

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

Civil
Case No. 22/3036 SC/CIVL

**BETWEEN: Harry Tele Rambay trading as Rambay
& Associates**
Claimant

**AND: Chief David Alikau and Chief Kartakau
Mara'ata representing Tasiriki
Community of Tasiriki Village, Moso
Island**
First Defendants

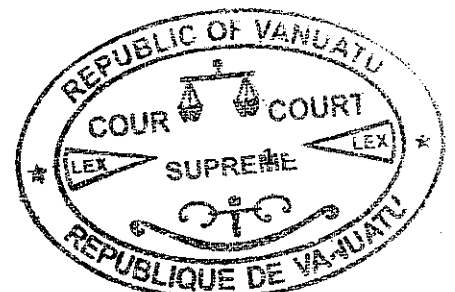
**AND: Kami Kalsef representing Tasiriki
Council of Chiefs of Tasiriki Village,
Moso Island**
Second Defendant

Date: 30 May 2024
Before: Justice V.M. Trief
Counsel: Claimant – Mr P. Fiuka
First Defendants – Mr N. Morrison
Second Defendant – Mr C. Leo

**DECISION AS TO ASSESSMENT OF DAMAGES PAYABLE BY THE SECOND
DEFENDANT**

A. Introduction

1. By the Claim, the Claimant Harry Tele Rambay trading as Rambay & Associates is suing the First Defendants Chief David Alikau and Chief Kartakau Mara'ata representing the Tasiriki Community of Tasiriki Village, Moso Island at North West Efate and the Second Defendant Kami Kalsef representing Tasiriki Council of Chiefs of the same village for refund of moneys paid on their behalf to Michael Leiper and Wendy Moss (the 'Purchasers') in respect of a failed land transaction over the sale

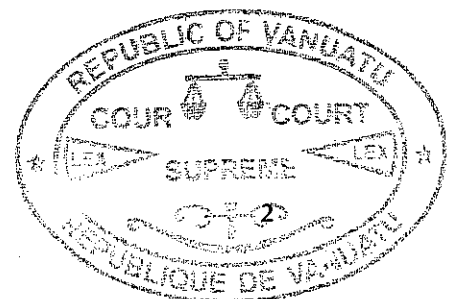


and purchase of leases 12/0242/015 (lot 10) and 12/0244/016 (lot 11) located at Emotu subdivision on Moso Island.

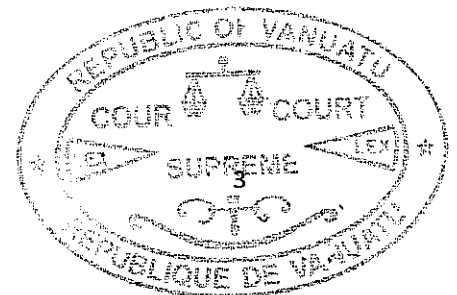
2. On 13 July 2023, Mr Rambay filed Application for Summary Judgment against the Second Defendant Mr Kalsef on the ground that his Defence had no prospects of success.
3. By Decision dated 11 September 2023, Mr Rambay's Application for Summary Judgment against the Second Defendant was granted and judgment entered against it for an amount to be determined.
4. This is the decision determining the quantum of damages against the Second Defendant.

B. Evidence as to Damages

5. The Claimant **Harry Tele Rambay** deposed in his Sworn statement in support of the Claim, filed on 13 July 2023, that he is the owner of Rambay & Associates, which carries on business in consultancy and real estate sales. He filed the Claim in the present proceedings for refund of moneys paid on the Defendants' behalf to Michael Leiper and Wendy Moss (the 'Purchasers') for a failed lease transaction and damages.
6. Mr Rambay deposed that in 2016, the First Defendants asked him to represent the Moso Island community in certain matters related to the Tasiriki community's Emotu Subdivision. He dealt with Alick Kalsev, the community sales representative. On 19 April 2017, he, the First Defendants and the Purchasers met at his office about their intention to buy lease title no's 12/0242/015 and 12/0244/016. He then prepared the sale and purchase agreements, and the First Defendants and the Purchasers signed them [**Annexures "HTR1" and "HRT3"**]. Chief David Alikau signed on behalf of the custom owners.
7. He deposed that on 3 May 2017, the Purchasers transferred VT2,500,000 purchase price and VT532,000 attendance fees to his bank account. On 23 May 2017, he paid out the purchase price as follows:
 - a) VT650,000 to the First Defendant Chief David Alikau as one of the custom owners;
 - b) VT400,000 to the First Defendant Chief Karitakau Mara'ata as one of the custom owners;
 - c) VT1,328,000 to the Second Defendant; and
 - d) VT122,000 for costs.



