

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

**Civil Case No. 156 of 2012**

**IN THE MATTER OF:** A Mortgage dated July 16, 1992 in respect  
of title number 11/OG33/030

**IN THE MATTER OF:** The Land Leases Act [Cap. 163]

**BETWEEN:** **NATIONAL HOUSING CORPORATION**  
**Claimant**

**AND:** **JOHN TARILAMA AND EILEEN TARI**  
**Defendants**

**Coram: Justice Mary Sey**

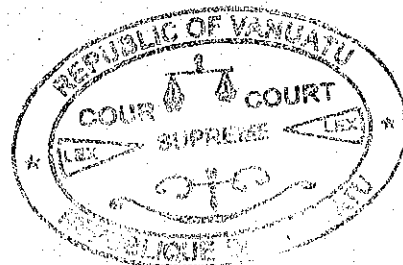
Counsel: Mr. George Nakou for the Claimant  
Mr. Felix Laumae for the Defendants

Date of Hearing: 1, 2 August 2013  
Date of Decision: 2 September 2013

**JUDGMENT**

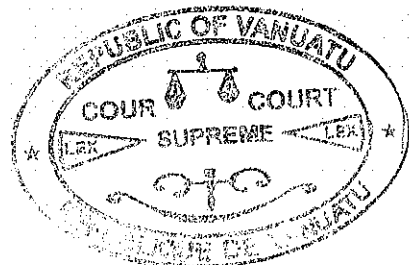
1. The Claimant herein instituted civil proceedings against the Defendants by a Supreme Court Claim, filed on the 5<sup>th</sup> day of September 2012, in which it prayed for the following reliefs:

- "1. An order that the Claimant, as Mortgagee, be empowered to sell and transfer leasehold property contained and described in lease title number 11/OE31/090 ("the Property") by such means and in such manner as it shall deem fit.



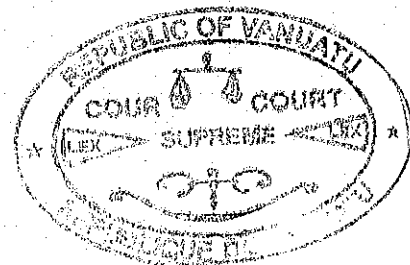
2. An order that pending such sale and transfer the Claimant, as Mortgagee, or any agent or agents duly authorized by it in writing, be empowered to enter on the said leasehold property and act in all respects in the place and on behalf of the proprietor of the Lease, and to apply in reduction of the monies due and owing to the Claimant all or any rent received in respect of the said property.
3. An order that the purchase monies to arise from the sale and transfer of the said leasehold property and the monies received (if any) by the Claimant pending such sale and transfer shall be applied:
  - (i) firstly, in payment of the expenses occasioned by the sale and transfer or going into and remaining in possession (as the case may be), including the costs of this application;
  - (ii) secondly, in payment of the monies then due and owing to the Claimant as Mortgagee;
  - (iii) thirdly, in payment of subsequent registered mortgages or encumbrances or charges (if any) in order of their priority;
  - (iv) fourthly, the surplus (if any) shall be paid into this Honourable Court pending further order.
4. An order that the remaining balance of the loan (after proceeds of the sale had been applied against the loan balance) as damages shall be paid by the Defendants.
5. Such further or other relief as this Honourable Court shall deem just."

2. The Claimant alleged at paragraph 4 of the Supreme Court Claim that:



*"The Defendants by a mortgage dated July 16, 1992, made between the Claimant as mortgagee and the Defendants as mortgagors, the Defendants mortgaged to the Claimant all their interest as registered proprietors in the lease comprised in title number 11/OG33/030 to secure the repayment of monies advanced in a form of a loan to the Defendants".*

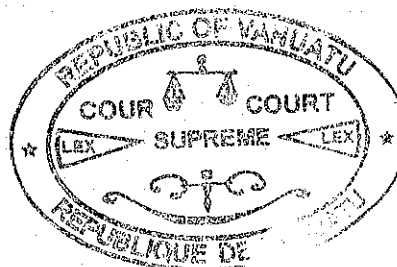
3. At paragraph 5 of its Statement of Claim, the Claimant alleged that the Defendants "had consistently failed, refused and/or neglected to comply with the terms of the loan agreement....." Then, under the heading of Particulars at (iii) thereof, it is alleged that "the Claimant demanded repayment through numerous demand notices since March 1989 to date but the Defendants have refused and the loan statement shows that for the entire year of 1998, the Defendants had not made any single deposit into the loan account. The loan statement indicates that the Defendants have allowed the loan to fall into heavy arrears and has been attracting interest since 1989 and the total balance of the loan as at March 2012 stands at VT 6,264,951 and still accruing with interest."
4. In their defence, the Defendants contended that they did not receive advance of any monies from the Claimant pursuant to any loan agreement or under the mortgage registered on 16 July 1992 against their property comprised in leasehold title number 11/OG33/030.
5. The Defendants further argued that they acquired the property from the Claimant on a sale and purchase agreement and that the purchase price was paid in full by instalments, with even an excess sum of VT173, 005.
6. It appears to me that the central issues for determination before this Court are first: whether the Claimant had advanced monies in the form of a loan



to the Defendants. Secondly, was there a mortgage in relation to leasehold title number 11/OG33/030? and on what date was it executed - 1992 or 1989? Thirdly, was the interest based on a fixed term calculation or on a reducing balance method? Fourthly, how much is due and payable by the Defendants under the mortgage?

