP 192 does not vest jurisdiction in the Supreme Court to make orders for settlement of matrimonial property, at least otherwise than as part of a maintenance order. Although there was no question of property

settlement in that case, the obiter remarks were made with reference to the procedure to be followed in matrimonial matters where ancillary relief is claimed, and were premised on an understanding that the Supreme Court was empowered to make orders for settlement of matrimonial property under the provision of the 1973 English Act. The conclusion is also consistent with the decision of this Court in *Fisher v. Fisher* [1991] VUCA2 Civil Appeal Case No. 1 of 1991, where the Court of Appeal, after referring to *Wachtel v. Wachtel* [1973] 1 ALL ER 829, a decision made under the Matrimonial Proceeding and Property Act 1970 [UK], proceeded to make an adjustment order requiring the former husband to pay his former wife a sum of money representing part of his interest in a property that was registered solely in his name.

Although in the past there has been general acceptance that the 1973 English Act, being an Act of general application is to be imported into Vanuatu law pursuant to Article 95 (2) of the Constitution, it must not be overlooked that Article 95 (2) only applies English and French laws "to the extent that they are not … incompatible with the independent status of Vanuatu and wherever possible taking due account of custom". Attention was directed to that requirement during argument on this appeal. In our opinion there is nothing incompatible with the independent status of Vanuatu to apply laws regulating matrimonial causes that were in force immediately before Independence. The Constitution recognises that Parliament retains the absolute power to alter those laws whenever it decides to do so.

It is a different question whether the continued application of the laws applied in Vanuatu immediately before Independence take sufficient account of custom to fulfil the requirement of Article 95 (2). In considering this question, the provisions of s.25 of the 1973 English Act are of important. Those provisions prescribed matters which the Court is to have regarded in deciding how to exercise its power under s.24 in making an adjustment order. Section 25 relevantly provides:-

> *(1) It shall be the duty of the court in deciding whether to exercise its powers under section 23 (1) (a), (b) or (c) or 24 above in relation to a party to the marriage and, if so, in what manner, to have regard to all circumstances of the case including the following matters, that is to say-*
>
> > *(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future.*
> >
> > *(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;*
> >
> > *(c) the standard of living enjoyed by the family before the breakdown of the marriage;*
> >
> > *(d) the age of each party to the marriage and the duration of the marriage;*
> >
> > *(e) any physical or mental disability or either of the parties to the marriage;*
> >
> > *(f) the contributions made by each of the parties to the welfare of this family, including any contribution made by looking after home or caring for the family;*

(g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring;

and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

It is not suggested that any of the matters which the court is directed to take into account are inconsistent with custom. Those are matters which are likely to be directly relevant in almost every marriage situation and a number of them were taken into account by the Supreme Court in *Molu v. Molu No. 2* [1998] VUCA 8. Importantly, those matters are not exclusive of any other consideration that might be important in a particular case. The primary direction to the Court is to have regard to all circumstances of the case, but in doing so to take into account the specified matters. It remains open to the court to take into account any other matters. For example, if there were particular custom requirements in relation to land or other assets. Those matters would have to be taken into account as part of the circumstances of the case, and the orders of the Court formulated having regard to custom requirements. For example, if a custom required that land continue to be held by one party to a marriage and passed down to succeeding generations according to a particular line of inheritance, the court can respect that custom in the application of s24. If it were necessary to make adjustment between the total asset position of each of the parties, that could be done by making an adjustment order in respect of other assets of the party holding the custom land. Perhaps it is theoretically possible that the only asset of value held by parties to a marriage will be custom land inherited by one of the parties. The court would be entitled to rely on the nature of the inheritance as a reason for not making an adjustment order. Indeed, where assets are inherited from a third party, and are not a reflection of contributions from the earnings and activities of the parties to the marriage, the court might in any even treat the inherited assets as being of little or no significance in judging what adjustment order should be made.

In our opinion the 1973 English Act, save in so far as its application has been overtaken by the provision of CAP 192, is a law which applies in Vanuatu in accordance with the provisions of Article 95 (2), and will continue to do so until Parliament otherwise provides.

