

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

Civil Appeal
Case No. 20/2846 SC/CIVA

BETWEEN: Mark Ati
Appellant

AND: National Bank of Vanuatu Limited
Respondent

Date of Hearing: 29 January 2021
Before: Justice V.M. Trief
In Attendance: Appellant – no appearance (in person)
Respondent – Ms S.S. Mahuk
Date of Decision: 23 February 2021

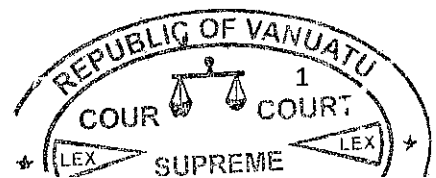
JUDGMENT

A. Introduction

1. This appeal arises from enforcement proceedings before the Hon. Master. Summary judgment was entered directing specific performance of the contractual arrangement in the letters of offer. That is, directing the Appellant Mark Ati to sign mortgage instruments in respect of the leasehold titles referred to in the Respondent National Bank of Vanuatu Limited's (the 'Bank') letters of offer to him for loan facilities that he accepted.

B. Background

2. Mr Ati sought loans from the Bank. The Bank set out the terms of its offers of loan monies to Mr Ati in letters of offer including the requirement for security for the loans by way of mortgages over certain leasehold titles.
3. Mr Ati signed the letters of offer and drew down the loan funds. However, he signed mortgage deeds over only 2 rather than over all the leasehold titles involved.



4. The Bank filed a Claim seeking specific performance. That is, that Mr Ati be compelled to sign the other mortgage deeds as agreed.
5. Mr Ati filed a Defence to the Claim.
6. Subsequently the Bank applied for summary judgment on the basis that Mr Ati had no real prospect of defending the claim.
7. On 17 September 2020, the Master granted summary judgment and ordered specific performance in respect of 4 leasehold titles.

C. The Appeal and Discussion

8. Mr Ati now appeals against the summary judgment. The grounds of his appeal include that the Master erred as there was a dispute of fact as the letters of offer were entered into by mistake or as a result of misrepresentation, and that the Bank owed Mr Ati a duty to explain the agreement regarding the conversion of his vatu account to a U.S. Dollar account.
9. On 23 November 2020, I directed that the parties file submissions and listed the hearing of the appeal on 29 January 2021. Counsel for both parties were in attendance – Mr Kalsakau for Mr Ati and Ms Mahuk for the Bank.
10. I am satisfied therefore that Mr Ati was aware through his counsel of the orders that he file submissions and of the date of the hearing of the appeal. However, no submissions have been filed for Mr Ati. Further, 2 days before the hearing of the appeal, Mr Kalsakau filed a Notice of Ceasing to Act.
11. Mr Ati has not attended the hearing of the appeal nor has Mr Kalsakau appeared to formally seek the Court's leave to cease acting. Further, there is no application from Mr Ati for adjournment of the hearing.
12. Accordingly, I heard Ms Mahuk's submissions in opposition to the appeal and considered the evidence that Ms Mahuk relied on from Civil Case No. 98 of 2020 ('CC 20/98'), the proceeding before the Master.
13. At the end of the hearing, I gave an oral decision. However, in light of the Court of Appeal's judgment in *Bred (Vanuatu) Limited v The Master of the Supreme Court*; Civil Appeal Case No. 3144 of 2020 dated 19 February 2021, I have had to reconsider my decision.
14. For the following reasons, I set aside the summary judgment entered by the Master:
 - a. The Master does not have the original jurisdiction of a Supreme Court judge.
 - b. In the absence of Rules of Court prescribing the Master and Deputy Master's jurisdiction, the Master's original jurisdiction is limited to the matters set out in para. 42(3)(a) of the *Judicial Services and Courts Act* [CAP. 270].



c. Accordingly, the Master did not have jurisdiction to determine the summary application.

15. Given the above result, I need not consider each of the grounds of appeal advanced.

D. Result and Decision

16. The appeal is allowed.

17. The summary judgment dated 17 September 2020 in CC 20/98 is set aside.

18. The Respondent's application in CC 20/98 for summary judgment must be determined by a Supreme Court judge. It is listed for hearing before me **at 10.30am on 17 March 2021**.

19. There is no order as to costs.

20. This judgment must be served on the Appellant and proof of service filed.

**DATED at Port Vila this 23rd day of February 2021
BY THE COURT**

VM Trief
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Viran Molisa Trief
Judge