### The Evidence

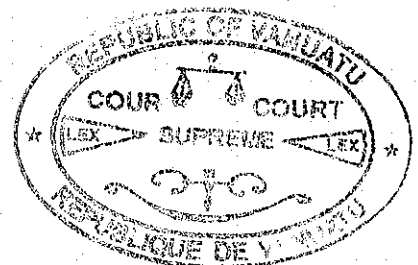
7. The Claimant's witness, Rebecca Aru, works for the National Housing Corporation (NHC) as an in-house legal officer. She testified that she has been working for the Claimant for the past 17 years and that she was familiar with the NHC schemes which dealt with two types of agreements. She produced and tendered a sworn statement, dated 11<sup>th</sup> September 2012, together with "Annexure RA-1 to RA-29". These were all admitted in evidence as Exhibit "P1".
8. Testifying further, the witness referred to "**Annexure RA-1**" as the "Assessment of Housing Applicant." The full name of the applicant on that document is Eileen Tari. The witness said that the Defendants had lodged an application on May 9, 1998 for a Housing Loan with the Claimant.
9. She confirmed that the first type of agreement covers the sale of land with an incomplete house for **VT1, 477,670** and the second type was in respect of land sold with a completed house for **VT1, 940,166**. She said that the Tarilamas bought the property that was being sold for **VT1, 477,670** which was the cost of the land with an incomplete house.
10. Rebecca Aru went on to state that "**Annexure RA-3**" is a true copy of the Loan Agreement executed between the Claimant and the Defendants. The



document is dated **16<sup>th</sup> July 1992** and that no amount is stated in the body of the Agreement.

11. The Claimant's second witness Davina Tosusu is the Finance officer of the Claimant and she has worked for the NHC for 26 years. She filed a sworn statement dated 8<sup>th</sup> April 2013 and she also tendered a Loan Agreement which was admitted in evidence as "**Exhibit P5**". This document is dated **16<sup>th</sup> July 1989** and made between the National Housing Corporation of Vanuatu and Tari John & Eileen Tari.
12. In her testimony, Davina Tosusu told the Court that the 10% reducing balance method was applied to the interest on the loan and it was worked out on a daily basis. She said "if you take it that the Defendants paid VT17,750 every month, you must remember that the interest is calculated daily. So if you take the figure of VT1,547,950 x 10% divided by 365 days for a year, then multiply that by the number of days in the month you should get the actual figure of interest for the days in the month. What the Defendants have done is to work out the interest for 1 year only but what they should have done was to have worked out the interest for 15 years."
13. When this witness was cross examined as to what the VT17,750 figure was based on, she said that she took the cost of the house & land plus the other components as the Mortgage value as shown in the document attached to the sworn statement of John Tarilama as **JT1** as follows:

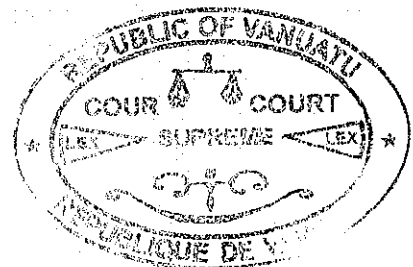
"Cost of house & land	Vt1, 477,670
Transfer of lease 5%	73,884
Registration of Trf 2%	29,553
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	1,581,107



Deposit	50,000
	-----
	1,531,107
Mortgage stamp duty .6%	9,187
Mortgage Registration .5%	7,656
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Mortgage value	1, 547, 950
	=====

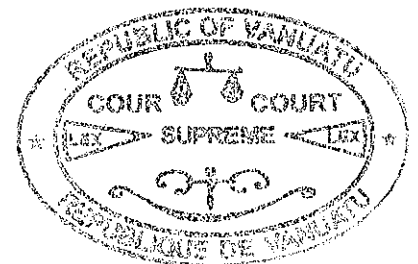
Davina went on to state that the figures on **JT1** were right up to the interest portion but that she disagreed with the Defendants' assertion that the fixed term calculation of 10% interest rate was used. She said the NHC only had the reducing balance calculation and that it did not apply the fixed term calculation.

