

**IN THE COURT OF APPEAL OF  
THE REPUBLIC OF VANUATU**  
*(Appellate Jurisdiction)*

**Civil Appeal Case No. 17/222**

**BETWEEN:** **WILLION APIA**  
Appellant

**AND:** **REPUBLIC OF VANUATU**  
First Respondent

**AND:** **KOLEN TAUR**  
Second Respondent

**AND:** **JEFFREY WILLIAM**  
Third Respondent

**Coram:** *Hon. Chief Justice Vincent Lunabek  
Hon. Justice Ronald Young  
Hon. Justice Oliver.A.Saksak  
Hon. Justice John Mansfield  
Hon. Justice Mary Sey  
Hon. Justice David Chetwynd*

**Counsel:** *Saling Stephens for the Appellant  
Sakiusa Kalsakau for the First Respondent  
Mary Grace Nari for the Second Respondent  
Roger Tevi for the Third Respondent*

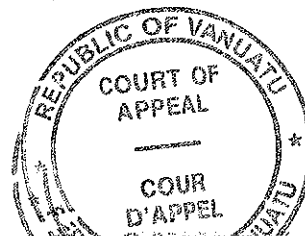
**Date of Hearing:** *4<sup>th</sup> April 2017*  
**Date of Judgment:** *7<sup>th</sup> April 2017*

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**JUDGMENT**

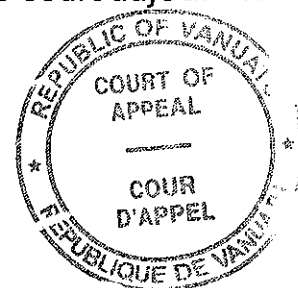
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1. The Government of Vanuatu has for many years wanted to develop the Norsup Airport on Malekula Island. However there have been disputes about who owns the land in the area of the airport.
2. In July 2012, the Government entered into an agreement with the representatives of the claimants to the disputed land, David Apia William (now represented by the Appellant Willion Apia) Colin Taur (the second respondent) and Jeffrey William. The agreement required the Government who were compulsorily taking land at the airport to pay VT 76.526.835 to the trust account of the Supreme Court. There were two cases before the Courts about the ownership of this land. The agreement provided that part of the money was to be held in the Supreme Court trust account until the litigation resolved the true



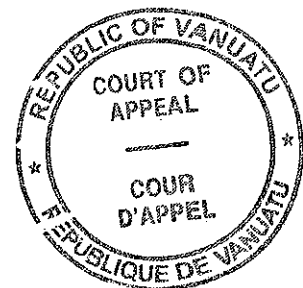
custom owners of the land. In the meantime half of the money was to be paid to the Family Apia William.

3. Despite this agreement the Government did not immediately pay the VT 38.263.417 to the Supreme Court trust account.
4. The appellant issued proceedings in the Supreme Court in December 2013 relating to this failure. In August 2014 the Government paid VT 38.263.417 into an interest bearing account at a local bank with the bank account in favour of the then unknown custom owners of the disputed airport land. After further interlocutory hearings the parties accepted that the compensation fund was properly in a commercial bank earning interest and no-one could access that account without an order of the Supreme Court.
5. At a conference hearing in the Supreme Court on 6<sup>th</sup> December 2016 the Judge recorded by Minute that Mr Stephens, counsel for the claimant *"confirms that the proceedings may be dismissed"*. The Judge therefore made an order dismissing the claim.
6. It is against that decision that appellant now appeals. Although the appellant detailed six grounds of appeal they are effectively the same ground: that there are no proceedings before the Courts which challenge the appellants' ownership of the land at Norsup and therefore the appellant is entitled to the compensation sum being held in trust. The Judge was therefore in error when he failed to make this order.
7. When this appeal was called we raised with Mr Stephens the fact that the Judge's minute of 6<sup>th</sup> December recorded that Mr Stephens agreed the proceedings had been resolved and that his claim could be dismissed.
8. In response Mr Stephens variously said that he did not think he had agreed to the appeal being dismissed but that when the Court adjourned



on 6<sup>th</sup> December to allow him time to consult his clients he had been under pressure.

9. If Mr Stephens wished to challenge the record of the minute of 6<sup>th</sup> December at this appeal then a detailed affidavit from him was required and he would need to stand down as counsel. This did not happen. We ~~therefore proceed on the basis that the Judge's minute of 6 December~~ accurately recorded Mr Stephens' concession and the orders made. The Judge had pointed out to Mr Stephens as other Judges in this case had that the Government payment of compensation in August 2014 in this case had achieved the purpose of his 2013 claim. It was in that context Mr Stephens discussed the case with his clients and confirmed the proceedings could be dismissed. As the Judge said this meant "*this claim is at an end.*"
10. Given there is no effective challenge to the Judge's minute the appeal must fail on this ground alone.
11. There are other impediments in Mr Stephen's way. The Judge's observations that after the payment of the compensation by the Government the complaint in these proceedings had been met and satisfied, was correct.
12. The 2013 statement of claim in this case was a complaint that the Government had failed to pay the compensation sum into the Supreme Court trust account. It was alleged this was a breach of the agreement of July 2012.
13. The appellant asked in its statement of claim that the Government rectify its failure. The Government effectively did so when it paid the compensation sum into a commercial bank account to await a resolution of the custom ownership of the land. And so even if the Judge had not dismissed the claim at the request of the appellant the claim could not have succeeded.



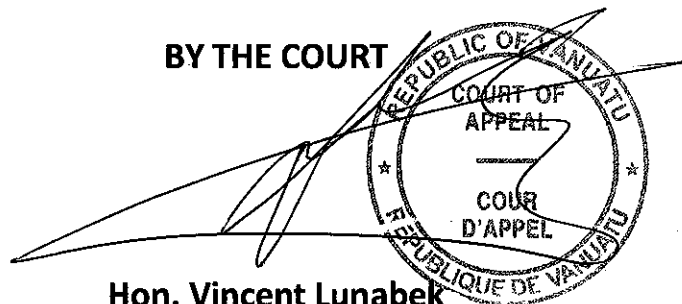
14. For those reasons also the appeal must fail.

15. Throughout this Supreme Court claim the appellant has tried to convince the Court that an order should be made paying the compensation sum to him. No such order could be made in these proceedings. However there has been understandable frustration that there has been no resolution as to who is the custom owner of the land and who therefore is entitled to the compensation. It will be in the interests of all who claim this land to have ownership resolved as soon as possible.

16. The appeal is dismissed. Costs to the second and third respondents of VT30,000 each and to the first respondent who did not file submissions and abided the Court's decision VT 10,000.

**DATED at Port Vila this 7<sup>th</sup> day of April 2017**

**BY THE COURT**



**Hon. Vincent Lunabek**

**(Chief Justice)**