

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

Civil
Case No. 21/1843 SC/CIVL

BETWEEN: Samson Bani
Claimant

AND: Dickinson Tevi
Defendant

Date of Trial: 27 October 2022
Before: Justice V.M. Trief
In Attendance: Claimant – Mr J. Kilu
Defendant – Mr G. Takau
Copy to: Office of the Attorney General
Date of Decision: 16 October 2023

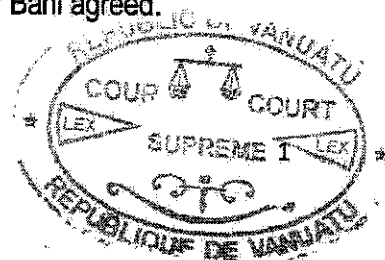
JUDGMENT

A. Introduction

1. This was a claim for fraudulent representation by the Claimant Samson Bani against the Defendant Dickinson Tevi. The relief sought includes an order that Mr Tevi share his leasehold property on Santo with Mr Bani as well as damages. The Claim is opposed.

B. Background

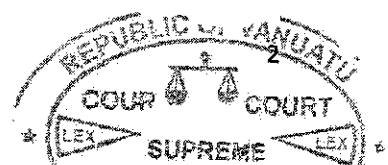
2. Mr Bani is Mr Tevi's paternal uncle (Mr Tevi's father's brother). He is in his eighties.
3. In 2003, Mr Tevi and his brother Toney Tevi approached Mr Bani to ask that his property leasehold title no. 03/OK94/063 located at Chapuis ('Sapi') area at Luganville, Santo ('Mr Bani's leasehold property') be used as security for a loan that the Defendant would obtain from the National Bank of Vanuatu ('NBV') in order to purchase 10 hectares of land at Jubilee Farm on Santo. Mr Bani agreed.



4. Consequently, Mr Tevi obtained a VT3,455,000 loan from NBV secured by Mr Bani's leasehold property.
5. In or around February 2007, Mr Tevi defaulted in repaying the loan. The NBV commenced Civil Case No. 40 of 2997 for power of sale orders over Mr Bani's leasehold property.
6. By Orders dated 5 February 2007, the Supreme Court granted the NBV power of sale over Mr Bani's leasehold property.
7. In January 2011, the NBV transferred Mr Bani's leasehold property to a third party Philix Wartef.
8. In 2009, after being told that Mr Tevi had purchased 10 hectares of land at Jubilee Farm on Santo, Mr Bani asked Mr Tevi if he could live and garden on a portion of that land. Mr Tevi agreed and Mr Bani moved from Vila to Santo and started living at the Jubilee Farm land.
9. In 2020, Mr Bani left the Jubilee Farm property after Mr Tevi demanded that he vacate the land.
10. On 11 June 2021, Mr Bani filed the Claim.

C. Pleadings

11. Mr Bani's case is that in 2003, the market value of his leasehold property was VT3,500,000 and that he agreed that his property be the security for Mr Tevi's loan which loan would be used to buy 10 hectares of land at Jubilee Farm that would be shared equally between them.
12. It is also pleaded in the Claim that in or around February 2009, after the NBV had obtained its power of sale orders, Mr Tevi told Mr Bani that he had purchased 10 hectares of land at Jubilee Farm with the NBV loan monies and that the land would be shared equally between them. After that, Mr Bani requested and Mr Tevi agreed that Mr Bani could live and work on a portion of that land.
13. It is alleged by Mr Bani that Mr Tevi defrauded him of his leasehold property and unjustly enriched himself using the NBV loan monies as he has not fulfilled his promise to reimburse Mr Bani the value of his leasehold property which was seized under Court Order or share 50% of the Jubilee Farm land with him.
14. The Claim is opposed.
15. By the Defence filed on 21 July 2021, Mr Tevi denied any agreement with Mr Bani that the 10 hectares of land at Jubilee Farm would be shared equally with him, either at the time that Mr Bani agreed to his leasehold property being used as security for



Mr Tevi's loan or later when he was told about Mr Tevi's purchase of the Jubilee Farm land and then asked Mr Tevi and was permitted to live and garden there.

