

BETWEEN : JOSEPHAT MELLAI LAAU AND  
FEAO MOEATA MELIAME LAAU

- Plaintiffs

A N D : SOU LEONG FERDINAND TIN  
TSOI WONG

- First Defendant

A N D : LEE SHING WONG

- Second Defendant

Coram : Chief Justice

Mr John Ridgway for the Plaintiffs

AND

Mrs Susan Bothmann Barlow for the first Defendant

AND

Mr Silas Hakwa for the Second Defendant

### J U D G M E N T

This is a relatively straight forward case which, like most cases, turns essentially on the facts; though there are certain interesting points of law that have been raised in counsel's submissions to the court that have to be considered.

The plaintiffs claim that by an agreement evidenced by a memorandum in writing dated the 12th day of January 1988, they agreed to buy a property and business in Port Vila, commonly known as "Tam's Store," from the defendants for a total purchase price of ten million eight hundred thousand vatu. It is further claimed that there has been substantial part performance of the agreement to purchase by the plaintiffs. They have already paid the defendants four million vatu on the 12th January 1988; two million eight hundred thousand Vatu of which was in respect of the stock in trade of the business. The remainder of the purchase price was to be paid by installments. The agreement was that they would pay off a number of debts owed to third parties by the defendants leaving a balance owing to the defendants of three million and seventy-six thousand four hundred and fifty five vatu (Vt 3,076,455), which would then be paid off at the rate of VT 150,000 per month. The plaintiffs seek a declaration that the agreement made on the 12th January with regards to "Tam's Store" is valid and enforceable, and claim specific performance.

The defendants deny entering into a sale agreement at all with regards to the "Tam's Store" and deny that there was a written

agreement to sell the property. They accept that the sum of four million vatu was paid by the plaintiffs and that the plaintiffs did settle a number of their debts on their instructions, but they nevertheless deny the reasons for those payments.

They counterclaim and aver that they are joint proprietors of the property and business. That the agreement between the parties amounted to an agreement that the plaintiffs would run the business at "Tam's Store" for a period during which the defendants would be absent from Vanuatu. That the sum of 1.8 million Vatu was for purchase of the stock in hand. That the sum of 2.2 million Vatu was paid by way of a "deposit" as a guarantee against future rental payments. That it was further agreed that the plaintiffs would also pay 150,000 Vatu per month by way of rent to the defendants. That the plaintiffs agreed to pay and did pay 3,518,506 Vatu towards various sums which the defendants owed to various creditors in Vanuatu, but that it was agreed that those sums would be set-off against the rent that the plaintiffs had agreed to pay to the defendants. That at most there had been an on-going discussion between the plaintiffs and the defendants concerning the possibility and no more of a sale of the store and business at a future time, but no details were ever agreed. The defendants therefore claim a declaration that they are the lawful owners of the store; possession; arrears of rent and damages for loss of profits.

FACTS :

The plaintiffs and the defendants were old friends. They met, it would seem, through being members of the same church, the Presbyterian Church. Mrs Laau, who I would say from her appearance seem to come from Tonga, first came to Vanuatu in June 1972 and went to live with her husband in Santo, where he was then the Education Officer. Mr Laau is a Ni-Vanuatu from Malekula. Mr Wong is from Tahiti. He has lived several years in Hong Kong where he met and married Mrs Wong before coming to Vanuatu in 1971. She apparently came to Vanuatu in 1973 after they were married in Hong Kong. Mrs Wong comes from Canton in China, where she was born. She left China at the age of 4 and has lived in Hong Kong with her family for 20 years until she married and moved to Vanuatu. They first lived in Santo and eventually came to live in Vila. The Laaus first met Mr Wong in Santo where he ran a bakery, in 1972. They were all members of the Presbyterian Church. They moved to Vila in 1975 and the Wong followed after the rebellion of 1980. That was when the Laaus met Mrs Wong as they all frequented the same church. They became close friends. Mr Laau by then must have embarked on a political career, because by 1987, he had been Second Secretary to the then Minister of Home Affairs and was Secretary to the then Minister of Agriculture.

