

(Civil Jurisdiction)

BETWEEN: VALELE TRUST

Claimants

**AND: JOSEPH RIRI, JAMES
TANGIS and SANIEL SUL**

First Defendants

AND: AHC (Vanuatu) LTD

Second Defendants

AND: MINISTER OF LANDS

Third Defendants

Coram: Mr Justice Oliver A. Saksak
Mrs Anita Vinabit - Clerk

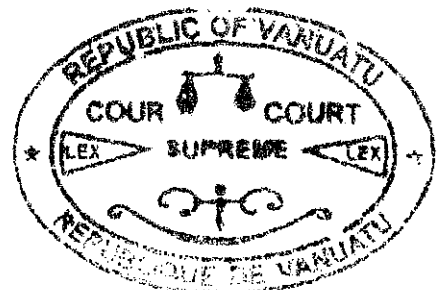
Mr Nigel Morrison for the Claimants, not appearing
Mr John Malcolm for the First and Second Defendants
No appearance by Third Defendants.

26th October 2005

JUDGMENT

On 2nd September 2005 the Second Defendant filed an Application seeking alternate orders that –

- (a) The Claims by the Claimant be dismissed pursuant to Rule 18.11; and



- (b) Summary Judgment be entered for the Second Defendant pursuant to Rule 9.10.

The Court allocated the hearing date for the Application on 26th October and issued a Notice to that effect on 28th September 2005.

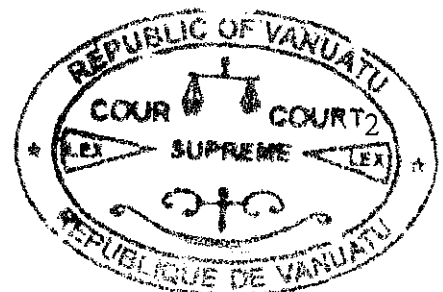
The Solicitor General wrote on 20th October 2005 and acknowledge receipt of the Notice and advised that the Third Defendant herein had consented to the jurisdiction of the Court and that they would simply abide any court orders and directions without being involved in the actual hearing.

Mr Morrison for the Claimants wrote on 23rd October 2005 informing the Court in relation to this matter and Civil Case No. 15 of 2005. And he sought adjournments for both cases for reason that he was involved in a trial hearing in Vila.

The Court deals with that application as a preliminary issue. The Court rejects the application and strikes it out. The reasons for this rejection will be provided later when the Court deals with Mr Malcolm's applications.

The Applications by the Second Defendants are supported by the sworn statements of Serah Toto dated 2nd September 2005. A further sworn statement in support is by Allan Court dated 16th September 2005. I have read those statements and their annexures. I accept and admit them into evidence to prove the following facts:-

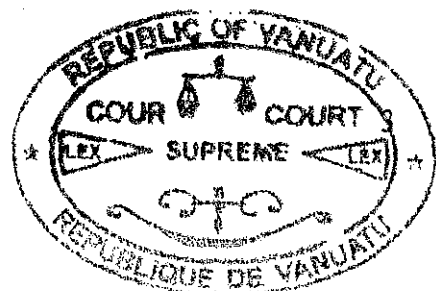
1. The land is question in this case is Title No. 04/2621/011. The lease is between James Tangis, Joseph Riri and Saniel Sul as Lessors, and AHC (Vanuatu) LTD as Lessees.
2. On or about 21st December 2000 Joseph Riri of the Riri Family as one of the disputing custom owners entered into an agreement appointing Colmar/Valele as a land agent for 2 years with a renewal of 2 years together with an option to purchase.
3. The Second Defendant obtained a Negotiator's Certificate on or about 24th August 2004.



4. Subsequently a lease was registered in favour of AHC Ltd, the Second Defendant on 13th September 2004.
5. On 1st October 2004, a writ purporting to be issued under the Official Letterhead of Ridgway Blake Lawyers was issued out of the Registry in Port Vila.
6. A defence to the Claim was filed and served on 15th March 2005 to the offices of Ridgway Blake Lawyers.
7. The matter was listed for a conference hearing in Vila on 24th March 2005 and the matter was transferred back to Santo.
8. On 7th June 2005 this Court issued on timetable order to progress the matter. Paragraph 1 of the said orders specifically required the Claimants to file and serve any amended claim they wished to have within 14 days (from 8th June 2005).
9. The Claimants have failed to take any steps to comply with the order at paragraph 1.
10. By letter of 23rd October, Mr Morrison sought an adjournment in order to enable the Claimants to file and serve an Amended Claim.

