

**BETWEEN: NATIONAL BANK OF VANUATU**  
Claimant

**AND: ANNIS ANNA SAVUAI**  
**PETER SALI SAVUAI**  
Defendants

Coram: Justice D. V. Fatiaki

Counsel: Nigel Morrison for Claimant  
Defendants in person

Date of Judgment: 31 March 2017

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## JUDGMENT

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### Introduction and Pleadings

1. In this claim the National Bank of Vanuatu ("NBV") as mortgagee seeks an order to sell a leasehold property title No. 11/OX21/045 of which the defendants are the registered proprietors. The claim is based on the provisions of section 59 of the Land Leases Act which deals with the "enforcement of mortgages" and not section 58 which specifically deals with "an action for the recovery of any principal sum or interest due under a mortgage."
2. The distinction is important because in this case it is clear that NBV does not have a money judgment against the defendants which represents any debt or monies due under a loan agreement or mortgage.
3. The absence of such a judgment has been a cause for much of the controversy in this case where the defendants completely deny any contractual relationship with and/or any indebtedness to NBV. They claim that their loan and mortgage was with Vanuatu National Provident Fund ("VNPF") and at no time did they agree to the transfer of their loan or mortgage from VNPF to NBV.
4. Specifically, the defendants aver that the AMU Act provides for "the transfer of certain assets and liabilities of the VNPF to AMU and not to the NBV". The defendants also deny signing any mortgage on 6 June 1996 in favour of VNPF or any loan agreement with NBV. They say the transfer of the VNPF mortgage to NBV was done without their knowledge or approval and further they deny



owning NBV any monies and they assert that they had "overpaid" the amount they loaned from VNPF.

5. In brief the defences are:

- (1) No mortgage signed with VNPF;
- (2) No loan agreement with NBV;
- (3) Illegal transfer of their loan account and mortgage from VNPF to NBV;
- (4) VNPF's loan was fully repaid and no monies are owed to NBV.

Despite the above defences, NBV has not filed a reply and is therefore "taken to deny all the facts alleged in the defence" (see: Rule 4.6) So much for the pleadings.

6. In the absence of a judgment debt NBV is clearly relying on its Loan Agreement and the terms of the VNPF mortgage which was transferred to it on 6 July 2001.

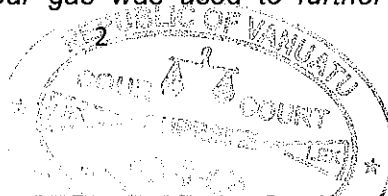
### Background and Chronology

7. On 12 March 1996 the defendants entered into a Loan Agreement with VNPF to borrow a sum of VT4,967,600 to purchase property title No. 11/OX21/045 situated at Nambatri, Port Vila. The Agreement was varied on 28 May 1997 increasing the loan amount to VT5, 884, 598. The loans were secured by a mortgage dated 6 June 1996 but eventually registered on 27 May 1998.
8. On 12 January 1998 there was a riot in Port Vila. It is described in the following terms in the Judgment of the Court of Appeal in VNPF v. Aruhuri [2001] VUCA 16:

*"The 12<sup>th</sup> January 1998 will be a day long remembered in the history of Port-Vila and of the appellant Board and its employees. That was the day when an unruly mob numbering between 300 and 500 people laid siege to the Vanuatu National Provident Fund (VNPF) building in downtown Port-Vila armed with sticks, stones and metal pipes and weapons and projectiles. It is not entirely clear how long it lasted, but, for over several hours, the mob vented its collective frustrations and anger on the VNPF building and despite the presence of police force members at the scene, outer doors and almost all windows and some internal partitioning of the building were shattered by flying projectiles. Employees of the appellant including sixteen (16) of the respondents who were working in and around the building at the time were severely traumatized by the experience. It is pure good fortune that no one was seriously injured.*

*When the crowd was eventually dispersed all three floors of the VNPF building had sustained damage in varying degrees which the building insurers assessors estimated could cost **12,000,000 VT** to repair and/or replace including 170 panes of window glass; several doors; a large number of internal gyprock and vinyl wall panels and internal partitioning; suspended ceiling panels and a skylight on the top floor.*