He was no doubt a very useful contact to have for an ambitious expatriate Chinese businessman. Whether that was the motive for the friendship or simply the fact that they frequented the same church, we shall never know. It seems that they became very close friends and frequented each other regularly socially, although, until the end of 1987, they had little if any business association. It must have been, from my observation of the two couples, the attraction of opposites, for I found the Laaus and the Wongs to be

chalk and cheese. Apart from their Church it would seem that they had nothing at all in common and, from what I have observed of the two couples in the witness box, they are poles apart in character and demeanour. If I make those few short observations now, it is because my view of the respective parties become important later on in my judgment.

Mrs Wong left Vanuatu on the 29th November 1987, with her six children, as evidenced by Photograph exhibit 1. Her eventual destination was to be Tahiti, but on the way she called on relatives in Australia and then in the U.S.A. Eventually arriving in Tahiti on the 18th January 1988, to be greeted by her husband who had arrived there a few days before her. He had left Vanuatu after her, on the 12th January 1988, but had gone directly to Tahiti, which explains why he arrived there before his wife and children.

Sometime before their departure from Vanuatu, it seems, the Wongs gave a party to which the Laaus had been invited. Whether that was a farewell party, as claimed by Mrs Laau, or a birthday party, as claimed by Mrs Wong, is unimportant in my view as it is common ground that it was shortly before Mrs Wong's departure from Vanuatu. Mrs Wong recalls it as being the 27th November 1987 as it was apparently a birthday party for one of her sons. With regards to that she may well be right. The reasons given for leaving Vanuatu, was the children's education. The then French Ambassador had been expelled from Vanuatu, Mr Wong was a french national. He apparently wished for a french education for his children. The french school in Vanuatu was suffering from, no doubt, reciprocal french retaliation for the expulsion of their Ambassador from Vanuatu and as a result was lacking in french teachers. Mr and Mrs Wong were apparently advised by the french school that it would be in the best interest of their children to be schooled in a French territory, and it was that apparently which prompted their departure from Vanuatu. Mr and Mrs Wong therefore determined to leave Vanuatu in the interest of their children's education. Tahiti where Mr Wong came from was, of course, an obvious French territory for him to go back to.

So far, in broad, the above facts appear to be agreed between the parties. In this case they seem, overall, to be the only agreed facts. Everything else from now on appears to be disputed. Mr Wong claimed in his evidence, that when he left Vanuatu, it was for a period of three years to seek to further his two eldest sons education. He said that he always had the intention of returning to Vanuatu one day, though he did not quite know when that day would be. He was hoping to start a new business in Tahiti and if it had worked out, he may well have remained there. The Laaus, on the other hand, gained the distinct impression that the Wongs were returning home. Leaving Vanuatu for good. Indeed, if the Laaus are right, they sold up in Vila, took everything they had with them, including a mini bus and a car and all their possessions, save that which they had decided to "sell" to the Laaus. I must now go back one stage. As I said before, prior to the time of the Wongs departure from Vanuatu, there had been little, if any, business relationship between the Laaus and the Wongs. Mrs Laau had a small, though lucrative business of her own in the tourist trade. A stall in the market place or something of the sort. She

was clearly making a good living out of it. Mr Laau was involved in politics and was certainly not a business man. The party of the 27th November, according to Mrs Laau, played a crucial role in what was to follow. According to her, she and Mrs Wong met in the kitchen over the dishes. They chatted as friends do. Apparently it was Mrs Wong who first mentioned the selling of Tam's Store (the subject matter of this case). She indicated, according to Mrs Laau, that they intended to sell the store. Mrs Laau showed immediate interest and inquired if they would contemplate selling it to them. It must have been something that Mrs Laau had contemplated raising with the Wongs in any event as she had prior to then approached her own bank to see if she could raise any capital to purchase the business. Mrs Wong apparently indicated that she would discuss the matter with her husband. Mrs Laau asked how much they were thinking of selling the business for and apparently Mrs Wong said it would be 9 Million Vatu to the Laaus as they were good friends, but that it would be 12 million to anyone else. Mrs Laau then told Mrs Wong that if her husband agreed to sell her the store, she would not be able to pay for it all at once, but could pay over a period of time. Mrs Wong indicated that she would talk to her husband about it and cautioned Mrs Laau not to mention any thing about it in the sitting room in front of their relatives. That was the only conversation that Mrs Laau had with Mrs Wong about the selling of the business. After that she waited for Mr Wong to bring up the subject matter. Mrs Wong then left for Tahiti.

