

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

Civil Case
No. 21/917 SC/CIVL

BETWEEN: Edwin Roger & Annie Bangga
Claimants

AND: Richard Bes trading under business
name Pacific Estate CBP Ltd
Defendant

Dates of Trial: 7, 8 & 11 September 2023
Before: Justice V.M. Trief
In Attendance: Claimants – Mrs P. Malites
Defendant – Mr E. Macreveth
Translator: Mrs M. Russet
Date of Decision: 18 January 2024

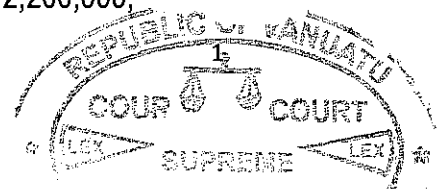
JUDGMENT

A. Introduction

1. This was a contested claim for a declaration that the claimants have paid the full purchase price for a plot of land and so they are entitled to registration of the transfer of the lease to them.

B. Agreed Facts

2. At the commencement of the trial, counsel handed up the following Agreed Facts dated 6 September 2023:
 - a) On 21 March 2016, the Claimants *de facto* partners Edwin Roger and Annie Bangga and the Defendant Richard Bes, trading as Pacific Estate CBP Ltd, entered into a Sale and Purchase Agreement for a 5,000 square metre plot of land located at Teouma Valley, Efate (the 'Agreement');
 - b) The purchase price at the start of the Agreement was VT2,200,000;



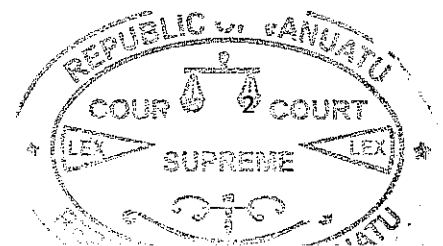
- c) Also on 21 March 2016, the Claimants paid the 10% deposit of VT220,000;
- d) The parties' agreement as to the terms of payment were expressed in different terms in English and in French as follows:
 - i) The Agreement in English stated, '*settlement will be done on a monthly instalment over a maximum of 5 years (except specific agreements and in writing from the seller) after a deposit of 10% which is VT220,000*'; and
 - ii) The Agreement in French stated, '*Un depot de garante de 10% soit 220,000 Vatu, puis reglement du solde soit 1,980,000 vatu au plus tard 30 jours apres la creation de la lease correspondent a cette parcelled. (This meaning we are to settle the remaining VT1,980,000 within 30 days' time)*;
- e) On 15 April 2016, the Claimants commenced paying VT17,500 fortnightly meaning VT35,000 monthly to Mr Bes; and
- f) As of February 2021, Mr Bes has received VT2,200,000 in total from the Claimants.

C. Pleadings

3. By the Claim, the Claimants alleged as follows (the 'Claim'):

- a) That on 21 March 2016, the Claimants and Mr Bes trading as Pacific Estate CBP Ltd entered into a sale and purchase agreement containing the following terms (the 'Agreement');
 - i) The Claimants to pay deposit of 10% of the VT2,200,000 purchase price (VT220,000);
 - ii) The Claimants to pay the balance of VT1,980,000 by monthly instalments within a period of 5 years;
 - iii) The Claimants offered and the Defendant accepted to pay monthly instalments of VT34,000; and
 - iv) Mr Bes is to transfer the lease to the Claimants on full payment of the purchase price;
- b) That on 21 March 2016, the Claimants paid the VT220,000 deposit and then in April 2016, commenced monthly instalments;
- c) That in February 2021, the Claimants completed full payment of the purchase price but despite demand, Mr Bes has refused to transfer the lease to them and demanded extra payment without any basis.

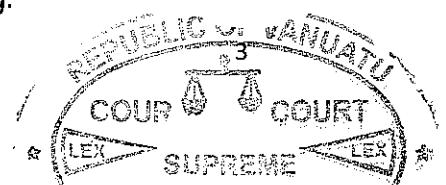
4. The orders sought are for the registration of the transfer of lease to the Claimants as joint lessees, costs and any other Orders the Court deems just.



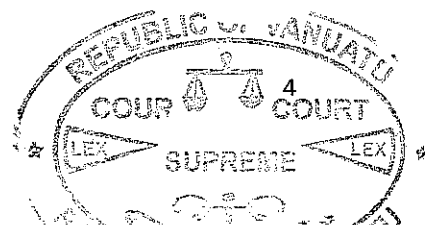
5. By his Defence and Counter Claim, Mr Bes alleged that the parties' initial agreement was that the Claimants pay a VT220,000 deposit and then the whole of the balance in a lump sum but when they could not obtain a loan to do so, Mr Bes offered them a refinancing method which they agreed to. Further, that the Claimants have not yet completed payment of the purchase price and cannot have the lease transferred to them until they have paid the whole of the purchase price.
6. It is alleged in the Counter Claim that the Claimants built a permanent house on the property without Mr Bes' consent and/or knowledge, and that the proceeding has caused psychological trauma and costs to Mr Bes. The relief sought is loss of business of VT1,000,000 and general damages of VT1,000,000.
7. It was alleged in the Claimants' Reply to Defence and Defence to the Counter Claim that there were conflicting English and French versions of the sale and purchase agreement. Further, that the Claimants are not French speakers, that it was not disclosed to them that the English and French versions were different, and that they agreed to the terms in the English version only but not in the French version. They alleged that Mr Bes harassed and pressured Mr Roger at his workplace to sign a new payment table charging interest, and he did so under pressure and in fear of losing the leasehold property and his job. They alleged that both Claimants agreed to the sale and purchase agreement but that Ms Bangga has never agreed to the new table charging interest which Mr Roger signed under duress.
8. The Claimants alleged that they have completed payment of the purchase price. They alleged that Mr Bes agreed that they occupy the land while paying off the purchase price and now that they have paid the purchase price in fully, they are entitled to continue to occupy the property, and the Court should intervene with an order that the Director of Lands register the lease to them.
9. By way of Defence to the Counter Claim, the Claimants alleged that initially they had relatives living on the land to do gardening but then they built a house on the land and moved into it in September 2019. They repeated that they did not agree to the refinancing agreement proposed by Mr Bes, and any psychological trauma and legal costs were caused by Mr Bes to himself.