*The dispersing crowd then moved on to other business premises in Port-Vila causing severe damage to buildings and stock and contents were looted. A police truck was upturned and set alight and tear gas was used to further disperse the mob. So*



*dangerous and volatile was the situation that a State of National Emergency was declared the following day and a limited curfew was imposed in Port-Vila and Luganville."*

9. On 27 May 1998 the defendants became joint registered proprietors of Lease Title No. 11/OX21/045. In order to finance the purchase the defendants took out a loan with the VNPF under its Housing Loan Scheme. The intention of the Scheme was to assist members to acquire real estate property. The loan was for an amount of VT4,967,600 at an "initial interest" rate of 7.5% per annum. It was secured by an "on demand" mortgage in favour of VNPF registered on 27 May 1998 and repayment was to be by way of "automatic deduction from any and all salaries" due and owing from (the defendants') employer. At the time only the first named defendant was in regular employment as a telephone operator with Telecom Vanuatu Ltd ("TVL").
10. In 1999 as part of the re-financing provided by a loan from the Asia Development Bank ("ADB") the VNPF Housing Loan Portfolio was transferred to NBV and AMU. Amongst the loans transferred to NBV was the account of the defendants.

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11. On 14 September 1998 the Asset Management Unit Act No. 22 of 1998 was enacted in the words of its long title: "*(to) provide for the restitution of the National and Development Banks of Vanuatu and for the transfer of certain asset and liabilities from the Vanuatu National Provident Fund to the Asset Management Unit*" (the "AMU Act")

12. The background to the AMU Act is set out in a letter dated 28 August 2006 from the then Minister of Finance and Economic Management to the Managing Director of the Claimant bank Mr Bob Hugh. I extract the following relevant paragraphs:

*"The VNPF members Housing Loan Scheme continues to cause confusion and deep concern to indigenous Ni-Vanuatu citizens who were in good faith obtained loan from that Housing Policy, that is to borrow against their savings with VNPF back in 1995/96 etc...."*

*... the principle concern behind this members Housing Loan Scheme was to allow indigenous Ni-Vanuatu citizens to be able to acquire some prime property sites in the main commercial area of Port Vila and Luganville.*

*Vanuatu National Provident Fund took registered mortgage over all the properties that were funded under the members House Loan Scheme. The Scheme was specifically for the member of the fund, it is not allowed to unemployed, or other members of the public.*

*In 1998, the members Housing Loan Scheme became heavily politicised by some Politicians which eventually resulted in what we now knew as the "VNPF RIOT" in 1998.*

*VNPF then as consequence suffered severely due to a large withdraw by members in addition to large payout already invested in the properties for member whose loan applications had been approved.*



The new government that came to power after 1998 snap General Election decided to accept introduction of comprehensive Reform Programme (CRP). It went ahead to borrow: \$20 Million US Dollar loan from Asian Development Bank to re-financial the following institutions;

- a) **National Bank of Vanuatu**
- b) **National Provident Fund (Housing Loan)**
- c) **Package offered to Public Servants made redundant as a result of right sizing of Public Service.**

The VNPF members Housing Loan package together with other losses incurred during the RIOT was fully covered through VNPF Loan portion from the ADB Loan.

Now assuming that being the case, then the question of how those Housing Loan amounts were transferred between VNPF, the Amu and the National Bank, remain questionable because the borrower of the Fund only signed one contract with VNPF and not with NBV or the AMU.

I have met with the representative of those members concerned whose names are listed on the document attached and wish to inform you that the Prime Minister's office is preparing a Council of Ministers Policy paper to go before Council of Minister for a final decision and this matter very soon, hopefully next week.

In that context, perhaps it may be best for the Bank to shelf any legal court proceedings against any person whose file is with the Bank, including temporary suspension of all Loan repayments related to this VNPF Loan until a decision is made on this issue by the Council of Minister".