Mrs Wong's version was very different. She said in evidence that she never discussed the selling of the store with Mrs Laau, let alone mention a price. She says that at the same party they met in the kitchen, they chatted, she indicated that her husband would be coming to Tahiti to settle his family and that after he had found them somewhere to live, he would be returning to Vanuatu to continue in his business. While away, his brother would be looking after his business for him. She remembers Mrs Laau asking her "a very peculiar question" as she put it, namely "Do you have any intention of selling the store?" Why that should be a peculiar question, I do not know, but she found it apparently peculiar enough to remember it over 5 years later and to have remembered her answer, which was that she intended to leave the shop to her six sons. She left Vanuatu on the 29th November 1987, apparently never having mentioned that conversation to Mr Wong. Indeed if it was as banal as all that, there would be no reason for her to mention it to her husband at all. But what is remarkable about this piece of evidence, is that she should recollect it at all over five years later, if it had made such little impact upon her that she did not think it warranted mentioning to her husband at all. Mr Wong claims that he had had no conversation prior to mid December with Mr and Mrs Laau with regards to the Tam's Store. He claimed that in mid-December they both came to see him, and asked for the chance to rent the store from him. Apparently, because he knew Mrs Laau very well and knew her to be a good business woman, he agreed to let the store to them at the rate of Vt 150,000 per month for a term of 3 years. Furthermore it was agreed that they would pay off certain debts he had left behind in Vanuatu : an overdraft at the bank; payment of a car he had recently purchased and a number of other outstanding bills. On top of that, Mr & Mrs Laau agreed apparently to give him 4 million Vatu. He saw Exhibit 3 (the

memorandum of sale) and denied ever signing that document which, on the face of it, bears his signature. He claimed that it was a forgery made by Mr and Mrs Laau. He vehemently denied ever agreeing to sell the store. He said in evidence that while he was away in Tahiti letters passed between them, which he apparently took to a Chinese man called Chan to translate for them, as apparently neither he nor his wife understand English or can write it. Mr Chan apparently translated and wrote the replies at Mr Wong's dictation which Mrs Wong thereafter copied, because apparently Chan's writing was not very good as he wrote in the french way. Those letters are very important as they are not only indicative of an agreement to sell, but proof that Mrs Wong, if she understood them, was plainly a party to the sale. Rent was not mentioned between the parties in correspondence for over 2 years. Indeed the letter of the 12th November 1990, showed in plain terms that Mr Wong was coming to Vila to sign the sale agreement which he was bringing with him which would have been previously signed in Tahiti by Mrs Wong. The purpose it seems of coming to Vila was to obtain the balance of the purchase price. Mr Wong claimed in evidence that he never had his wife's authority to sell the store and in any event that he had never intended to sell it. If that is right, then the letter of the 12th November 1990, which on his evidence he had got Chan to write, makes no sense at all.

Mr and Mrs Laau impressed by their quiet demeanour in the witness box. She recalled relating the conversation she had had with Mrs Wong at the party to her husband. She understood the Wongs to be leaving Vanuatu for good to settle back in Tahiti where Mr Wong came from. She told us that the next time she spoke about the business was with Mr Wong when he came to their house. He brought up the subject and said he agreed to sell her the business and the store. The Laaus were invited to move into the store. Mr Wong then showed Mrs Laau the books and introduced her to his suppliers. They agreed that the price for the store and business would be 10.8 million vatu, 9 million for the store, 1.8 million for the stock, the price that had apparently been mentioned by Mrs Wong in the kitchen at the time of the party. Mrs Laau could not pay for it all at once, and they agreed to go to the Westpac Bank together to arrange for a loan. Mr Wong accompanied her and showed the bank manager his trading books and explained them to the bank manager. Mrs Laau produced a number of documents which showed that she had agreed with the bank to borrow money for the purchase of the store. Indeed both parties were clients of Westpac. If she is not telling the truth about this transaction, then it would seem that Mr and Mrs Laau were operating a massive fraud not only on Mr and Mrs Wong but also on the bank and what's more, they were taking the incredibly unnecessary risk of being immediately found out, because as I said, both parties were clients of the bank and it would stretch imagination beyond belief, that the bank would be prepared to lend substantial sums of money for the purchase of a business without referring to the seller at all. That seems to me even more incredible, when one considers that the seller happens to be a client of the same bank. Apparently the Laaus had agreed to pay 4 million Vatu as previously stated. Thereafter they were to clear the Wongs' outstanding debts which was to come off the purchase price and after which they would settle the balance by installments. The records held at the bank seem to support Mrs Laau's account entirely, if that account needed supporting, which

