

**BETWEEN: WONG JOCK KEONG, WONG KHU RWOO
JACQUES, WONG KHU KIT MICHAEL and
WONG JEANNE trading as "NEW LOOK
FASHION"**

Claimants

AND: MRS. TRU THI HUE
First Defendant

AND: MRS. TRU THI NGA
Second Defendant

Coram: V. Lunabek CJ

*Counsel: Mr N. Morrison for Claimants
Mr R. Sugden for Defendants*

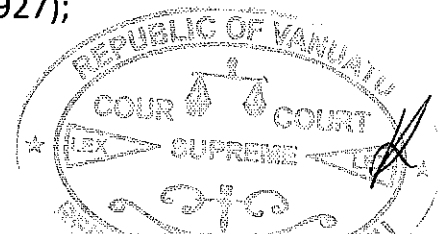
JUDGMENT

Introduction

1. These proceedings concern the family and business relationship between the four claimants and Mrs. Hue and Mrs. Nga. The claimants' case is that the defendants worked for them as employees in the New Look Store in Port Vila. The defendants' case is that they owned the Port Vila New Look store. This dispute is at the essence of the dispute between the parties.

2. The claimants in these proceedings sue the defendants alleging:
 - (a) The defendants ordered goods from the claimants which the defendants have not paid for (total claim VT778,505);

 - (b) The claimants paid for various airfares and telephone expenses on behalf of Mrs. Hue and Mrs. Nga. They were to reimburse the claimants but have not done so (total claim VT1,148,927);



(c) When the defendants managed the claimants' New Look Store in Port Vila they failed to account to the claimants for the profit of the store from 1993 until 1999. An order for the taking of accounts is sought by the claimants to establish the claimants' loss which they estimated at trial was VT49,796,900.

3. The defendants' counterclaim is based on quite a different view of the relationship between the parties:

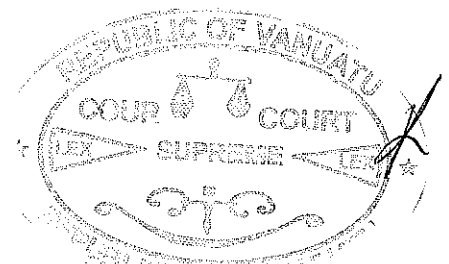
(a) The defendants' case is that they gave one of the claimants Mrs. Wong \$US450,000 in 1993. That money set up the New Look Port Vila shop. The defendants were not employees of the New Look Port Vila shop but its owners and investors.

(b) As they operated the New Look Port Vila store they sent money to the claimants to purchase more stock. The claimants failed to account for this money;

(c) The claimants have now wrongly taken possession of the New Look Port Vila store from the defendants and wrongly assert they own the store.

(d) The defendants therefore claim:

- (i) The return of their business and compensation for loss of stock;
- (ii) The profit from the business from the time the claimants wrongly took over the business in 1999;

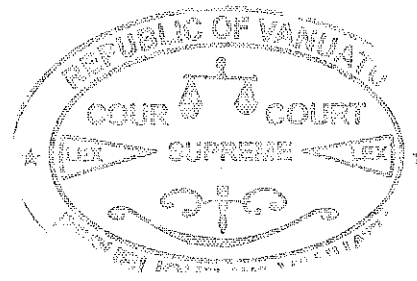


- (iii) Repayment of the \$US450,000 and the balance of the money sent to the claimants when the defendants operated the New Look Port Vila shop.

The defendants agree the two defendants are to be treated as if one defendant. They have the same interests.