16. It was also alleged in the Defence that Mr Tevi asked Mr Bani to leave the Jubilee Farm land because he had been stealing Mr Tevi's kava plants. Further, that Mr Tevi offered to Mr Bani and his family to live at Mr Tevi's registered leasehold property at Prima area on Efate, that they verbally agreed that Mr Tevi's registered leasehold property at Prima area would be the exchange for Mr Bani's leasehold property, and that Mr Bani and his family have built a house at the Prima area property and continuously lived there since 2009 without any complaints. An order was sought that the Claim be struck out in its entirety.
17. By the Reply filed on 11 November 2021, Mr Bani alleged that there was never a written agreement that Mr Tevi would transfer the land at Prima to Mr Bani. Further, if Mr Tevi did have a lease at Prima, he failed to transfer it to Mr Bani. He repeated that Mr Tevi was unjustly enriched by benefitting from the use of Mr Bani's leasehold property but then failing to reimburse Mr Bani the value of the land or transferring other leasehold property to him. He denied that he stole Mr Tevi's kava plants and alleged that Mr Tevi never paid him for his services of clearing and occupying the Jubilee Farm land.

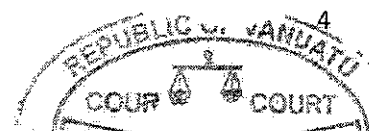
D. The Evidence

18. The standard of proof that Mr Bani was required to establish to succeed in his Claim was "on the balance of probabilities." That is, that his assertions were more likely than not to be correct. There was no onus on Mr Tevi to establish facts or his non-liability.
19. The evidence had to be analysed to ascertain what was accepted and what was not.
20. Each party relied on his own evidence; neither party called another witness. I assessed the credibility and accuracy of their evidence not only by how the witness appeared in Court but more significantly, by looking for consistency within their own account and also comparing that account with relevant exhibits. I also had regard to the inherent likelihood of the situation then prevailing.
21. I reminded myself that if I were to draw inferences, they could not be guesses or speculation but had to be logical conclusions drawn from other properly established facts.
22. I now set out my summary of the relevant evidence of each party, and my assessment of what weight should be given to that particular evidence.
23. Mr Bani relied on his Sworn statement filed on 12 October 2021 [Exhibit C1]. He deposed that in 2003, Mr Tevi approached him and demanded that he use Mr Bani's leasehold property title no. 03/OK94/063 as security for his VT3,455,000 loan from the NBV [copy of the lease attached as Annexure "SB1"]. He deposed that he



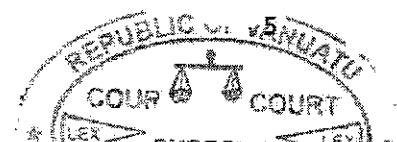
agreed on the condition that Mr Tevi would use the VT3,455,000 loan monies to purchase 10 hectares of land at Jubilee Farm on Santo that would be shared equally between them. Mr Tevi would repay the loan as he was employed. Their agreement was verbal.

24. Subsequently, Mr Bani, Mr Tevi and the NBV signed a Third Party Mortgage Agreement [**Annexure "SB2"**] and the NBV released the loan monies to Mr Tevi. However, in February 2007, Mr Tevi defaulted in his loan repayments. The NBV commenced Civil Case No. 40 of 2007 for power of sale orders. On 5 February 2009, the Supreme Court granted power of sale orders [**Annexure "SB3"**]. The NBV later transferred the lease to Philix Wartef.
25. In February 2009, Mr Tevi told him after the power of sale orders that he had purchased 10 hectares of land at Jubilee Farm with the loan monies which would be shared equally with him. As the lease seized by the NBV was the only land he had owned, he asked Mr Tevi to live and garden on a portion of the Jubilee Farm land. Mr Tevi agreed and he moved there. He lived there until February 2020 when Mr Tevi demanded that he vacate the land.
26. Mr Bani stated that Mr Tevi defrauded him by using and then losing his lease while Mr Tevi has been enriched at Mr Bani's expense. Mr Tevi told him that he would pay him the value of the lease lost or share 50% of the Jubilee Farm land with him but he has not done either.
27. There is also no written agreement between them as to the land at Prima area. Mr Tevi said that he would transfer that land to him (Mr Bani) but that assertion too was false as he has never done so.
28. Mr Bani also relied on his Sworn statement filed on 28 February 2022 [**Exhibit C2**]. He deposed that Mr Tevi lied that he had a good salary as he ended up defaulting on the loan. Also, Mr Tevi never advised him beforehand that he was undergoing financial difficulty. Mr Tevi meant to use his leasehold property for his personal financial gain and enriched himself without giving Mr Bani anything in exchange, including the Prima area property as initially discussed. He has ignored his promise for 20 years to transfer the Prima area property to Mr Bani, since 2004. If he had known that the Prima area property was registered in 4 people's name, he would have hesitated to make agreement with Mr Tevi but Mr Tevi told him that the land was in his sole name and he only found out the truth 20 years later.
29. He agreed that Mr Tevi said that he could live and garden on the Jubilee Farm land. However, the kava that he planted there would belong to him, not Mr Tevi. Further, that Mr Tevi never paid him for the cleaning and occupying of the Jubilee Farm land. He never agreed with Mr Tevi that his staying there was in consideration for the leasehold property seized by the NBV.
30. In cross-examination, Mr Bani agreed that in 2003, Mr Tevi and his brother Toney Tevi approached him and asked to use his leasehold property at Chapuis as security



