

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

Civil  
Case No. 15/93 SC/CIVL

**BETWEEN: STEPHEN BONGNEBU**  
Claimant

**AND: FRESHWIND LIMITED**  
First Defendant

**AND: PETER MARAE**  
Second Defendant

**AND: PHILIP MORRIS**  
Third Defendant

**Before:** *Justice Dudley Aru*  
**Counsel:** *Daniel Yawha for the Claimant*  
*George Boar for Second and Third Defendants*

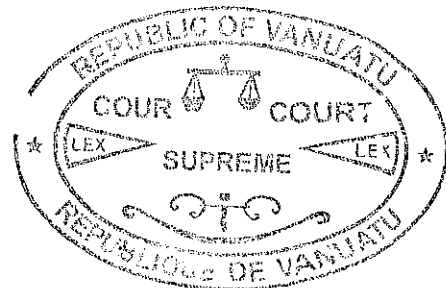
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## SUMMARY JUDGMENT

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### Introduction

1. Stephen Bongnebu is the registered proprietor of lease title No 11/0133/095 ("the 095 lease") which is located at the Ohlen Freshwind area in Port Vila. He obtained the lease from Freshwind Limited and the transfer was registered on 21 November 1995. Since obtaining the lease the claimant was unable to undertake any developments on the property as the first and second defendants ("the defendants") refused to vacate the property when repeatedly requested to do so by the claimant.



## Claim

2. Mr Bongnebu has now sought assistance from the Courts by filing a claim on 15 July 2016. He asserts in his claim that the defendants are squatters on his property, the 095 lease and seeks two main orders namely –

- i) An order for the first and second defendants to dismantle their houses on the property; and
- ii) An order of eviction against the defendants.-

## Defence

3. The defendants filed an amended defence to the claim on 23 August 2018 which in essence denies the claimant's entitlement to the 095 lease. They assert in their defence that they were invited by the Port Vila Urban Land Corporation ("the PVULC") to clear the land and to move in and in return they were to be given leases. They say that they settled on the land since 1983 which was then old title 140 and later became lease title 11/0133/008 covering 23 hectares of land ; The defendants maintain that they have yet to be given leases promised to them by the PVULC .

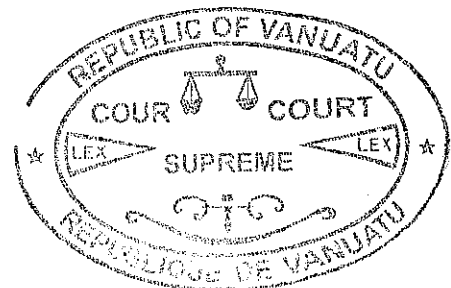
## Application for Summary Judgment

4. Having considered the defendants' amended defence, the claimant now applies for summary judgment on the basis that he believes the defendants do not have any real prospects of defending the claim. The claimant relies on *Willie Comberra and 177 others v Barak Sope and Ors* Civil Appeal Case No 16/2211 in support of its application.

Rule 9.6 (7) of the Civil Procedure Rules provides:

"(7) if the court is satisfied that:

- (a) the defendant has no real prospect of defending the claimant's claim or part of the claim; and
- (b) there is no need for a trial of the claim or that part of the claim, the court may:
- (c) give judgment for the claimant for the claim or part of the claim; and



(d) make any other orders the court thinks appropriate.

5. At paragraph 7 D of their amended defence the defendants plead the following :

"D. The first and second defendants are part of the 177 individual persons and families whom the corporation encouraged and agreed with them to clear the 40 (11/0133/008) from bushes settled thereon whilst the corporation prepares their leases."

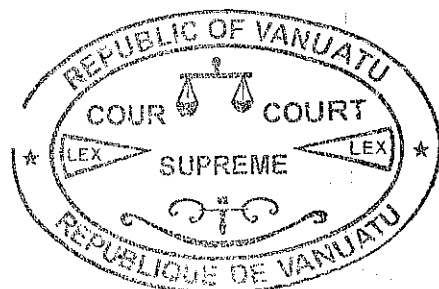
6. The 177 individuals referred have been found by this Court and the Court of Appeal to be squatters on the land. In **Willie Combera and 177 others v Barak Sope and Ors** Civil Appeal Case No 16/2211 the Court of Appeal accepted that the Government was "*perfectly entitled to lease the land to Freshwind Limited*" and in doing do so Willie Combera and 177 others remained as squatters on the land.

7. In this current proceeding, the defendants have not shown any evidence whatsoever that they are entitled to remain on the claimant's land which formerly was part of the Freshwind Limited lease .They have also admitted in their defence that they are part of the 177 individuals who moved onto title 11/0133/008 which was obtained by Freshwind Limited . In view of the above Court of Appeal decision, the defendants remain as squatters.

8. The claimant has obtained good title to his property from Freshwind Limited and is entitled to have peaceful enjoyment of his title free from squatters. The defendants have no real prospects of defending the claim and there is no need for a trial. The application for summary judgment is granted. Furthermore , I now issue the following orders :

## ORDERS

(1). The first and second defendants are allowed 3 months from today to do the following:

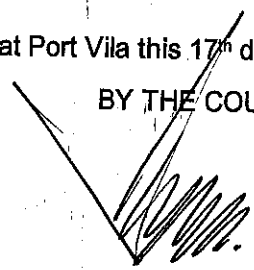


- a) To dismantle their houses within lease title 11/0133/095 located at Freshwind area; and
- b) To evict or remove themselves and their families from residing on lease title 11/0133/095.

(2). The claimant is entitled to costs against the first and second defendants to be agreed or taxed.

DATED at Port Vila this 17<sup>th</sup> day of October, 2018.

BY THE COURT



DUDLEY ARU

Judge

