

**IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU**
(Appellate Jurisdiction)

Civil Appeal Case No. 57 of 2016

BETWEEN: NOEL VARI
Appellant

AND: JULIANE VARISIPITI
First Respondent

AND: THE REPUBLIC OF VANUATU
Second Respondent

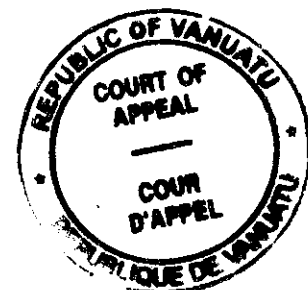
Before: *Hon. Chief Justice Vincent Lunabek*
Hon. Justice John von Doussa
Hon. Justice Ronald Young
Hon. Justice Oliver A. Saksak
Hon. Justice Dudley Aru
Hon. Justice Mary Sey
Hon. Justice David Chetwynd
Hon. Justice Paul Geoghegan

Counsel: *Mr Edward Nalyal for Appellant*
Mr Silas Hakwa for First Respondent
Mr Sammy Aron for Second Respondent

Date of Hearing: *7th April 2016 at 9am*
Date of Judgment: *15th April 2016 at 4pm*

JUDGMENT

1. The appeal involves an application for leave to appeal an interlocutory order of the Supreme Court. Leave is also required because the application was filed out of time (by almost 12 months).
2. The issue in the substantive proceedings is an argument between Mr Vari and Mrs Varisipiti as to who is entitled to lawful registration of a lease in their favour in respect to lease 04/2943/020. Prior to trial counsel for the parties had identified a discrete legal issue



which they asked the Supreme Court to answer pre-trial. The issue identified by the parties was:

“whether the asserted Agreement to lease survived the death of the leasee, Michael Varisipiti”.

The Supreme Court agreed to hear and rule on this preliminary question. After hearing submissions the Court gave a judgment which favoured Mrs Varisipiti. Subsequent to the judgment Mrs Varisipiti sought Summary Judgment from the Supreme Court. That application has been heard but judgment has not yet been delivered.

3. Mr Vari now wishes to appeal the preliminary point judgment. The proposed appeal by Mr Vari to this Court however raises a different question than that answered by the Supreme Court. Counsel for Mr Vari said he hoped this Court could give a ruling as the issue he raised has *“an important question of law”*.

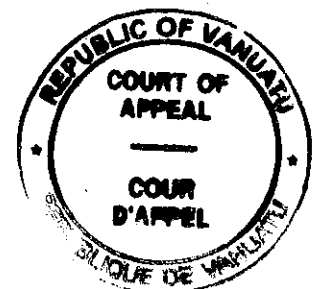
4. The question proposed to be answered is:

“Whether or not the Court below was correct in that judgment in holding the agreement to lease in question has a lease despite the Land Leases Act defining a lease as.....”

5. At the hearing before this Court counsel for Mr Vari accepted that this question did not arise from any considered issue before the Supreme Court. Given that acceptance there is no valid appeal before this Court. We therefore refuse leave to appeal.

6. We advised all counsel that they should ensure, before the Supreme Court gives judgment on the application for summary judgment that all relevant issues identified by the parties are before the Supreme Court Judge.

7. Finally, this case illustrates once again the dangers of inviting the Supreme Court to consider preliminary points before a full trial of all issues. Such an approach rarely saves time and



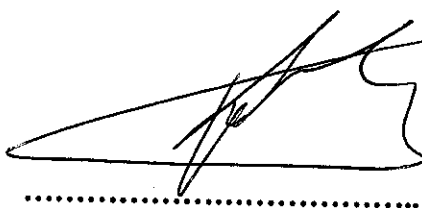
expense. In this case the far better course would have been one trial on the merits raising all relevant issues.

Result

Leave to appeal is refused. The applicants will pay costs to the First Respondent of VT50,000 and to the Second Respondent of VT50,000 together with disbursements as fixed by the Registrar.

DATED at Port Vila this 15th day of April, 2016.

BY THE COURT



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HON. CHIEF JUSTICE

Vincent Lunabek

