

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

**Civil**  
**Case No. 22/3036 SC/CIVL**

**BETWEEN: Harry Tele Rambay trading as Rambay  
& Associates**  
Claimant

**AND: Chief David Alikau and Chief Kartakau  
Mara'ata representing Tasiriki  
Community of Tasiriki Village, Moso  
Island**  
First Defendants

**AND: Kami Kalsef representing Tasiriki  
Council of Chiefs of Tasiriki Village,  
Moso Island**  
Second Defendant

*Date of Trial:* 17 September 2024  
*Before:* Justice V.M. Trief  
*In Attendance:* Claimant – no appearance (Mr P. Fiuka)  
First Defendants – Mr N. Morrison  
Second Defendant – in person  
*Date of Decision:* 19 September 2024

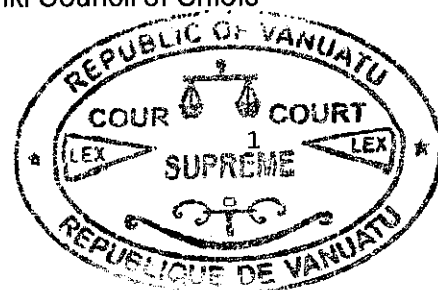
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**JUDGMENT**

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**A. Introduction**

1. By the Claim, the Claimant Harry Tele Rambay trading as Rambay & Associates sued the First Defendants Chief David Alikau and Chief Kartakau Mara'ata representing the Tasiriki Community of Tasiriki Village, Moso Island at North West Efate and the Second Defendant Kami Kalsef representing Tasiriki Council of Chiefs

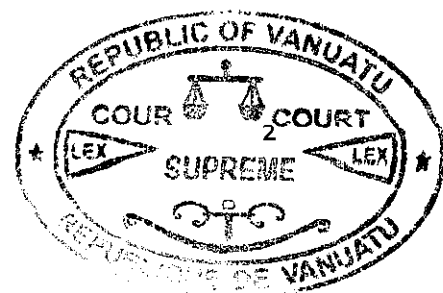


of the same village for refund of moneys paid on their behalf to Michael Leiper and Wendy Moss (the 'Purchasers') in respect of a failed land transaction over the sale and purchase of leases 12/0242/015 (lot 10) and 12/0244/016 (lot 11) located at Emotu subdivision on Moso Island.

2. On 13 July 2023, Mr Rambay filed Application for Summary Judgment against the Second Defendant Mr Kaisef on the ground that his Defence had no prospects of success.
3. By Decision dated 11 September 2023, Mr Rambay's Application for Summary Judgment against the Second Defendant was granted and judgment entered against him for an amount to be determined: *Rambay (trading as Rambay & Associates) v Alikau* [2023] VUSC 176.
4. By Decision dated 30 May 2024, the quantum of damages payable by the Second Defendant was determined: *Rambay v Alikau* [2024] VUSC 111.
5. This matter proceeded to trial against the First Defendants. Despite having given notice to cross-examine the Defendants' witnesses, Claimant's counsel did not appear and there was no explanation why. The First Defendants' counsel Mr Morrison appeared.
6. This is the judgment determining the claim against the First Defendants.

B. The Pleadings

7. It is alleged in paras 4 and 5 of the Claim filed on 27 October 2022 as follows:
  4. *The Claimant claim against the First and Second Defendants ... for refund of moneys paid on their behalf to one Michael Leiper and Wendy Moss (the 'Purchasers') for a failed land transaction over the leases and related damages.*
  5. *Sometimes in 2016, the First Defendants approached the Claimant and requested the Claimant to act as their representative office for the Moso Island community to handle certain matters relating to Emotu Subdivision belonging to the Tasiriki community and the Claimant agreed.*
8. In their Defence filed on 14 February 2023, the First Defendants pleaded the following:
  4. *They deny para. 4... these matters have already been tried and determined in the Supreme Court at Port Vila; Case 2135 of 2017 and subsequent Court of Appeal decision 2177 of 2018.*
9. At para. 5, they alleged that:



5. ... they were not involved in the sale process, they did not attend meetings at the Claimant's office, they never gave instructions to release payments and they refused to accept payments from the Claimant or anybody else.

10. At paras 13 and 14, they alleged that:

13. They... repeat that any loss the Claimant may have suffered is not the lawful responsibility of the First Defendants.
14. ... this claim should be struck out as being *res judicata* the factual issues having already been considered and ruled on in previous proceedings within which the Claimant was a party.