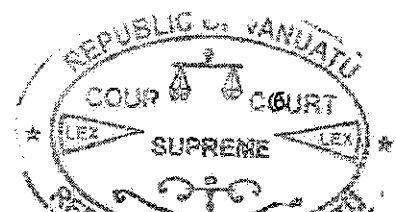
for a loan which Mr Tevi would use to buy some land "*blo yumi*" ('for us'). He told Mr Tevi that there was 6 years outstanding land rent to pay totalling VT36,000 which Mr Tevi paid. He agreed that after that, they signed the NBV loan agreement and then he requested and Mr Tevi agreed to him going to live on the land purchased at Jubilee Farm on Santo. He lived there from 2003 to 2020 and planted kava and food crops. He also planted vanilla but there was no market for it. He did not ask Mr Tevi which part of the land belonged to him (Mr Bani).

31. It was put to him that in 2007, Mr Tevi told him that the NBV seized his land but Mr Tevi would buy him other land on Santo. He replied that when they came out of Court, Mr Tevi told him not to worry because the value of the Chapuis land was low but the Jubilee Farm land value was much bigger.
32. He waited for 3 months without further word so then he went to Mr Tevi's house at Nambatu area and told Mr Tevi that he wanted (him) Mr Tevi to give him his Prima area property in place of his leasehold property that the NBV seized. He stated that Mr Tevi said yes. A week later, he again went to Mr Tevi's house and told him that his seized leasehold land was registered so he wanted Mr Tevi to register the Prima area property in his (Mr Bani's) name. Mr Tevi said yes. However, since 2007 to today, Mr Tevi has not given him any registered leasehold title.
33. Mr Bani stated that in 2014, his family moved to the Prima area property while he lived on Santo.
34. In 2019, Mr Tevi came to Santo and said in a meeting that the Jubilee Farm land lease title was registered in his (Mr Tevi's) name so his permission must be asked before harvesting any food from the land. That was when Mr Tevi started to chase him off the land. Then Mr Tevi and his sister Ruth apologised to him (Mr Bani) with a red mat. In 2020, Mr Tevi and 4 men came to the land, stole his dry kava, emptied the water tank and took it away, and Mr Tevi whose eyes were red told him twice to leave the land. That was when he (Mr Bani) left the land.
35. Mr Bani agreed that their agreement was that he get the Prima area property in exchange for his seized leasehold property except that Mr Tevi has never given him registered title to the Prima area property.
36. In re-examination, Mr Bani explained that in 2003, Mr Tevi said he would use the loan money to buy "*graon blo yumi*" ('land for us'), which is what he said rather than for him alone – if Mr Tevi had said for him alone, he (Mr Bani) probably would not have agreed to let Mr Tevi use his Chapuis land as security for the loan. He added that Mr Tevi is a son of his and he knows his character. Mr Tevi's brother Toney assaulted their sister Ruth for the land that Toney now lives on. So, if Mr Tevi had said the land was for him alone, he (Mr Bani) would not have allowed the use of his Chapuis land as security for Mr Tevi's loan.
37. Mr Bani's account remained unchanged in cross-examination. His evidence was that in 2003, he agreed to Mr Tevi's request to use his registered lease to secure

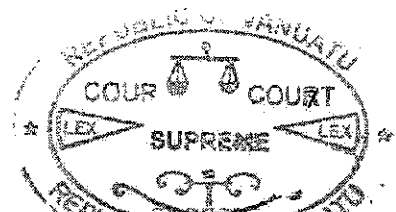


Mr Tevi's loan because Mr Tevi was going to use the loan monies to purchase Jubilee Farm land "*blo yumi*" ('for us') meaning for both of them. I consider that it is inherently unlikely that Mr Bani, or indeed anyone, would freely and voluntarily sign a mortgage agreement putting up his leasehold property as security for the loan, knowing that if the borrower defaulted on the loan, that the bank would seize his leasehold property. I consider that on the contrary, the inherent likelihood of the situation is that Mr Bani agreed to his registered lease being used as security for Mr Tevi's loan because Mr Tevi told him that he would use the VT3,455,000 loan monies to purchase 10 hectares of land at Jubilee Farm on Santo that would be for both of them.