13. Earlier on 25 September 2000 the Minister of Lands and Natural Resources wrote to the Acting CEO of the AMU concerning "**VNPF Housing Loans with AMU**" in the following terms:

*"It is my understanding that with the establishment of the AMU, the VNPF house loan portfolio was transferred to AMU with the view to regularise payments and for AMU to dispose of the bad loans through legal means.*

*While this practice is legally correct, it however jeopardises the intent of the VNPF housing loans; that is to permit the Ni-Vanuatu to gain access to real estate. The Government is now considering its policy on this issued and I would request on behalf of Government that any transfer of property listed under the VNPF scheme be put on hold until the Government has taken a decision on this important issue".*

14. On 21 October 2004 a group of disaffected VNPF housing loan borrowers including the defendants signed a letter to the then Minister of Finance requesting the establishment of a Commission of Enquiry to investigate the transfer of their housing loan accounts to NBV. The letter questioned the legality of the transfer of the housing loan accounts from VNPF to NBV instead of to AMU and clearly set out the problems being encountered by the authors in the following terms:

*"Since these members housing loans were transferred to NBV, the following problems have been encountered by the VNPF housing loan borrowers*

1. **Repayment period reduced to comply with terms and conditions of a commercial bank.**

2. **Interest rate is charged at 12% as oppose to 7.5% in VNPF.**
3. **Repayment is twice the amount of repayment agreement made with VNPF.**

As a result of above, the following has been encountered.

1. Repayment amount required by NBV is 70% of salary and above.
2. In most cases, payments made could only cover for NBV interest charged.
3. Housing loan balance continued to increase instead of decreasing.
4. So much so that new repayment terms are asked to be negotiated by NBV.
5. Despite the repayment requirement by NBV, salaries in Vanuatu have not increased at the same rate or have not increased at all for most for the borrowers.
6. Because of the underpayments, default notices were sent and in some case summons to court.
7. Some borrowers have lost their properties due to action by NBV.

In these circumstances, we request the Honourable Minister of Finance to establish a Commission of Enquiry into the transfer of VNPF Housing Loan portfolio to National Bank of Vanuatu in 1999. We believe that there are irregularities and illegal activities involved in these transfers, which have caused us and our families our daily lives".

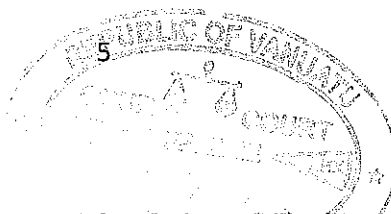
(my highlighting)

15. A copy of the above letter was sent under by the Minister of Lands cover of a letter dated 1<sup>st</sup> July 2005 to the Minister of Finance. In it the Minister of Lands expressed his:

*"... big concern on the issue of the VNPF Housing loan. **With the compulsory transfer of loan to either NBV or AMU the interest goes from 7,5% to 12% and a lot of Ni-Vanuatu cannot afford to it** and if no decision is taken quickly, they will lose (sic) their home. The government and VNPF is partly responsible of this situation. It is unfaired to leave these people without assistance".*

(my highlighting)

16. On 31 May 2000 the first named **Annis Anna Savuai** defendant alone entered into a Loan Agreement with NBV to refinance the VNPF loan that she and her husband the second named defendant had entered into with VNPF and which had an outstanding amount of VT5,776,460. In my view this so-called Loan Agreement with NBV could have no binding effect on the second named defendant **Peter Sali Savuai** who was not named as a party to it. Furthermore it could not be secured by a mortgage over Lease Title No. 11/OX21/045 without the agreement of the second named defendant who was a registered joint proprietor of the Lease Title.
17. On 6 July 2001 VNPF unilaterally transferred its mortgage over the defendant's leasehold title to NBV in consideration of the sum of VT5,825,551. The transfer was registered on 29 September 2004. No agreement or receipt for such consideration was produced despite the defendants' requests for the same.
18. By a further Loan Agreement dated 4 September 2001 the defendants jointly entered into an agreement with NBV to borrow the sum of VT5, 873, 639 to be secured over their leasehold title No. 11/OX21/045. The loan term was reduced



from 180 months to 166 consecutive monthly repayments of approximately VT67, 000, a slight increase from the earlier estimated monthly repayment figure. The defendants' signatures were witnessed by Salome Fred of the NBV, Vila.