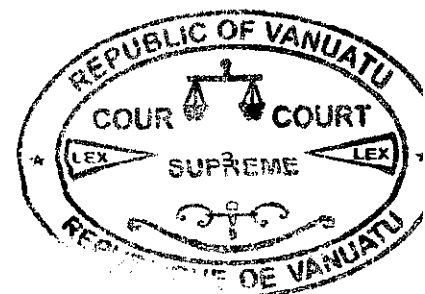
C. Discussion

11. The First Defendants were both the lessors and the lessees of lease 12/0242/015. As held by the Court of Appeal in *Leiper v Kalsev* [2019] VUCA 9 at [19]-[20]:

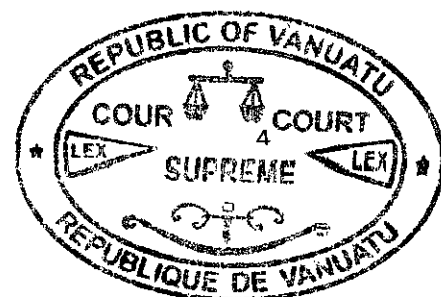
19. *Karl Kalsev and David Alikau are registered Lessors. The Tassiriki Community of Moso Island is the registered Lessee. Karl Kalsev signed the lease 015 as Lessee on behalf of and representing the Tassiriki Community of Moso Island on the basis of the authority given to him by the council of chiefs and the Tassiriki Community of Moso Island on 15 December 1999 as reflected in the letter of 25 April 2013 (see KK1 – evidence of Karl Kalsev).*
20. *We also note that the Purchase Agreement for Lot 10, among other matters, wrongly described the vendor and it was never signed or initiated by the registered Lessee.*

*(my emphasis)*

12. The First Defendant Chief Kartakau Mara'ata in the present proceeding is also known as (and has been previously sued as) Karl Kalsev.
13. The First Defendants were previously sued by the Purchasers in Civil Case No. 2135 of 2017. They alleged that Mr Mara'ata had refused to give consent to the transfer of lease 015, and sought an order directing Mr Mara'ata to execute the Transfer of Lease instrument for lease 015. The Claim was dismissed in the Judgment dated 19 July 2018 per Saksak J: *Leiper v Kalsev* [2018] VUSC 144.
14. Effectively, there has not been any finding made that Mr Kalsev unreasonably withheld his consent to the transfer of lease 015.
15. On appeal in Civil Appeal Case No. 2177 of 2018, *Leiper v Kalsev* [2019] VUCA 9, the Court of Appeal upheld the judgment, agreeing with Saksak J that there was never a legal enforceable contract in relation to lease title 12/0242/015 on Lot 10 and that the [Purchasers] may have an action available to them against the agent Mr Rambay in negligence for any money they paid for Lot 10:



24. *We agree with the primary judge that there was never a legal enforceable contract. The agent should never have released any funds held for the appellants' intended purchase of Lot 10. The agent ignored the terms of the proposed contract when he released those funds. He or they may be negligent. The Appellants may have an action available to them against the agent in negligence for any money they paid for Lot 10. In this case, the only evidence of payment is a receipt of vatu 2,500,000 which was said to be paid to the Tassiriki Community. There was no other evidence of other payments. It was apparent that the payment was not dealt with by the sales agent in accord with the terms of the Purchase Agreement. The Respondents denied receiving money intended for the purchase of Lot 10 by way of personal gain and there was no evidence to the contrary.*
25. *The primary judge was also correct that the Appellants' remedy does not lie against the Respondents but other persons or entities who may be sued separately.*
16. Subsequently, the Purchasers sued Mr Rambay in Civil Case No. 1706 of 2019.
17. On 8 June 2020, summary judgment was entered against Mr Rambay in the sum of VT3,032,000 together with interest and costs per Andree Wiltens J: *Leiper v Rambay (trading as Rambay & Associates)* [2020] VUSC 99. The Judge found at [14]-[20] that Mr Rambay had disbursed funds from the VT2,500,000 purchase price for lease title 12/0242/015 prematurely and contrary to a particular clause in the Sale and Purchase Agreement as transfer of ownership had yet to occur (and never did), which funds were held on trust for the benefit of the Purchasers. Further, that the vendors (the First Defendants) had no authority to instruct Mr Rambay to pay out funds held on trust for the Purchasers' benefit:
14. *The same day, Mr Rambay distributed the VT 2,500,000 purchase price for the land to:*
- *one of the custom vendors, Chief David Alikau, in the amount of VT 650,000;*
  - *another of the custom vendors, Chairman Kami, in the amount of VT 400,000;*
  - *the Navaraliki Council in the amount of VT 1,328,000; and*
  - *in payment of commission of VT 122,000.*
15. *The balance of the remitted funds were to be spent on:*
- *VT 7,000 Commissioner of Oaths fee;*
  - *VT 50,000 Stamp Duty;*
  - *VT 125,000 Registration fess; and*
  - *VT 350,000 Rambay & Associates' Fee.*
16. *Given that registration of the transfer of ownership had yet to occur, the payments described in paragraph 14 were premature, unauthorised and made contrary to a particular clause set out on the Agreement for Sale and Purchase entered into on 19 April 2017.*
17. *The transfer of ownership has not occurred. A large portion of the remitted funds has been disbursed as described in paragraph 14 above , and the balance as described in*



paragraph 15 above was retained by Mr. Rambay. Hence the claim for reimbursement of the entire sum remitted.

