

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

**Civil
Case No. 19/108 SC/CIVL**

**BETWEEN: Bernard Itai Lauto
Claimant**

**AND: Dinh VanTu
Defendant**

Coram: Justice Aru
Counsel: Mr. J. Tari for the Claimant
Mr. D. Yawha for the Defendant

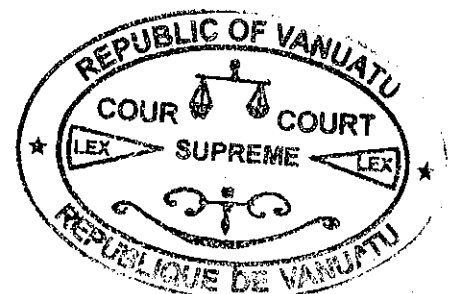
JUDGMENT

Introduction

1. This is a claim for monies owed under contract to carry out quarry activities and annual land rents.

Background

2. The parties were involved in a number of proceedings. This is the second of two. The first is CC22 of 2013 *Bernard Itai Lauto v Mangroves Ltd & ors*. Mr Dinh Van Tu has a controlling interest in the first and second defendants which are local companies namely Mangroves Ltd and Kwila Ltd. In defending the claim they filed a defence and counterclaim. They also applied to have the matter struck out. I heard the application and on 15 March 2017 the claim was struck out. The reasons were given on 20 March 2017. Part of the strike out orders directed that the defendants' counter claim continues. On 26 February 2020 the counterclaim was also struck for failure by the first and second defendants to take steps to progress the counterclaim.
3. Both the claim and counterclaim have been struck out in CC22 of 2013.
4. This current proceeding was filed by Bernard Itai Lauto against Mr Dinh Vanh Tu himself.



Pleadings

5. The claimant claims monies owed under an Agreement which he alleges was signed with the defendant on 25 February 2010 to allow the defendant to conduct quarry activities on his land for a period of 10 years namely 25 February 2010 to 25 February 2020 for a fee of VT 90,000 per month. He alleges that the defendant has not paid a single vatu to him since the signing of the agreement.
6. The second part of the claim is a claim for non-payment of annual rent on 15 leases registered to the defendant as lessee.
7. The relief sought is VT9, 720,000 from February 2019 and continuing until February 2020 being for quarry fees and annual land rents in the sum of VT 4,120,000 with interest.
8. The defendant says that the agreement for quarry fees was subject to a quarry permit granted to him. He says a quarry permit was only granted in March 2010 and expired in 2011. It was then reissued in 2016, 2017 and 2018 with a total value of VT 4,320,000 but he has made advances to the defendant from 2005 to 2013 totalling VT25,836 787. The defendant says the matter is res judicata and should be dismissed.

Evidence

9. In support of the claim, the claimant relies on his sworn statement filed on 29 January 2019. In response the defendant also filed a sworn statement on 4 April 2019.

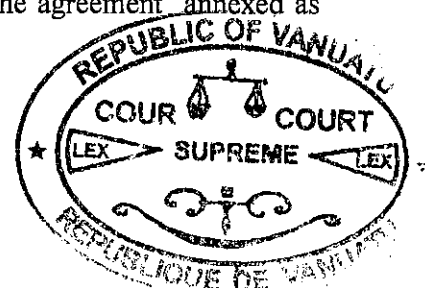
Submissions

10. On 9 October 2020 the parties agreed that the matter be dealt with on the papers. The claimant was allowed time to file his written submissions by 12 October 2020 which were filed on the same date.
11. The defendant was given until 16 October 2020 to respond. To date he has not filed any submissions in response despite reminders from the registry.

Discussions

Fees to conduct quarry

12. The basis for the claim for monies owing is a contract the parties signed on 25 February 2010. The defendant does not dispute this. The terms of the agreement annexed as "BL2" to the claimant's sworn statement is as follows:



25.2.10

Agreement between: 1st Party: Bernard Lauto
2nd Party: Ent. Dinh Van Tu

This is a common agreement between both parties and for the quarry extraction on Lease Title No 12/0914/027 at Erakor.

The lessor of the land Bernard Lauto agrees for this quarry extraction for a monthly payment of VT 90,000 and gives exclusivity on this site to the second party Ent. Dinh Van Tu.

Enterprise Dinh Van Tu is willing to pay VT 90,000 (Ninety Thousand Vatu) to Mr Bernard Lauto every month.

This contract is agreed to be valid for 10 years and renewable if wished by both parties.

1st Party Bernard Lauto

(sign)

2nd Party Ent. Dinh Van Tu

(sign) ”

13. Lease title 12/0914/027 was registered to the defendant on 19 October 2005 with the claimant as lessor. In exchange for allowing the defendant to conduct a quarry on the lease the parties agreed that the defendant will pay the claimant a sum VT 90,000 per month for the full term of the agreement which is 10 years.

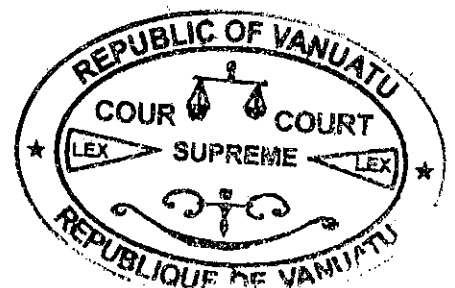
14. The Mines and Minerals Act [CAP 190] require all persons involved in the quarry business to have a quarry permit. No quarry activity can be undertaken without a quarry permit. The defendant's evidence is he was only granted a quarry permit in March 2010 which expired in 2011. He was again issued a quarry permit in 2016, 2017 and 2018.

15. At paragraph 16 of his sworn statement the defendant says:-

“since 2005 the claimant has been advancing cash from my business almost every day and we had agreed that his advances would be offset against any payment due to him either for purchase of his land or annual land rent or quarry royalties as is the case in our agreement .”

16. At annexure “DVT5” of his sworn statement the defendant annexes a record of the monies advanced to Mr Lauto from 4 December 2005 to 4 February 2013. The total advances was VT 25,836,787 broken down as follows:

- Year 2005 - VT25,000
- Year 2006 - VT1,546,842



- Year 2007 - VT 3,185,365
- Year 2008 - VT 2,805,399
- Year 2009 - VT 3,752,017
- Year 2010 - VT 9,125,504
- Year 2011 - VT2,969,906
- Year 2012 - VT2,123,492
- Year 2013 - VT303,262

17. The defendant does not dispute that he received this monies in advance as asserted by the claimant above. The advances were to be set off against any monies owing for land rent and quarry royalty as agreed.

Annual land rent

18. Aside from lease title No 12/0912/027 which is registered to the defendant in person the rest of the leases listed are either registered to Mangroves Ltd or Kwila Ltd. They are the only parties who can be sued for breaching conditions of their lease. And this is what the claimant did in CC 22 of 2013 which was struck out. That decision was not appealed. Even if the claimant could proceed with the claim for outstanding annual rent against the defendant he does not dispute the claimant's evidence that he received monies in advance from the claimant which was agreed to offset any monies owing in respect of land rents or quarry fees.

Result

19. The claim is therefore dismissed and the defendant is entitled to costs to be agreed or taxed by the Master

DATED at Port Vila this 23/day of August, 2021

BY THE COURT

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 D. Aru
 Judge

