

**BETWEEN:** **Rocky Melteklesi**  
Appellant

**AND:** **Dimitri Malvirlani**  
First Respondent

**AND:** **Republic of Vanuatu**  
Second Respondent

**Coram:** *Hon. Chief Justice V. Lunabek*  
*Hon. Justice B. Robertson*  
*Hon. Justice O. Saksak*  
*Hon. Justice J. Mansfield*  
*Hon. Justice G.A. Andrée Wiltens*  
*Hon. Justice V.M. Trief*

**Counsel:** *Mr B. Livo for the Appellant*  
*Mr J. Tari for the First Respondent*  
*Mr S. Aron for the Second Respondent*

**Date of Hearing:** *7 July 2020*

**Date of Judgment:** *17 July 2020*

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## **JUDGMENT**

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### **A. Introduction**

1. The Supreme Court found that the transfer of the Appellant Rocky Melteklesi's lease to the First Respondent Dimitri Malvirlani was fraudulent. Mr Melteklesi appeals the associated order made that he must first pay Dimitri Malvirlani VT3,102,242 before the fraudulent transfer is cancelled and he is restored as the registered proprietor.

### **B. Background**

2. Mr Melteklesi allowed his leasehold title no. 11/OG21/050 to be used as security for a National Bank of Vanuatu ('Bank') loan to his relatives Rogatien Malvirlani and Jacqueline Rory (the '2 Borrowers'). They used the loan monies to buy a vehicle.
3. The 2 Borrowers fell into arrears with the loan which resulted in the Bank threatening to seize the property. To avoid the Bank calling in the security, the 2 Borrowers sought assistance to pay off the loan. It was repaid with Dimitri Malvirlani's assistance and the mortgage over Mr Melteklesi's lease discharged.



4. Subsequently, the 2 Borrowers transferred Mr Melteklesi's lease to Dimitri Malvirlani. Dimitri Malvirlani commenced proceedings to evict Mr Melteklesi from the leasehold property. Mr Melteklesi counter claimed that the lease transfer to Dimitri Malvirlani was obtained by fraud. The Supreme Court held in his favour that the transfer was fraudulent. That decision has not been challenged.
5. Mr Melteklesi appeals the associated order that he must first pay Dimitri Malvirlani VT3,102,242 before the fraudulent transfer is cancelled and he is restored as the registered proprietor.
6. The Second Respondent the State abides the decision of this Court.

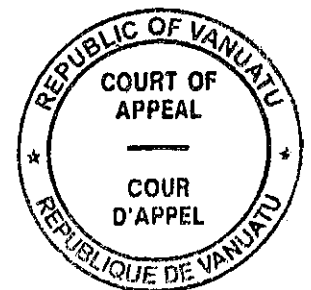
**C. Submissions**

7. Mr Livo submitted that Mr Melteklesi was not a Bank customer. He did not owe money under the loan. Moreover, he was not party to the arrangement between the 2 Borrowers and Dimitri Malvirlani for the latter to help the former repay the loan. In Mr Livo's submission, if anyone needs to repay Dimitri Malvirlani, it is the 2 Borrowers, not Mr Melteklesi.
8. Further, that if this Court found against Mr Melteklesi on this, it should require repayment of only VT1,000,000 which was what Mr Malvirlani paid towards the loan. Mr Livo submitted that Mr Melteklesi consented to his property being used as security for the 2 Borrowers' loan, but not to repay the loan.
9. Mr Tari submitted that the unchallenged evidence in the Court below was that Mr Malvirlani paid VT1,000,000 towards the loan, but then also gave Rogatien Malvirlani the balance owed of VT2,102,242. Accordingly, Dimitri Malvirlani should be repaid VT3,102,242. Mr Tari submitted that Mr Melteklesi should repay Dimitri Malvirlani as he agreed to his property securing the 2 Borrowers' loan.

**D. Discussion**

10. Mr Melteklesi agreed to his property securing the 2 Borrowers' loan. That loan was repaid with Mr Malvirlani's assistance and the mortgage over the property was discharged.
11. The discharge meant that the property was mortgage-free land. Any obligations that Mr Melteklesi had in relation to securing the loan had been discharged. Moreover, he was not party to the arrangements between the 2 Borrowers and Dimitri Malvirlani that resulted in the repayment of the loan. In the circumstances, the Supreme Court order that Mr Melteklesi must pay Dimitri Malvirlani VT3,102,242 cannot stand.

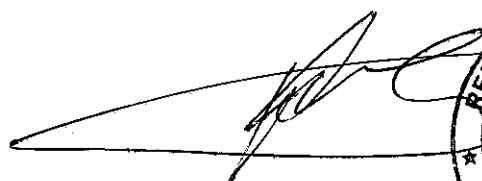
**E. Result**



12. The appeal is allowed. Order 2 of the Supreme Court namely that Mr Melteklesi must first pay Dimitri Malvirlani VT3,102,242 is set aside.
13. Additionally, the following order is made in substitution for Order 1 of the Supreme Court:
  - 1) The registration of the transfer of leasehold title no. 11/OG21/050 to Dimitri Malvirlani is hereby cancelled and the lease is to be restored in the name of Rocky Melteklesi as lessee.
14. The First Respondent is to pay the Appellant's costs of this appeal which we set at VT75,000, to be paid within 21 days.
15. There is no order as to the costs of this appeal for the Second Respondent.

**DATED at Port Vila this 17<sup>th</sup> day of July 2020**

**BY THE COURT**

  
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Hon. Chief Justice Vincent Lunabek