D. The Evidence

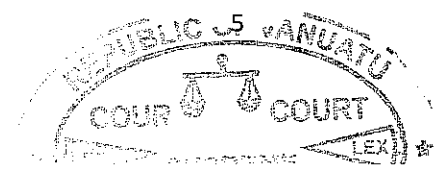
10. The standard of proof that Ms Bangga and Mr Roger were required to establish to succeed on the Claim, and Mr Bes to succeed on the Counter Claim, was "on the balance of probabilities." That is, that their assertions were more likely than not to be correct.
11. The evidence had to be analysed to ascertain what was accepted and what was not.
12. I assessed the credibility and accuracy of each witness' evidence not only by how the witness appeared in Court but more significantly, by looking for consistency within their own account and also comparing that account with the documentary evidence. I also had regard to the inherent likelihood of the situation then prevailing.



13. I reminded myself that if I were to draw inferences, they could not be guesses or speculation but had to be logical conclusions drawn from other properly established facts.
14. I now set out my summary of the relevant evidence of each witness, and my assessment of what weight should be given to their evidence.
15. **Ms Bangga** in her Sworn statement filed on 25 June 2021 [Exhibit C1] (attachments provided in the Further Sworn statement filed on 6 August 2021 [Exhibit C2]) deposed that she and her *de facto* partner Edwin Roger are suing Mr Bes as he has not transferred lease title no. 082/0923/12 (5000 square metres, located at Teouma Valley on Efate) to them on complete payment of the purchase price in breach of the Agreement. The terms of the Agreement included that Mr Bes transfer the lease to them on full payment of the purchase price.
16. She and Mr Roger signed the French version of the Agreement [**Attachment "AB2"**] thinking it contained the same terms as in the English version of the Agreement [**Attachment "AB1"**]. They are both English speakers and trusted Mr Bes' translation in the French version. Later they discovered the differences between the English and French versions including the time for payment and different lease title numbers. At the signing of the Agreement, Mr Bes informed them that they could cultivate the land and build their house there.
17. To work out how much to pay each month, they divided the VT1,980,000 balance by 60 months (5 years) which was VT35,000. So they agreed to pay VT17,500 on the 15th and 30th of each month, totalling VT35,000 per month. They paid the instalments by direct transfer to Mr Bes' account at the National Bank of Vanuatu and sometimes by cash direct to his account or to him in person, at times 1 or 2 days late, but never for more than 2 weeks or a month late.
18. In September or October 2017, Mr Bes threatened multiple times over the phone to evict them if they did not obtain a loan from a commercial bank to pay up the full remaining purchase price. She and Mr Roger refused as the fortnightly payments worked well for them and they already had an existing bus loan and could not afford another loan. They applied to the Bred Bank for a loan but were rejected as they had existing loans. Mr Roger informed Mr Bes, who then said that Pacific Estate BBP Ltd would refinance the purchase price so that the Claimants must pay the purchase price plus interest, and he prepared a payment table showing the interest charged [**Attachment "AB3"**].
19. She and Mr Roger refused to sign the payment table because with interest, the outstanding sum dramatically increased. They were firm that they would continue to pay only the monthly instalments agreed in the first place. Mr Bes called them multiple times over the phone cursing and swearing at them saying 'putain' in French, and demanded that they sign the payment table or he would evict them from the premises. This caused them and their family much distress.

