

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

**Civil  
Case No. 17/2604 SC/CIVL**

**BETWEEN: Amon Sese**  
*Claimant*

**AND: Willie Wanemut and Edna Wanemut**  
*Defendants*

**Coram:** *Justice Aru*  
**Counsel:** *Mr. J. Ngwele for the Claimant*  
*Mr. L. Napuati for the Defendants*

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**JUDGMENT**

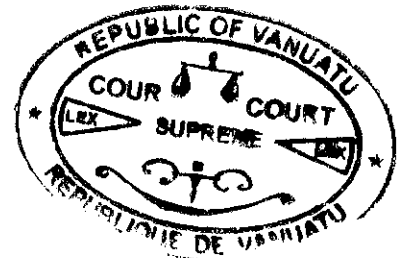
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**Introduction**

1. This is a claim for breach of contract in relation to sale of land.

**Background**

2. On or around June 2011 Mr Sese, a teacher teaching on Tanna at that time approached the defendants that he wanted to buy a plot of land from them. The land is located at Erakor village on Efate and is owned by Mr and Mrs Wanemut. A verbal agreement (the Agreement) was reached that the claimant will purchase the land for a sum of VT 750,000.
3. Mr Sese made three (3) payments on different dates towards the purchase price with the first payment as a deposit:-  
  
17 January 2011 - VT 400,000  
3 April 2012 - VT 100,000  
15 January 2013 - VT 50,000
4. After making the last payment a sum of VT200, 000 was still outstanding. Subsequently the defendants terminated the Agreement alleging that Mr Sese had failed to honour the agreed terms and sold the land to another buyer. The monies paid were also forfeited.



## Claim

5. Mr Sese filed his claim on 19 September 2017 seeking a refund of monies paid and damages for loss of business opportunity and general damages.
6. He alleges that the defendants told him that if a reasonable amount was paid he would have access to the land and build a temporary house pending completion of payment. On the same day he deposited a sum of VT400, 000 and was shown the land. He then proceeded to plant fruit trees on the land and made two more payments one in 2012 and 2013 respectively leaving a final outstanding balance of VT 200,000. Following his last payment he was informed that the land had been sold to another person.

## Defence

7. The defendants deny that Mr Sese is entitled to a refund or to any damages. They admit that the terms of the Agreement were all verbal and the purchase price was agreed to be VT 750,000. That upon payment of a deposit the balance must be completed within twelve (12) months. Following payment of the deposit on 17 June 2011, the defendants say that the claimant was advised to pay the balance of VT 350,000 within 12 months or pay VT 50,000 every month. That the 12 month period was from 17 June 2011 to 17 June 2012. The defendants also say that it was a term of the agreement that if the claimant fails to complete the purchase within twelve (12) months, the agreement will be terminated and the deposit forfeited.
8. The defendants extended the 12 months period for completion of payment but Mr Sese still had an outstanding of VT 200,000. Thereafter the defendants terminated the Agreement and sold the land to another purchaser. The deposit with all monies paid was forfeited.

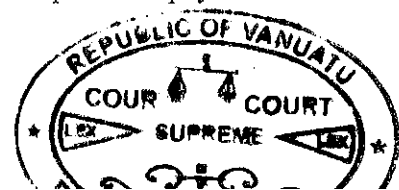
## Discussion

### *Was there a contract*

9. The answer is Yes. It was Mr Sese who wanted some land. He and some of his family members approached the defendants at Erakor village to enquire. The defendants had land to sell and offered a plot to Mr Sese with terms and condition for a price of VT 750,000. He paid an initial deposit of VT 400,000 as consideration.

### *What were the terms of the contract*

10. Mr Sese in his oral evidence says he met Mr Wanemut and his wife and they agreed to sell him a plot of land. He says what they agreed was for payment of a reasonable amount as deposit then he can take possession and build a temporary house until he completes payment of the balance. He denies that he had to complete the payments

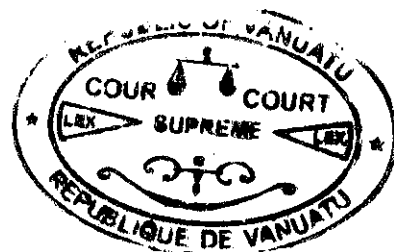


within 12 months. He is not related to the defendants and says that he did not ask for a written agreement and they went and showed him the land.

11. Mr Wanewmut in his oral evidence says that they have a subdivision and have sold plots to 25 other people on the same verbal terms and conditions as Mr Sese's . These people have complied although the terms were all oral. The terms were always agreed with the buyer with both defendants present.
12. When Mr Sese approached them, he brought some of his family members and they discussed the sale in their kitchen. The terms agreed were for payments to be completed within 12 months after payment of a deposit. He confirmed that all the payments were made to his wife as per receipts AS1, AS2 and AS3. When Mr Sese failed to complete the payments he was with his wife when she called the claimant but he said he had no money. He gave a further extension of 12 months but Mr Sese failed to complete the payments and the agreement was terminated and the deposit forfeited as agreed.
13. Mrs Wanemut agreed that the receipts she issued for all the payments made were AS1, AS2 and AS3 .Her copies were destroyed during cyclone Pam. She confirmed that they agreed verbally to sell the land for VT 750, 000 and that upon payment of a deposit, the balance had to be completed within 12 months. When Mr Sese defaulted in his payments she confirmed calling him in the presence of her husband. When Mr Sese failed to complete the payments after a further extension, the Agreement was terminated and the monies paid were forfeited.

#### *Findings*

14. Mr Sese is not related in any way to the defendants and the approach to their dealings is as total strangers. He approached the defendants wanting to buy land. Before parting with VT 400,000 there is no evidence that he insisted on the terms being in writing .Similarly he does not dispute Mr Wanemut's evidence that he attended the meeting with the defendants with some family members. Furthermore, he disputes the terms agreed verbally but did not call any family members present at the meeting with him to give evidence.
15. I am then left with the evidence of Mr and Mrs Wanemut. They did not approach the Mr Sese to sell him the land. He made the approach. Both confirmed that the terms of their agreement were verbal that upon payment of a deposit the balance had to be completed within 12 months. When Mr Sese defaulted he was given a further extension to complete the payments. The balance outstanding when the agreement was terminated was VT 200,000.



16. I accept the defendants' evidence as to the terms of their agreement and they were entitled to forfeit any monies paid when Mr Sese failed to complete the payments as agreed.

**Result**

17. The claimant has not proved on the balance of probabilities that he is entitled to the relief claimed. The claim is therefore dismissed and the defendants are entitled to costs to be agreed or taxed by the Master.

DATED at Port Vila this 5<sup>th</sup> day of February, 2021

BY THE COURT

.....  
D. Aru  
Judge