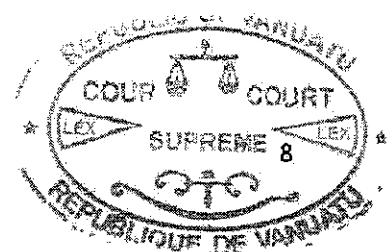
38. I also consider that Mr Bani's evidence had the ring of truth about it that he was shocked that Mr Tevi defaulted on the loan and the NBV seized his property but that Mr Tevi said to him then (in 2007) that the Jubilee Farm property was of higher value than his seized property.
39. I considered that Mr Bani was a reliable and accurate witness, and accept his evidence.
40. **Mr Tevi**, deposed in his Sworn statement filed on 8 December 2021 [**Exhibit D1**] that Mr Bani is his father's biological brother. He and his brother Toney Tevi at Toney's suggestion approached Mr Bani to ask that his leasehold property be used as security for Mr Tevi's loan. Mr Bani agreed without hesitation. Mr Bani fully understood that if there was a default in the loan repayment that he would lose his property yet he freely and voluntarily signed the mortgage agreement.
41. He deposed that Mr Bani fully understood that Mr Tevi took the loan to purchase the Jubilee Farm property and did not once raise a question about his share of the Jubilee Farm title.
42. He deposed that Mr Bani was under pressure from his family from being unemployed so Mr Bani asked if he could go and live on the Jubilee Farm land. Mr Tevi agreed and Mr Bani went. He told Mr Bani that he was free to plant food crops there from which to earn his living. He also constructed a hot-air dryer to support Mr Bani with his cash flow and Mr Bani enjoyed the proceeds from regular copra sales since 2003. Mr Tevi visited him regularly and sponsored other items including a water tank. After a couple of years, he was enjoying a good stream of cash flow from copra sales, farm animal sales, root crop sales and kava sales. All this Mr Tevi did as consideration to Mr Bani for supporting him with the security for his loan.
43. In 2003, suddenly his mother and two other dependants were forced to flee their normal residence and moved in with Mr Tevi which imposed an additional financial burden on him to look after them. In mid-2004 he was dismissed from his job and was unemployed for a while. He later got some small consultancy work but his income dropped significantly. Meanwhile the loan arrears increased.



44. In March 2007, Mr Bani came to Vila for the Court case. Prior to going to Court, he (Mr Tevi) discussed with Mr Bani his plan to purchase land on Santo to replace Mr Bani's land that was security for the loan. This would be in Mr Bani's interest also as he could earn a living from his farm produce at Jubilee Farm but "*will still not have lost his land since it would be replaced. He agreed to the deal*" [para. 58, **Exhibit D1**].
45. After the Court case, Mr Bani returned to Santo and continued making his living from the Jubilee Farm land. "*At the same time understanding that I will find a purchase of a new plot of land in Santo to replace his Sapi property which has been lost*" [para. 61, **Exhibit D1**].
46. Soon afterwards, Mr Bani called him from Santo to say that his (Mr Bani's) children would prefer that since they were all living in Port Vila, that the replacement land would be in Vila and not Santo. He explained to Mr Bani that there were 2 issues with the Prima area property, namely that the land title had not yet been transferred to him and that the land was in a flood risk area so it was unsafe for residence. Mr Bani insisted that he was okay with that so Mr Tevi agreed that they could start to use it whenever they were ready. Mr Bani was satisfied and returned to the Jubilee Farm land and used his earnings to support his family in Vila, including to build a 3 bedroom concrete apartment at the Prima area property.
47. When Mr Bani commenced the present proceedings, Mr Bani's nephew told Mr Tevi to evict Mr Bani and his family from the Prima area property. Mr Tevi refused and, "*told him I do not lie when I make a deal. The land at Prima is the replacement land for Sapi.*" The issue is that the Sapi land is jointly owned with 4 others who want the land subdivided into individual titles but the process is not easy with the new *Custom Land Management Act* and they are all frustrated with the delays encountered.
48. In 2019, he organised 3 relatives to reside at the Jubilee Farm land to plant kava for themselves and check Mr Tevi's own kava and plant more kava for him. They said that there was no kava there that belonged to Mr Tevi which shocked him that Mr Bani had stolen his kava.
49. He went to Santo and organised a meeting with everyone on the farm and told them that that the property belonged to him therefore from now on, all property on the land must be shared with him 50:50. A few weeks later, Mr Bani was caught again making unauthorised sales of kava. So, Mr Tevi's lawyer wrote a letter to Mr Bani dated 7 October 2019 which Police officers delivered to him. In 2020, Mr Bani's stealing continued so he asked him to leave the property. By that time, all the cattle, chicken and kava were gone from the property. Mr Bani left the land in 2020.
50. In cross-examination, Mr Tevi stated that when he worked for the Quarantine Department, he and 4 others jointly purchased the Prima area land hence the lease is in their names jointly, not in his name alone. Their agreement was that once they had fully paid the purchase price, then they would subdivide the land into individual leases. He explained that to Mr Bani.



