

(Civil Jurisdiction)

BETWEEN: WESLEY RASU & HAROLD MOLI
Representing Rasu and Worahese Family

Claimant

AND: ATANAS WARI

First Defendant

AND: MINISTER OF LANDS

Second Defendant

AND: THE DIRECTOR OF LAND RECORDS

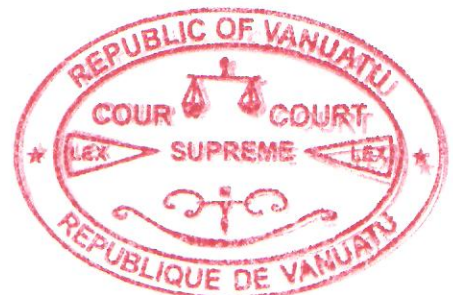
Third Defendant

Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

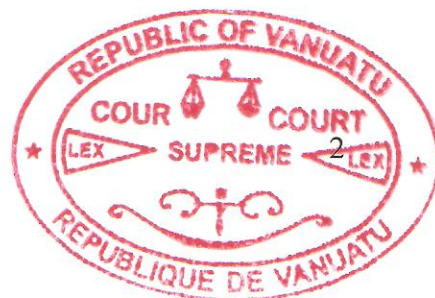
No Appearances by Claimants
Mr Atanas Wari, Defendant in person

RULING

1. This case was first listed for trial hearing on 1st February 2010 by Notice dated 17th December 2009.
2. On 1st February 2010 neither the Claimants nor the First Defendant were present in Court. Only Counsel Mr Frederick Gilu appeared on behalf of the Minister and Director of Land Records as Second and Third Defendants. On that occasion Mr Gilu informed the Court the Second and Third Defendants would simply abide by Court Orders.



3. The Court relisted the matter for today 25th February 2010 by Notice to Show Cause dated 8th February 2010.
4. Today only the Defendant appears in person. He submits that this proceeding be struck out with costs on grounds that –
 - (a) The Claimants' have failed to prosecute their claim within the times set by the Rules.
 - (b) The exparte interlocutory orders dated 20th February 2008 could no longer remain temporary as it was prejudicing them as intended lessees; and
 - (c) Their cross-application to have those orders set aside dated 1st April 2008 have not yet been determined by the Court and that the Court should do so and set those orders aside.
5. Neither the Claimants nor their Counsel are present today. There is no information before the Court as to why none of them could be present today. The Court is of the view that the Claimants have had ample notice of the application to show cause.
6. Under those circumstances the Notice to Show Cause stands unchallenged by the Claimants. The Court is satisfied that the orders of 20th February 2008 were only interim orders which the Claimant were to pursue to make them permanent orders or to obtain other orders in their place. But it is more than 2 years and the Claimants have done little or nothing at all to prosecute or advance their claim to date. Their failure and/or omission to do so amounts to a mere delaying tactic set up to the detriment and prejudice of the Defendant.



7. For those reasons therefore the Court must now strike out the whole proceeding, including all orders made there-under and in particular the exparte interlocutory orders of 20th February 2008.

8. The formal orders of the Court are –
 - (a) Civil Case No. 2 of 2008 is struck out in its entirety together with all orders made there-under.

 - (b) The Claimants will pay the Defendant's costs of and incidental to this proceeding pursuant to their Undertaking. Costs are to be agreed or taxed by the Master.

DATED at Luganville this 25th day of February 2010.

BY THE COURT


OLIVER A. SAKSAK

Judge

