

**BETWEEN: TORQUIL MACLEOD AND  
MARIANNE CANTLEY**

Claimants

**AND: SCOTT FRANCIS WALKER**

First Defendant

**AND: THE GOVERNMENT OF THE  
VANUATU BY THE MINISTER OF  
LANDS**

Second Defendant

**Coram:** *Mr. Justice Oliver A. Saksak*

**Counsel:** *Mr. Nigel Morrison for Claimants  
Mr. John Malcolm for First Defendant and Cross-Claimant  
Ms Florence Williams for the State as Defendant to Cross-Claim*

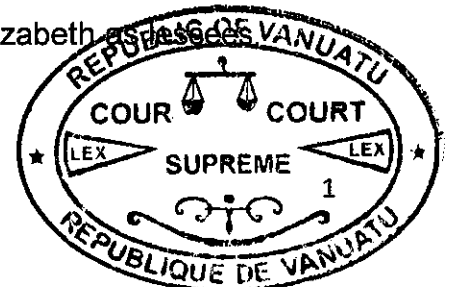
**Date:** *7<sup>th</sup> April 2014*

## **JUDGMENT**

1. Judgment is hereby entered in favour of the Claimants against the First Defendant and the Claimant is entitled to costs against the First Defendant in the sum of VT50.000.

### **Facts**

2. The following facts are necessary to understand the background of the Claimants' case –
  - (a) The Claimants are lessees of leasehold title 04/2243/003 (Leasehold 003).
  - (b) Leasehold 003 was registered on 25<sup>th</sup> April 2005 with Joseph Tangis as lessor and Warren Lawrence Sydney and Dawn Elizabeth as lessees.



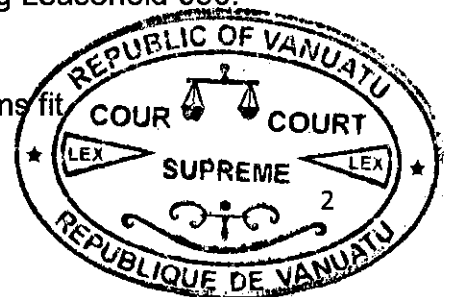
- (c) By contract dated 8<sup>th</sup> July 2009 the Claimants contracted to purchase Leasehold 003 comprising some 11 ha 7 a 876 ca in size and including two islands namely Malvanua and Malvapevu.
- (d) A transfer of Leasehold 003 was executed on or about 6<sup>th</sup> October 2009 and registered on 20<sup>th</sup> October 2010. The Claimants were bona fide purchasers for value of Leasehold 003.
- (e) On or about 13<sup>th</sup> September 2012 another lease title 04/2243/080 (Leasehold 080) was registered naming Lowett Morris as lessor and the First Defendant as lessee.
- (f) A survey map attached to Leasehold 080 purports to make Malvapevu Island the subject of that lease.
- (g) At the time Leasehold 080 was approved and registered Leasehold 003 was already in existence and included the same land, namely Malvapevu Island.

### Allegations

- (h) The registration of Leasehold 080 was obtained or made by fraud or mistake.
- (i) The First Defendant had knowledge of the omission fraud or mistake giving rise to the registration of Leasehold 080 or alternatively caused such omission fraud or mistake or substantially contributed to it by his act, neglect or default.

### Reliefs

- (j) The Claimant therefore seeks the following reliefs –
- (i) Rectification of the land register by cancelling Leasehold 080.
  - (ii) Costs.
  - (iii) Such further or other relief as the Court deems fit

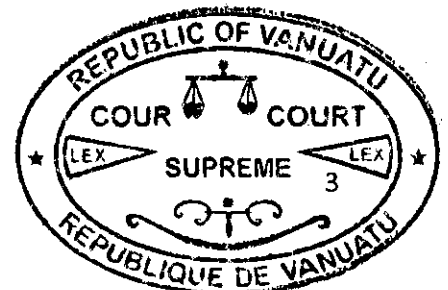


## Discussions

3. Counsel for the Claimant filed evidence in support of the Claimants' claims on 4<sup>th</sup> November 2013 and on 20<sup>th</sup> November 2013.
4. The Second Defendant has not filed any response or defence.
5. The First Defendant filed evidence by sworn statement dated 7<sup>th</sup> March 2014. At paragraph 2 of that statement Mr. Walker deposes to having read the statement of Mr. Mc Leod and that he accepts the lease he purchased was registered first in time and accepts he is the party entitled to rectification in this matter. He disputes the actual history of the matter.
6. At the Chambers hearing this morning, Counsel for the First Defendant however conceded the Claimants' claim. Mr. Malcolm then conceded that the Claimant was entitled to judgment and to an order of cancellation and rectification. Mr. Morrison sought further declarations and an order for costs to be fixed at VT50.000. Counsel sought to be excused for the balance of the case.

## Declarations And Orders

7. Accordingly, the Court is satisfied and declares that the Claimants are bona fide purchasers for value of Leasehold 003 which was registered first in time. This lease comprises of lands situate within the two islands of Malvanua and Malvapevu.
8. The Claimants are entitled to the following Orders –
  - (a) That the Second Defendant be required to cancel the registration of Leasehold 04/2243/080 within 14 days from the date of this judgment.
  - (b) The First Defendant pays the Claimants' costs fixed at VT50.000 within 14 days from the date of this Order.



(c) The Claimants be excused from the balance of the proceeding and from future attendance.

9. As for the remainder of the claim, the First Claimant filed a defence and cross-claim against the Second Defendant. The amount of the cross-claim is VT5,000,000 and costs. The State has not filed any defence. The cross-claim was only filed on 7<sup>th</sup> March 2014.

10. Mr. Malcolm and Ms Williams agreed to proposed directions to be issued by the Court to progress the balance of the case which are as follows:-

(a) The cross-claimant will file and serve sworn statement as to valuation within 3 weeks from the date of this order.

(b) Within 3 weeks thereafter the State as defendant to the cross-claim will file and serve their valuation evidence.

(c) Within 2 weeks thereafter the cross-claimant will file and serve written submissions in relation to the valuation evidence.

(d) Within a further 2 weeks thereafter the defendant will file and serve responses thereto.

(e) The case be called for further conference on Monday 30<sup>th</sup> June 2014 at 0900 hours.

(f) Costs to be in the cause.

**DATED at Port Vila this 7<sup>th</sup> day of April 2014.**

**BY THE COURT**

  
**OLIVER A. SAKSAK**  
Judge