it does not. Mrs Laau told me how they came to write Exhibit 3, the memorandum of sale, which she produced in evidence. It was done at Mr Wong's request. He took a copy and left for Tahiti. She tells of the correspondence between them after the Wong's departure, and of the subsequent meeting in George Vasaris' office. Mr Laau's evidence was that he had had an initial conversation about the purchase of Tam's Store with his wife, when she mentioned to him a conversation she had had at the party with Mrs Wong. He later talked to Mr Wong about the purchase price. Mr Wong had offered to accompany them to the bank to help them raise the loan by showing the bank his trading books. They raised 4 million Vatu which he says his wife gave to Mr Wong. He then told of the way Exhibit 3 came to be made. He too says it was at Mr Wong's request. Mr Wong dictated it in Bislama, and Mr Laau wrote it out in English and it was signed by all three of them. Mr Laau also said that he understood the Wongs were leaving for good. He then referred to the correspondence between them and how he wrote the letters to Mr Wong. He refers to there being a balance of 3,046,500 Vatu outstanding between them because they had agreed to pay the Wongs off by installments. The balance figure in any event is not contested in the event that the court finds that there was an agreement to sell. What is said by the Wongs is that the moneys that were paid, were paid by way of rent by the Laaus. The Laaus, on the other hand, say it was paid off the capital purchase price. Mr Laau talks also of the meeting in George Vasaris' office at which Mr Wong and the Laaus were present. On that occasion he says, George Vasaris ran through the list of accounts and there was a disagreement between them as to the exact sum that was paid by the Laaus to the Wongs and nothing else.

Mr George Vasaris gave evidence about that meeting which was held in his office in early January 1991. He said there had been two such meetings. At both, it was the final balance owing before transfer that was discussed. Not once according to Mr Vasaris, had Mr Wong claimed that they had not agreed to sell the business. The only sticking point being the final sum owing. Never once, according to Mr Vasaris was the word rent or back rent mentioned in his presence. There never was any dispute about an agreement to sell, the sole dispute seemed to center around the final figure outstanding on the purchase.

Mrs Wong's evidence about what happened after she left Vanuatu amounted to this: that eventually when she came to talk to her husband in Tahiti about the store, he told her that he had rented it to the Laaus, apparently he even told her that he had written a receipt to them for the 4 million Vatu. She was apparently not in the least concerned because he had told her that he had leased the place to them. She then told the court how she transcribed all the letters that went from them to the Laaus. Not understanding a word of what she was writing apparently, just copying the letters written by Mr Chan. She had apparently not had an English education. She said that she had learnt the alphabet on her own. She was shown all the letters and her answers were always the same. She spoke in court through an interpreter. She came to Hong Kong at an early age but apparently went to a Chinese school. She said that her husband occasionally explained the contents of the letters to her. With regards to the letter of the 12th November and her husband's return to Vanuatu, she claimed that he told her he

was returning to Vanuatu, not to sell as indicated in the letter of the 12th but to settle arrears of rent with the Laaus. When he mentioned selling the store to them, she objected to that, she said. She claims that she had never given her accord to sell the store to the Laaus. In cross-examination, she accepted that it was quite common practice in their married life, for her husband to enter into agreements for them jointly without her having to sign any documents. She cited a number of such occasions, e.g. an agreement to purchase by tender a property at Socapor, the application for a business licence, new car from Burns Philp, etc. She accepted that her husband had never misled her or behaved dishonestly towards her.