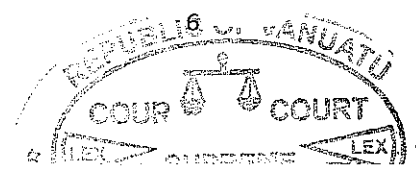


20. Mr Bes attended Mr Roger's workplace at Intraco many times, he was tired of that and feared losing his job so on 20 September 2017, he signed the payment table. However, Mr Bes has never approached her (Ms Bangga) to sign the table because she made their position clear that they did not agree and would stick with the initial agreement to pay VT35,000 monthly instalments and they had been faithful in their repayments so he should be patient. In September 2019, they and their children moved in to start living in their incomplete house on the premises. In 2020, Mr Bes came to their home, holding a piece of wood that he hit their dog with, repeatedly swore in French saying 'putain' and cursing in front of their children. They used to hear gun shots from his place so they lived in fear.
21. In February 2021, she and Mr Roger completed the purchase price via their monthly instalments and asked Mr Bes to transfer the lease to them. He refused saying they had to pay the extra amount due. Despite solicitor's demand in February 2021 [Attachment "AB4"], he has not transferred the lease to them but his then lawyer Christina Thyna's letter to them dated 4 March 2021 [Attachment "AB5"] stated that they had 'opted for a refinancing offered by [Mr Bes]' and demanded payment of interest. Attached to that letter was a copy of the French version of the Agreement. They never agreed to any refinancing by Mr Bes and do not understand how he claimed to have 'refinanced' the purchase price.
22. In examination-in-chief, Ms Bangga tendered a table that she had prepared showing all payments made to Mr Bes from 21 March 2016 to 2 December 2020, totalling VT1,986,850 [Exhibit C3]. From 15 April 2016 to 30 September 2017, they paid VT17,500 each fortnight (although on 30 June 2017 and 31 July 2017, just VT15,000 each and on 15 July 2017, VT5,000) (therefore VT35,000 monthly). From 15 October 2017 to 31 December 2017, their fortnightly payments changed to VT16,950 (therefore VT33,900 monthly). On 15 January 2018, VT17,000 was paid then on 6 February 2018, VT17,500 was paid then they again made VT16,950 fortnightly payments although with differing amounts on some dates. From 16 October 2019 to 5 September 2020, they paid VT17,000 fortnightly. As at 2 December 2020, they had paid a total of VT1,986,850 to Mr Bes.
23. They made further payments and in February 2021, completed full payment of the VT2,200,000 purchase price.
24. In cross-examination, Ms Bangga confirmed that both she and Mr Roger signed the French version of the Agreement but that they did not understand it because they are English-speakers. She confirmed that they signed both the English and French versions on the same day, but that they read the English version only, understood it and then signed the Agreement. She was asked that they did not read the French version but simply signed it? She replied that before she signed it, she asked Mr Bes what was in the French version and he said every detail in the French version was the same as what was in the English version.
25. Ms Bangga was asked that after the signing, Mr Bes did not tell them the balance of the purchase price was due within 30 days? She said no, what they agreed to was payment within 5 years. Mr Bes told them that he understood the living of Ni-Vanuatu ('ol blak



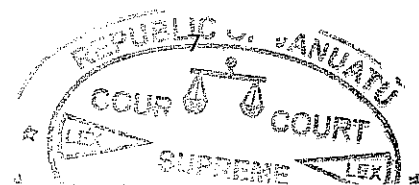
man') therefore they could pay it off over 5 years hence they paid VT35,000 per month. She agreed that it was in September or October 2017 that Mr Bes asked them to pay the full amount as set out in the French version of the Agreement. She stated that Mr Bes threatened them at their home, in front of their children, about getting a loan from a bank but they told him it was not possible due to their existing loan with the bank. So they preferred to make payment as set out in the Agreement (English version). She confirmed that they refused to pay the interest set out in the payment table that Mr Bes prepared. She disagreed that because they refused to pay the interest in the payment table, that they still owed Mr Bes money therefore he refused to transfer the lease title to them saying that they followed the English version of the Agreement and had paid the full purchase price, never being late for more than a month. She agreed that the payments in **Exhibit C3** followed the English version of the Agreement.

26. There was no re-examination.
27. Ms Bangga's evidence in cross-examination was consistent with her account in evidence-in-chief. She gave full answers that explained and repeated her account in-chief. Ms Bangga's evidence in **Exhibit C3** was consistent with her and Mr Roger's evidence that they regularly made fortnightly payments to Mr Bes towards the purchase price, however **Exhibit C3** shows that on they initially paid VT17,500 each fortnight (mostly) (therefore VT35,000 monthly) then on 15 October 2017, changed the amount of their fortnightly payments to VT16,950. They paid this amount fortnightly until 31 December 2017 (therefore VT33,900 monthly). They paid slightly larger amounts fortnightly after that to 2 December 2020. This evidence contradicts the Claimants' case that they paid monthly instalments of VT34,000 to Mr Bes. Accordingly, I considered that I could rely on Ms Bangga's evidence where it was supported by other evidence.
28. The Claimants' second witness was Gael Remy Yorlei, a sales person at Intraco Mitsubishi in Port Vila. He deposed in his Sworn statement filed on 29 May 2023 [**Exhibit C4**] that he remembers Mr Bes attending at Intraco over an issue with Mr Roger. He came to Intraco and asked for Mr Roger. They told him he was out doing banking or a delivery. Probably the next morning, Mr Bes came back and met with Mr Roger at Intraco. They had a tense discussion. Mr Bes returned in the afternoon and seemed to be demanding something from Mr Roger. He came back again the following day and had another intense discussion with Mr Roger. He heard Mr Bes saying that he is a busy man and was wasting his time coming and going. Mr Bes seemed frustrated and to be threatening Mr Roger though he could not hear exactly what they were saying to each other.
29. In cross-examination, Mr Yorlei agreed that he did not know why Mr Bes was continually having discussions with Mr Roger.
30. I considered that Mr Yorlei was seeking to assist the Court with the truth and accepted his evidence as reliable.
31. Mr Roger was the final witness for the Claimants. He deposed in his Sworn statement filed on 30 May 2023 [**Exhibit C5**] that from 18-20 September 2017, Mr Bes came to speak with him at his workplace at Intraco Mitsubishi Dealership where he was a sales



man at the time. On 18 September 2017 morning, Mr Bes came and demanded that he sign the payment table that Mr Bes had prepared to charge interest as per the French version of the Agreement. He refused to sign. Mr Bes returned in the afternoon and threatened that if he did not sign the payment table, that he would evict his relatives from the land. At the time, he and Ms Bangga were already constructing their house on the property and cultivating the land, with their relatives living there, so the threats were concerning to Mr Roger.