Preliminary Issue

4. Before I consider the background facts evidence and history in this case one aspect of the defendants' counterclaim can be resolved immediately so that there is an appropriate focus in this judgment.
5. The fact these events occurred mostly between 1993 and 1999 means it is well beyond the time when the New Look Port Vila business (even if it now still exists) can be returned to the defendants if their counterclaim is established. Further there is a "double counting" aspect of the defendants' damages claim. The defendants' case is that the \$US450,000 or part thereof was invested in the New Look business at Port Vila. They say they were entitled to the profit from the business. The defendants took that profit until 1999 when they were wrongly removed from the business by the claimants. Thus the defendants if successful in the counterclaim cannot be entitled to a return of the whole sum of \$US450,000 and to the value of the New Look Port Vila business. The value of the New Look Port Vila business is reflected in part in the \$US450,000 . Thus the claim for both the \$US450,000 and the return of the business would be seeking double.

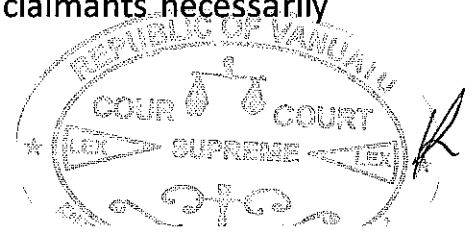


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6. In these circumstances I will limit the defendants' claim to a return of the damages of \$US450,000 together with, if it can be established, the money sent by the defendants to the claimants which the defendants are entitled to have it reimbursed. These are the sums they say, between 1993 and 1999, that they sent to the claimants but which the claimants have never accounted to the defendants for.
7. If the defendants are successful with respect to their counterclaim for \$US450,000 then interest would be payable on that sum. This in turn may effectively equate to the potential profit of the New Look Port Vila business after 1999 when the defendants say the claimants wrongly took possession of the New Look Port Vila Store.

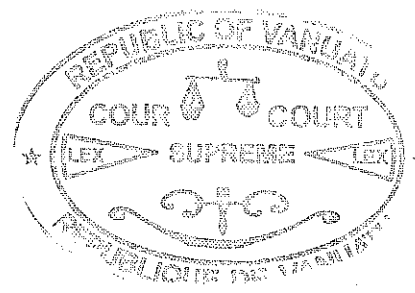
The Issues and the Parties Claims

8. It will be evident therefore that the pivotal question in this case is whether I can be satisfied on the balance of probabilities that Mrs. Hue gave Mrs. Wong the \$US450,000 to invest in the New Look Port Vila business and elsewhere in 1993. If Mrs. Hue did pay the money to Mrs. Wong then her counterclaim will at least with respect to the bulk of her claim succeed.
9. If I find Mrs. Hue did not pay the money to Mrs. Wong then the defendants' counterclaim must fail. I will then need to consider the claimants' claims. I note the first and second causes of action by the claimants will need to be decided irrespective of my conclusion about the defendants' counterclaim. If I give judgment for the defendants' counterclaim then the third cause of action by the claimants necessarily



cannot succeed. That is because it is based on the proposition that the New Look Port Vila shop was owned by the claimants and the defendants were their employees. If the counterclaim succeeds the defendants owned the New Look Port Vila Shop.

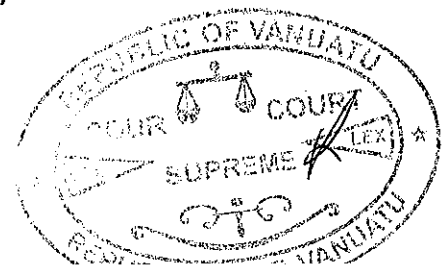
10. In considering the respective cases of the parties each party has set out why I should accept their versions of events both in the evidence called and in the submissions made by them. I consider that my assessment of the respective credibility of each party's versions of events should be based on the relevant documentation and the inferences available from it alone. Given the length of time that has passed with respect to the pivotal events in this case (1990 – 2000), I do not propose to rely upon any "*impression*" a witness may leave on me when giving evidence.
11. All parties agree that the first question to be resolved by me is whether the payment of \$US450,000 was made by Mrs. Hue to Mrs. Wong in 1993.
12. I deal first with some essential background. Mr. and Mrs. Gia are Vietnamese who had before 1963, left Vietnam and settled in Vanuatu. They had ten children, two of whom were Mrs. Wong and Mrs. Hue. In 1963 the family decided to return to Vietnam. Mr. and Mrs. Gia and eight of their ten children did so. The children who returned to Vietnam included both defendants. Mrs. Wong, one of the claimants was also a child of the Gias had married in Vanuatu and remained there when the rest of the family returned to Vietnam.