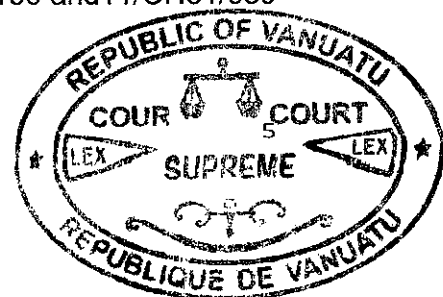
18. The Defence filed by Mr. Nalyal admitted the majority of the above matters. Mr. Rambay stressed that he was not acting as a real estate agent in the transaction, but that is immaterial. He stated that the VT 122,000 payment was the reimbursement of an earlier advance by him to the Moso Island Community.
19. The only relevant pleading in establishing a defence is in paragraph 14 of the Defence filed. It involves the denial of the disbursements described in paragraph 14 above and stated that Mr. Rambay was acting on the instructions of the vendors.
20. The point, firmly advanced by Ms Hamer, is that the vendors had no authority to instruct Mr Rambay to pay out funds held on the trust for the benefit of the purchasers. In effect, this statement in defence is actually an admission of the claim.

18. In the present matter, **Mr Rambay** deposed in his Sworn statement filed on 13 July 2023 that on 3 May 2017, the Purchasers transferred VT2,500,000 purchase price and VT532,000 attendance fees to his bank account. On 23 May 2017, he paid out the purchase price as follows:

- a) VT650,000 to the First Defendant Chief David Alikau as one of the custom owners;
- b) VT400,000 to the First Defendant Chief Karltakau Mara'ata as one of the custom owners;
- c) VT1,328,000 to the Second Defendant; and
- d) VT122,000 for costs.

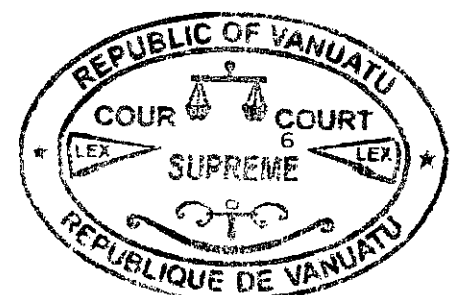
19. He also deposed that the First Defendant Chief David Alikau signed the consent for the lease 015 but not the First Defendant Chief Karltakau Mara'ata [**Annexure "HTR4"**]. On 31 May 2017, both First Defendants Chief David Alikau and Chief Karltakau signed the consent for the lease 016 [**Annexure "HRT5"**]. However, despite having received payment, Chief Karltakau never signed the Transfer of Lease document for lease 015 [**Annexure "HTR6"**]. On 6 June 2017, the Second Defendant took a further VT200,000 to Chief Karltakau in respect of lease title no. 14/0242/015 because he had a swollen leg at the time. However, Chief Karltakau did not sign the consent and transfer of lease documents for lease 015.

20. He deposed that as a result of the First Defendants' failure to sign the lease documents, the Purchasers demanded full refund of the moneys for the sale otherwise they would sue the Claimant on the Defendants' behalf. He told the Defendants about this demand. Despite giving an undertaking, the Defendants never refunded the Purchasers. The Purchasers sued Mr Rambay in Civil Case No. 1706 of 2019 ('CC 19/1706') and obtained summary judgment for VT3,661,035. On 9 August 2021, the Purchasers obtained an Enforcement Warrant against Mr Rambay to sell his personal leasehold properties 12/0943/136 and 11/OH31/039



resulting in him being evicted from his personal home, incurring substantial costs for temporary accommodation including at the Moorings Hotel, and temporary storage of his personal properties at Mele, Pango, Bladiniere, Beverly Hills and Ohlen. He paid VT3,000,000 to the Purchasers then the Sheriff allowed him to return to his personal home.

