

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

**Civil  
Case No. 17/2604 SC/CIVL**

**BETWEEN: Amon Sese**  
*Claimant*

**AND: Willie Wanemut and Edna Wanemut**  
*Defendants*

**Coram:** *Justice Aru*  
**Counsel:** *Mr. J. Ngwele for the Claimant*  
*Mr. L. Napuati for the Defendants (no-appearance)*

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**JUDGMENT**

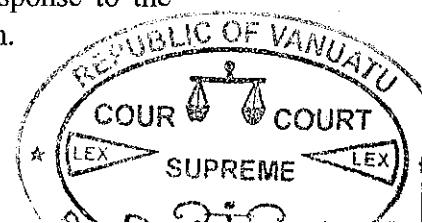
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**Introduction**

1. This is an application for summary judgment.

**Background**

2. On 17 June 2011 the claimant and the defendants entered into an agreement for the defendants to sell a plot of their land to him for a sum of VT 750,000. The land is located at Erakor village, South Efate. The terms of the agreement are all verbal. Subsequently the defendants terminated the agreement alleging that the claimant failed to honour the agreed terms. As a result the contract was terminated and the land was sold to another person.
3. The claimant filed a claim on 19 September 2017 seeking a refund of monies paid and damages for loss of business opportunity and general damages.
4. On 11 October 2017 the defendants filed a defence to the claim. Mr and Mrs Wanemut also filed their sworn statements in support of the defence on 20 November 2018.
5. On 22 April 2020 the claimant filed an application seeking summary judgment relying on his own sworn statement which was filed in support of the claim.
6. On 24 April 2020 the defendants were given 14 days to file a response to the application and the hearing was set down for 11 June 2020 at 2.00 pm.



7. At the date of hearing, the defendants did not file a response and there was no appearance either from the defendants in person or from Mr Napuati.

### **Application**

8. Under the Civil Procedure Rules, rule 9.6 (1), (7), (8), and (9) provides:-

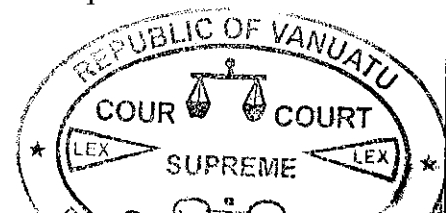
**“ 9.6 Summary judgment**

- (1) *This rule applies where the defendant has filed a defence but the claimant believes that the defendant does not have any real prospect of defending the claimant's claim.*  
....
- (7) *If the court is satisfied that:*
- (a) *the defendant has no real prospect of defending the claimant's claim or part of the claim; and*
  - (b) *there is no need for a trial of the claim or that part of the claim, the court may:*
  - (c) *give judgment for the claimant for the claim or part of the claim; and*
  - (d) *make any other orders the court thinks appropriate.*
- (8) *If the court refuses to give summary judgment, it may order the defendant to give security for costs within the time stated in the order.*
- (9) *The court must not give judgment against a defendant under this rule if it is satisfied that there is a dispute between the parties about a substantial question of fact, or a difficult question of law. ”*

9. If I am satisfied that the defendant has no real prospects of defending the claim and there is no need for a trial I may enter judgment for the claimant. I also note that I cannot give judgment against a defendant if I am satisfied that there is a dispute between the parties about a substantial question of fact.

### **Discussion**

10. Mr Ngwele submits that the defendants have not filed any response to the application for summary judgment as directed. The claim was filed as a result of a breach of contract to purchase land. It was submitted that the terms of the agreement were all verbal and nothing was written. The parties agreed that the purchase price was VT 750,000 and a reasonable sum should be paid as a deposit. On 17 June 2011 the claimant paid VT400, 000. On 3 April 2012 a sum of VT 100,000 was paid and

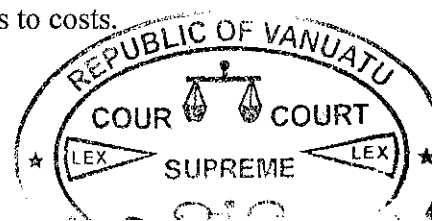


on the 15 January 2013 a further sum of VT 50,000 was paid making a total of VT 550,000.

11. After the payment was made the claimant went to inspect the land only to find that someone else had cleared it. He then sought a refund from the defendants of the total he paid. That is where the dispute arises.
12. The defendants agree and admit that they received the sum of VT 550,000 which was paid in instalments by the claimant as per receipts annexed as 'AS1', 'AS2' and 'AS3' to the claimant's sworn statement. Their evidence is that the agreement was for a period of 12 months which started to run from 17 June 2011 when the first deposit of VT 400,000 was made. Within that time frame, they allege it was agreed that the full balance of the purchase price had to be completed. Failure to do so will entitle the defendants to cancel the agreement and forfeit any deposit paid to them.
13. Both defendants say in their evidence that after the 12 months period lapsed, the purchase price was not completed and the claimant sought a further 12 months extension. The last payment of VT 50,000 was paid after the agreement was extended.
14. At paragraph 10 of the defence the defendants plead that after 17 June 2013 the claimant still had arrears of VT 200,000. After that date the defendants informed the claimant that his deposits were forfeited and that they have decided to sell the land to another purchaser who paid the full purchase price for the plot.
15. At paragraph 11 of their defence, the defendants say that they did not breach their agreement with the claimant.
16. In view of the fact that the agreement was verbal, there seems to be in my view a substantial dispute of fact about the actual term of the agreement: whether it was agreed that the full purchase price must be completed within 12 months if not any deposit will be forfeited. The claimant disputes that a 12 month period was agreed as alleged.
17. Considering the above, I am satisfied that there is a dispute between the parties about a substantial question of fact being the term of the agreement and forfeiture of any deposit made if there is non-compliance.

## Result

18. The application for summary judgment must be refused. On the question whether I should order payment of security for costs, I reserve the exercise of my discretion as no submissions were made by the claimant on that point and the defendants were also not present or represented at the hearing. I also make no order as to costs.



19. This matter is now relisted for Pre-trial conference at 8.30 am on 25 August 2020.

**DATED at Port Vila this 7<sup>th</sup> day of August, 2020**

**BY THE COURT**

.....  
**Dudley Amu**  
**Judge**

