

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

Civil  
Case No. 22/2139 SC/CIVL

**BETWEEN: BRED (Vanuatu) Limited**  
Applicant

**AND: Gordon Arnhambat**  
Respondent

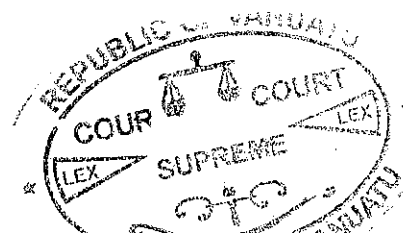
Date: 3 June 2024  
Before: Justice V.M. Trief  
Counsel: Applicant – Ms S. Mahuk  
Respondent – in person  
Copy to: Sheriff of the Supreme Court

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**DECISION AS TO RESPONDENT'S URGENT APPLICATION TO SUSPEND  
MORTGAGEE SALE ORDER OF 12<sup>TH</sup> APRIL 2023**

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1. The Sheriff is requested to serve this decision on the Respondent Gordon Arnhambat and file proof of service **by 4pm on 17 June 2024.**
2. On 18 April 2024, Mr Arnhambat filed Urgent Application to Suspend Mortgagee Sale Order of 12<sup>th</sup> April 2023 (the 'Application') and Sworn statement of Gordon Arnhambat in support. On 23 April 2024, the Sworn statement of Waven ARnhambat was also filed in support.
3. The Application is made on the following grounds:
  - a) That the Respondent's son Waven Arnhambat has convinced the National Bank of Vanuatu ('NBV') to refinance and pay off the outstanding mortgage with the Applicant BRED (Vanuatu) Limited (the 'BRED Bank');

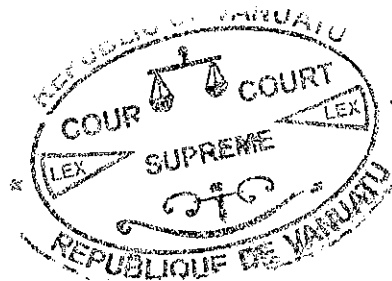


- b) That on 10 April 2024, NBV officer Laisa Soro requested BRED Bank officer Elizabeth David to forward Mr Arnhambat's outstanding loan balance for the NBV to refinance; and
  - c) Waven Arnhambat is a permanent public servant with the capacity to procure a loan from the NBV to refinance his father's outstanding loan with the BRED Bank.
4. The Application is opposed: Objection to the Application filed on 22 April 2024 and Applicant's Submissions in Support of Objections filed on 15 May 2024.
5. Applicant's counsel Ms Mahuk submitted that the Court of Appeal has upheld the 12 April 2023 mortgagee sale orders therefore only the Court of Appeal can suspend its own orders, not the Supreme Court. In addition, only the Court of Appeal can determine whether or not to accept fresh evidence (the contents of the supporting sworn statements). Finally, that Mr Arnhambat's raising of refinancing as a ground has already been raised previously and rejected in both the Supreme Court and Court of Appeal.
6. Both sworn statements in support attach a copy of Ms Soro's email dated 10 April 2024 to Ms David [Annexures "GA2" and "WA1"]. She stated as follows in the email:

*I am emailing you to confirm that I am on the process of submitting a request for Waven Arnhambath to refinance his father's loan Gordon Arnhambath. I would appreciate if you could forward me his outstanding loan balance.*

*Await your confirmation.*

7. Contrary to the ground of the Application that Waven Arnhambat has convinced the NBV to refinance his father's outstanding loan with the BRED Bank, that email does not contain any statement to that effect. It is to the effect that NBV officer Ms Soro is in the process of submitting a request for Waven Arnhambat to refinance his father's loan. There is no merit to this ground of the Application.
8. The next ground of the Application is that the NBV officer has requested the BRED Bank officer to forward the loan balance. That is not relevant to any consideration of suspension of a mortgagee sale. That ground is devoid of merit.
9. Whether or not Waven Arnhambat is a permanent public servant with capacity to obtain a loan is also irrelevant. That ground also is devoid of merit.
10. Ms Mahuk is correct that Mr Arnhambat has previously raised refinancing in both the Supreme Court and the Court of Appeal: see the Court of Appeal's judgment in *Arnhambat v BRED (Vanuatu) Limited* [2023] VUCA 33 at [5] and [6]:



5. *In summary, the grounds of appeal complain that the Appellant needed to be allowed a more extended period to clear the arrears through his chosen methods. He was to sell assets, encourage his son to refinance the loan when confirmed in his new employment, clear off the arrears, and rely on the twenty-year term of the mortgage he maintained should still be available to him.*
6. *In his oral submissions to this Court, he confirmed that the bank had done nothing wrong and agreed that he had not made payments as required, having been made unemployed some years ago. His son, who was present in Court, had recently been confirmed in his employment and was seeking finance to take over the loan with another bank. That process was, he explained, nearing completion. All he desired was further time to complete the process.*

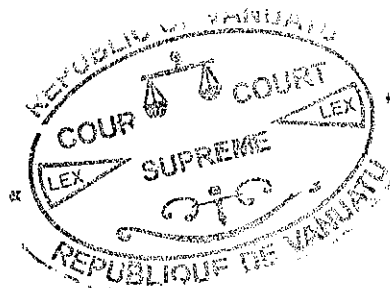
*(my emphasis)*

11. The Court of Appeal held at [9] and [10] of its decision that once a Notice of Demand had been served under the terms of the Home Loan facility, that there was no provision for further time to be given by the Court:

9. *Once the Notice of Demand had been served under the terms of the Home Loan facility, the whole outstanding balance became due, and the 20-year loan period ceased to have any effect. This is provided in Clause 8, First Schedule of the mortgage deed dated 26 August 2011, on page 27 of the Appeal Book B.*
10. *That Clause 8 provision, a term of the contract which the Appellant entered into with the Respondent Bank, gives this Court no option but to dismiss the appeal. It makes no provision for further time to be given and does not permit this Court to grant such further time. The Appellant has been more than fortunate to have extended time as far as it has.*

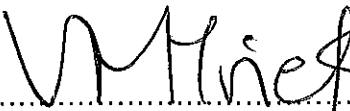
*(my emphasis)*

12. The Court of Appeal held at [9] of its decision that the contract between Mr Arnhambat and the BRED Bank provided that once a Notice of Demand had been served under the terms of their contract, the whole outstanding balance of the loan became due. It held at [10] of its decision that the contract made no provision for further time to be given and that it did not permit that Court to grant further time for Mr Arnhambat to explore his options including refinancing.
13. I adopt the above reasoning of the Court of Appeal. There was no provision for that Court to grant further time for Mr Arnhambat to explore his options including refinancing, and for the same reasons, there is no provision for this Court (the Supreme Court) either to grant him further time.
14. For the reasons given, the Respondent's Urgent Application to Suspend Mortgagee Sale Order of 12<sup>th</sup> April 2023, filed on 18 April 2024, is **declined and dismissed**.



15. Costs must follow the event. The Respondent is to pay the Applicant's costs of the Application as agreed or taxed by the Master. Once settled, the costs are to be paid within 28 days.

**DATED at Port Vila this 3<sup>rd</sup> day of June 2024  
BY THE COURT**

  
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Justice V.M. Trief