19. For present purposes I extract the following clauses:

4. "Securities

a) *That the Security for the Loan is to consist of the following:*

- *Standing Instruction from Peter Sali Savuai*
- *Assignment over Salary given by Anna Annis Savuai*
- *Existing Registered Mortgage over Property Title Number 11/OX21/045*

*This agreement confers no rights on the Bank to enforce the giving of these additional securities but there is no obligation to make all or any part of the loan until they are executed and delivered in a form satisfactory to the Bank.*

b) *The securities referred to in (a) of this clause shall extend to cover (to the extent expressed in each of such securities) not only the debit balance of the Loan Account from time to time, interest thereon, and fees and charges relating thereto, but also all the Borrower's other liabilities to the Bank, present or future, actual or contingent and whether alone or jointly with any other person."*

5. "Interest Rate and Payment of Interest

a) *The rate of interest payable on the debt in the Loan Account shall be at the initial rate of 10.25% (per cent) per annum, provided however that the Bank may at any time and from time to time, at its discretion, whether before or after the Loan is drawn and without prior or any notice, increase or decrease the said rate of interest.*

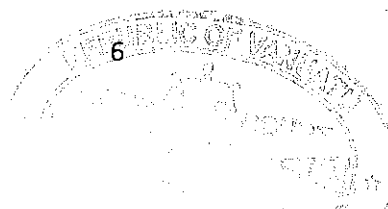
b) *Interest shall be payable on the full amount from time to time owing in the Loan Account, calculated on daily balances, and shall be debited by the Bank calculated on the daily debit balance. The Bank's certificate as to the rate of interest at any time will be conclusive and binding in the absence of manifest error on the face of the certificate.*

6. Loan Term and Repayment

*The Loan shall be repayable by One hundred sixty six (166) consecutive monthly repayments of principal and interest to fully repay the Loan within One hundred sixty six (166) months from the date of drawdown. Repayments shall commence on the last day of the month in which the loan is drawdown and thereafter shall be payable on the las business day of each month.*

*Based on the Indicative Rate in clause 4 above, the monthly repayment amount will be VT67,000. The actual repayment amount will be determined by the rate set on the day of drawdown and will be advised to you.*

*The repayment amount may be varied by the Bank from time to time in the light of changes in the interest rate to ensure the Loan is fully repaid within the term of*



One hundred sixty six (166) months. Any changes to the repayment amount will be advised to you.

Should the Borrower make default in complying with any of the covenants of conditions contained in this Agreement, the Bank may, if it thinks fit, so advise the Borrower by Registered A.R. letter and upon delivery thereof or when such letter should have been received in the ordinary course of the mail, whichever is the earlier, all monies lent hereunder and interest thereon shall become immediately payable without further demand or notice.

The following are specific examples of breaches of covenant or conditions to which this clause applies.

- i) The monies advanced not being used for the approved purpose;
- ii) The failure by the borrower to ensure the proper maintenance of and the normal operation of the subject matter acquired or improved by the use of the monies hereby advanced;
- iii) The default in payment of monies payable hereunder;
- iv) The making by the borrower or any of his guarantors of a false or misleading statement in or relating to this Agreement;
- v) The failure by the borrower to comply with clause 18 hereunder;
- vi) Death of/or incapacity of the borrower;
- vii) In case of bankruptcy or any change in the activity or status of the borrower."

20. Assuming regularity of payment, a simple calculation using the above monthly repayment over the term of the loan works out to:  $VT(67,000 \times 166) = \mathbf{VT11,122,000}$  which is almost double the principal sum loaned.
21. Be that as it may the defendants deny signing any mortgage on 6 June 1996 in favour of VNPF or any loan agreement with NBV. They say the transfer of the VNPF mortgage to NBV was done without their knowledge or approval and further they deny owing NBV any monies and they assert that they had fully repaid their loan from VNPF.