13. When Mr. and Mrs. Gia left Vanuatu for Vietnam the defendants' say that they were relatively well off. They had established a successful business in Vanuatu and were able to progressively sell the assets of the business and bring the money to Vietnam.

On their return to Vietnam Mr. and Mrs. Gia and a number of children began work. However their return to Vietnam did not work out for the family. They worked for their return to Vanuatu. However they were not able to leave for a further 30 years in 1993. The defendants as the children of the Gias say they were able, through a variety of work, trading on the black market, and by the sale of Mr. and Mrs. Gias assets they were to accumulate \$US450,000 in cash.

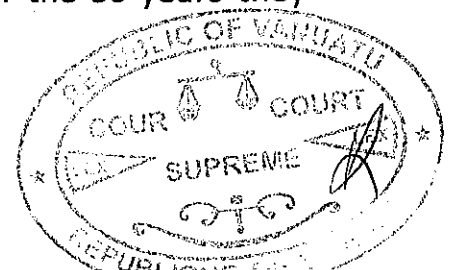
14. The defendants say they were able to smuggle this money out of Vietnam initially to Sydney in 1993 when they left Vietnam for Vanuatu. The defendants say they gave this money to Mrs. Wong in Sydney to take to Vanuatu and invest for them in the New Look shop in Port Vila and elsewhere.
15. The claimants' case is that Mr. and Mrs. Gia and their children including Mrs. Hue found life very poor in Vietnam. They struggled economically. They submit the defendants could not possibly have saved \$US450,000. The claimants say that Mrs. Hue gave them no money in Sydney. The claimants say that when Mrs. Hue arrived in Port Vila she was penniless. Mrs. Wong had a New Look shop in Santo and she started up another such store in Port Vila. She installed Mrs. Hue as the manager and employee to provide a living for Mrs Hue and her family. The claimants



say that Mrs. Hue as manager failed to account for all of the profit of the New Look Port Vila business to them and failed to reimburse Mrs. Wong for expenditure she had incurred on behalf of Mrs. Hue.

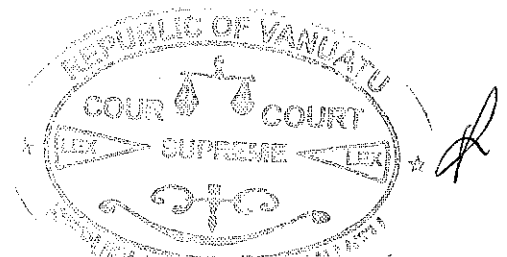
Discussion

16. I turn now to the vital issue in this trial, did Mrs. Hue accumulate \$US450,000 in Vietnam; did she bring it with her from Vietnam to Sydney; did she give the money to Mrs. Wong to invest; and did Mrs. Wong do so in the New Look Port Vila shop and elsewhere?
17. I am satisfied that Mrs. Hue did bring \$US450,000 from Vietnam, that she gave it to Mrs. Wong to invest and that Mrs. Wong did so on the defendant's behalf. I accept that the objective documentary evidence does not point all or one way. But I am satisfied that the preponderance of the documentary evidence supports Mrs. Hue's claim. I am therefore satisfied that it is more probable than not that Mrs. Hue did bring the \$US450,000 from Vietnam and that she did give the money to Mrs. Wong for investment.
18. I am satisfied there is evidence that Mrs. Hue could have accumulated \$US450,000 over 30 years in Vietnam. There is evidence that Mrs. Hue's parents were relatively well off when they went to Vietnam in 1963. At that time and subsequently Mrs. Hue's parents sold their assets in Vanuatu including most probably a boat, a business and two houses. This money was brought to Vietnam. It could have been available to Mrs. Hue. Mrs. Hue and her family appeared to work hard over the 30 years they

