

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

Civil Case No. 143 of 2005

**BETWEEN: PHILIPOE MALITES**  
First Claimant

**AND: MATHIAS & RACHEL MOLSAKEL** *AB. 15/12/05*  
Second Claimant *NMT/FG*

**AND: THE GOVERNMENT OF THE REPUBLIC  
OF VANUATU**  
First Defendant

**AND: JOHN TARI MOLBARAV**  
Second Defendant

**AND: MANWAH LEONG**  
Third Defendant

*Coram:* Justice N. R. DAWSON  
*Date of Hearing:* 19<sup>th</sup> February, 2009  
*Date of Decision:* 19<sup>th</sup> March, 2009

*Counsel:*

1 <sup>st</sup> Claimant:	Mr. Kausiama
2 <sup>nd</sup> Claimant:	" "
1 <sup>st</sup> Defendant:	Mr. Loughman
2 <sup>nd</sup> Defendant:	Ms. La'au
3 <sup>rd</sup> Defendant:	" "

## **DECISION**

1. An Application has been made by the First Defendant, supported by the Third Defendant to strike out the claims the First and Second Claimants in this matter.
2. The First and Third Defendants advanced three reasons in support of their application to have this claim struck out. They are:-

9. It is argued by the Claimants that in Civil Appeal Case No. 4 of 2004, the parties were different, the issues were different, and therefore any argument based on Res Judicata is wrongly brought. The Claimants say that there are three new parties to these proceedings, including the Second Defendant. The Claimants submit that this is an entirely new case which is over the validity of the Third Defendant's lease, that is to be heard and determined by the Court.
10. It is submitted by the Third Defendant that the Claimant's submission is not strictly correct. They say that the Second Claimant and Second Defendant were not parties to Civil Case 02 of 2000 at Luganville in Vanuatu, but point out that both of those persons appeared as witnesses in that case. The Third Defendant submits that the changing of the names of the parties does not mean that a new action can be brought by these means when those same parties all appeared at the earlier trial and gave evidence during the course of that trial. It is also submitted by the Third Defendant that the total amount claim in Civil Case 02 of 2000 was a sum of VT 104,398,620. The Claim in this proceeding they point out is an amount of only VT 60,000 difference. It is submitted that the evidence that would be adduced at trial in respect of this matter would be by the same witnesses as at the previous trial dealing with essentially the same issues claiming what is essentially the same amount of money.
11. From the submissions made during the course of the hearing of this application and documents filed in this Court it is apparent that the Claimants are seeking to reshuffle the same pack of cards, hoping for a better hand to be dealt to them at a further hearing. The issues raised in this matter are essentially the same issues relating to the validity of the lease and a claim for compensation. The Claimants have had their time in Court, and have been heard, they have been to the Court of Appeal, and they cannot expect this Court to allow them to re-litigate these matters endlessly by naming different parties in their claim when those same parties were previously actively involved the earlier Court hearing.

Limitation Act No. 4 of 1991

12. It is submitted by the First Defendant that the Supreme Court Claim failed to disclose the principle of law on which the Claimants rely and any claim for compensation is most likely to be based on an alleged breach of contract or breach of duty. The First Defendant submits that the damages that the Claimants is alleged to have suffered seems to result from eviction orders made on 16<sup>th</sup> November 1995 and executed on 11<sup>th</sup> September 1997. On this basis it is submitted that a claim for compensation is time barred as a result of the Limitation Act No. 4 of 1991. These submissions of the First Defendant are supported by the Third Defendant.
13. The submissions made on behalf of the Claimants are about what they say is the history of these matters from 1971 to 11<sup>th</sup> September 1997. Their submissions do not address the issue raised pursuant to the Limitation Act.
14. The Limitation Act No. 4 of 1991 states in section 3:  
*"Limitation of actions of contract and certain actions*  
*(1) The following action shall not be brought after the expiration of 6 years from the date on which the cause of action accrued, that is the say:-*  
*(a) Actions founded on simple contract or on tort"*
15. The claimants have failed to address this issue. Nothing has been pointed out to this Court to indicate that any part of the Claimant's claim fell within in the six year period stipulated by the Limitation Act.
16. The application to strike out this Claim on the arguments raised based upon Res Judicata and the Limitation Act 1991 is granted and the Claimant's Supreme Court Claim is struck out accordingly. On this basis there is no reason for the Court to consider whether it is appropriate to grant the Claimants the opportunity to amend their Supreme Court Claim.

17. Costs are awarded against the First and Second Claimants in favour of the First and Third Defendants at an amount to be agreed upon by the parties and failing such agreement then by taxation by this Court.

**Dated at Port Vila, this 19<sup>th</sup> day of March, 2009**

**BY THE COURT**

  
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**N. R. DAWSON**  
**Judge**