### The Evidence

22. NBV produced and relies on two (2) sworn statements of **Andrew Edmond Cottam** dated 28 April 2009 and 27 April 2011 respectively – **Exhibits 1(a) and 1(b)**; and the sworn statements of **Salome Fred Naviti** – **Exhibit 2**; **Menzies Samuels** – **Exhibit 3**; and **Serge Taga** – **Exhibit 4**. None of the deponents were called and none were cross-examined and despite the defendants' objection they were admitted and marked.
23. NBV did call its Manager Recoveries **Ben Dick Dali** who has been with NBV since April 2003 and was personally familiar with and able to speak on the transactions between NBV and the defendants. The second witness for the NBV was **Steven John Buchanan** its Head of Credit and Recoveries who testified about various terms found in the defendants' loan statement including a penalty interest charge ("*Interest charged*"). The witness also described the changes that occurred in the Bank's computer systems between 1998 and 2004 of which there

were 3 major changes resulting in some shortcomings in the Bank's accounting records. Both witnesses were cross-examined.

24. The most significant aspect of the claimant's oral evidence was the strong impression I had that because of the several changes to NBV's computer systems, its record of customer accounts was often incomplete and inaccurate. The significant aspect of Mr. Buchanan's evidence was his frank admission that a second interest charge of 5% penalty interest on the defendant's loan account, was not provided for in terms of Clause 4 of the defendants' Loan Agreement with NBV and would have to be refunded by way of manual reversal entries being made to the defendants loan account.
25. The defendants for their part produced a total of 4 sworn statements – 3 deposed by **Peter Sali Savuai** and 1 sworn statement deposed by **Annis Anna Savuai** marked **Exhibits D(1)(a); (b) and (c) and D(2)** respectively. Only Peter Savuai was cross-examined as claimant's counsel accepted that Annis Anna Savuai had paid an amount in excess of VT5,8 million over a period of 10 years against an original borrowing of VT4,9 million from the VNPF.
26. After the trial which lasted 2 days the court ordered claimants counsel to file a Memorandum dealing with the penalty interest refund and annexing copies of the defendants' loan and the defendants missing payment accounts for the period January 1999 to July 2004. On 6 March 2015 the court ordered a further Memorandum explaining the absence of any details of payments from 25 April 2002 until 8 July 2004.
27. The first Memorandum disclosed that a total sum of VT1,453,691 as "*penalty interest*" had been wrongly charged to the defendants' loan account No. 5433003 between 25 September 2003 and 25 April 2014. The total loan debit as at 25 December 2014 was VT14,316,018 and rising and NBV advised "*that on a forced sale of the property, they would not pursue the defendants for any shortfall*".
28. For their part the defendants obtained a letter from Barrett & Partners Chartered Accountants dated 27 January 2015 which makes the following observations after a review of a number of documents provided by the defendants:
- ***"Loan was conducted satisfactorily with VNPF with regular payments from Mrs. Sali's employer;***
  - ***There was no apparent consultation with the borrowers when VNPF transferred loan to NBV;***
  - *The conduct of the loan at NBV was erratic. We have been seen no evidence of regular contact with the borrowers (Sali). We have seen 3 Loan Agreements (in 2000; 2001; and 2005) some signed some unsigned; some with Mrs Sali alone as borrower others with Mr & Mrs Sali;*
  - *We have examined the Savings Bank passbooks and tried to compare the transactions recorded in 2004 and 2006 with the A/C 0005433003 statement. Our preliminary review and sampling shows some instance that can be clearly matched but there are many entries that are not matched and are quite confusing to us;*





- No payments have been made to NBV since early 2006. Sometime in 2009 NBV started to add extra charges, above interest, onto the Sali's account. These include:-
  - Loan issue
  - Late fee VNPF
  - Some months have two debits for interest – it is not clear why
  - Legal fees”.