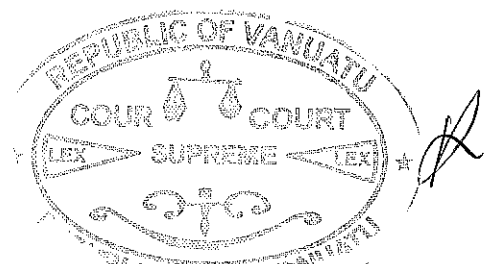


were in Vietnam. Mrs. Hue said she traded in the black market especially trading in currency during this 30 year period. Significant profit was made (although very risky) from such trading. The family owned houses in Vietnam which appeared to have been of a good standard which were also sold and could have gone towards the \$US450,000.

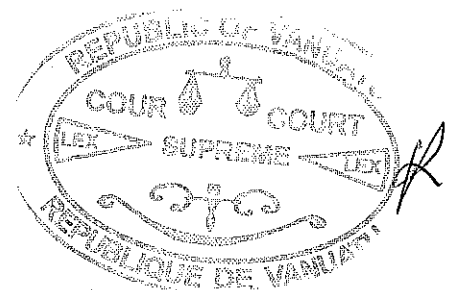
19. Mrs. Wong had no direct knowledge of these events. Her evidence was that Mrs. Hue from time to time had asked that money be sent to Vietnam to help her family. She said that this illustrated that Mrs. Hue and her family were poor and that this meant she could not have accumulated \$US450,000.
20. Even if Mrs. Wong's evidence relating to the request for help is true I do not consider that this means Mrs. Hue could not have accumulated the money.
21. The claimants' case is that it is highly improbable in an impoverished community like Vietnam anyone could accumulate \$US450,000. This expression of opinion was not backed up by any real evidence about the Vietnamese economy and the claimed improbability. While it may be that the vast majority of Vietnamese during this time were poor and could not have accumulated such a sum a small part of the community are likely to have prospered. The claimants have not convinced me that Mrs. Hue's evidence on this point is so improbable that it could not be true.
22. I am therefore satisfied that on the balance of probabilities Mrs. Hue did accumulate \$US450,000 in the 30 years she and her family live in Vietnam.



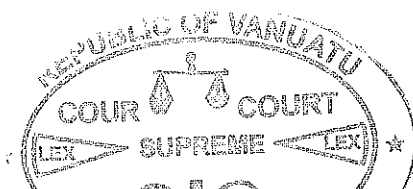
23. There was a significant dispute between the parties about whether Mrs. Hue gave Mrs. Wong the \$US450,000 in Sydney in 1993. Mrs. Hue's evidence was that she and two other family members had brought the money into Australia in US dollars in money belts. Mrs. Wong denied she had received the money. Mrs. Hue said that she had given her the money. The dispute in part focused on a dispute about whether the sisters had met at all in Sydney in 1993 and whether it was possible for the three family members to have secreted the money in a money belt and transported it from Vietnam to Sydney.
24. There is nothing in the evidence in my view to establish on balance that sisters Mrs. Wong and Mrs. Hue did not meet in Sydney at this time. The evidence on balance supports such a meeting. Both sisters were in Sydney at this time. They both knew the other was in Sydney and Mrs. Wong knew her sister and her family were proposing to come and live in Vanuatu. It would be extremely surprising if they did not meet. They were both aware of the addresses that each was staying at and there is some evidence they were staying at the same address.
25. Nor is there any reason to suppose the three family members who said they brought the money from Vietnam to Sydney could not have smuggled \$US450,000 in \$100 notes from Vietnam. While this may have been extremely risky there was no convincing evidence it was impossible. The three family members said they transported the money. They had an explanation as to how they had done so which was believable and in its essential detail it was consistent.