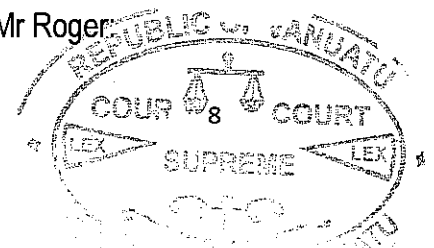
32. On 19 September 2017, Mr Bes returned to Intraco and insisted that Mr Roger sign the payment table. He refused to sign, telling Mr Bes that he and Ms Bangga wished to adhere to the original Agreement in English. Mr Bes again threatened to evict their relatives living on the property if he did not sign the payment table.
33. On 20 September 2017, Mr Bes returned more frustrated and angry. He said that this would be the last time for him to come to his workplace and if he didn't sign the payment table, that he would evict their relatives from the property and sell the property to someone else. He and Ms Bangga had invested money in the property which they regarded as a lifetime investment. He (Mr Roger) was also worried about losing his job because of Mr Bes' continual uninvited attendances at his workplace, so he signed the payment table.
34. Ms Bangga refused to sign the payment table. Even though he had signed it, they informed Mr Bes afterwards that they would not pay the interest and continued to pay VT35,000 per month via their fortnightly payments.
35. In 2020, Mr Bes came to their home, holding a piece of wood that he hit their dog with, repeatedly swore in French saying '*putain*' and cursing in front of their children. They used to hear gun shots from his place so they lived in fear.
36. By letter dated 24 April 2020, their lawyer wrote to Mr Bes informing him that he was in breach of the Agreement by threatening to take the property from them and sell to someone else when the Agreement did not contain a clause permitting the seller to cancel the contract and the 5-year period that the Claimants had to complete full payment of the purchase price had not yet expired (till 21 March 2023 [Attachment "ER1"]). In February 2021, he and Ms Bangga completed the purchase price via their monthly instalments and asked Mr Bes to transfer the lease to them. He refused saying they had to pay the extra amount due. Despite solicitor's demand, he has not transferred the lease to them. They never agreed to any refinancing by Mr Bes and do not understand how he claimed to have 'refinanced' the purchase price.
37. Also in February 2021, they lodged a Police complaint against Mr Bes [Attachment "ER2"]. He deposed that Mr Bes is now relying on the terms of the French version of the Agreement which was not communicated to him and Ms Bangga at the signing of the Agreement. He only started to bother them about interest, relying on the French version, in September 2017 which was 18 months after the signing of the Agreement. Mr Bes agreed that they settle on the land and he was living in the area when they moved in so he should have complained when they first move in instead of allowing



them to remain. He is only making excuses because they will not pay the interest charged.

38. In cross-examination, he stated that he and Ms Bangga read the English version of the Agreement, understood it and signed it, then took a copy of that with them but Mr Bes held onto the French version. His partner asked Mr Bes at the time what was in the French version and Mr Bes answered that it was the same as in the English version. He confirmed that then they began their VT17,500 fortnightly payments which was manageable for them and he also told them they could enter onto and develop the land while completing payment of the purchase price. Once done, then CBL Ltd would transfer the lease to them. He stated that Mr Bes came to see him at his workplace many times to sign the payment table but he did not agree to sign it. Mr Bes forced him to sign it. Mr Bes came many times which made him scared of losing his job as well as Mr Bes telling him that he and his family would have to leave the land if he did not sign, which scared him because they would lose the money that they had already expended on developing the land.
39. Mr Roger agreed that Mr Bes said that the payment table was for payment of interest, but not that it was about the French version of the Agreement. He never even showed them the French version until they had started these proceedings. That was when they found out that the French version had different terms from the English version that they had been faithfully complying with. He agreed that he signed the payment table out of fear of being evicted, but even then, never paid the interest charged as only he signed, not his partner, and they both only ever agreed to the Agreement which they followed by making their payments.
40. There was no re-examination.
41. Mr Roger's account remain unchanged in cross-examination. His and Ms Bangga's accounts were consistent with each other, however given that his evidence that they paid VT35,000 per month via fortnightly payments was contradicted by their own evidence in **Exhibit C3**, I considered that I could rely on his evidence only where it was supported by other evidence.
42. **Mr Bes** was the only witness for the Defendant. He joined from overseas via video link. I record my thanks to the translator Mrs Russet who translated throughout the entire trial to and from French for Mr Bes. He deposed in his Sworn statement filed on 22 March 2022 [Exhibit D1] that the Agreement signed in March 2016 was for the Claimants to pay the purchase price in cash. However, when the Claimants failed to obtain a loan to complete payment of the purchase price, he presented the second agreement in English in 2017 for monthly interest. Contrary to what is asserted by Ms Bangga, both she and Mr Roger signed the second agreement. The monthly payments for the new Agreement was VT33,903 [**Attachment "RB1"**]. Subsequently, by his and Ms Bangga's emails dated 16 October 2017, he agreed to them paying VT16,950 per fortnightly (therefore VT33,900 per month) [**Attachment "RB2"**]:

Email dated 16 October 2017 from Ms Bangga to Mr Bes and Mr Roger



From: [Ms Bangga]
Date: Monday, October 16, 2017 12:30 PM
To: [Mr Bes] ; [Mr Roger]
Subject: query

Hello Richard,

please you save letem mifala save stret amount blong mi fala pem naoia follem new agreement ia olsem mi save hamas blong transfer kam lo account blong you

thankyou need your urgent response

Regards

Annie

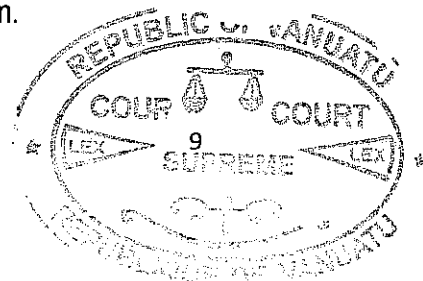
Reply email dated 16 October 2017 from Mr Bes to Ms Bangga:

