

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

**Civil**  
**Case No. 22/2378 SC/CIVL**

**BETWEEN: Republic of Vanuatu**  
*Claimant*

**AND: Terrence & Clarence Ngwele**  
**Kerr**  
*Defendants*

*Date of Hearing:* 2<sup>nd</sup> day of February, 2024  
*Date of Decision:* 2<sup>nd</sup> day of February, 2024  
*Date of publication of reasons:* 17<sup>th</sup> day of June, 2024  
*Before:* Justice E.P. Goldsbrough

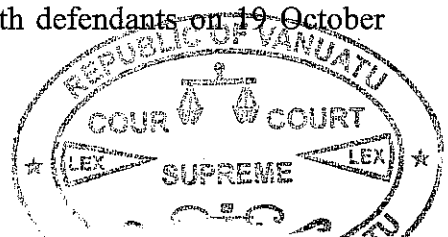
*In Attendance:* Wells, J for claimant  
Ngwele, J for defendant – Not present

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**DECISION ON APPLICATION FOR SUMMARY JUDGMENT**

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1. The Defendants are lessees of lease title nos. 12/0923/382 and 12/0923/107 at Teoumaville on South Efate (the “Quarry Site”) while the Claimant is the lessor. By Quarry Permits dated 2013 to 2018, the Claimant permitted the Defendants to mine and extract limestone from the Quarry Site on conditions that they would only excavate to certain depths and then rehabilitate the Quarry Site by levelling it, re-spreading topsoil over the surface, ensuring slopes were gentle and ensuring that the area was safe (the “Rehabilitation”) in hopes of developing a sports complex thereon.
2. By way of a claim filed on 1 September 2022, the claimant alleged that the Defendants have breached the conditions of the Quarry Permits by excavating to unauthorized levels and particularly by failing to Rehabilitate the Quarry Site since 2018 despite countless requests and demands by the Claimant which has resulted in the Claimant instituting this proceeding to compel the Defendant to undertake the agreed Rehabilitation or else to pay the Claimant Damages to enable the Claimant to facilitate such Rehabilitation.
3. The claim had been renewed on 6 October 2023 because of service issues on previous counsel. A defence to the claim was filed on behalf of both defendants on 19 October

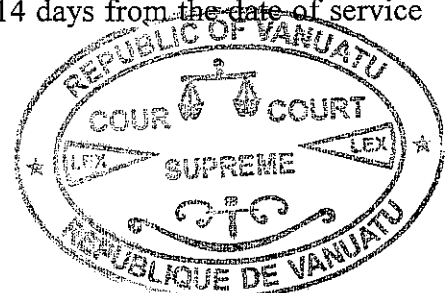


2023. In the defence, it is said that a subcontractor of the defendants was responsible for the rehabilitation of the site. Whilst there are many denials, most of which concern a denial of correspondence sent to them by officers of the claimant, there is no denial specifically relating to a breach of the permits, only that their own subcontractor was responsible for the rehabilitation. There is no request contained in the defence to add that subcontractor as a party or even to suggest that the subcontractor had any relationship other than with the two defendants.

4. On 6 December 2023, the Claimant filed an Application for Summary Judgment. The defendants through their counsel appeared at a hearing on 8 December 2023 by which time the application for summary judgment had been filed but not served. The application was listed for hearing on 19 January 2024 and an order was made for the filing and service of sworn statements. At the adjourned hearing of 19 January 2024 and thereafter at a further hearing on 2 February 2024 counsel for the Defendants, having been given notice, failed to appear nor was any explanation of that failure provided in advance or after the hearing.
5. On 2 February 2024, the Court determined to hear the application and received evidence from the claimant by way of a sworn statement filed 6 December 2023 of Camila Garae. That sworn statement had been served together with the application for summary judgment. The opportunity had been afforded to the defendants to file material setting out why they felt that they had a defence, and no such material was filed nor any submissions made by counsel on their behalf.
6. Based on the evidence received and considering the defence raised, the Court determined that the defendants had no real prospect of defending the claim and that a trial was not necessary. Accordingly, judgment was entered in favour of the claimant under Rule 9.6 (7).
7. The draft judgment signed on 23 May 2024 is hereby replaced. Counsel have been notified of the error and of the replacement.

**ACCORDINGLY, JUDGMENT IS ENTERED AS FOLLOWS:**

1. A declaration that the Defendants have breached the conditions of Quarry Permits, Quarry Management Plans, and rehabilitation plans.
2. The Defendants shall substantially commence the agreed Rehabilitation of the Quarry Site in accordance with the Rehabilitation Plan within 14 days from the date of service of this Judgment; or



3. In the event that the Defendants fail to commence Rehabilitation as per the above order, they shall pay damages to the Geology & Mines Unit (GMU) of the Claimant in a sum remaining to be quantified or as otherwise agreed between the parties; and
4. The Defendants shall allow and not in any way hinder the Claimant and its agents from entering the Quarry Site to commence the Rehabilitation after the period in Order 2 above has expired; and
5. The Claimants are entitled to costs in the sum of VT50, 000 to be paid to the Office of the Attorney General within 28 days from the date of publication of this Judgment.

**DATED at Port Vila on this 17th day of June 2024**

**BY THE COURT**

*E.P. Goldsbrough*

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**E. P. GOLDSBROUGH**

**Judge of the Supreme Court**

