

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

Civil
Case No. 20/3050 SC/CIVL

**BETWEEN: Melody Mary Bori Varalie, Administrator of
the Estate of Late Joseph Varalie, deceased**

Claimant

AND: Roy Esika

First Defendant

AND: Termakon Bae Chile

Second Defendant

Date of Hearing:

7th April 2021

Before:

Justice Oliver.A.Saksak

In Attendance:

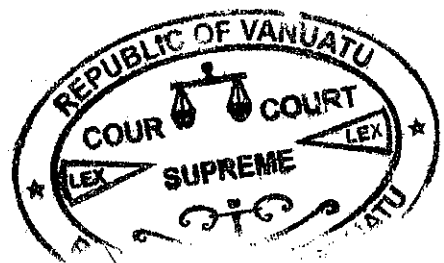
Ms Juliette Kaukare for the Claimant

No appearance for the Defendants (Mr

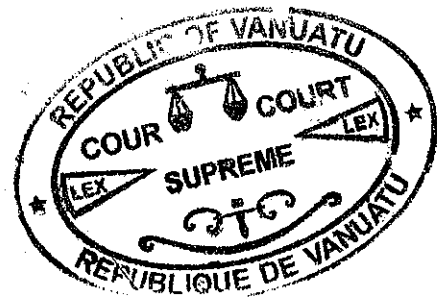
Colin Leo)

SUMMARY JUDGMENT

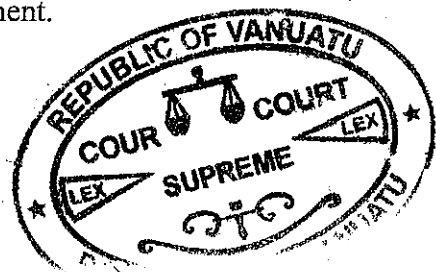
1. The claimant is the surviving wife of the deceased, the late Varalie Joseph who died intestate on 22nd September 2018.
2. She was granted Letters of Administration in the estate of the deceased husband on 16th July 2020.
3. Her claim is for VT 3,405,000 paid by her and her deceased husband to the defendant in 2018 as deposits for the purchase of Toyota Double-Cab Land Cruiser.
4. From 15th February 2018 through 22nd May 2018 a total deposit of VT 3,100,000 was made by the claimant to the defendants.
5. On 15th November 2014 the claimant paid VT 305,000 to cover accommodation, food and transport costs of the first defendant pursuant to a verbal agreement.



6. Despite receiving VT 3,100,000 and the claimant having incurred special expenses of VT 305,000 for the benefit of the first defendant, and letters of demands for refunds on 11th September 2019 and 21st October 2020, the defendants have not refunded the moneys being claimed.
7. The mater was reported to the Police Fraud Unit. As a result the defendants entered into a written agreement to refund the deposits with interest. The sum agreed was VT 5.000.000.
8. Despite the agreement, no moneys have been paid.
9. The claimant now claims judgment against the defendants jointly or severally for the sum of VT 5.000.000 together with interest at 10% per annum from 14th November 2018 to the date of judgment, with costs.
10. The claimant filed her claim on behalf of the estate on 2nd November 2020.
11. Mr Leo filed a defence on 11th November 2020. No sworn statements have been filed in support of that defence.
12. Mrs Varalie filed evidence by sworn statement in support of the claim on 3rd December 2021.
13. The case has been called for management on 8th December 2020, on 5th February 2021 and on 2nd March 2021. In none of those three conferences had Mr Leo or his clients the defendants been present.
14. At the conference on 8th December 2020 the defendants were directed to file and serve their defences and sworn statements in support of their defence by 11:00am on 10th December 2020.




15. Despite filing a defence, the defendants have not filed any evidence in support of their defence.
16. The claimant seeks summary judgment claiming the defendant have no real prospect of defending the claim.
17. I accept and allow the application for summary judgment.
18. The Court is satisfied from the evidence filed by Mrs Varalie that the defendants have no real prospect of defending the claim. There is no need for a trial.
19. From the evidence of Mrs Varalie a deposit of VT 3,100,000 was made to the defendants. A further sum of VT 305,000 was expended to cover accommodations, food and travelling costs of the first defendant.
20. By annexure marked "MMBV4" the second defendant agreed to repay Mrs Varalie the sum of VT 5,000,000 as a goodwill on 15th September 2020. But that has not occurred. His agreement was duly witnessed and signed.
21. By annexure marked "MMBV 3" the first defendant Roy Esika in paragraph 2 states that he is a contributor to the first defendant's investment.
22. From those evidence by the claimant, the defendants have no real prospect of defending the claimant's claim.
23. I therefore enter judgment in favour of the claimant for the following sums-
 - (a) Severally against the First Defendant only- VT 305,000.
 - (b) Severally against the Second defendant only- VT 4,695,000.
24. The second defendant will pay interest at 10% per annum on VT 4,695,000 from 14 November 2018 to the date of judgment.



- 25. The first defendant does not have to pay any interest on the VT 305,000 he has to repay to the claimant's estate.
- 26. Both the first and second defendants will pay jointly the standard costs of the claimant as agreed or taxed by the Master.
- 27. This judgment shall be served on the first and second defendants individually.
- 28. The first and second defendants are required to pay to the claimant the sums adjudged in paragraphs 23 (a) and (b) and the interest in paragraph 24 within 28 days after receipt of the judgment.

DATED at Port Vila this 7th day of April, 2021

BY THE COURT

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Oliver.A.Saksak

Judge

