

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

Civil  
Case No. 19/1706 SC/CIVIL

**BETWEEN:** Michael leiper and Wendy  
Moss

Claimants

**AND:** Harry Tele Rambay t/a  
Rambay & Associates

Defendant

*Before:* Justice G.A. Andrée Wiltens  
*Counsel:* Ms C. Hamer for the Claimant  
Mr E. Nalyal for the Defendant  
*Date of Hearing:* 5 June 2020  
*Date of Decision:* 8 June 2020

---

**JUDGMENT**

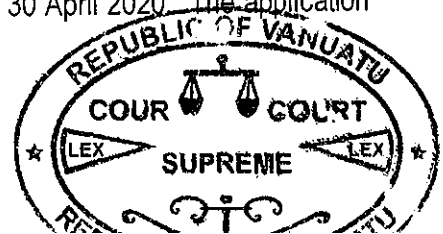
---

**A. Introduction**

1. This was an application for Summary Judgment on the basis that there was no real prospect of defending the Claim.

**B. Background**

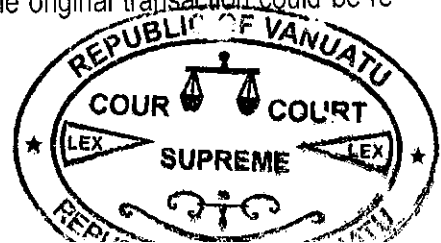
2. At a previous directions conference on 27 April 2020, Mr Nalyal was advised of the hearing date for the forecast application for Summary Judgment; and he was directed to file and serve a Response to the application by 18 May 2020 and to file and serve any evidence he sought to rely on in opposition to the application by 25 May 2020.
3. There has been no compliance with either direction by Mr. Nalyal. I note that the application and Mr Leiper's sworn statement were served on Mr Nalyal on 30 April 2020. The application also noted the date of hearing on it.



4. Ms. Hamer and I waited for Mr. Nalyal to appear. After some time, a member of the Supreme Court Staff telephoned Mr. Nalyal. What was reported back is as follows:
  - Mr. Nalyal was unaware of the hearing;
  - Mr. Nalyal had not received my Minute of 27 April 2020 setting out the directions referred to earlier;
  - Mr. Nalyal would not attend the hearing as he was receiving induction training at Parliament; and
  - Mr. Nalyal wanted the matter to be adjourned.
5. Ms Hamer opposed the extremely late and informal application.
6. The application to adjourn was declined for the following reasons.
7. Mr. Nalyal had notice of the hearing
  - He had attended the conference on 27 April 2020, when the date was set;
  - My Minute of the same date recorded the hearing date, and was as usual placed in the appropriate pigeon hole at the Supreme Court – on checking, it was no longer there, so someone had collected it;
  - The application itself recorded the date of hearing and was served on Mr. Nalyal.
8. Mr. Nalyal must have known of his other commitment prior to Court staff telephoning him some 10-15 minutes after the appointed hour. He did not apply in advance for an adjournment. He did not arrange for another solicitor from his firm, or for an agent in his stead, to appear.
9. Mr. Nalyal had not filed and served a defence to the application, nor filed any evidence in opposition to the application as previously directed.

### **C. The Application**

10. The Claim alleges that Mr. Leiper and Ms Moss transferred VT 3,032,000 to Mr. Rambay's trust account on 3 May 2017. The funds were to meet: (i) the purchase price for a particular plot of land on Moso Island, and (ii) the attendant fees to complete the legal transfer of ownership. The land is more particularly described as leasehold Tile No 12/0242/015.
11. Some two weeks after the funds had been remitted, it came to the Claimant's attention that by virtue of another transfer in relation to the same land the intended purchase had been frustrated. Mr. Leiper accordingly wrote to Mr. Rambay seeking the return of his funds. Mr. Rambay responded that he would do so later that same day.
12. However, these were then further negotiations between vendors and purchasers which involved Mr Rambay, and which raised the possibility that the original transaction could be re-



ignited. Mr. Leiper wrote to Mr. Rambay on 19 May 2017 authorising him to retain the remitted funds *...until next Tuesday for the contract to be honoured.*"

13. By letter dated 23 May 2017, Mr. Rambay advised Mr. Leiper that the necessary legal documents to transfer ownership of the property to Mr Leiper/Ms Moss had been executed and would be lodged for registration the next day. He anticipated completion of registration in 2-3 weeks.

14. The same day, Mr Rambay distributed the VT 2,500,000 purchase price for the land to:

- one of the custom vendors, Chief David Alikau, in the amount of VT 650,000;
- another of the custom vendors, Chairman Kami, in the amount of VT 400,000;
- the Navaraliki Council in the amount of VT 1,328,000; and
- in payment of commission of VT 122,000.

15. The balance of the remitted funds were to be spent on:

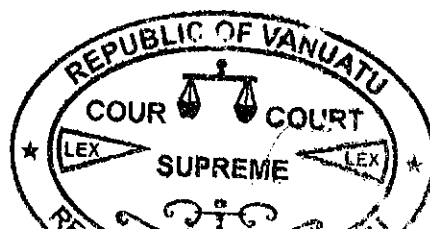
- VT 7,000 Commissioner of Oaths fee;
- VT 50,000 Stamp Duty;
- VT 125,000 Registration fess; and
- VT 350,000 Rambay & Associates' Fee.

16. Given that registration of the transfer of ownership had yet to occur, the payments described in paragraph 14 were premature, unauthorised and made contrary to a particular clause set out on the Agreement for Sale and Purchase entered into on 19 April 2017.

17. The transfer of ownership has not occurred. A large portion of the remitted funds has been disbursed as described in paragraph 14 above , and the balance as described in paragraph 15 above was retained by Mr. Rambay. Hence the claim for reimbursement of the entire sum remitted.

18. The Defence filed by Mr. Nalyal admitted the majority of the above matters. Mr. Rambay stressed that he was not acting as a real estate agent in the transaction, but that is immaterial. He stated that the VT 122,000 payment was the reimbursement of an earlier advance by him to the Moso Island Community.

19. The only relevant pleading in establishing a defence is in paragraph 14 of the Defence filed. It involves the denial of the disbursements described in paragraph 14 above and stated that Mr. Rambay was acting on the instructions of the vendors.



20. The point, firmly advanced by Ms Hamer, is that the vendors had no authority to instruct Mr Rambay to pay out funds held on the trust for the benefit of the purchasers. In effect, this statement in defence is actually an admission of the claim.

**D. Result**

21. Accordingly, I accept that no viable defence has been presented to counter the Claim filed.

22. Summary judgment is entered against Mr Rambay in the sum of VT 3,032,000, together with the interest on that sum at the Supreme Court rate of 5% per annum from 3 May 2017 until paid in full.

23. The judgment debt is to be paid within 21 days.

24. The Claimants are entitled to costs. I fix those at VT 150,000. These too are to be paid within 21 days.

25. Pursuant to Rule 14.5(1), I now schedule a Conference for 1.30 pm on 1 July 2020 to ensure the judgment has been executed' or for the judgment debtor to explain how it is intended to pay the judgment debt.

26. For that purpose, this judgment must be served on the Defendant.

Dated at Port Vila this 8<sup>th</sup> day of June 2020  
BY THE COURT

*G.A. Andrée Wiltens*  
Justice G.A. Andrée Wiltens