14. On 11<sup>th</sup> April 2013, Davina Tosusu filed an additional sworn statement to clarify the difference of the opening balance of VT1, 938,082 in the defendants' statement of account and the amount of VT1,793,106 as per the Loan Agreement. She stated that in March 1989 and June 1989, the Defendants took materials on credit from the Claimant to totalling VT203, 613 and the Defendants paid only VT68,500 leaving an outstanding balance of VT144,976 which was debited against the loan balance.
15. On this issue of materials, purportedly taken by the claimants on credit, let me say straightaway that no specific pleadings have been made raising it. Moreover, the Claimant has not provided receipts/dockets of supply of such materials. I do not therefore propose to make any findings in relation to the issue and nothing more needs to be said about it. The additional figures would be disregarded and only the initial amount of **VT1, 793,106** as per the loan agreement will be considered.

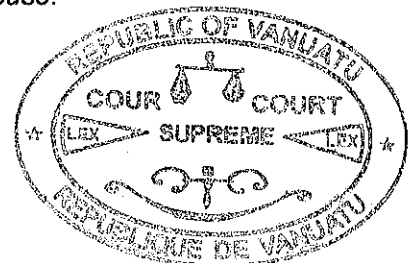


16. I shall now turn to consider the Defendants' evidence as set out in the sworn statement of John Tarilama filed on the 17<sup>th</sup> day of April 2013. For ease of reference, it is reproduced in full hereunder as follows:

- "4. *I want to inform the Court that with sworn statement filed by Davina Tosusu recently, there appear to be two (2) loan agreements which we signed with the Claimant as one exhibited in sworn statement of Rebecca Aru annex "RA 3" and one in sworn statement of Davina Tosusu annex "DT 1".*
5. *I must say that loan agreement annex "DT 1" to sworn statement of Davina Tosusu which she said we signed loan agreement with the Claimant on 16 July 1989 is not true and it appears the date was changed and amount inserted recently. It is a forged document. We never signed loan agreement with the Claimant on 16 July 1989 as sworn from loan agreement exhibited by Davina Tosusu. It is a forged document and I request the Court to summon Davina Tosusu to explain why she swore on oath to confirm a forged document. My lawyer has advised me that the said Davina Tosusu committed offence criminal offence to swear on oath to tell untrue stories and to use forged document.*
6. *I confirm to the Court that loan agreement annex "RA 3" to sworn statement of Rebecca Aru is the true document that my wife was asked to sign at the old Courthouse that was burnt and which I signed about two (2) days later at my house.*
7. *I now want to tell the Court how my wife and I acquired the property title 11/OG33/030 which is our only residential home at Freshwota central, Port Vila.*
8. *In 1986, the Parliament of Vanuatu passed the National Housing Corporation Act (Cap. 186). The Act comes into force on 4 August 1986.*
9. *Pursuant to its function under to the Act, the Claimant established a low housing scheme and sells the same to people especially Ni-Vanuatu.*
10. *In 1988, the Claimant started the low cost housing scheme at Freshwota central, Port Vila.*
11. *The Claimant advertised the low cost housing scheme in late 1988 to public to make application if interested to acquire house.*

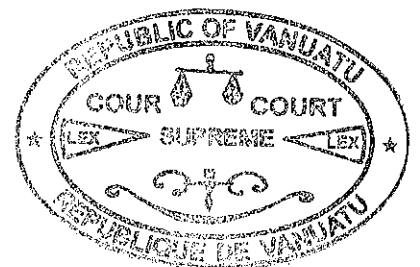


12. *On 9 May 1988, my wife and I applied and filled out a form to buy our house now under the scheme. When we filled out the form, we were advised by officers of the Claimant that the Claimant established the low cost housing scheme to provide opportunity especially for Ni-Vanuatu to acquire property in Port Vila. The officers of the Claimant advised us that Claimant is set up by Government not to make profit but assist Ni-Vanuatu to own properties especially in Vanuatu urban towns of Port Vila and Luganville, Santo.*
13. *Before we filled out the form, the officer of the Claimant who helped us fill out our form gave us the document (procure) that show two (2) different types of houses under the low cost housing scheme and their prices.*
14. *I annex mark "JT 1" is a true copy of the said procures.*
15. *Under the scheme there are two (2) different types of houses:  
(a) complete house which costs -VT1,940,166.  
(b) incomplete house which costs -VT1,477,670.*
16. *My wife and I applied and filled out form for the incomplete house which costs VT1,477,670.*
17. *Our application was approved for the incomplete house.*
18. *I annex mark "JT 2" is a true copy of the photo of the incomplete house that we bought from the Claimant.*
19. *From calculation given to us, the total sum which we would pay the Claimant on monthly installments is VT1, 702, 745. This sum is inclusive of transfer fee, stamp duty and interest.*
20. *The interest is 10% calculated on the total purchase price inclusive of transfer fee and stamp duty. It is one off interest and is not calculated and applied monthly.*
21. *The duration of the installment payments was for 15 years at monthly payment of VT9, 460.*
22. *For our property, we have offered to pay for our property within 8 years. And from calculation by officer of the Claimant, our monthly installment payment was VT17, 750.*
23. *Upon payment of deposit of VT50,000, we took possession of our property and carried out work to complete the house.*