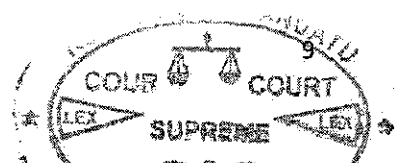
51. He stated that before they entered Court for the NBV's case, he offered to Mr Bani to buy another similar-value property for him at Santo. That was their agreement before entering Court and Mr Bani's lease was seized. The Prima area land was the result of the promise to buy another similar-value property for Mr Bani.
52. He stated that he does not remember how much the Prima area property cost as his salary was deducted towards the purchase price.
53. After they agreed that Mr Tevi would buy Mr Bani new land at Santo, then Mr Bani asked for the Prima area property instead. He said that he explained to Mr Bani that it was not in his sole name whereas if he bought a land on Santo, it would be in Mr Bani's sole name and also that the property was on the bank of the La Colle river so it had a high risk of flooding. Mr Bani said it was okay, that once Mr Tevi got the registered lease for the Prima area property then to transfer it to Mr Bani. So, Mr Bani started living and gardening at the Prima area land from 2007, built a big house there in 2014 and has lived there ever since. He stated that since Mr Bani has maintained the case in Court, he has not checked further as to the process to subdivide the Prima area property.
54. It was put to Mr Tevi that once subdivision was complete; he would transfer the Prima area property to Mr Bani? He answered, "*Hemia nao bae process complete*" meaning "That would be the completion of the process". He stated that Mr Bani's Chapuis land would have been of a value equivalent to the amount of the loan.
55. Mr Tevi was asked what their conversation was in 2003. He replied that it was to ask Mr Bani to help him secure his loan. It was put to him that he (Mr Tevi) told Mr Bani that the loan was to buy land "*blo yumi*" ('for us'). He replied that he did not want to mislead the Court but we in Vanuatu have custom and there is a way to talk to our family ("*Mi no wandem misleadim Kot ia. Be yumi lo Vanuatu I gat kastom. I gat way blo toktok lo family blo yumi.*")
56. Mr Tevi was asked if he used the words, "*blo yumi*" ('for us')? He answered that he never said, "*yumitu*" ('for us two'). He added that Mr Bani had finished work as Prime Minister Father Lini's driver and Mr Tevi had bought a bus "*blo mifala*" that Mr Bani drove, kept at his home and earned money from.
57. He agreed that initially he allowed Mr Bani to live on the Jubilee Farm land and to garden there. It was put to him that he then decided that Mr Bani must leave as the land was his alone. He replied that that was the important question in this case. He had no objection to Mr Bani living there but when he started to steal his kava, they had a meeting but Mr Bani continued to steal his kava so he was left with no choice but to tell Mr Bani to quit the land because that land was not for someone to live there and steal from it. He has previously lodged a Police complaint about Mr Bani's stealing (which he never heard back about) and can lodge another one.