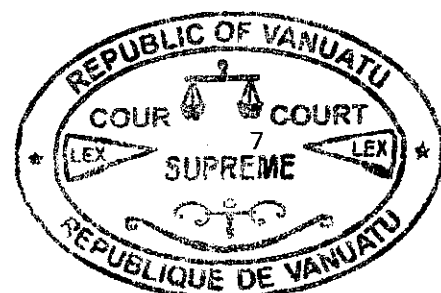
21. He deposed that as a result of the Defendants' failure to sign the leases and to refund the Purchasers' money, he suffered the following loss:
  - a) The VT3,000,000 paid to the Purchasers [receipt in **Annexure "HTR22"**];
  - b) Mr Rambay's costs paid to his own lawyers Edward Nalyal & Partners and Colin Bright Lawyers VT625,000 [**Annexure "HTR23" & "HTR24"**];
  - c) Mr Rambay's costs paid for recovery attempts by the Tasiriki community VT233,500 [**Annexure "HTR25"**];
  - d) Costs of transportation of belongings VT150,000, 4 months' interim accommodation with Odin Real Estate Limited VT200,000, and 6 days' temporary accommodation at Moorings Hotel VT180,000 [**Annexure "HTR19"**]; and
  - e) Photographs of damaged household furniture and items estimated at VT500,000 [**Annexure "HTR28(a)"**].
22. He deposed that despite demand, the Defendants have not refunded him [**Annexures "HTR30" & "HTR31"**].
23. Mr Rambay deposed in his Further Sworn statement filed on 29 February 2024 that after he paid VT3,000,000 to the Purchasers pursuant to the consent orders, he also paid VT400,000 on 23 February 2022, VT100,000 on 13 June 2022, VT100,000 on 24 June 2022, VT50,000 on 29 June 2022 and VT339,505 on 7 September 2022 to Hurley Lawyers for the balance of the judgment debt and legal costs [**Annexures "HTR1" to "HTR3"**]. This totals VT3,989,505 that he paid pursuant to the claim against him for refund and its consent orders. He deposed that he has suffered that loss which must be compensated for.
24. In the sole sworn statement filed for the First Defendants, **Karitakau Mara'ata** deposed that he verifies the matters pleaded in the First Defendants' Defence and First Defendants' Submissions opposing Mr Rambay's claim for damages.
25. There is no evidence in Mr Mara'ata's sworn statement contradicting Mr Rambay's evidence that on 23 May 2017, Mr Rambay paid him VT400,000 and on 6 June 2017, a further VT200,000.



26. However, as held by the Court of Appeal, Mr Mara'ata never signed the Sale and Purchase Agreement in relation to lease 015. It held that there was never a legal enforceable contract for lease 015.
27. In the Judgment dated 8 June 2020, Andree Wiltens J found that Mr Rambay's payments out of the VT2,500,000 purchase price paid by the Purchasers were premature and unauthorized.
28. Given Mr Rambay's premature and unauthorised payments from the VT2,500,000 purchase price paid by the Purchasers, the First Defendants cannot be held liable for damage that Mr Rambay suffered as a result of the Purchasers suing him in CC 19/1706, the summary judgment obtained in CC 19/1706 and the consequential costs and expenses incurred as a result of its enforcement. Mr Rambay has brought that situation upon himself.
29. However, given that there was never a legal enforceable contract for the sale and purchase of lease 015, the First Defendants did not have any legal entitlement to the money that Mr Rambay paid to them from the purchase price funds that he received from the Purchasers. Accordingly, I find that the loss proved against the First Defendants is limited to the portion of the purchase price that they each received.
30. Mr Alikau has not filed any evidence denying that he received VT650,000 from Mr Rambay. Accordingly, I find that Mr Rambay has proved the following loss against Mr Alikau: that out of the purchase price that he received from the Purchasers, on 23 May 2017, he paid VT650,000 to Mr Alikau.
31. Mr Mara'ata filed evidence but not contradicting Mr Rambay's evidence of payments made to him. Accordingly, I find that Mr Rambay has proved the following loss against Mr Mara'ata: that out of the purchase price that he received from the Purchasers, on 23 May 2017, he paid VT400,000 to Mr Mara'ata, and then on 6 June 2017, a further VT200,000 to Mr Mara'ata.
32. For the reasons given, judgment will be entered for Mr Rambay against the First Defendants.

D. Result and Decision

33. Judgment is entered for the Claimant against the First Defendants.
34. The First Defendant Chief David Alikau is to pay to the Claimant damages in the sum of VT650,000.
35. The First Defendant Chief Karltakau Mara'ata is to pay to the Claimant damages in the sum of VT600,000.



36. Costs must follow the event. The First Defendants are to pay the Claimant's costs as agreed or taxed by the Master and once settled, within 28 days.

E. Enforcement

37. This matter is listed for Conference **at 12.50pm on 18 October 2024** for the First Defendants to inform the Court: (i) that they have paid the judgment sum or (ii) to explain how they intend to do so. If there is no satisfactory conclusion, the file will be transferred to the Master for enforcement action.

38. For that purpose, this judgment must be personally served on the First Defendants and proof of service filed.

**DATED at Port Vila this 19<sup>th</sup> day of September 2024  
BY THE COURT**

*VM Tria*

Justice Viran Molisa Tria