24. On 16 July 1992, the Claimant transferred leasehold title 11/OG33/030 (now our property) to us for the sum of VT1, 477,670.
25. I annex mark "JT 3" is a true copy of the said transfer.
26. On 16 July 1992, the Claimant also registered mortgage over our property.
27. I annex mark "JT 4" is a true copy of the advice of registration of the said mortgage.
28. Turning to the issue of the loan agreement, I confirm that loan agreement we signed did not specify amount. I want to say that we did not receive any money under the said loan agreement from the Claimant.
29. I want to say as well that we never ever received any money from the Claimant to purchase our property title 11/OG33/030.
30. We have been faithfully pay VT17,750 towards our property to the Claimant since 31 October 1989 as agreed until 14 October 1996 when the former Acting General Manager late Paul Willy wrote to salary section of the Government of Vanuatu to suspend deduction of my wife's salary toward payment for our house until problems caused by previous management of the Claimant is sorted out.
31. I annex mark "JT 5" is a true copy of the said letter.
32. My wife continued to work for the Government of Vanuatu in the Department of Education until December 2003 when she finally retired.
33. From our record, we have paid total of VT1, 875, 750 to the Claimant for our property. In fact we paid in excess of agreed purchase price of the property inclusive of 10% one off interest which is VT1, 702, 745.
34. The price of our property is not VT1, 938,082 as shown in statement provided by Rebecca Aru.
35. We have paid for our property in full and owe the Claimant no money.



36. *We have completed our house and developed our property over the years from our struggle and earnings and the value of our property now stands at VT15,000,000.*

37. *I annex mark "JT 6" is a true copy of valuation of our property.*

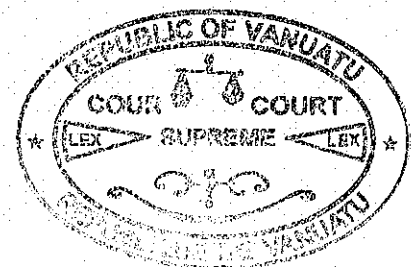
17. In a nutshell, John Tarilama's evidence is to the effect that the agreement he had with the Claimant was one of sale and purchase agreement of leasehold property for the sum of **VT1,702,745** inclusive of a one off 10% interest calculated on the total purchase price, transfer fee and stamp duty.
18. Furthermore, that the duration of the installment payments should have been over a period of **15 years** at a monthly payment of **VT9,460** but that he and his wife offered to pay for their property over a period of 8 years and that from the calculation done by an officer of the Claimant, their monthly installment payment of **VT17,750** was worked out on the basis that the payment was over 8 years commencing in 1989.

### **Analysis of the evidence**

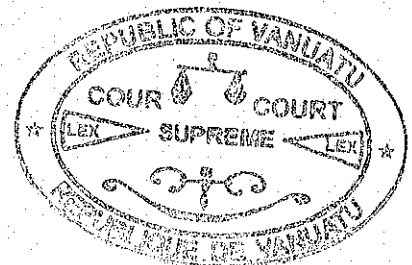
19. In order to give the reader an insight into the substratum of the case, it is convenient at this stage to set out relevant portions of some of the documentary evidence tendered before this Court.
20. The **Loan Agreement** made on the **16<sup>th</sup> day of July 1992**.  
Paragraphs 1 - 4 read thus:

### **"WHEREBY IT IS AGREED AS FOLLOWS:**

1. *The Corporation has agreed with the Borrower to lend the Borrower the sum of (amount in words and figures) Blank VT. Blank*



2. *The granting of the loan is to enable the Borrower to purchase the leasehold property as described by the Lease number 11/OG33/030 (hereinafter called "the property") from the Corporation.*
  3. *The monies paid by the Corporation to the Borrower in pursuance of this agreement shall bear interest at the rate of ten percent per annum (10%).*
  4. *The borrower shall repay the principal of the Loan and interest thereon by consecutive instalments of Blank each, commencing on the Blank day of Blank, 19 Blank, and to be made between the first and tenth day of the month of their due date, without demand by the corporation. The amount of the final instalment may be varied. The Borrower may repay any part of the principal at any time in advance of the due date."*
21. Before continuing with the other documents, I shall at this stage make some specific observations relating to the loan agreement. Two different loan agreements have been tendered by the Claimant. The one reproduced in paragraph 22 above was the agreement tendered by the Claimant's first witness Rebecca Aru. The blank areas were not filled in at the time the document was signed by the Claimant and the Defendants.
22. However, in the second document tendered by the Claimant's second witness, Davina Tosusu, I note that the date has been altered to reflect the year 1989 instead of 1992. Also, all the blank areas have been filled in handwritten blue ink and the amount in words and figures read as One million seven hundred ninety three thousand one hundred & six vatu, VT1,793,106. It is also significant that, at paragraph 4, an amount and a date have been inserted in handwritten blue ink so that the document states that "the Borrower shall repay the principal of the loan and interest thereon by consecutive installments of 17,750 VT PM each, commencing on the 30<sup>th</sup> day of January, 1989, and to ....."