I considered the evidence given in this case by all the parties with a great deal of care. I was impressed by the straight forward manner in which the Laaus gave their evidence. Never once making any accusations towards the Wongs. They gave it with a great deal of dignity, in a totally unassuming manner. Their evidence was backed not only by the memorandum of sale dated 12th January 1988, but by a number of documentary evidence, the most important of which were the letters that passed between the parties. All told in favour of the Laaus. I, for my part, believed in its entirety the evidence given by the Laaus in this case. I have no doubt that they did agree to purchase the store from the Wongs in the manner in which they have testified. Having heard Mr and Mrs Wong give evidence, I have equally no doubt that they lied to me. If I had to decide which of the two, Mr or Mrs Wong was the most accomplished liar, I would have difficulty in answering that question. Fortunately for them, I do not have to resolve that particular issue. I have no doubt at all that Mrs Wong understands, speaks and writes sufficient English to have written the letters that were sent by the Wongs to the Laaus. Mrs Laau had said in evidence that she had often known Mr Wong to ask his wife to draft letters in English because she had a basic knowledge of the English language. I believe her. She also said that Mrs Wong could make herself understood in English; again I believe her. During the time she was giving her evidence before me, I noticed on several occasions that Mrs Wong had understood questions I had asked her, was about to answer them, realised she had made a mistake and turned to the interpreter. I was totally unimpressed by her evidence, as indeed by that of her husband. I found them to have been as thoroughly dishonest in the witness box as I found the Laaus to have been honest. Whenever and where ever the evidence of Mr Wong and that of Mrs Wong conflict with that of Mr & Mrs Laau's without hesitation I believe the evidence of the Laaus.

I have no doubt that Mrs Wong did speak to Mrs Laau in the kitchen of her house about selling the store; I have no doubt that on that occasion she did mention the price to Mrs Laau; I have no doubt that Mrs Wong did consent to the sale; that she was fully aware of it and of the conditions of sale. Her husband has never deceived her and in my view did not do so on this occasion either. The letters that passed from the Wongs, I have no doubt, were written by Mrs Wong. I do not accept the story about Mr Chan and the transcribing of the letters. Mrs Wong has lived the whole of her life in countries where English was spoken from the time she was aged 4, she is now 44 years old. I do not believe her English to be perfect, but I am certain that it is sufficiently good for her

to have understood and to have written the letters sent from Tahiti. I do not accept her evidence that she did not mention to her husband the conversation she had had with Mrs Laau in the kitchen. I believe that she had agreed all along to her husband selling the Tam's Store to the Laaus. Having observed both her and her husband in the witness box, I have no doubt that she is the guiding force in their marriage. He would never have signed the document of the 12th January 1988 without her prior consent. I do not believe Mr Wong when he said that he did not sign that document and that it is a forgery. Having seen and heard Mr and Mrs Laau in the witness box, I can state without doubt that they are quite incapable of having forged that document. On the facts therefore, I totally disbelieve the evidence of the Wongs.

There were two points of Law which were raised in this case which warrant consideration. The first was whether section 40 of the Real Property Act 1925 applies to Vanuatu; the other the question of agency. Before I can consider section 40 of the Real Property Act 1925, I must ask myself if there is any statutory law that applies to sale of leases in Vanuatu. The property the subject matter of this claim is a leasehold property in Efate, described as Lease number 11/OJ14/007. Most properties, if not all, in Vanuatu are leasehold properties. Under the Constitution, the Land belongs to the Custom owners who are indigenous Ni-Vanuatu. The sale of leaseholds is governed by the Land Leases Act Cap 163. The relevant sections of which are sections 22(2); 22(5), 60(1) 60(2) 61(3), 75(2) 76(1); 77(1) and 77(2).

Section 22(2) states :

"Every instrument creating or disposing of a registered lease or mortgage shall be registered"

Section 22(5) states :

"Nothing in this section shall be construed so as to prevent any unregistered instrument from operating as a contract".

