

6. Despite the application for summary judgment being listed and adjourned on 7 and 13 August 2014, and then listed for hearing on 5 September 2014, Mr Michel filed no responsive material. His counsel did not attend on the final hearing date.

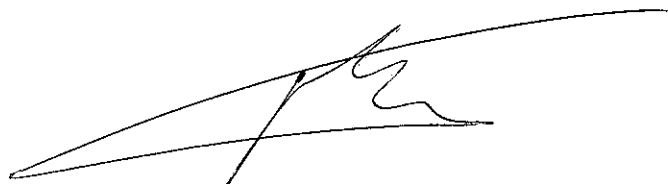
THE APPEAL

7. Mr Michel now appeals from the summary judgment on the ground that it should not have been entered because he was permitted to stay on the land; because his lawyer did not let him know of the date fixed for the hearing; and because the amount of the damages is excessive.
8. As we have noted, Ms Galinie did not appear on the hearing of the appeal. It is not clear why.
9. In our judgment, the appeal should be dismissed in so far as it complains of the entry of summary judgment against Mr Michel for trespass and the order for him to leave the land. As we have noted above, the evidence in support of the summary judgment application was unchallenged, and was sufficient to support the allegations in the statement of claim (other than on the issue of damages).
10. Mr Michel did not take up the opportunity to file any responsive material to resist that application. Nor, on this appeal, did he present any sworn statement about what he might have said in answer to the assertion that he was no longer entitled to remain on the land. His counsel accepted that his entitlement to be on the land was not for a fixed term, and was determinable on reasonable notice. Neither he nor the brothers of Ms Galinie have put forward any evidence to suggest that, in the circumstances, Ms Galinie as the administratrix of the estate of her father is not entitled to have proceeded as she did. We propose to vary the order of the Supreme Court only to the extent of allowing Mr Michel a reasonable time, in this case fixed at 31 January 2015, by which he must vacate the land.
11. In our view, however, the appeal must be allowed for the purposes of setting aside the orders awarding damages for trespass and interest on those damages. That is simply because the claim for damages for trespass is an unliquidated claim. Even in the case of a summary judgment, it is necessary that there be coherent evidence upon which the damages may be assessed. There was no such evidence. There

14. There is one further observation which should be made. We refer above to the ground of appeal that it was the fault of the lawyer for Mr Michel and not that of Mr Michel himself that he did not file responsive material in relation to the summary judgment application or appear at the hearing of that application. The Court is entitled to rely on counsel for a party to attend properly to matters involved in the conduct of litigation. In this case, through his counsel Mr Michel had filed a defence and had attended on a number of occasions before the Court on behalf of Mr Michel. On one occasion he had specifically written requesting a further 7 days to file responsive material. In such circumstances, it is not sufficient to make out that ground of appeal simply by saying it, in the absence of evidence by sworn statement of the dealings between the lawyer and the client. The Court otherwise is being invited to make findings on assertions without giving the lawyer the opportunity to respond to them. The Court is entitled to assume, generally speaking, that in circumstances like the present, the lawyer for a party is acting properly. If Mr Michel has any issue about the way in which his matter was conducted by his lawyer, it is a matter that he must take up with his lawyer. The material before the Court on this appeal did not indicate that either the lawyer for Ms Galinie or the Court had any reason to think that Mr Michel was not being properly represented by his then solicitors. We note that counsel appearing for Mr Michel on this appeal is not the same counsel who appeared for him in the Supreme Court proceeding.

DATED at Port-Vila this 14th day of November 2014

BY THE COURT

A handwritten signature in black ink, appearing to be 'Vincent Lunabek', written over a horizontal line.

Vincent LUNABEK
Chief Justice