58. He agreed that the Jubilee Farm property is registered in his (Mr Tevi's) name. He was asked the value of that 10 hectare property. He replied that he had not taken out a valuation of the property.
59. There was no re-examination.
60. Mr Tevi's evidence was not credible. It was specifically put to him that in 2003, he told Mr Bani that the loan was to buy land "blo yumi" ("for us"). He replied that he did not want to mislead the Court but we in Vanuatu have custom and there is a way to talk to our family ("*Mi no wandem misleadim Kot ia. Be yumi lo Vanuatu I gat kastom. I gat way blo toktok lo family blo yumi*"). I understood from Mr Tevi's answer that he spoke with his relative Mr Bani in such a way as to persuade Mr Bani to agree that his Chapuis property be used as loan security but that Mr Tevi was not being truthful that the land that he purchased with the loan monies would be for the both of them.
61. It was also specifically put to Mr Tevi that he used the words, "blo yumi" ("for us"). He answered that he never said, "yumitu" ("for us two"). I consider that it was more likely than not that Mr Tevi used the words, "blo yumi" but chose in Court to avoid directly answering the question put to him by saying instead that he never said, "yumitu" ("for us two") which was an entirely different word and meaning.
62. Mr Tevi's evasiveness further detracted from his credibility.
63. In Mr Tevi's own evidence, in March 2007, he offered to purchase land on Santo to replace Mr Bani's property which was seized, and then later agreed to transferring his Prima area property to Mr Bani. However, despite Mr Tevi's evidence to this effect, Mr Tevi has not made over any registered title to Mr Bani as promised.
64. For these reasons, I considered that Mr Tevi's evidence lacked credibility and that I could only rely on it where his account was consistent with Mr Bani's evidence. However, where Mr Tevi's evidence was not consistent with Mr Bani's account, I would prefer Mr Bani's version of events.

E. Discussion

65. To prove the Claim, Mr Bani must plead and prove the following (Bullen & Leake & Jacob's *Precedents of Pleadings* (17th ed., Sweet & Maxwell, 2011) at p. 941):
- a) There must be a representation of fact made by words or by conduct;
 - b) The representation must be made with knowledge that it is false i.e., it must be wilfully false or at least made in the absence of any genuine belief that it is true or recklessly i.e., without caring whether his representation is true or false (*Derry v Peek* [1889] 14 App. Cas. 337);
 - c) The representation must be made with the intention that it should be acted upon by the claimant, in the manner which resulted in damage to him;



- d) It must be proved that the claimant acted upon the false statements; and
- e) It must be proved that the claimant has sustained damage by so doing.

66. Applying those principles to Mr Bani's case:

- a) There must be a representation of fact made by words or by conduct –
 - (i) It was pleaded in para. 3 of the Claim that in 2003, Mr Tevi said that he would use the loan monies to purchase Jubilee Farm land that would be shared equally between them in consideration for using Mr Bani's Chapuis leasehold property to secure the loan, and that Mr Tevi would repay the loan.
 - (ii) Mr Bani proved this by **Exhibit C1** in which he deposed that in 2003, he agreed to his Chapuis area property being used as security for Mr Tevi's loan on the condition that Mr Tevi would use the VT3,455,000 loan monies to purchase 10 hectares of land at Jubilee Farm on Santo that would be shared equally between them, and that Mr Tevi would repay the loan as he was employed. He maintained that evidence in cross-examination, saying that Mr Tevi asked to use his leasehold property at Chapuis as security for a loan which Mr Tevi would use to buy some land "*blo yumi.*"
 - (iii) Mr Tevi was asked in cross-examination if in 2003, he told Mr Bani that the loan was to buy land "*blo yumi*" ('for us'). He replied that he did not want to mislead the Court but we in Vanuatu have custom and there is a way to talk to our family ("*Mi no wandem misleadim Kot ia. Be yumi lo Vanuatu I gat kastom. I gat way blo toktok lo family blo yumi.*"). In Mr Tevi's own evidence, therefore, in 2003 he spoke with his relative Mr Bani in such a way as to persuade him to agree that his Chapuis property be used as security but without genuine belief or intention on Mr Tevi's part that in return, the land purchased with the loan would be shared equally between them. I also consider that it can be inferred from that answer of Mr Tevi that he made the misrepresentation recklessly. That is, that without caring whether his representation was true or false.
 - (iv) It was also specifically asked of Mr Tevi if he used the words, "*blo yumi*" ('for us'). He answered that he never said, "*yumitu*" ('for us two'). In doing so, Mr Tevi side-stepped the question and I concluded that it was more likely than not that he had used the words, "*blo yumi*".
 - (v) Accordingly, I find it proved that in 2003, Mr Tevi made a representation by words to Mr Bani that in return for using Mr Bani's leasehold property as security for his loan, that he would use the loan monies to buy land at Jubilee Farm that would be shared equally between them, and that he (Mr Tevi) would make the loan repayments as he was employed.
- b) The representation must be made with knowledge that it is false i.e., it must be wilfully false or at least made in the absence of any genuine belief that it is true

or recklessly i.e., without caring whether his representation is true or false (*Derry v Peek* [1889] 14 App. Cas. 337) –

