

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

CIVIL CASE No.207 of 2007

BETWEEN: THE GOVERNMENT OF THE REPUBLIC OF
VANUATU
First Claimant

AND: THE MINISTER OF LANDS
Second Claimant

AND: SAM MAHIT
Defendant

*Ms Jennifer Harders & Mrs Viran Molisa for the First and Second Claimants
Mr Nigel Morrison for the Defendant*

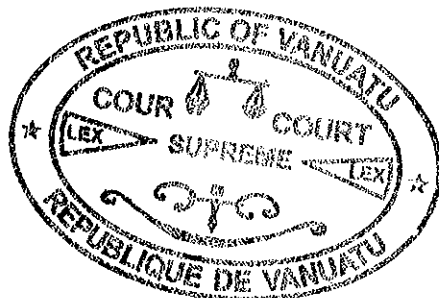
REASONS FOR STRUCKING OUT COUNTER-CLAIM

The Claimants filed an Interlocutory Application to strike out the counterclaim of the Defendant. The application is filed on 16 January 2008.

On 3 December 2007, the Claimants filed a claim against the Defendant. The Claimants seek, among other orders, an order for specific performance requiring the Defendant to execute an instrument of surrender in favour of the first Claimant, Damages and exemplary damages, costs and interests.

On 10 January 2008, the Defendant filed a Defence and a counterclaim seeking for:

1. An order for damages against the Claimants' employees.
2. An order that the First Claimants' employees be summarily dismissed for serious misconduct.
3. Alternatively, that the First and Second Claimants pay the Defendant the balance of VT70 millions.
4. Costs and incidentals.



On 16 January 2008, the Claimants filed this Interlocutory Application to strike out the counterclaim seeking the following:

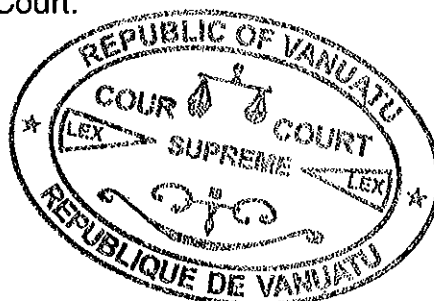
1. The whole of the counterclaim be struck out as disclosing no reasonable cause of action or alternatively, as being frivolous or vexatious.
2. The Defendant's pay the Claimant's costs of this application and costs thrown away on the counterclaim.

The Interlocutory application was listed for hearing on 15 December 2008 at 4.30PM o'clock. On such a date and time, the Defendant and his counsel were not attending the hearing. The hearing of the application was adjourned to 3 February 2009 at 2.00PM o'clock. At 2.00PM today, Mr Nigel Morrison appears for the Defendant and clarifies his position to the effect that on what he can see on the Claimant's file, counsel who has the carriage of the matter is overseas. He is not in a position to make any advancement apart from what is the Defendant's file. The Claimant's counsel must prove the Claimant's application.

The Defendant filed no response or defence to the application. The application is supported by sworn statements of Russel Nari, Director General of Lands filed 28 January 2008 and 2 February 2009.

The application is advanced on the following grounds:

- (a) There is not pleaded, nor could there be, any cognizable obligation upon the Claimants to pay any additional sum (VT70 millions or otherwise) to the Defendant, even if the Defendant's plea of non est factum is proved.
- (b) There is not pleaded any fact giving rise to any duty, nor could there be, the breach of which (also unpleaded) could give rise to a claim for damages (which are not particularised either as to type or amount).
- (c) There is no remedy sought by the prayer for relief which could transform the suggestions of "coercion" (paragraph 2), "inducement" (paragraph 3) or breach of "trust and confidence" (paragraph 4) into a cognizable causes of action.
- (d) The remedy of "summary dismissal" (paragraph 2) of the first Claimant's employees is beyond the jurisdiction of the Court.



I have considered each and all grounds of the interlocutory application. They are not opposed by the defence.

The claim was lodged on the basis of a consensual agreement between the Claimants and the Defendant "Deed of Release and Surrender of Lease".

The Claimants pay VT58,000,000 to the Defendant in consideration of which, the Defendant is required to execute the Form of Surrender of the title (Form 7) under the Land Leases Act.

The Defendant has breached the terms of the Deed by:-

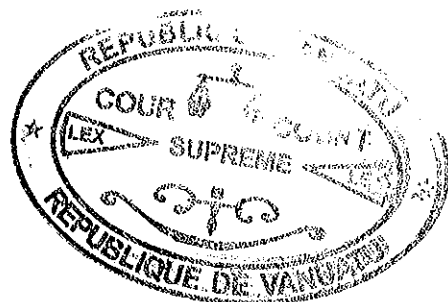
- Failing to vacate the land lease on 16 September 2006 or subsequently;
- Commencing or continuing to build on the land;
- Refusing to vacate the lease property despite notices to vacate (see Attachment of Russel Nari sworn statement "R.N.15-21").

The Defendant admits signing the Deed. He had not repaid the purchase price of compensation payment of VT58,000,000.

The Defendant argues that the Deed was vitiated by his inability to speak English or some form of unspecified coercion.

This argument cannot stand. There is material evidence that correspondence were written in very good English language by the Defendant to the Claimants. The Defendant was represented by a lawyer at all material times.

The claim for additional payment of VT70 millions cannot be sustained. There is no obligation on the Claimants to make additional payments of Vatu 70 millions. Further, there is no point pleaded giving rise to damages. There are no particulars of damages or amount sought.



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It defies logic and good sense to make an order for payment of damages to the Defendant while he failed to comply with the terms of his obligations under the Deed.

Finally, it is accepted that the remedy of summarily dismissing the Claimants' employees, is beyond the powers of the Court to so order.

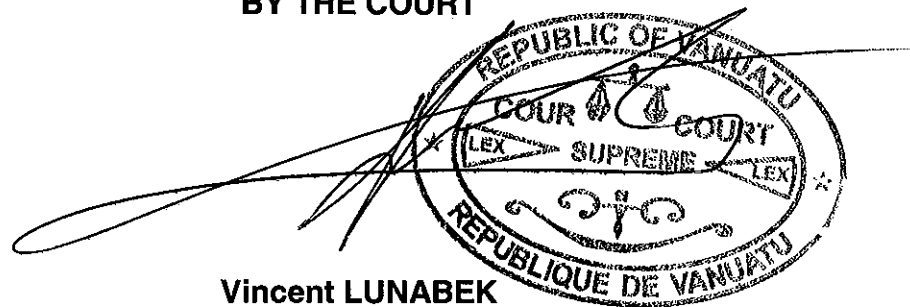
For these reasons, the Interlocutory Application to strike out the counterclaim of the Defendant filed 10 January 2008, must be granted.

ORDER

1. The counterclaim of the Defendant filed 10 January 2008, is hereby struck out.
2. The Claimants are entitled to costs assessed at Vatu 20,000 to be paid by the Defendant to the Claimants by 27 February 2009.

DATED at Port-Vila this 3rd day of February 2009

BY THE COURT



**Vincent LUNABEK
Chief Justice**