From: [Mr Bes]
Date: lundi 16 octobre 2017 12:45
To: [Ms Bangga]
Subject: query

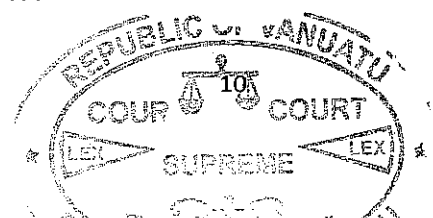
hello

15/10/2017 = 16950 vt
30/10/2017 = 16950 vt
and every month like this
thank you

43. He deposed that he warned the Claimants by email dated 2 October 2017 that interest would be calculated automatically on all late payments [**Attachment "RB3"**] and stated that he never threatened the Claimants as alleged.
44. He deposed in his para. 13 as follows:
13. *I never forced Edwin to sign the second Agreement. I have left the documents with them for 3 days and I had collected it after 3 days. Both parties have signed the second Agreement. The only reason I had gone back to see Edwin was because the table outlining the interests [sic] to be paid was not signed by both of them. I attended at his workplace to also have his signature. There was no threats on my part. They could have chosen to refuse to sign which would have cancelled everything.*
45. In 2000, he attended the Claimants' house to give a letter to Mr Roger. He had not seen that one of his dogs had followed him, and the Claimants' dog jumped on his dog so he used a stick that he found there to separate the two dogs and chase his dog away. He did not see any children there at the time and did not throw any abusive words at any children there. He also understood that Ms Bangga was not home at the time so he does not know how she can come up with such allegations against him.



46. He deposed that any allegation about use of arms needs to be supported by evidence. He said that he never received a letter from their lawyer in 2020. The first one he received was in 2021. In February 2021, the Claimants still had an outstanding to be paid and he never received any payment of VT300,000 in 2021. The Claimants must pay their outstanding in full under the agreement for interest together with any costs of this proceeding to be entitled to have the lease transferred to them.
47. In cross-examination, Mr Bes stated repeatedly that on 21 March 2016, the parties signed the French version only of the Agreement then after the Claimants failed to obtain a bank loan to pay off the balance in one lump sum, in 2017, the parties signed the Agreement in English which provided for monthly payments including interest. He described the French version as requiring payment in cash whereas the English version provided for sale by "credit" meaning repayment monthly or fortnightly with interest. He stated that both Claimants signed the English version of the Agreement. He stated that the parties could not sign two contracts (versions) on the same date which said different things – when the Claimants could not fulfil the first contract requiring cash payment within 30 days, then they had to write the second contract providing for payment by monthly instalments. He disagreed that it was from the English version of the Agreement that the Claimants began to pay instalments of VT17,500 per fortnight ("No. No!"). He disagreed that the Claimants paid VT17,500 per fortnight for 5 years.
48. Mr Bes agreed that went to see Mr Roger at Intraco about signing the payment table. The third time he went to Intraco, Mr Roger gave back the payment table which he had signed. He denied threatening to evict Mr Roger and his family, to sell the property to someone else or that he was frustrated. He did not understand Mr Roger's concern about losing his job because Intraco is a place that sells spare parts and is open to the public so anybody can go there at any time.
49. It was put to him that Mr Roger only signed the payment table under pressure from him (Mr Bes). Mr Bes responded that if so, why did Mr Roger start to pay according to what was in the table? The table specified monthly payment of VT33,900, then on 16 October 2017, he received an email from Ms Bangga asking what was the new amount to be paid under the new contract they had signed, to which he replied VT16,950 every mid-and end-of-month and they proceeded to pay that without any problem. It was put to him that he called the Claimants and demanded that they sign the payment table. He said no, it was actually Mr Roger who asked him to draw up the table and there was never any pressure because the Claimants asked for the table. He agreed that he prepared the payment table and it showed that payment of the purchase price would be completed in September 2023.
50. Mr Bes disagreed that the English version of the Agreement provided that payment would be completed in February 2021. He disagreed that the Claimants only began paying fortnightly the amount required by the payment table because they were scared that he would evict them from the property. He disagreed that the Claimants told him that they would stick with the original agreement for them to complete their monthly payments in February 2021. He repeated that they initially signed only the French version of the Agreement, then he signed the English version in 2017.