Section 60(1) states :

"A proprietor may, subject to the provisions of this Act, transfer his registered lease or mortgage to any person, with or without consideration, by an instrument in the prescribed form".

Section 60(2) states :

"The transfer shall be completed ..... by filing the instrument.

Section 61(3) states :

"A proprietor ..... may not dispose of the interest ....., otherwise than by way of transfer in accordance with the provisions of this Act".



Section 75(2) states :

- "Where two or more persons are joint proprietors of such a registered interest :-
  - (a) a disposition of that interest shall be made only by all the joint proprietors;

Section 76(1) states :

"Every disposition of a registered interest shall be effected by an instrument in the prescribed form .....

Section 77(1) states :

"Every instrument evidencing a disposition shall be executed by all persons shown by the register to be proprietors of the interest affected and by all other parties to the instrument".

Section 77(2) states :

- "An instrument shall be deemed to have been executed only :-
  - (a) by a natural person, if signed by him or his duly authorized attorney;

Therefore, there is an obligation to register every instrument disposing of a registered lease (section 22(2)) but an unregistered instrument can operate as a contract (section 22(5)) if an instrument of transfer is executed, it can be done with or without consideration (section 60(1)); the transfer is complete upon filing of the instrument (section 60(2)) and nothing more need be done; no disposition of land can be done otherwise than in accordance with the provisions of the Act (section 61(3)) namely until registered in accordance with the Act the land is not disposed of, and it must be done in the prescribed form (section 76(1)). When two or more persons are joint proprietors, the disposition can only be made by all the joint proprietors (section 75(2)); and the instrument is deemed to have been executed only if signed by the owner or his authorized attorney (section 77(2)) finally, all instruments evidencing a disposition of a registered lease can only be done in writing and if signed by all parties concerned (section 77(1)) or of course, by his duly authorized attorney (section 77(2)).

Therefore, the Land Leases Act CAP 163 sets out in clear terms how a land lease can be created and disposed of and how an "instrument" evidencing a disposition must be done. Nothing prevents an unregistered instrument from forming part of a contract of sale but the transfer must be done in a certain formal way. What is clear is that no disposition of land leases can be effected unless evidenced in writing. In my view, this Act alone governs the disposition of registered leases in Vanuatu and section 40 of the Real Property Act 1925 does not apply to registered leases in Vanuatu. That does not mean of course that sale of registered leases can be done otherwise than if evidenced in writing. The Act is clear about it, it must be, and what's more it must be signed by all joint proprietors or by their duly authorized attorney. The word "Attorney" is not defined in the Act, nor is it defined in the

interpretation Act CAP 132. It is simply an old english word which means a person appointed in place of another, or alternatively a person appointed by another to act in his place: see Stroud's Judicial Dictionary p 228 and Osborn's Concise Law Dictionary p 38. The definition of attorney in the Shorter Oxford English Dictionary is :

"One appointed to act for another; an agent, deputy, commissioner."

Adopting that simple definition, therefore, what section 77(2) means is that an instrument is deemed to have been executed by a natural person if signed by him or someone as his agent duly authorized by him.

On the evidence in this case, I found that Mrs Wong was clearly aware of the intention of the Laaus to buy and of her husband's to sell, and on the facts as I found them to be, there is no doubt that she also intended the sale to take place. In my view when her husband executed the memorandum of sale dated the 12th January 1988, he was acting not only in his own name, but as her duly appointed agent or alternatively he had ostensible authority to act on her behalf. A person has ostensible authority if the principle so conducted himself or herself towards a third party as to be estopped from denying the truth of the representation. This was plainly the situation in this case. I simply do not believe Mrs Wong when she said that she did not know nor consent to her husband selling Tam Store to the Laaus. Her whole demeanour throughout, and the whole of the correspondence between the Laaus and the Wongs clearly establish that she knew and consented to the sale of the store and that her husband was her duly appointed agent.