26. I am therefore satisfied on the balance of probabilities that Mrs. Hue did give Mrs. Wong the \$US450,000 in Sydney in 1993.
27. Once the Hue family arrived in Vanuatu in 1993 they needed to convince the Vanuatu Immigration Authorities that they should be allowed to stay in Vanuatu. They would therefore have to convince the Immigration Authorities that they could be financially independent. The Hue family were able to do this by convincing Authorities that they were the owners of the New Look Port Vila business and that they had over VT60 million in assets to bring from Vietnam to Vanuatu.
28. The evidence supporting the fact the Hue family had over VT 60m in assets when they arrived in Vanuatu in 1993 is of real significance in this case. To establish the truth of this information Mrs Hue relied in part upon a letter from Mr. Simpson of Westpac Bank. Mr. Simpson had a senior role at the bank in Vanuatu and was the manager of the Santo branch. On the 16th June 1993 Mr Simpson wrote a letter to Vanuatu's Principal Immigration Officer setting out Mrs. Hue and her family's financial circumstances. Mr. Simpson's letter told the Principal Immigration Officer that the Hues had assets in excess of VT60 million which they were bringing to Vanuatu.
29. The letter from Mr. Simpson was admitted at trial as a business record. The VT60 million approximately equated to \$US450,000. The defendants' case is that this letter is powerful evidence which confirms the essential details of their evidence in this case, that they had brought \$US450,000 to Vanuatu in 1993.



30. The claimants' case was that Mr. Simpson, at the request of Mr. Jaques Wong, one of the claimants wrote the letter to the Principal Immigration Officer. The claimants say Mr. Simpson was a friend of the Wong family. They claim Mr. Simpson agreed to say to the Principal Immigration Officer that Mrs. Hue was bringing more than VT60 million in assets to Vanuatu when this was not true. The claimants said that Mr. Simpson was prepared to do this to help the Wong family and through them the Hue family to facilitate their immigration to Vanuatu. The claimants said that what Mr. Simpson letter was actually referring to was the VT60 million in assets which the claimants' owned. The claimants said Mr. Simpson agreed to lie to the Principal Immigration Officer that the assets belonged to Mrs. Hue to help Mrs. Hue and her family with the Immigration Authorities in Vanuatu.
31. If Mr. Simpson wrote the letter to Immigration knowing it was untrue his actions were extremely serious. If Mr. Simpson wrote the letter knowing it was false he probably committed a crime in Vanuatu. He almost certainly would have been dismissed by Westpac Bank had they come to know of the falsity and probably it would have ended his career in banking.
32. I consider it extremely unlikely that the information in the letter was a fraud. Mr. Simpson was a senior bank manager in Vanuatu. He would have been well aware that both Westpac Bank and the Principal Immigration Officer in Vanuatu would have placed considerable importance on the letter being honest and accurate. If the claimants are correct Mr. Simpson lied about the source of the VT60 million. If it belonged to the claimants then it could not possibly had been used to



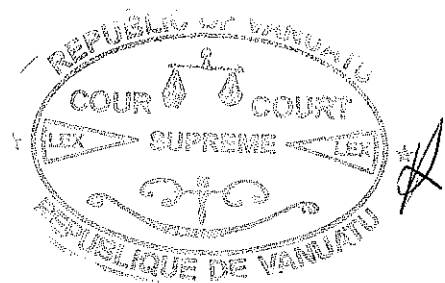
support an immigration application for the Hues as the VT60 million in assets were already in Vanuatu and belonged to the Wongs.