23. I find that Davina Tosusu's document has been tampered with and dates and amounts have been deliberately altered in a bid to deceive the Court. Besides, I simply cannot comprehend how the Claimant could have put two conflicting documents before the Court in support of its claim. It is beyond disputation that the evidence of Davina Tosusu is at variance with that of Rebecca Aru and, to my mind, it was deliberately tailored to fit the case she put forward. I therefore reject this document and the evidence adduced in support of it in its entirety.
24. Rather, I accept the document tendered by Rebecca Aru as "**Annexure RA-3**", as the correct **Loan Agreement** which was made by the Claimant and the Defendants on the **16<sup>th</sup> day of July 1992**.
25. The **Agreement of Sale** which was signed by the parties reads as follows:

AGREEMENT OF SALE

SCHEDULE NUMBER 1

DESCRIPTION OF SUBJECT LAND TRANSFERRED

TITLE NUMBER 11/OG33/030

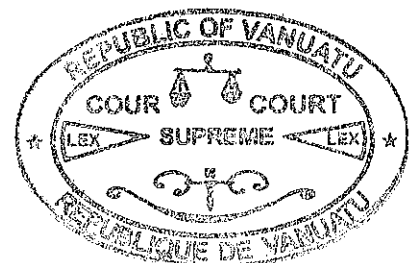
SCHEDULE NUMBER 2

PRICE OF THE SUBJECT LAND AND HOW PAYABLE

THE PRICE OF THE SUBJECT LAND AND IMPROVEMENTS SHALL BE

Payable by a DEPOSIT of

THE BALANCE after payment of the DEPOSIT shall be payable by  
 ..... Installments of VT 17,750 each together with interest of 10  
 (ten) percent per annum or at a rate which may be determined by the National  
 Housing Corporation from time to time.



SCHEDULE NUMBER 3

PARTICULARS OF THE PURCHASER

FULL NAME (S): TARI JOHN & EILLEN TARI  
RESIDENTIAL ADDRESS: FRES WOTA CENTRAL (Stage 10)

OCCUPATION:

SIGNED BY THE SAID PURCHASER (S) .....sgd.....  
In the presence of: (Purchaser)  
.....sgd.....  
(Witness) (Purchaser)

SIGNED FOR AND ON BEHALF OF NATIONAL  
HOUSING CORPORATION by its duly authorized representative in  
The presence of .....sgd.....  
.....sgd..... (Vendor)

The common seal of National Housing  
Corporation BY

26. I find that the date of Registration of the Mortgage and the date of the Loan Agreement are all consistent with the sworn statement of Rebecca Aru. I also find that stamp duty of VT10, 800 was paid on 20<sup>th</sup> August 1992 and the original Deed dated 16<sup>th</sup> July 1992 was registered at Port Vila at 09.10 hours on the 11<sup>th</sup> day of January 1993.
27. The evidence of John Tarilama as shown in Exhibit "JT 1" is also consistent with that of Rebecca Aru as appears on "Annexure RA-24" in that the cost of the house and land comprised in **lease title 11/OG33/030** was transferred by the Claimant to the Defendants for **VT1,477,670**.
28. It is pertinent to note that John Tarilama was not cross-examined by the Claimant's counsel on his evidence. To my mind, this witness gave a correct narration of the facts surrounding the sale and purchase transaction in question. He said that he and his wife Eileen Tari were given the keys to

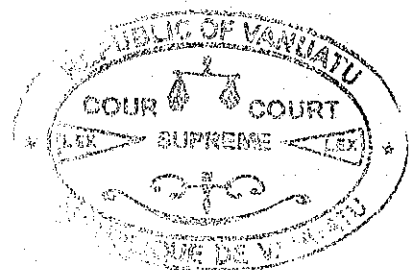


the house sometime in 1988 by the then General Manager, Mr. Bule, for them to complete the house. He said arrangements to that effect were commenced then but that no documents were signed at that stage. He testified that the signing of all documents took place in 1992 and not in 1989 as alleged by the Claimant. He also said that his wife signed at the old Court House building whilst the document was signed by him at his house.