Agency by estoppel (or the doctrine of holding out) also known as apparent or ostensible authority, has been held to be based on estoppel: see *Rama Corp Ltd v Proved Tin and General Investments Ltd* [1952] 2QB 147 at 149, 150; [1952] 1 ALL ER 554 at 556. It arises where a person has so acted as to lead another to believe that he has authorized a third person to act on his behalf and that other in such belief, - see *Mac Fisheries Ltd v Harison* (1924) 93 LJKB 811; enters into transactions with the third person within the scope of such ostensible authority, see *Summers v Solomon* (1857) 26 LJQG 301. In this case the first-mentioned person is estopped from denying the fact of the third person's agency under the general law of estoppel, and it is immaterial whether the ostensible agent had no authority whatever in fact: see *Pickard v Sears* (1937) 6 Ad & EL 469; *Freeman v Cooke* (1848) 2 Exch 654, or merely acted in excess of his actual authority see *Union Credit Bank Ltd v Marsey Docks and Harbour Board* [1891] 2QB 205, *King v Smith* [1900] 2 ch 425;

The Onus lies upon the person dealing with the agent to prove either real or ostensible authority, - see *Pole v Leask* (1863) 33 LJ ch 155; and it is a matter of fact in each case whether ostensible authority existed: see *Brazier v Camp* (1894) 63 LJ QB 257 CA;

On the facts of this case, as I have said before, I have no doubt that there was real authority vested in Mr Wong to bind Mrs Wong, but in any event the Plaintiffs have fully satisfied me, in the alternative, that Mrs Wong has so conducted herself as to be estopped from denying the ostensible authority of her husband to have bound her to the agreement to sell Tam Store. That agreement was in writing sufficient to satisfy the conditions of Section 77 (1) of the Land Leases Act CAP 163, and I so hold. Therefore, pursuant to the prayers in the amended particulars of claim. I declare and order as follows :-

1. That the agreement for sale evidenced by the written memorandum of sale made by all the parties and dated 12th day of January 1988, is an unregistered instrument within the meaning of section 22(5) of the Land Leases Act, which operates as a binding contract on all the parties. It follows therefore, that it is a valid and enforceable agreement for the sale and purchase of Leasehold property NO. 11/OJ14/007 and the business known as "Tam Store".
2. An order for specific performance is hereby issued directed at the defendants to do all such things and sign all such documents as are necessary to transfer to the plaintiffs the leasehold property No. 11/OJ14/007.
3. That upon completion by the defendants, the plaintiffs shall cause to be paid through their solicitor, to each of the solicitors acting for each of the defendants half of the balance of the sum outstanding on the purchase price of the said Leasehold and business. The totality of that sum, I find as a fact to be 2,880, 455 Vatu. I come to that sum in this way :

Basing myself on the schedule Exhibit 12 prepared by George Vasaris and attached to his letter dated 26th March 1991, the sum there stated was 3,076,455. I take out from that sum two further amount which I find as a fact were paid to Mr and Mrs Wong, namely the sum of 96,000 Vatu mentioned in letter "N" dated 8-8-90 in the bundle of correspondence and the further sum of Vatu 100,000 mentioned in letter 'O' dated 7-10-90 in the same bundle of correspondence. Therefore, the sum arrived at by Mr Vasaris of 3,076,455 is reduced by 196,000 Vatu leaving a balance of 2,880,455 Vatu owed jointly by the Laaus to the Wongs. On that issue as on all other issues in this case, I accept entirely the evidence of the Laaus that they did pay the sum of 196,000 Vatu to the Wongs.

Since cost must follow the event, the Wongs are jointly and severally ordered to pay the cost of this action. To be taxed or agreed. The solicitors acting for the Wongs will hold on to all sums of money paid to them on behalf of the Laaus, until such time as the cost of this action has been defrayed and the balance shall thereafter be paid over to the Wongs.

I now turn to the counter-claim made by the Defendants. For the reasons that I have stated above, that counter-claimed is dismissed. Likewise, I dismiss the subsidiary action brought by the Laus against the Wongs for damages as the Laus have failed to prove any actual damages.

Dated this 26th day of March 1993.

*Charles Vaudin d'Imecourt*  
.....  
• CHARLES VAUDIN d'IMECOURT  
Chief Justice