As the division of a property between parties following a decree of nullity or dissolution of marriage is an important one, pregnant with the possibility of matrimonial disputes between the parties and their families, this is an area where we would urged Parliament to consider passing laws specific to the needs and aspirations of the citizens of this Republic.

For these reasons we hold that the Supreme Court had the power to make an order to adjust the proprietary interest of the husband in the assets which were identified before Coventry. J. as his sole property. Strictly, we think this conclusion answers the matter upon which the judge was asked to rule. However, as we noted at the outset, the judge went further and made observations about the manner in which the power of the court should be exercised and in doing so, concluded that there was a presumption of joint or equal ownership impressed upon all assets coming within the notion of matrimonial property. We are unable to agree with the process of reasoning followed by his Lordship, or with his conclusion that the law imposes such a presumption on matrimonial property.

A law applied in Vanuatu already makes provision for the manner in which the power to adjust proprietary interests between the parties is to be exercised. That is contained in s.25 (1) of 1973 English Act, and in a host of cases that have been decided by English Courts in the application of that law. It was not necessary nor appropriate for his Lordship to seek to reformulate the principles to be applied.

Further, the broad aspirational statements contained in the Constitution cannot be translated directly into principles of the kind formulated by his Lordship. The application of those concepts into law is primarily a matter for Parliament whose members will bring to their debate a wide cross section of views and interests. It is because Parliament is equipped to reflect community views of this kind that courts should leave law-making to Parliament, and fully respect the separation of powers which underlies the Constitution. Similarly, it is a matter for Parliament to decide what if any changes to the social patterns of conduct of men and woman in this Republic should occur, and how Vanuatu as a State party to the Convention on the Elimination of all Forms of Discrimination Against Women will seek to reflect that Convention in its domestic law. It is not the task of the court to undertake this difficult exercise

In our opinion there is no presumption of law that matrimonial assets are beneficially owned jointly, no matter whose name they are in and who paid for them.

Where there is a dispute over ownership and division of assets, ownership is to be determined according to ordinary principles of law and equity. Those principles are also applied in disputes concerning the division of property between unmarried people who have lived together for an extended period of time: see for example *Baumgartner v. Baumgartner* [1987] 164 CLR 137. In the case of parties that have been married, the court has additional powers to make an adjustment order, applying the relevant provisions of the 1973 English Act.

Depending on the length of time the parties have lived together, and their respective contributions the Court might reach a conclusion, as a matter of fact in the circumstances of the case, that matrimonial assets should be divided in a roughly equal fashion. However such a result is **not** because of any presumption of law, but because of the respective positions and contributions of the parties. Even where parties have never been married, the application of similar considerations in equity may lead to the imposition of a trust on assets such that assets acquired by the parties during their co-habitation will be divided roughly equally.

The appeal must be allowed. As the appeal is not against a precise order we think that the appropriate course is for this Court to simply rule that the assets over which there is a dispute are assets which the Court can take into account if it is required to make a settlement order dividing the matrimonial assets between the parties. The Court therefore rules that the matrimonial assets of the parties included the appellant's interest in two leasehold title No. 12/0634/009 and 12/0634/010, shares held in his name in a). Pactec Limited b). Snoopy's Stationary and Office Suppliers and c). Orchid House Limited, and his interest in the businesses of a) Hereton b) Salt Water Fishing Adventures c) Multiclean Limted.

As the ruling, was made necessary by the appellant disputing what were matrimonial assets, we think of the costs of the hearing before Coventry J. should be cost in the cause as should the costs of the appeal.

As we indicated earlier in these reasons we do not think that it was appropriate, having regarded to the limited ruling which the Court was asked to make, for his Lordship to consider in the detail which he did the evidence of the parties, and to pass comment on the likely division of the property. A judgment on those issues should wait until the parties have completed placing all the evidence which they rely on before the Court, and there has been a full trial on the issues.

Dated at Port Vila this 7th day of November 2003

V. Lunabeck CJ
J. B. Robertson J.
J. von Doussa J
D. Fatiaki J.
O.A. Saksak
P.I. Treston