- (i) It was pleaded in para. 9 of the Claim that Mr Tevi's actions were deceitful and that he falsely represented to Mr Bani that Mr Tevi would pay Mr Bani the value of the property which was seized or that he would give 50% of his own leasehold property to Mr Bani.
 - (ii) As set out in the preceding paragraph (a), I have held (and therefore Mr Bani has proved) that in 2003, Mr Tevi made his representation to Mr Bani without genuine belief or intention on Mr Tevi's part that in return for using Mr Bani's leasehold property as his loan security, the land purchased with the loan monies would be shared equally between them. I also considered that it can be inferred from that answer of Mr Tevi that he made the representation recklessly. That is, that in making the representations, his primary concern was to get Mr Bani to agree to him (Mr Tevi) using Mr Bani's property as security for Mr Tevi's loan but Mr Tevi did not care whether his representation was true or false that he would share the purchased land equally between them.
- c) The representation must be made with the intention that it should be acted upon by the claimant, in the manner which resulted in damage to him –
- (i) This is pleaded in paras 3 and 4 of the Claim.
 - (ii) As set out above, Mr Bani has proved that Mr Tevi clearly intended that his representation would be acted upon by Mr Bani in that Mr Bani would agree that Mr Tevi could use his (Mr Bani's) leasehold property as security for his loan, Mr Bani agreed, they signed a third party mortgage agreement and subsequently this resulted in damage to Mr Bani when the NBV seized his property due to Mr Tevi defaulting on the loan.
- d) It must be proved that the claimant acted upon the false statements –
- (i) Mr Bani has proved that he acted upon the false statements by signing a third party mortgage with Mr Tevi and the NBV for his leasehold property at Chapuis to be the security for Mr Tevi's loan [**Annexure "SB2", Exhibit C1**].
- e) It must be proved that the claimant has sustained damage by so doing –
- (i) Mr Bani has proved that he sustained damage by so doing because following Mr Tevi's default on the loan, in 2009 the NBV seized his property under Supreme Court orders for seizure and sale [**Annexure "SB3", Exhibit C1**]. Later, in January 2011, the NBV transferred Mr Bani's leasehold property to Mr Philix Wartef [**Annexure "SB4", Exhibit C1**].

67. Accordingly, Mr Bani has proved his claim for fraudulent misrepresentation.

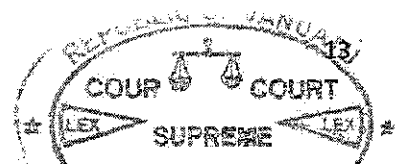
68. Mr Tevi also made other representations as alleged in the pleadings as follows:

- a) There must be a representation of fact made by words or by conduct –
- (i) It was pleaded in para. 6 of the Claim that in 2009, Mr Tevi said that he had purchased 10 hectares of land at Jubilee Farm on Santo and that the land (then unregistered lease title no. 04/2642/075) would be shared equally with Mr Bani.
 - (ii) In the Defence, Mr Tevi alleged that he offered to Mr Bani and his family to live at his (Mr Tevi's) property at Prima area, and that they verbally agreed that the Prima area property would be the exchange for Mr Bani's leasehold property that was seized.
 - (iii) It was further alleged in the Defence that Mr Tevi agreed to this and Mr Bani and his family have lived and built on the land since 2014 to now.
 - (iv) In the Reply, Mr Bani alleged that Mr Tevi has failed to transfer title to the Prima area property to him (therefore causing damage to Mr Bani).
 - (v) Mr Bani proved this by **Exhibit C1** in which he deposed that in February 2009, Mr Tevi told him after the power of sale orders that he had purchased 10 hectares of land at Jubilee Farm with the loan monies which would be shared equally with Mr Bani.
 - (vi) Mr Bani also deposed in **Exhibit C1** that Mr Tevi used his leasehold property to secure his loan "without giving Mr Bani anything in exchange, including the Prima area property as initially discussed". Further, that Mr Tevi has ignored his promise for 20 years to transfer the Prima area property to Mr Bani, since 2004. If he had known that the Prima area property was registered in 4 people's name, he would have hesitated to make agreement with Mr Tevi but Mr Tevi told him that the land was in his sole name and he only found out the truth 20 years later.
 - (vii) Mr Bani deposed in **Exhibit C2** that in 2007, he told Mr Tevi that his seized leasehold property was registered so he wanted Mr Tevi to register the Prima area property in Mr Bani's name, and Mr Tevi said yes.
 - (viii) Mr Tevi deposed in **Exhibit D1** that after the Court case, Mr Bani returned to Santo after they had agreed that Mr Bani would continue earning a living from the Jubilee Farm land but that Mr Tevi would purchase a new plot of land on Santo to replace his seized property. Further, that subsequently, Mr Bani told him that his children would prefer that the replacement land would be in Vila therefore they agreed on the Prima area property to be the exchange for the seized property.
 - (ix) I consider it proved therefore that in February 2009, Mr Tevi told Mr Bani that that he had purchased 10 hectares of land at Jubilee Farm with the loan monies which would be shared equally with Mr Bani, and that subsequently due to Mr Bani's children's preference, they agreed that Mr Tevi's Prima area property would be the replacement for the property

