

BETWEEN: PATRICK ISHMAEL

Claimant

AND: HEATHER RORY

First Defendant

AND: GRACIA SHADRACK

Interested Party

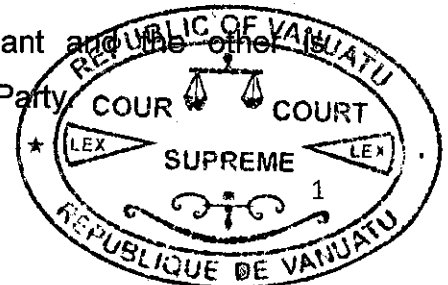
Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Mr. Lent Tevi and Wingy for Claimant/Respondent
Mrs. Mary Grace Nari for Defendant and Interested Party/Applicant*

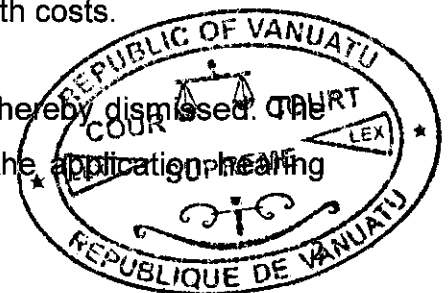
Date: *9th April 2014*

JUDGMENT

1. The Interested Party Gracia Shadrack applies for Orders that –
 - (a) The ex parte orders dated 18th November 2013 be set aside.
 - (b) The interested party be removed as a party.
 - (c) Costs be paid by the Claimant.
2. The application is supported by the sworn statement of the applicant dated 11th March 2014.
3. Mr. Tevi opposes the application on the basis of the evidence before the Court showing there are two contracts in existence. One contract is purportedly between the Defendant and the Claimant and the other is purportedly between the Defendant and the Interested Party.



4. The issues raised appear to be and which are issues of substance in the main claim are –
 - (a) Which contract was the first in time?, and
 - (b) Which contract is valid and binding?
5. The two contracts concern the sale and purchase of the vehicle in question over which the ex parte orders of 18th November 2013 apply.
6. I have considered the application and the grounds advanced in support thereof in light of the evidence of the Interested Party dated 11th March 2014 and also the evidence of Patrick Ishmael dated 25th February 2014 which remains unchallenged by the Defendant.
7. The Court is not yet satisfied on the evidence of Gracia Shadrack that he has purchased the vehicle in dispute. The document entitled "TRANSFER OF OWNERSHIP OF MOTOR VEHICLE" dated 3rd March 2014 indicates the date of sale as 10th November 2013 being the same date the ex parte orders were issued. This document is suspicious and it is invalid because the vendor and the purchaser have not certified the particulars. There are no signatures appearing on the document.
8. And it took almost 5 months for the Malampa Provincial Government Council to issue a receipt on 3rd March 2014 and for the registration of change of ownership also on the same date.
9. The concern of the Court is that all these transactions were taking place despite the existence of the orders of 18th November 2013 which the interested attempted to have vacated once on 3rd February 2014 but was unsuccessful in his attempt. His second attempt to have the orders set aside is a blatant abuse of process and must be dismissed with costs.
10. Accordingly, the application by the Interested Party is hereby dismissed. The Claimant is entitled to his costs of and incidental to the application hearing.



today on the standard basis as agreed or be taxed by the Court. The Interested Party is required to pay these costs before the next hearing date.

11. To advance the substantial case, it is necessary for the following directions to be issued –


(a) Within 14 days from today the defendant and the Interested Party be required to file and serve sworn evidence in response to the Claimant's evidence by sworn statement dated 28th February.

(b) The Claimant will file and serve replies (if need be) within 7 days thereafter.

(c) There be a pre-trial conference on Friday 9th May 2014 at 0830 hours at the Court in Luganville.

DATED at Port Vila this 9th day of April 2014.

BY THE COURT


OLIVER A. SAKSAK
Judge