Rule 9.10 of the Civil Procedure Rules No. 49 of 2002 provides for striking out as follows:-

- “(1) This rule applies if the Claimant does not:
- (a) take the steps in a proceeding that are required by the Rules to ensure the proceeding continue; or
 - (b) comply with an order of the court made during a proceeding.
- (2) The Court may strike out a proceeding:
- (a) at a conference, in the supreme court; or
 - (b) at a hearing; or
 - (c) as set out in subrule (3); or



(d) without notice, if there has been no step taken in the proceeding for 6 months.

(3) If no steps have been taken in a proceeding for 3 months, the court may:

(a) give the Claimant notice to appear on the date in the notice to show cause why the proceeding should not be strike out; and

(b) if the Claimant does not appear, or does not show cause, strike out the proceeding." (All underlining mine).

I have underlined those parts of this Rule which are relevant to this application.

Rule 18.11 of the Rules provides for Failure to comply with an Order as follows:-

"(1) This rule applies if a party fails to comply with an order made in a proceeding dealing with the progress of the proceeding or steps to be taken in the proceeding.

(2) A party who is entitled to the benefit of the order may require the non-complying party to show cause why an order should not be made against him or her.

(3) The application:

(a) must set out details of the failure to comply with the order; and

(b) must have with it a sworn statement in support of the application; and

(c) must be files and served with the sworn statement on the non-complying party at least 3 business days before the hearing dated for the application.

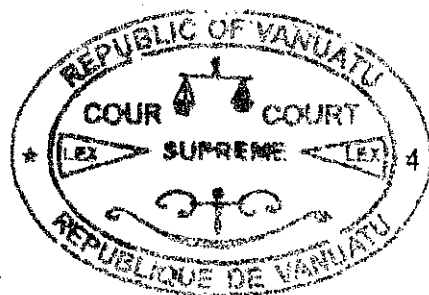
(4) The Court may:

(a) give Judgment against the non-complying party; or

(b) extend the time for complying with the order; or

(c) give directions; or

(d) make another order.



- (5) This rule does not limit the Court's powers to punish for contempt of court."

Rule 15.5 provides for costs awarded on the standard and indemnity basis. Rule 15.5(5) provides:-

"The Court may also order a party's costs be on an indemnity basis if:-

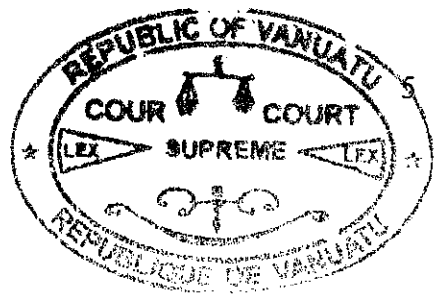
(a) in other circumstances (including an offer to settle made and rejected) if the Court thinks it appropriate."

Applying these provisions to the facts, I find as follows:-

1. The Claimants have failed to comply with Court Orders of 8th June 2005 to amend their Claims for more than 4 complete months.
2. The Claimants have not shown any good cause why an adjournment should be granted.
3. The Claimants have not shown cause why their claim should not be struck out.
4. The Defendants have made an offer to settle and the Claimants have and responded to the offer of settlement.
5. The Defendants have filed their applications properly in accordance with Rules 9.10, 18.11 and 15.5.

The Court therefore concludes and orders as follows:-

1. The Claim of the Claimants be struck out in its entirety.
2. The Defendants be entitled to their costs of and incidental to this proceeding and application on an indemnity basis to be agreed.
3. In relation to the Second Defendant's application for summary judgment in their favour, the Court in its oral decision gave summary judgment for the Second Defendant. However upon



reflection the Court hereby reverses that decision and substituting it by a rejection of the application. The reason for the rejection is that the Second Defendant has not counter-claimed against the Claimants at any time through formal pleadings. Secondly I find there to be no legal basis for granting such orders.

DATED at Luganville this 26th day of October, 2005.

BY THE COURT



OLIVER A. SAKSAK
Judge