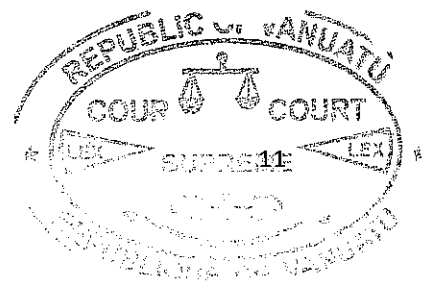


51. Mr Bes pointed out that the rate of interest applied was written on the top left-hand-side of the payment table – 10.5% per annum. He said he did not use the term 'refinancing' but the sale was made on a credit basis with interest to be paid monthly. As shown in the payment table, the monthly reimbursement included the monthly interest and the more was paid, the lower the interest became. He agreed that there was no mention of a credit arrangement in the French version of the Agreement because it was for payment in cash. In the contract in French, it stipulated that after the deposit, the balance to be paid was VT1,980,000 but in the second contract, in English, they could not stipulate that the balance was VT1,980,000 because the Claimants had already started making deposits. He pointed out that Ms Bangga was not correct in her sworn statement because monthly payments of VT35,000 multiplied by 60 comes to VT2,100,000 whereas the balance owed after payment of the deposit was VT1,980,000.
52. He agreed that the Claimants could cultivate the land, because he had sold them an agricultural plot. He denied agreeing that they could build a house, saying that he had no authority to give them a construction permit. He disagreed that in February 2021, he had received VT2,200,000 from the Claimants. He said that he had received the capital but not the interest; he would only transfer the lease once the interest has been paid.
53. In re-examination, Mr Bes explained that the parties' changed their agreement so that in the English version of the Agreement, payments were supposed to be made according to the table that was annexed to the contract. According to the table, 20 payments remain to be made. He was asked to explain the absence in the English version for sale on credit. He stated that the French version came first requiring payment in cash, then the later English version (which did not have a French translation) provided for payments to be made fortnightly or monthly according to the table that was annexed to the contract of the VT2,200,000 principal amount plus interest. He stated that the parties decided to enter into the English version of the Agreement in 2017 because the Claimants could not pay cash.
54. Mr Bes stated that in August 2022, he and Mr Roger communicated with the assistance of Mr Patu from the Lands Department, and he sent Mr Roger a document clearly setting out the balance remaining to be paid. Mr Roger received that document and signed it, but it has not been put into evidence. He (Mr Bes) had sent it to his previous lawyer Ms Thyna and then yesterday, to his lawyer Mr Macreveth because it seemed from listening to the discussions that he did not have those documents.
55. I considered that I could rely on Mr Bes' evidence where it was supported by other evidence.

E. Discussion

The Claim

56. The agreed facts include that:



- a) On 21 March 2016, the Claimants and Mr Bes signed a Sale and Purchase Agreement for a 5,000 square metre plot of land located at Teouma Valley, Efate;
- b) The purchase price at the start of the Agreement was VT2,200,000;
- c) Also on 21 March 2016, the Claimants paid the VT220,000 deposit required which was 10% of the VT2,200,000 purchase price; and
- d) The parties' agreement as to the terms of payment were expressed in different terms in English and in French. The agreement in French required payment of the remaining VT1,980,000 within 30 days' time [**Attachment "AB2", Exhibit C2**]. The agreement in English stated, 'settlement will be done on a monthly instalment over a maximum of 5 years (except specific agreements and in writing from the seller) after a deposit of 10% which is VT220,000 [**Attachment "AB2", Exhibit C2**].

57. The agreement in English included the following:

...

Property Description

Agricultural plot of 5000 square meter, number 1 of the subdivision of the title 082-0923-12 located on the island of Efate at a place called Teouma River.

Purchase Price

A principal of two million and two hundred thousand vatu (2,200,000 vatu) + costs

Term of Payments

Settlement will be done on monthly instalments over a maximum period of 5 years (except specific agreements and in writing from the seller) after a deposit of 10% which is 220,000 vatu.

The amounts paid will be deducted from the purchase price and charges until the final settlement, monies paid cannot be renders for some reason whatsoever.

Transfer of Property Title

The transfer of ownership of this plot will not be done until full settlement of the purchasing price plus relative costs.

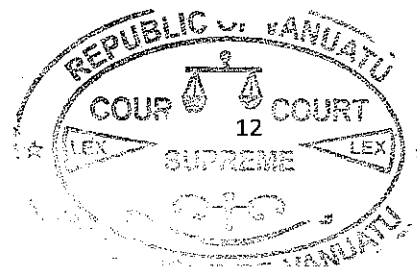
...

(my emphasis)

58. Both the English and French agreements are undated. I will return later to the question of whether or not both agreements were signed on 21 March 2016 as claimed, or on different dates.

59. The Agreement in both English and French is one-page long although the one in English in **Attachment "AB1"** is followed by 2 more pages, the first of which states as follows:

VERSEMENTS



Date	Montant Versé	Frais	Montant restant	Le 21/03/2016
21/03/2016	220000		2,200,000	[Mr Bes' signature]
			1,980,000	

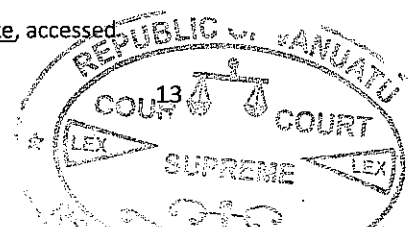
60. 'Versements' is French meaning 'payments'¹, 'montant versé' means 'amount paid'² and 'montant restant' means 'remaining amount' according to the Google Translate website³. 'Frais' means 'costs' or 'charges'⁴ Accordingly, that second page in **Attachment "AB1"** is titled 'Payments' and shows a starting amount of VT2,200,000 and then a payment on 21 March 2016 of VT220,000 leaving the remaining amount of VT1,980,000. After this appeared hand-written words, "Le 21/03/2016" with Mr Bes' signature directly beneath those words.
61. The contents of the second page in **Attachment "AB1"** reflect the terms of payment in the agreement in French. That is, that the Claimants pay a 10% deposit of VT220,000 and the VT1,980,000 balance within 30 days. Given the terms of the agreement in English, I consider it more likely than not that any attachment to the English contain a breakdown of the requisite monthly instalments. I find therefore that the second page in **Attachment "AB1"** related to the Agreement in French rather than being a document produced in respect of the Agreement in English.
62. The third and last page in **Attachment "AB1"** page is a survey plan for lease title no. 12/0923/082 showing 16 plots within that subdivision project. Both the agreements in English and French refer to plot no. 1 of the subdivision title no. 12/0923/082 (although the digits are reversed in the agreement in English). I find therefore that the Agreement was for the sale and purchase of the 5,000 square metre Lot 1 in the subdivision title no. 12/0923/082 [**Attachment "AB1"**, **Exhibit C2**].
63. Were both agreements signed on 21 March 2016 as claimed, or on different dates?
64. The Claimants' case is that they signed both agreements on 21 March 2016 but do not speak French so they did not know what was stated in the agreement in French. They only found out afterwards that the agreements contained different payment terms. Further, that Mr Bes only started bothering them about paying interest 18 months after the Agreement was signed.
65. Mr Bes's case, on the other hand, is that the agreement in French was signed first, and then later the agreement in English. His case is that the terms of payment in the French was for payment of deposit then the balance in 30 days' time but the Claimants failed to secure a bank loan to pay the whole of the balance in cash so the parties entered into the agreement in English requiring instalment payments.