29. It is submitted by defence counsel that John Tarilama's evidence must be accepted as it was unchallenged.
30. In the case of **Hack v Fordham** [2009] VUCA 6; Civil Appeal Case No. 30 of 2008 (30 April 2009) at paragraphs 21 and 30 the Court of Appeal commented as follows:

*"21. At trial counsel for both claimant and defendants tendered the sworn statements filed before trial on their clients' behalf, and, apparently by agreement, then did not cross examine the deponents. This procedure deprived the Court of the opportunity to see and hear the deponents respond to the challenges made to their evidence. Without seeing and hearing the witnesses cross-examined on disputed facts the Court was in no position to decide issues of credit between the witnesses. In particular the disputed allegations of misconduct and other business activities made against the respondent were not tested.*

*30. We have already mentioned the procedure adopted by the parties in this case of not cross examining on sworn statements where the facts deposed to are in dispute. Counsel in a trial must appreciate that when a deponent is not cross examined, a trial Judge will not be in a position to reject the deponent's evidence in favour of a different version of the facts where the dispute turns on the credit of the witnesses."*



31. I shall now turn to consider the central issues I had earlier identified for determination.

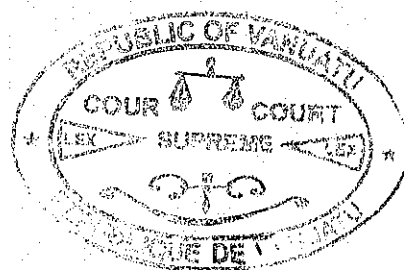
***First: whether the Claimant had advanced monies in the form of a loan to the Defendants?***

32. The Claimant's allegation is that the Defendants by a mortgage dated July 16, 1992, made between the Claimant as mortgagee and the Defendants as mortgagors, the Defendants mortgaged to the Claimant all their interest as registered proprietors in the lease comprised in title number 11/OG33/030 to secure the repayment of monies advanced in the form of a loan to the Defendants. (Underlining mine)

33. The Defendants accept that they signed a mortgage with the Claimant but maintain that the Claimant did not advance any money to them under the said mortgage.

34. I find that this is not a case where the Claimant had advanced monies to the Defendants as a loan to purchase leasehold property title 11/OG33/030. There is no evidence of such a loan before this Court notwithstanding the fact that the parties had executed **Annexure RA-3** as a Loan Agreement.

35. I must say that the Defendants have demonstrated some element of complacency, negligence and lack of good judgment in simply signing all documents they were presented with without questioning all the discrepancies in the various figures. Perhaps they should have sought legal advice whilst doing the mortgage transactions.



36. Be that as it may, however, what I find is evidence of a sale and purchase transaction relating to leasehold land and property title number 11/OG33/030 situated at Freshwota as evidenced by the Agreement of Sale document referred to in paragraph 25 of this judgment.

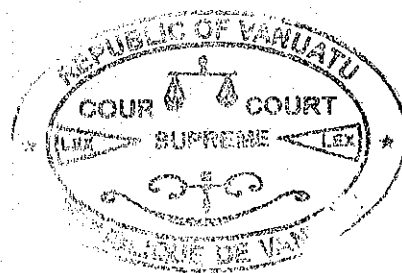
***Secondly: was there a mortgage in relation to leasehold title number 11/OG33/030? and on what date was it executed - 1992 or 1989?***

37. Therefore, the answer to this question is in the affirmative. A mortgage over leasehold title number 11/OG33/030 was executed by the parties for the sum of **VT1, 793, 106**. The original **Deed dated 16<sup>th</sup> July 1992** was **stamped on 20<sup>th</sup> August 1992** and **registered** at Port Vila at 09.10 hours on the **11<sup>th</sup> day of January 1993** as shown on "**Annexure DT-2**" which was admitted in evidence and marked as Exhibit "**P6**"

***Thirdly: was the interest based on a fixed term calculation or on a reducing balance method?***

38. The Claimant, on the one hand, alleged that it used the reducing balance method whereas the Defendants, on the other hand, contended that the interest was based on a one off 10% fixed term calculation in order to make the low cost housing affordable to Ni Vanuatu citizens.

39. It is common cause that John Tarilama's evidence remained unchallenged. Now, without the Court seeing and hearing this witness cross-examined on disputed facts, it is in no position to decide issues of credit between John





Tarilama and the Claimant's witness Davina Tosusu. In particular, the disputed allegation of mode of interest applied was not tested.

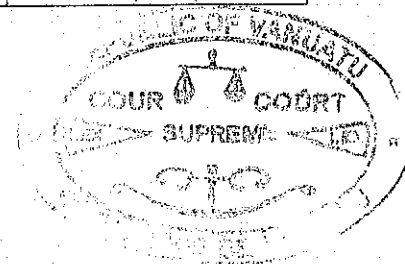
40. As was stated by the Court of Appeal in **Hack v Fordham**, "counsel in a trial must appreciate that when a deponent is not cross examined, a trial Judge will not be in a position to reject the deponent's evidence in favour of a different version of the facts where the dispute turns on the credit of the witnesses." I therefore have no alternative but to accept the Defendants' assertion that the interest was based on a fixed term calculation.