33. I accept the evidence on behalf of Westpac that Mr. Simpson would have checked the accuracy and honesty of the claim by the Hues regarding their claim that they owned these assets. Either the money would have been on deposit at Westpac or reflected in assets that Mr. Simpson could have verified belonged to Mrs. Hue. Mr. Simpson knew the financial position of the claimants. It seems he was their friend and banker. And so there could be no confusion or mistake on his behalf as to the source of the VT60 million. I consider it more probable than not that the letter was truthful and accurate. Mr. Simpsons' letter is therefore strong evidence supporting the Hue's counterclaim.

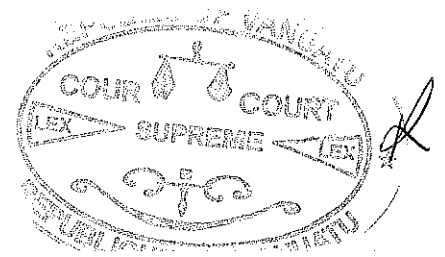
34. Two further aspects relating to the defendants' counterclaim. There is evidence that there was a significant turnaround in the the Wongs financial circumstances about 1993 – 1994. The defendants say the logical inference from this turnaround is that the Wongs used some of the \$US450,000 given to them by the Hue's to improve their own financial circumstances. In 1993 the claimants appeared to have substantially increased goods imported by them over previous years and to have been able to repay loans. By 1994 the value of the imported goods by the Wongs increased almost three fold. The explanation for this increase in wealth does not appear to have resulted from a sudden substantial increase in business for the Wongs in Santo nor extra borrowing.



35. The defendants say that the logical inference from these circumstances is as I have noted that the Wongs used some of the \$US450,000 to support their Santo business and this evidence supports the defendants' case. I accept that this is some, although not by itself strong, evidence which supports the defendants' counter-claim.
36. Secondly as far as the Vanuatu government was concerned Mrs. Hue was the owner of the New Look shop in Port Vila. Business licences were in her name. She was noted as the employer of the New Look shop by the Vanuatu National Provident Fund. This evidence also supports Mrs. Hue's claim and is in conflict with the claimants' case.
37. The claimants' case is essentially based on their claim that a series of lies they or others told on Mrs Hue's behalf to facilitate the Hues immigration. The claimants say that they had Mr. Simpson lie about the Hues VT60 million assets. The claimants say they lied to the Immigration Authorities on behalf of the Hues. The claimants say they lied to the Government authorities when they said Mrs. Hue owned the Port Vila store. Their preparedness to lie rather undermines their credibility as witnesses in this case.
38. I am satisfied that considered overall that the evidence supports Mrs. Hue's claim. For the reasons given I am satisfied that it is more probable than not that Mrs. Hue did give Mrs. Wong \$US450,000 to invest for her and that Mrs. Wong held that money on Mrs. Hue's behalf. I am satisfied that the \$US450,000 was vested in part in the New Look Port Vila shop.



39. I am satisfied therefore that the Claimants must repay to Mrs Hue \$US450,000. Consistent with my observation at the beginning of this judgment this means the New Look Port Vila business will now belong to the claimants once payment pursuant to this judgment is made.
40. As to the defendants claim to be reimbursed for the money they sent to the claimants between 1993 to 1999 I am not satisfied on the balance of probabilities the defendants have established this claim. The claim fails in part because there is no evidence as to how much money has been sent nor is there any evidence as to how the claim might be calculated.
41. There will be judgment for Mrs Hue on her counterclaim against the claimants for \$US450,000 less the sums set out below arising from the claimant's claim. The defendants are entitled to interest on this sum commencing from the date of filing these proceedings.
42. There have been most unfortunate delays in this case. I consider that the appropriate interest rate from the date of filing of the counterclaim when the defendants' demand was first made to the date of this judgment should be set at no more than that of increase in the cost of living in Vanuatu calculated each year. There should be no compound interest payable on this judgment. The parties should prepare a memorandum detailing the calculations and the proposed interest payment.
43. For the reasons I am about to give a judgment in favour of the defendants \$US450, 000 will be reduced by the amount of damages claimed with respect to the first and second causes of action by the claimants. Interest will therefore be calculated on this net sum.