that the NBV seized. These were representations of fact made by words by Mr Tevi.

- b) The representation must be made with knowledge that it is false i.e., it must be wilfully false or at least made in the absence of any genuine belief that it is true or recklessly i.e., without caring whether his representation is true or false (*Derry v Peek* [1889] 14 App. Cas. 337) –
- (i) Given Mr Tevi's earlier misrepresentation made in 2003 which resulted in the damage suffered by Mr Bani, I consider that Mr Tevi's later representations were made recklessly in order to appease Mr Bani in the aftermath of the NBV seizing his property but he (Mr Tevi) did not care whether his representations were true or false.
- c) The representation must be made with the intention that it should be acted upon by the claimant, in the manner which resulted in damage to him –
- (i) I find as proved that Mr Tevi's representations were made with the intention that they should be acted upon by Mr Bani as following their agreement that the Prima area property would be the replacement for the property that the NBV seized, Mr Bani's children and family have lived on the Prima area property since 2009, built a big house there in 2014 and continue to live there.
- (ii) This has resulted in damage to Mr Bani as he and his family have spent on developments there but Mr Tevi has never given Mr Bani registered title over the property.
- (iii) I conclude therefore that Mr Tevi's representations were made with the intention that they should be acted upon by Mr Bani, in the manner which has resulted in damage to Mr Bani.
- d) It must be proved that the claimant acted upon the false statements –
- (i) I find as proved that following Mr Bani and Mr Tevi's agreement that Mr Tevi would transfer registered title over the Prima area property to Mr Bani as the replacement property for Mr Bani's seized leasehold property, Mr Bani's family moved onto the Prima area property, developed the land and continue to live there.
- (ii) Accordingly, it has been proved that Mr Bani acted upon the false statements.
- e) It must be proved that the claimant has sustained damage by so doing –
- (i) I find as proved that Mr Bani has sustained damage by so doing as contrary to the representation made, Mr Tevi has never given Mr Bani registered title over the Prima area property.

69. In the circumstances, Mr Bani has proved the Claim on the balance of probabilities.



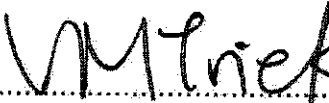
70. Judgment will be entered in Mr Bani's favour with damages and/or other relief to be determined as there is insufficient material before the Court to make the orders sought.
71. Mr Bani sought relief including an order that Mr Tevi transfer leasehold property to Mr Bani, or alternatively, an award of damages. However, there is no evidence as to the value or purchase price of either of Mr Tevi's leasehold properties (at Prima area and at Jubilee Farm) and whether or not they are unencumbered. I consider therefore that the State must be joined as a party so that the Director of Lands can assist the Court with the relevant information from the Land Leases Register, and thereafter the Court make its orders which the State can abide by.

F. Result and Decision

72. Judgment is entered **for the Claimant** with damages and/or other relief to be determined.
73. The Republic of Vanuatu is **joined** as a party, namely the "Second Defendant". Accordingly, the Defendant is **renamed** the "First Defendant". This will be reflected in further Orders.
74. The Second Defendant is to file and serve sworn statement of the Director of Lands disclosing all registered dealings in land in respect of leasehold title no. 04/2632/075 (the Jubilee Farm property) and in respect of leasehold title no. 12/0631/651 (the Prima area property) **by 4pm on 16 November 2023**.
75. This matter is listed for Conference at **1.25pm on 21 November 2023**.
76. Costs are to follow the event. The Defendant is to pay the Claimant's costs as agreed or as taxed by the Master and once set, paid within 28 days.

DATED at Lakatoro, Malekula this 16th day of October 2023

BY THE COURT


Justice Viran Molisa Trief