***Fourthly: how much is due and payable by the Defendants under the mortgage?***

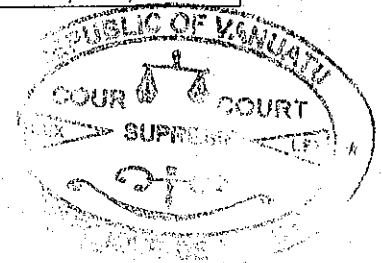
41. I have perused the statement sheet tendered by the Claimant as "**Annexure RA-4**" showing payments that were made by the Defendants from 1989 up to October 1996 as follows:

**Vanuatu National Housing Corporation Limited**  
**Eileen & J Tari**  
**Number 408**

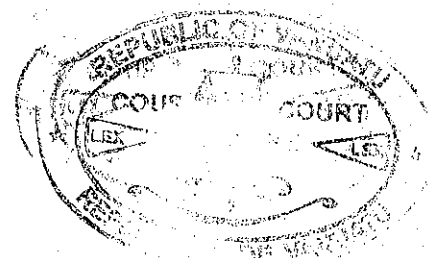
DATE	PAYMENT	INTEREST	BALANCE
<b>1989</b>			1,938,082
Jun		0	1,938,082
Jul		0	1,938,082
August 31		16,460	1,954,542
Sep 30		16,065	1,970,607
Oct 31	26,625	16,511	1,960,493
Nov 30	17,750	15,968	1,958,710
Dec 31	17,750	16,4850	1,957,445
<b>1990</b>			
Jan 31	17,750	16,474	1,956,169



Feb 28	17,750	14,870	1,953,289
Mar 31	17,750	14,439	1,951,978
Apr 30	17,750	15,898	1,950,126
May 31	8,875	16,487	1,957,738
Jun 30	17,750	15,945	1,955,934
Jul 31	17,750	16,461	1,954,645
Aug 31	26,625	16,375	1,944,395
Sep 30	17,750	15,835	1,942,480
Oct 31	8,875	16,422	1,950,028
Nov 30	17,750	15,882	1,948,159
Dec 31	17,750	16,395	1,946,805
<b>1991</b>			
Jan 31	26,625	16,308	1,936,488
Feb 29	17,750	15,245	1,933,983
Mar 31	8,875	16,350	1,941,458
Apr 30	26,625	15,738	1,930,571
May 31	8,875	16,321	1,938,018
Jun 30	26,625	15,710	1,927,106
Jul 31	8,875	16,292	1,934,519
Aug 31	26,625	16,204	1,924,099
Sep 30	8,875	15,742	1,930,965
Oct 31	26,625	19,174	1,920,514
Nov 30	17,750	15,639	1,918,403
Dec 31	17,750	16,143	1,916,796
<b>1992</b>			
Jan 31	8,875	16,204	1,924,125
Feb 29	17,750	15,147	1,921,521
Mar 31	26,625	16,094	1,910,990
Apr 30	17,193	15,565	1,909,363
May 31	17,750	16,066	1,907,678
Jun 30	17,750	15,534	1,905,462
Jul 31	8,875	16,108	1,912,695
Aug 31	17,750	16,094	1,911,039
Sep 30	17,750	15,561	1,908,850
Oct 31	17,750	16,061	1,907,162
Nov 30	8,875	15,602	1,913,889
Dec 31	8,875	16,180	1,921,194
<b>1993</b>			
Jan 31	26,625	16,091	1,910,659



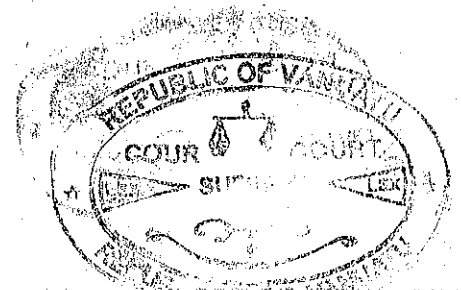
Feb 28	22,750	14,483	1,902,392
Mar 31	17,750	16,007	1,900,649
Apr 30	17,750	15,476	1,898,374
May 31	17,750	15,972	1,896,537
Jun 30	17,750	15,443	1,894,289
Jul 31	26,625	15,862	1,883,527
Aug 31		15,997	1,899,524
Sep 30	35,500	15,321	1,879,345
Oct 31	17,750	15,811	1,877,405
Nov 30		15,431	1,892,836
Dec 31	26,625	15,850	1,882,061
<b>1994</b>			
Jan 31	17,750	15,834	1,880,145
Feb 28	26,625	14,219	1,867,739
Mar 31	17,750	15,712	1,865,701
Apr 30	17,750	15,189	1,863,140
May 31	17,750	15,673	1,861,063
Jun 30	17,750	15,151	1,858,463
Jul 31	17,750	15,633	1,856,347
Aug 31	17,750	15,615	1,854,212
Sep 30	6,000	15,191	1,863,403
Oct 31	6,000	15,775	1,873,178
Nov 30	6,000	15,347	1,882,525
Dec 31	15,987	15,853	1,882,391
<b>1995</b>			
Jan 31	25,974	15,767	1,872,184
Feb 28	25,974	14,163	1,860,372
Mar 31	25,976	15,580	1,849,976
Apr 30	25,976	14,992	1,838,992
May 31	21,863	15,433	1,832,562
Jun 30	17,750	14,916	1,829,728
Jul 31	8,875	15,465	1,836,318
Aug 31	17,750	15,445	1,834,013
Sep 30	17,750	14,928	1,831,192
Oct 31	17,750	15,402	1,828,849
Nov 30	17,750	14,886	1,825,979
Dec 31	17,750	15,358	1,823,587
	1,326,818	1,212,323	