The Claimants Causes of Action

44. The first cause of action by the claimants seeks payment of VT778,505 by Mrs. Hue for the goods they say Mrs Hue ordered but did not pay for. The claimants called evidence to establish this claim. The defendants gave no evidence disputing this claim. I am satisfied the claim is established. There should therefore be judgment for the claimants against the defendants in the sum of VT778,505.
45. As to the second cause of action this seeks reimbursement of payments made by the claimants on the defendants' behalf for airfares and telephone charges. The amount claimed is VT1, 148,927.
46. The defendants have not disputed payments were made on their behalf however they say:
- (a) The payments were a gift. There is no convincing evidence that the claimants did or would have gifted over VT1 million for airfares to the defendants. This is especially so given my findings as to Mrs. Hue's financial position when she arrived from Vietnam.
 - (b) The defendants claim this cause of action is outside the limitation period. There was no direct evidence as to when the airfare debts were to be repaid and therefore when this cause of action arose. Even if the debts were to be immediately repaid the debts were incurred from 1993 until 1998. The claim for repayment and therefore the triggering of the cause of action were all within the Limitation Act period (6 years). The cause of action for the repayment of the debt most probably arose when these proceedings were issued



making demand for repayment. The failure to pay on demand triggered the cause of action. The proceedings were therefore well within the limitation period.

(c) Finally the defendants say that VT1 million was paid off the airfare tickets debt when the defendants' uncle gave the claimants' a VT1 million reduction in the purchase price of a piece of land. This claim is in conflict with the defendants' assertion that they proceeded on the basis that the airfares were a gift by the claimants to the defendants. If they were as the defendants claimed a gift then it would be improbable that the defendants would arrange for their uncle to effectively repay VT1 million. No such repayment would have been required if as the defendants assert the airfares were a gift from the claimants. I therefore reject the defendants' claim that they repaid VT1 million of the outstanding airfare debt. I am satisfied that the claimants did pay for the defendants' airfares as outlined and that the parties intended the claimants would have been repaid by the defendants and the defendants have failed to repay the debt.

47. The claimants therefore should have judgment for VT1,148,927.

48. The two sums of VT778,505 and VT1,148,927 together total VT1,927,432. This amount should be deducted by setoff from the award of damages in favour of the defendants on their counterclaim. I have treated the \$US450,000 judgment as an award in favour of both defendants.



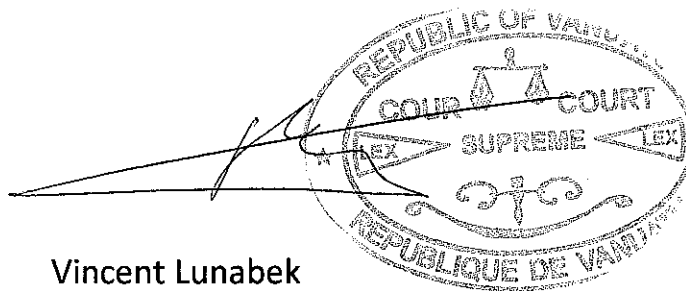
49. To calculate the damages payable the \$US450,000 should be converted to Vatu as of the date of the judgment. Judgment will be in Vatu and will be the net figure after deductions of the claimant's award. After deduction of the setoff amount VT1,927,432 the interest payment can be calculated yearly commencing from the date of filing of the counterclaim until the date of this judgment. The parties should file a memorandum setting the calculations for the consideration by the Court.

Costs

50. Parties should file a memorandum as to costs. I consider currently the defendants should have costs on their counterclaim reduced by 15% to reflect the partial success of the claimants' claim. I consider that no other costs should be payable in this case. This costs award would therefore encompass all costs payable in this action whether incurred by the claimants the defendants or in defense of any claim.

DATED at PortVila, this 11th December 2014

BY THE COURT



Vincent Lunabek
Chief Justice

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