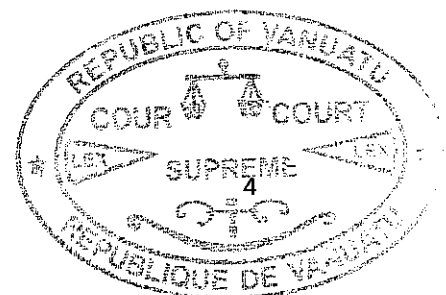
8. The First Defendant Chief David Alikau signed the consent for the lease 015 but not Chief Karttakau Mara'ata [**Annexure "HTR4"**]. On 31 May 2017, both First Defendants Chief David Alikau and Chief Karttakau signed the consent for the lease 016 [**Annexure "HRT5"**]. However, despite having received payment, Chief Karttakau never signed the Transfer of Lease document for lease 015 [**Annexure "HTR6"**]. On 6 June 2017, the Second Defendant took a further VT200,000 to Chief Karttakau in respect of lease title no. 14/0242/015 because he had a swollen leg at the time. However, Chief Karttakau did not sign the consent and transfer of lease documents for lease 015.
9. He deposed that as a result of the First Defendants' failure to sign the lease documents, the Purchasers demanded full refund of the moneys for the sale otherwise they would sue the Claimant on the Defendants' behalf. He told the Defendants about this demand. Despite giving an undertaking, the Defendants never refunded the Purchasers. The Purchasers sued Mr Rambay in Civil Case No. 1706 of 2019 ('CC 19/1706') and obtained summary judgment for VT3,661,035. On 9 August 2021, the Purchasers obtained an Enforcement Warrant against Mr Rambay to sell his personal leasehold properties 12/0943/136 and 11/OH31/039 resulting in him being evicted from his personal home, incurring substantial costs for temporary accommodation including at the Moorings Hotel, and temporary storage of his personal properties at Mele, Pango, Bladiniere, Beverly Hills and Ohlen. He paid VT3,000,000 to the Purchasers then the Sheriff allowed him to return to his personal home.
10. He deposed that as a result of the Defendants' failure to sign the leases and to refund the Purchasers' money, he suffered the following loss:
- a) The VT3,000,000 paid to the Purchasers [receipt in **Annexure "HTR22"**];
 - b) Mr Rambay's costs paid to his own lawyers Edward Nalyal & Partners and Colin Bright Lawyers VT625,000 [**Annexure "HTR23"** & **"HTR24"**];
 - c) Mr Rambay's costs paid for recovery attempts by the Tasiriki community VT233,500 [**Annexure "HTR25"**];
 - d) Costs of transportation of belongings VT150,000, 4 months' interim accommodation with Odin Real Estate Limited VT200,000, and 6 days' temporary accommodation at Moorings Hotel VT180,000 [**Annexure "HTR19"**]; and
 - e) Photographs of damaged household furniture and items estimated at VT500,000 [**Annexure "HTR28(a)"**].
11. He deposed that despite demand, the Defendants have not refunded him [**Annexures "HTR30"** & **"HTR31"**].



12. Mr Rambay deposed in his Further Sworn statement filed on 29 February 2024 that after he paid VT3,000,000 to the Purchasers pursuant to the consent orders, he also paid VT400,000 on 23 February 2022, VT100,000 on 13 June 2022, VT100,000 on 24 June 2022, VT50,000 on 29 June 2022 and VT339,505 on 7 September 2022 to Hurley Lawyers for the balance of the judgment debt and legal costs [Annexures "HTR1" to "HRT3"]. This totals VT3,989,505 that he paid pursuant to the claim against him for refund and its consent orders. He deposed that he has suffered that loss which must be compensated for.
13. Despite the opportunities given, the Second Defendant has not filed evidence as to the assessment of damages.

C. Consideration

14. I find on the evidence that the First Defendants and the Purchasers Michael Leiper and Wendy Moss signed sale and purchase agreements for lease title no's 12/0242/015 and 12/0244/016, and paid the purchase price and attendance fees to Mr Rambay's bank account.
15. However, subsequently, the lease transactions failed as the First Defendants did not sign all the required consent and lease transfer documents.
16. I also find that the Purchasers then demanded full refund of their moneys and when they were not refunded, they sued Mr Rambay in CC 19/1706 for the moneys. Summary judgment was entered and consequential costs incurred as a result of its enforcement.
17. I find that despite demand, the Second Defendant has not refunded Mr Rambay.
18. I find that Mr Rambay has proved the following loss against the Second Defendant: that out of the purchase price that he received from the Purchasers, on 23 May 2107, he paid VT1,328,000 to the Second Defendant.
19. The First Defendants were required to sign the consents and transfer of lease documents for the 015 and 016 leases on behalf of the Tasiriki Community. There was no requirement for the Second Defendant Tasiriki Council of Chiefs or its representative Kami Kalsef to sign those documents. Accordingly, I find the loss proved against the Second Defendant limited to the portion of the purchase price that it received and not extending to losses allegedly suffered as a result of CC 19/1706 and the consequential costs and expenses incurred.
20. For the reasons given, damages are assessed against the Second Defendant in the sum of VT1,328,000.



D. Result and Decision

21. The Second Defendant is to pay to the Claimant damages in the sum of VT1,328,000.
22. Costs must follow the event. The Second Defendant is to pay the Claimant's costs as agreed or taxed by the Master and once settled, within 28 days.

E. Enforcement

23. This matter is listed for Conference at **12.50pm on 20 June 2024** for the Second Defendant to inform the Court: (i) that he has paid the judgment sum or (ii) to explain how he intends to do so. If there is no satisfactory conclusion, the file will be transferred to the Master for enforcement action.
24. For that purpose, this judgment must be personally served on the Second Defendant and proof of service filed.

**DATED at Port Vila this 30th day of May 2024
BY THE COURT**


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Justice Viran Molisa Trief