(my highlighting)

The letter concludes with the opinion:

**“... we consider that there has been very poor communication between the parties, Mr & Mrs Sali; VNPF and NBV. This has led to a significant degree of confusion for Mr & Mrs Sali. If that confusion had not existed the account may have been settled. We consider it not unreasonable to suggest that the account should have been quarantined in early 2006 and some type of arrangement been agreed between the parties at that time that may have resolved the matter. As it happens the NBV balance has increased from 5,890,757vt to over 13,691,640 since the last payment. We question whether this situation would have arisen if the seemingly unauthorised transfer of account from VNPF to NBV had not taken place”.**

(my highlighting)

### **Consideration and Conclusions**

29. As for the defendants denial of signing the mortgage in favour of VNPF dated 6 June 1996, I am satisfied from the evidence and the sworn statement of the witnessing officer **Menzies Samuel** that the mortgage was not only a “security” requirement of the Loan Agreement which the defendants admit signing with VNPF, but also, the second named defendant admitted under cross-examination that he knew a mortgage was the required security for the VNPF loan and that a mortgage was in fact given and registered on the defendants leasehold title No. 11/OX21/045. This ground of defence fails in the absence of a plea of “*non est factum*”.
30. As for the Loan Agreement between the defendants and NBV dated 4 September 2001 the second named defendant denies executing the Agreement in his sworn statement (see: para. 20). In response NBV filed a sworn statement from the signature witnessing officer **Salome Fred Naviti** in which she deposes in para. 9 confirming the defendants para. 20 to the effect that: “*The defendants had refused to sing the Loan Agreement and the restructure was never proceeded with*”. This flies in the face of the mortgage document annexed to Mr Cottam’s first sworn statement.
31. I confess that even to an untrained eye the second named defendant’s signature on the 4 September 2001 loan agreement looks quite different to that which he admits signing in the VNPF loan agreement on 12 March 1996. Notably Salome Fred does not confirm the signing of NBV’s loan agreement by the defendants in her presence.

32. In those confusing and conflicting circumstances I do not accept that the claimant which carries the burden of proof, has established that there was a contractual relationship between the defendants and NBV which agreed an interest rate of "10.25% per annum".
33. As for the legality of the transfer of the defendants' VNPF loan account and mortgage to NBV, the defendants aver that such a transfer is not sanctioned under the AMU Act and is therefore illegal. This particular averment is not denied in any reply filed by NBV and therefore, notwithstanding Rule 4.6 which relates only to facts, may be taken to be admitted, but, even if denied, in my view, the defence is unassailable.
34. The purposes of the AMU Act is clearly stated in Section 1 as follows:

**"Purposes**

*The purpose of this Act is to:*

(a) *establish an asset management unit;*

(b) *provide for the transfer of certain assets and liabilities of the National Bank to the Asset Management Unit;*

(c) *provide for the transfer of the loan portfolio of the Development Bank of Vanuatu to either the Asset Management Unit or the National Bank and to provide for its liquidation;*

(d) ***provide for the transfer of certain assets and liabilities of the Vanuatu National Provident Fund to the Asset Management Unit.***

(my underlining and highlighting)

35. I am also satisfied given the wide definition of "assets"; "acquiring party" and "securing party" that VNPF and NBV are included in the latter definitions. Whatsmore the defendants loan agreement and mortgage with the VNPF are "assets" within the meaning of the term and are transferable under **Part III** of the restructuring plan contemplated by the AMU Act. In particular, Section 11 which expressly provides in relation to VNPF at sub-Section (1)(c):

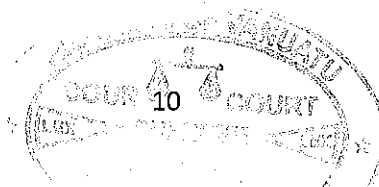
*"The VNPF will divest certain nominated assets and liabilities held as part of its investments of participants funds to AMU"*

(my underlining)

Three things are clear from the above provision:

- (1) Not every asset and liability held by VNPF is to be transferred or divested;
- (2) Every asset and liability of the VNPF that is divested or transferred has to be selected or "nominated"; and
- (3) **the divested asset and liability will be transferred "to AMU" only.**

36. Furthermore in terms of subsection (2), with any transferred asset or liability:



*"... there shall be an agreement between the parties concerned as to the purchase price and for the terms and method of payment".*

No agreement between VNPF and NBV has been produced in this case concerning the defendants' loan account and mortgage.