**John & Eileen Monthly Interest**

1996	O/Ba l	Interest	Pay	C/Balance
January	1,823,587	15,482	17,750	1,821,319
February	1,821,319	14,466	17,750	1,818,035
March	1,818,035	15,434	8,875	1,824,594
April	1,824,594	14,954	26,625	1,812,923
May	1,812,923	15,391	17,750	1,810,564
June	1,810,564	14,876	17,750	1,807,690
July	1,807,690	15,347	17,750	1,805,287
August	1,805,287	15,326	8,875	1,811,738
September	1,811,738	14,754	26,625	1,799,867
October	1,779,867	15,280	8,875	1,806,272
November	1,806,272	14,846		1,821,118
December	1,821,118	15,467		1,364,757

42. It appears from these figures that the total payments which were made by the Defendants amounted to **VT1, 495,443**. I note that all payments were effected by direct debits from the account of Mrs. Eileen Tari at the Ministry of Education.
43. The Claimant has alleged that as at March 2012 the outstanding balance owing stands at VT 6,264,951 and still accruing with interest. I find, from the totality of the evidence adduced before me, that this allegation has not been proven by the Claimant.
44. The Defendants contend that they have paid a total of VT1, 875, 750 to the Claimant and that in fact they paid the purchase price in full by instalments, with even an excess sum of VT173, 005.
45. The law is trite, that he who asserts a fact must prove it, and where enough and relevant evidence is not adduced, then it is he who has failed to produce the evidence that will fail in his case. I feel emboldened to place



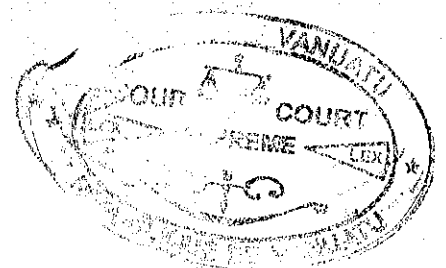
reliance on **W.A. Joubert (editor) The law of South Africa** (first reissue 1999) volume 9, Butterworths, page 444 at paragraph 39, where he states *"That he who asserts must prove because if one person claims something from another in a Court of law, he has to satisfy the Court that he is entitled to it."*

Suffice it to say that the Defendants have failed to discharge that onus.

46. As my earlier findings in paragraph 37 above indicate, a mortgage over leasehold title number 11/OG33/030 was executed by the parties for the sum of **VT1, 793, 106**. There is no doubt in my mind that this was the mortgage sum in respect of the property. As such, this is the amount I would accept and not the Defendants' amount of **VT1, 702, 745**.
47. Now, judging from the fact that I have accepted the Defendants' contention that the interest was based on a fixed term calculation, a simple arithmetical calculation between the mortgage sum of **VT1, 793, 106** and the payments made by the Defendants totalling **VT1, 495,443**, as appears in paragraph 42 of this judgment, shows a shortfall in payments of **VT297, 663** due and payable by the Defendants to the Claimant under the mortgage.
48. In the circumstances, it is hereby ordered as follows:

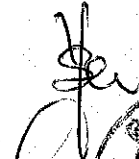
The Defendants are to pay the Claimants the sum of **VT297,663** being outstanding payments owed under the mortgage over leasehold title number 11/OG33/030.

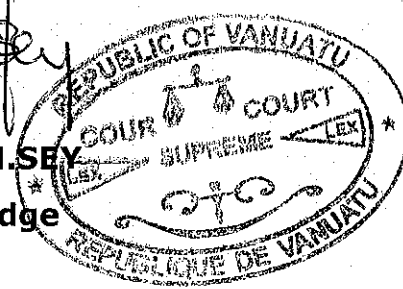
The parties are to bear their own costs.



DATED at Port Vila, this 2<sup>nd</sup> day of September 2013

BY THE COURT

  
M.M. SEY  
Judge



The seal is circular with the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom. In the center, it features a scale of justice and the words "COUR SUPREME" and "COURT SUPREME". There are also decorative flourishes and the word "LEX" on either side of the central text.