

(Civil Jurisdiction)

BETWEEN: JOSSES LAAU, ISSAC ISIAH, JOSEPH SALONG, JUDE TABI, DENIS ABEL, HENRY ALVEA, LORIN STATHAM, KARL JOCKEY, HORRY MAURICE, RAYNOLD SIMON BORI, MOLI MAMIKI, MARK KALOTAP

Applicants

AND: SOVEREIGN DEVELOPMENT LTD

Respondent

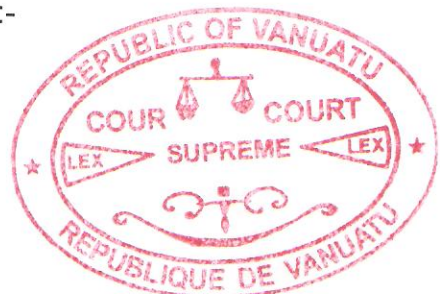
Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mrs Marisan P. Vire for the Appellants
Mr James Tari for the Respondent

Date of Hearing and Oral Decision: 7th April 2010
Date of Reasons: 8th April 2010

JUDGMENT

- (1) This judgment provides reasons for the oral decision handed down on 7th April 2010.
- (2) On 26th October 2009, the Magistrate's Court in Luganville delivered a one-paged judgment in favour of the respondent and specifically ordered the appellants to vacate the properties they currently occupy within 6 months. The appellants challenge that judgment and orders which includes an order for costs against them.
- (3) The appeal was based on 5 grounds as follows:-



- (a) The finding that the appellants' case had been brought before the Court of Appeal.
- (b) The failure to give weight to the appellants' evidence that they occupied lands at the invitation of the respondent.
- (c) The issues raised by the appellants were res judicata.
- (d) The misapplication of the res judicata principle in a strike out situation due to procedural defect as opposed to the final determination of issues as a result of substantive hearing.
- (e) Lack of jurisdiction by the Magistrate's Court to adjudicate the issues of land leases and counter-claims of the appellants, and the failure to refer the matter to a higher court, namely the Supreme Court.

4.1. Grounds (a) –

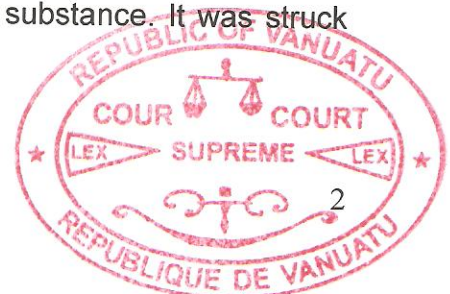
It was submitted by Counsel for the appellants that there was no evidence the case of the appellant was appealed. The Court accepts that submission.

4.2. Ground (b) –

The respondents' claims in the Magistrate's Court contained extensive pleadings to which the appellants filed defences and counter-claims which they were obliged in law to do. This warranted a proper trial to have been held. Instead the Magistrate's Court decided the matter summarily by limiting the issues to illegal possession and held in favour of the respondent when no proper trial hearing was held. That was an error on the part of the Court below.

4.3. Grounds (c) and (d) –

The res judicata principle was wrongly applied by the Court below. Civil Case No. 21 of 2007 was not determined in its substance. It was struck



out on procedural grounds. The Court accepts the appellants' submissions on this point.

4.4. Ground (e) –

The counter-claim of the appellants alleged breach of contract and claimed VT96.000.000 as damages and VT6.000.000 being for damages for pain and suffering. Given these circumstances, the proper course was for the Court below to be ceased of the case and to transfer the case to the Supreme Court for lack of jurisdiction. Failure to do so was an error on the part of the Court below.

5.1. Counsel for the respondent submitted that Section 15 of the Land Leases Act. Cap 163 afforded the respondent indefeasible titles to land and as such, the appellants had no defence.

5.2. This submission is rejected for two reasons –

- (a) There is no evidence before this Court that this argument was raised in the Court below; and
- (b) Section 15 of the Land Leases Act was not specifically pleaded in the claim of the respondent in the Magistrate's Court. It was therefore not open for the respondent to raise this argument on appeal.

6. It was for these reasons the appeal of the appellant was allowed and the orders they sought were granted.

DATED at Luganville this 8th day of April 2010.

BY THE COURT


OLIVER A. SAKSAK
Judge

