

In the Matter of a Mortgage, dated 18 November 1985

AND

In the Matter of the Land Leases Act 1983

BETWEEN : JUDITH MARGARET WOOD  
(Plaintiff)

AND : SARA HOLDINGS LIMITED  
(Defendant)

RULING

For the purpose of Record the brief facts relating to this matter are as follows:-

Sara Holdings Limited and or Mr and Mrs Shacklady sought to borrow money from the Hong Kong and Shanghai Banking Corporation to build and or complete buildings at Ellouk on the island of Efate. As neither were customers of the bank, the bank required them to obtain a personal guarantee from someone known to the bank. Miss Judith Wood gave the requested guarantee. A firm of solicitors arranged for Sara Holdings Limited to give a mortgage over the property at Ellouk in favour of Miss Wood as security for her guarantee to the bank.

The loan was never repaid to the bank, who in turn called upon Miss Wood to honour her guarantee which she did in December 1985.

Miss Wood has endeavoured to recover the money owed to her by Sara Holdings Limited and or Mr and Mrs Shacklady.

Miss Wood obtained judgment against the Shackladys on the 28th January 1986 for the sum of VT3 million and a further principal sum of A\$100,000.00 with interest and costs. The judgment has not been satisfied in whole or in part. In my opinion the Shackladys were given plenty of time to arrange a sale of the property to pay the judgment debt.

A Writ of Execution was taken out against the Shackladys personal effects but the Court Bailiff reported that they had none.

Miss Wood then took further Court proceedings against Sara Holdings Limited to enforce her mortgage. I gave judgment in that matter on the 25th August 1986 and Miss Wood was empowered to sell and transfer the property in such means and such manner as she shall deem fit. Again the Shackladys and Sara Holdings Limited were given time to try and re finance the property or of satisfying the prior judgment but failed to do so.

The sale of the property was, according to the Court's directions, advertised both in Australia and Vanuatu and the sale and transfer of

the property was again, according to the Court's directions not completed before the 22nd of November 1986. In fact, an agreement for the sale of Ellouk property, is according to documents placed before me, due to be completed by the 15th May 1987. Consent for the transfer of the lease was given by the Port Vila Urban Land Corporation on the 27th April 1987 (Title 11/0212/005). On the 28th April, Sara Holdings Limited filed a summons in the Court applying for a stay of execution.

The matter came before me on the 30th April 1987 when Mr Coombe, Counsel for the Plaintiff, Miss Wood, immediately applied for the Summons to be struck out. His submissions were as follows:-

1. That as Judgment had been given in this matter I was functus officio.  
This submission I accepted.
2. That Mr and Mrs Shacklady cannot appear in person as neither are legal practitioners and as representing Sara Holdings Limited, they must be represented by Counsel or a solicitor.  
This was so held in the case of Frinton and Walton Urban District Council v. Walton and District Sand and Marine Co. Ltd., and another 1938 1 A.E.R. Ch. D. at page 649. Morton J, said "The language in R.S.C. Ord. 4, r.2 (now Ord. 5 r.6 in the 1979 White Book) does not contemplate that a company can sue in person and the points to which my attention has been drawn are sufficient to satisfy me that a company cannot appear in person."  
A more recent case was G.J. Mannix, Re (1984) 1 N.Z.L.R. 309 N.Z.C.A. where it was held, that a body corporate has no right of audience in the Superior Courts. Not being a natural person, it cannot appear in person. The rule allowing a litigant in person to appear to support his case should not be extended by analogy to allow laymen officers or agents of a company to represent the company as of right in the Superior Courts. Aside from statutory exceptions no one has a right to present a case in any court unless in person or by a qualified lawyer. All courts, however, have a residual discretion (which should be sparingly exercised) to allow unqualified advocates to appear before them in a particular case to provide non-professional representation.  
Other cases were Tritonia v. Equity and Law Life Assurance Society (1943) A.C. 584 and O'Toole v. Scott (1965) C.L.Y. 2443.
3. That final Judgment was handed down on 25th August 1986. That no appeal was lodged against that Judgment and the time for appeal had long expired. This I agree with as such contention is correct. Litigation must be brought to a finality otherwise Judgments would be meaningless.

As the Defendants contended that the price agreed for the property was too low I requested the Chief Registrar to obtain an affidavit from Mr Ligo, the First Secretary of the Ministry of Home Affairs to satisfy myself that any other offer for the said property is too uncertain. I have attached a copy of the said affidavit to this ruling.

I accede to all the submissions of Mr Coombe.

The summons is therefore struck out with costs in the sum of 50,000VT

in favour of the Plaintiff by Mr and Mrs Shacklady.

Dated at Vila this 30th day of April, 1987.

*Frederick G. Cooke*

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CHIEF JUSTICE

