**IN THE EFATE ISLAND COURT OF THE REPUBLIC OF VANUATU HELD AT PORT VILA**

**CIVIL CASE NO: 21/1917**

**BETWEEN:** **DENNY MELTEVIRSE**
Applicant

**AND:** **THENSIAL TALES HULNAIM**

Respondent

***Date of hearing:*** *7 July 2021 at 9:00 am*

***Before:*** *Magistrate K. Harrison Nimbwen*

***In Attendance:*** *Applicant appear in person*
*Respondent appear in person*

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## RULING ON THE APPLICATION FOR REVIEW

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Introduction

1. This is a ruling in relation to an application filed herein by the applicant seeking the indulgence of the Court to review the Efate Island Court's decision of 22 April 2021.

2. In that judgement, the Efate Island Court have granted in favour the respondent's claim and ordered the applicant to compensate 5 pieces of iron roof sheets he retained knowingly those belongs to the respondent.

3. Nevertheless, the Applicant was dissatisfied with the decision of the Efate Island Court of 22 April 2021 and applied in pursuant to section 21 of the Island Court Act [CAP 167] for the Supervising Magistrate of the Efate Island Court to review the decision of 22 April 2021 to the following grounds:

> (a) That there is an existing agreement made between the parties and that the respondent and his family temporarily resides with the applicant for 3 months.
>
> (b) That there is an agreement that the respondent will pay the sum of VT150, 000 after when him and his family have completed a court case for the respondent's late brother a Nick as a token of payment for occupying his house during that period.

(c) that there is an agreement for occupying a new constructed semi building with two rooms built by the respondent and that the respondent will pay a monthly rental of VT10,000.

4. Upon those grounds above, that the Applicant refused to compensate the 5 pieces of iron roof that belongs to the respondent and the matter was subject to review before reaching the enforcement stage.

5. The applicant alleged that the respondent had breached his obligation in the agreement and so he is not entitled to that 5 pieces of iron roof to which the respondent pay and contributed to the constructed semi building.

6. It is the duty of the Court to ascertain whether there is a genuine agreement entered between the parties and if so, whether there is a breach of that said agreement.

**Facts**

7. The factual scenario presented in the first hearing at the Efate Island Court recorded that the claimant who is the respondent in this matter alleged that the defendant had seized five pieces of iron roof sheets 5 meter 85 centimetre each that belongs to him.

8. The respondent who is the applicant in this matter refused to release them back to the respondent.

9. The Applicant alleged that there is an agreement entered between them. The applicant referred to a copy of a letter issued by the Public Solicitor's office dated 26 November 2019 asking the respondent to vacate his property. In review hearing, the Court heard that it was because of that letter that the respondent and his family have vacated the applicant's property.

10. The content of the letter directed to the respondent specifically mentioned that there is an agreement entered between the parties sometimes on August 2018. The agreement was that the applicant allowed the respondent and his family to occupy the applicant's house from August 2018 till November 2018 and the respondent promised to pay the applicant the sum of VT150, 000 for that period.

11. The letter further mentioned that the respondent though occupying the applicant's house still failed to fulfil his obligation. As a result of failure to perform, sometimes in April 2019, a new agreement has entered for the respondent to pay monthly rental to the applicant. However, the respondent still unable to meet the monthly rental.

12. However, the respondent in response argued that there is no agreement as alleged by the applicant. He further alleged that the applicant has asked them to leave his premises which they did on 1 December 2019.

13. The respondent commented that if he had known that he would have lived inside the applicants yard for 3 months, he would not help to construct a house to which he claimed to be the applicant's based on their negotiation.

**Analysis**

14. The Court found out that in the first hearing the respondent did not mentioned that there is an agreement made between them. The Court also found out there the respondent have not mentioned the sum of VT150,000 in the first hearing but responded in review that the sum of VT150,000 is due if only they succeeded in the case of his late brother's Nick entitlements in the Supreme Court.

15. Based on the first hearing, the Court observed that the actions of the parties reflects consensus ad idem meaning meeting of the minds of the parties that an agreement has been formed when the respondent accepted to build and reside within the premises of the applicant.

16. First, the agreement of the sum of VT150, 000 which was raised in review was an agreement whereby the respondent did not raised in the first hearing. There is sufficient evidence that the agreement of VT150,000 is for the respondent occupancy in the premises of the applicant.

17. The Court also found in review that the 5 pieces of iron roofing sheets were purchased by the respondent on the condition to build a semi constructed building within the vicinity of the applicant to accommodate his family while waiting for the outcome of the case that is relating to the entitlements of his late brother Nick.

18. The Court also found out that the respondent have not perform his obligation to settle the sum of VT150. 000. As a result the applicant humbly requested the responded to pay monthly rental in the sum of VT10.000 until completing the VT150.000 but to no avail.

19. The Applicant has proven his case on the balance of probabilities that there is an existing unwritten contract that closely deemed as "implied contract" because the actions of the parties impliedly justified that there is an agreement.

20. The Court observed that the obligation that derives from the actions, conduct, or circumstances of the parties in the agreement existed and is legally binding even though it is not written but verbal confirmation is necessary.

21. The Court also observed that there is consensus ad idem in the formation of that contract. Consensus ad idem means the 'meeting of the minds'. The parties to the unwritten agreement must be ad idem on all the terms of the agreement". That simply means the parties to some extent have negotiated the occupancy of the applicant's premises that is impliedly obvious from the actions and conduct of the parties.

22. So, when the respondent have agreed to build the house with the condition of his contribution on his part to the terms of purchasing the five iron roof sheets towards the building, and to be living with the applicant, already that signifies that he impliedly responded to an offer, accepted to perform his obligation in relation to the terms of that agreement.

23. The Court also identified that the respondent failed to perform to the terms of the agreement in particular the payment of the sum of VT150, 000 and the monthly rental payment in the sum of VT10, 000.

24. When there is a breach of an unwritten contract, the Court of Appeal in the case of *Vanuatu Copra and Cocoa Exporters (VCCE) Ltd v Vanuatu Coconut Product Ltd (VCPL) [2011] VUCA 29; Civil Appeal 17 of 2011 (22 November 2011)* applied the basic rule governing the law of remoteness of damage in contract was stated by Alderson B in *Hadley v. Baxendale [1854] EWHC J70; [1854] 156 ER 145 at 151*:

> *"Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such* ***breach of contract*** *should be such as may fairly and reasonably be considered either arising naturally, ie, according to the usual course of things, from such* ***breach of contract*** *itself,* ***OR such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it.****"*

**Outcome**

25. The Court found out that the Efate Island Court was erred in law to award the compensation in favour of the respondent and not considering the essential elements of the formation of an unwritten contract that entered by the parties whereby the applicant has proven in the review process.

24. The Court also found out that the respondent has misrepresented to the Court in first hearing that there is no agreement. However, his behaviour in respond to the negotiation between them raised in review signifies that there is an implied contract whereby the respondent denied admittance.

27. The Court quashed the Efate Island Court decision of 22 April 2021 and ordered that the respondent is not entitled to the five iron roof sheets he claimed due to his non-performance to the consideration of the contract by which he entered with the applicant.

28. This Court is satisfied that the five iron roof sheets are part of compensation towards the damages the respondent caused and treated as full settlement of his debt to the applicant.

**DATED at Port Vila this 20th day of June 2022.**

**BY THE COURT**

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**Magistrate K.H. NIMBWEN**
**Supervising Magistrate of the Efate Island Court**

Republic of Vanuatu EFATE ISLAND COURT