37. The exclusivity in (3) above is reinforced by the provisions of Section 12 (c) which provides for consequential amendments to the VNPF Act as follows:

*"(c) The Vanuatu National Providence Fund Act [CAP. 189] is amended by inserting after Section 16 the following section:*

*DIVESTING OF CERTAIN ASSETS OR LIABILITIES*

*16A. (1) Where an investment entered into under section 16 is non-performing poorly or of a type that the Board does not wish to maintain it may be divested to the Asset Management Unit in accordance with an agreement or agreements entered into the Asset Management Unit.*

*(2) Prior to an asset or liability being divested under subsection (1) the Board and the General Manager must agree that the investment is non-performing or poorly performing to the extent that it is uneconomic to maintain the investment having regard to the obligations imposed under Part IX of this Act or that it is of a type that the Board does not wish to maintain".*

(my highlighting)

38. In this latter regard the consensus of the evidence led before this Court is to the effect that whilst the defendants' loan account was maintained with VNPF it was conducted satisfactorily with regular repayments being made from the first named defendant's employer. In the words of Salome Fred Naviti the NBV Manager Securities and Loss Recovery:

*"It would appear that the (defendants) loan was well repaid. However it was the government's decision to transfer the entire VNPF housing loan portfolio to the bank despite whether or not the loan was performing".*

The latter sentence raises a very real question about the lawfulness of the transfer of the defendants' loan account from VNPF to NBV (not "to AMU") from the very outset in so far as it was not a "non-performing or poorly performing" loan account.

39. The exclusivity is further reinforced by considering the provision of Section 12(a) of the AMU Act which deals with a consequential amendment of the National Bank of Vanuatu Act No. 46 of 1989 as follows:

*"a. Section 3(1) of the National Bank of Vanuatu Act no. 46 of 1989 is amended by inserting after paragraph (y) the following paragraph:*

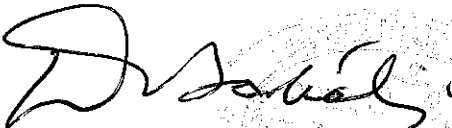
*(z) to divest bad or poorly performing loans to the Asset Management Unit and to acquire good or better performing loans from the Development Bank of Vanuatu in accordance with an agreement or agreements entered into between the Bank and the relevant party".*

(my highlighting)

40. It is clear from the highlighted passage that the power of NBV "to acquire" assets and liabilities under the AMU Act is confined to: "... the Development Bank of Vanuatu". Furthermore given the clear mention and definition of "DBV"; "NBV"; "VNPF" and "AMU" throughout the AMU Act including Section 1(c) which envisages the transfer of the DBV loan portfolio to either "AMU" or "NBV" [reinforced by Section 11(b)(i) and (ii)], I am satisfied that Sections 12(a) and (c) read "expressio unius" excludes the acquisition of VNPF loans and assets by NBV.
41. In light of the foregoing I am firmly of the opinion that there is no provision of the AMU Act which permits or allows the unilateral divesting of the defendants' loan account and mortgage from VNPF to NBV as opposed "to AMU", and accordingly the purported divestment is ultra vires, null, and void. It is incapable of creating any valid legal relationship between the defendants and NBV and NBV acquired no rights to enforce the mortgage executed between VNPF and the defendants and illegally transferred to it on 6 July 2001.
42. The claim which seeks to enforce the illegally transferred mortgage must therefore fail and is accordingly dismissed with costs to the defendants to be taxed on a standard basis if not agreed.

**DATED at Port Vila, this 31<sup>st</sup> day of March, 2017.**

**BY THE COURT**

  
**D. V. FATIAKI**  
**Judge.**

