

judgment appealed from. A stay of execution can only be granted if there are good reasons for doing so. One of such reasons is that if a stay is not granted the Appellants' rights of appeal would be rendered nugatory.

Is the present case, such a case? A stay will not be granted save in very exceptional circumstances such as where execution of the judgment will destroy the subject matter of the action or deprive the appellants of the means of prosecuting the appeal. In this case, if the First and Second Appellants file a notice of appeal and if successful, they could re-enter the land, the subject matter of this action.

There is no evidence of any detriment shown in the sworn statement of Mr Gilles Daniel. The land the subject of this proceeding was transferred and registered jointly in the names of the Claimants on 27 November 2008. It was unlawfully sold and transferred by the Sheriff of the Supreme Court on 8 May 2009. It was again registered in the Claimants' names by the Director of Lands on 14 October 2009.

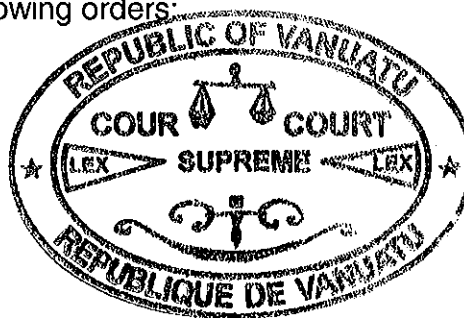
The Respondents (Claimants) are entitled to enjoy the fruits of their Judgment while the Defendants have a right to appeal the Judgment if they wish. However, the appeal (if any) is not going to be rendered nugatory as the subject-matter land will still be there and the Defendants, if successful in their appeal, could always re-enter the land.

Finally, the Court is informed by Mr Blake, counsel for the Respondents (Claimants) that the Applicants (Defendants) have settled and compromised by a payment, the claim to damages arising from their unlawful occupation.

This is also confirmed by the Notice of Discontinuance (of Damages Claim) filed 17 April 2010 by Mr Blake on behalf of the Claimants (Respondents here) that they have discontinued their claim for damages against the First Defendant, Mr Gilles Daniel and the Second Defendant, Mr Patrice Riviere.

It is difficult to see how a right of appeal can be maintained when the First and Second Defendants have acknowledged their liability to damages.

For the reasons set out above, there is no need for leave to appeal and this is not such a case warranting for a stay. I make the following orders:



ORDERS

1. There is no need for leave to appeal. The Summary Judgment of 5 August 2010 is a final Judgment but not an interlocutory one.
2. Stay is refused.
3. The Respondents (Claimants) are entitled to their costs assessed at Vatu 80,000 against the First and Second Applicants (Defendants). Such costs of VT80,000 shall be paid by the Applicants (Defendants) within 21 days from today's date i.e. by Monday 27 September 2010.

DATED at Port-Vila this 6th day of September 2010

BY THE COURT

**Vincent LUNABEK
Chief Justice**