¹ Google Translate, <https://translate.google.com/?hl=en&sl=fr&tl=en&text=versements%0A&op=translate>, accessed 16 January 2024

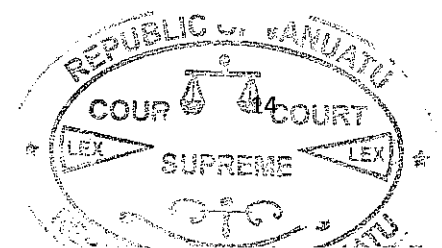
² Google Translate, <https://translate.google.com/?sl=fr&tl=en&text=montant%20restant&op=translate&hl=en>, accessed 16 January 2024

³ Google Translate, <https://translate.google.com/?sl=fr&tl=en&text=montant%20restant&op=translate&hl=en>, accessed 16 January 2024

⁴ Google Translate, <https://translate.google.com/?hl=en&sl=fr&tl=en&text=frais&op=translate>, accessed 16 January 2024.



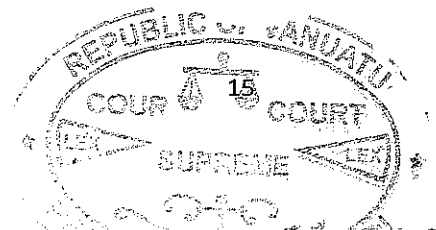
66. Mr Bes' evidence is that he left the agreement in English with the Claimants for 3 days and when he collected it, both Claimants had signed the agreement but neither had signed the table which was annexed to the contract in English, setting out the interest to be paid, so that was the only reason he went back to see Mr Roger at his workplace to get his signature.
67. The payment table [**Attachment "AB3", Exhibit C2; Attachment "RB1", Exhibit D1**] is for a 72-month period starting from October 2017 to September 2023 therefore accepting this part of Mr Bes' evidence would be to accept that the parties signed the agreement in English in October 2017 but not the corresponding payment table which set out the monthly payments required (including interest) starting from October 2017.
68. However, the Claimants had already begun making fortnightly payments, since 15 April 2016 [**Exhibit C3**]. I consider it is more likely than not that they did so knowing the terms of payment in the agreement in English, and in compliance with those terms. I consider it inherently unlikely that the Claimants made their regular fortnightly payments in the absence of a contractual obligation to do so. I therefore reject Mr Bes' evidence that the agreement in English was signed in October 2017, and reject his evidence that the payment table was annexed to the agreement in English when that agreement was signed.
69. There is no complaint that the Claimants entered into the agreement in English under duress. Their complaint about duress is in relation to Mr Roger's signing of the payment table.
70. It is clear from both sides' evidence that Mr Bes agitated over time for the Claimants to pay the balance in a lump sum (in his words, 'in cash') and that the Claimants applied for a Bred Bank loan but their application was rejected due to their existing loan commitments. In both Claimants' evidence, they informed Mr Bes of their unsuccessful bank loan application and that they preferred to continue with the agreement in English because they could pay the balance owed by monthly instalments. The parties' conduct is consistent with the existence of both agreements, in French and in English.
71. For the reasons given, I find that the parties signed both the agreements in English and in French on 21 March 2016, but that the Claimants did not understand until afterwards that the agreements contained different payment terms.
72. I find also that when the Claimants failed to settle the balance within 30 days' time, Mr Bes did not cancel the contract but instead kept urging them to get a loan while continuing to accept their fortnightly instalments.
73. In the Claimants' evidence, Mr Bes started bothering them about paying interest 18 months later, to the point of threatening to evict them from the property if they did not sign the payment table and attended at Mr Roger's workplace several times until Mr Roger had signed it under pressure and in fear of eviction and losing his job because of the disturbances caused by Mr Bes' visits.



74. Mr Roger signed the table on 20 September 2017. I find that Mr Bes prepared that payment table in or about September 2017.
75. Mr Bes confirmed in his evidence attending at Mr Roger's workplace several times in order to obtain Mr Roger's signature. Mr Bes' evidence that he did not threaten Mr Roger to get that signature is unsupported. I reject that aspect of Mr Bes' evidence. I find that Mr Bes threatened the Claimants and their family with eviction if they did not agree to pay monthly instalments including interest.
76. I further find that Mr Roger signed the payment table out of fear that he and his family would be evicted from the property and of losing his job due to Mr Bes' visits to his workplace.
77. Out of the two Claimants, only Mr Roger signed the payment table. Ms Bangga never did and her evidence was Mr Bes did not even approach her too because she was clear in their position that they would not pay interest.
78. Ms Bangga's evidence is, however, contradicted by her email attached to Mr Bes' sworn statement dated 16 October 2017 in which she asked him to let them know the exact amount under the "new agreement" that they should pay to his account [Exhibit D1]. I consider that she was asking what amount they should now pay according to the payment table. Mr Bes replied by email dated the same day that they needed to pay VT16,950 on the 15th and 30th day of each month. Then the Claimants changed their fortnightly payment from the VT17,500 that they had been paying up to that point to VT16,950 fortnightly starting with the payment for 15 October 2017 [Exhibit C3].
79. However, even though the Claimants changed the amount of their fortnightly payments in accordance with what was set out in the payment table and despite the circumstances in which Mr Roger signed it, whether or not interest is payable depends on the terms of the agreement in English.
80. I deal first though with the 'refinancing' aspect of the Defendant's case, pleaded as follows in paras 2(a)-(e) of the Defence and Counter Claim:

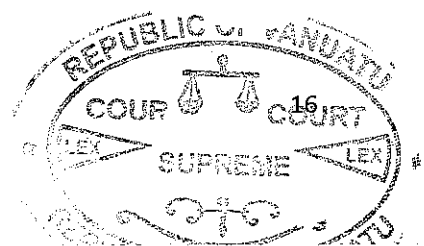
2. *The Defendant, as of paragraph 4 [of the Claim]:*

- (a) *Says that the Claimants had initially agreed to make a deposit of VT220,000 and a whole payment of the balance;*
- (b) *Says that after many failures to settle the balance due to bank's rejections of financing applications, the Defendants proposed to them instalment payment plans with interest [sic] which was a refinancing method proposed by Pacific Estate CBP Ltd;*
- (c) *Says that the Claimants had agreed to the terms and conditions of such refinancing offered by Pacific Estate CBP Ltd;*
- (d) *Says that to date, the Claimants have still not completed the purchase price for leasehold title 083/0923/995 ("the property");*
- (e) *Says that once full settlement of the property is made, the title to the property could be transferred to the Claimants;*



- ...
81. Mr Bes' contention is that Pacific Estate CBL Ltd offered the Claimants 'refinancing'. However, it has never paid off a debt belonging to the Claimants with loan monies that the Claimants needed to repay with interest. I reject the Defendant's case that there was any refinancing involved in charging the Claimants interest commencing in October 2017.
 82. Whether or not interest is payable depends on the terms of the agreement in English.
 83. The Claimants' case is that they were required to pay the balance of the VT2,200,000 purchase price by monthly instalments within a 5-year period commencing on 21 March 2016 and interest is not payable. Further, that they made VT17,500 fortnightly payments (VT35,000 monthly) to pay off the balance within 60 months. At such rate of payment, the Claimants would have paid off the balance within 60 months of April 2016. Their case is that in February 2021, they completed payment of the balance.
 84. On the other hand, Mr Bes' case was that the Claimants are required to pay interest. Further, that he set out in the payment table the monthly amount payable from October 2017 onwards, for a 72-month period ending in September 2023. Further, that the lease transfer would occur once both principal and interest have been paid.
 85. Was there a term of the agreement in English for the payment of interest?
 86. The word, "interest" is not used in the agreement in English, only the words, "costs" and "charges" as follows:
 - a) The clause titled, 'Purchase price' states that, "*A principal of two million and two hundred thousand vatu (2,000,000 vatu) + costs*"; and
 - b) The second paragraph of the clause titled, 'Term of Payments' provides that the amounts paid will be deducted from the purchase price "*and charges until the final settlement*".
 87. It is arguable that the word "costs" in the 'Purchase price' clause following on after the reference to a 'principal' amount includes interest payable. However, "costs" and "interest" are different words and if the parties intended that interest be payable, there should have been express use of the word, "interest" within the terms of the agreement.
 88. I note that Mr Macreveth in the closing submissions on Mr Bes' behalf submitted that it was not disputed that both agreements did not provide for interest. He went on to submit that in September 2017, Mr Bes decided to charge 10.5% interest because of the Claimants' late payments:

It is not disputed that there was no interest charge specified on both agreements. However, the defendant had decided to charge a 10.5 percent per annum only for the second contract in September 2017 for reasons of default payments as admitted by the claimants' late payments of few days.



89. I am fortified, therefore, in my interpretation of the agreement in English that it did not provide for interest payable.
90. It is accepted that Mr Bes only tried to introduce the payment of interest in September 2017. The Claimants did change the amount of their fortnightly payments following Mr Roger signing the payment table on 20 September 2017, but because he signed the payment table under duress, the payment table is *void ab initio* and the Claimants are not bound to make payments as set out in that table.
91. In the circumstances, I find that interest is not payable.
92. I find on the Claimants' evidence that they completed payment of the VT2,200,000 purchase price in February 2021. Accordingly, there are entitled to transfer of the lease over Lot 1 of subdivision lease title no. 12/0923/082 at Teouma Valley, Efate to them as joint proprietors. There will be a declaration to this effect.

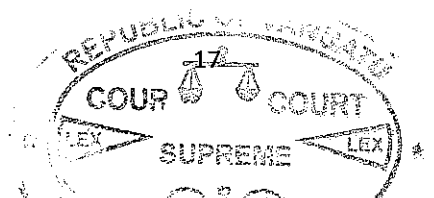
The Counter Claim

93. The Counter Claim is pleaded as follows:

4. *The Defendant counter Claims and says that:*

- (a) *the Claimants built a permanent house on the property without his consent and/or knowledge;*
- (b) *the Claimants have been malicious in denying their lack of consent and/or knowledge of the interest that they had initially agreed to pay;*
- (c) *this proceeding should have been initiated at the first place;*
- (d) *this proceeding has caused psychological trauma and legal costs to the Defendant;*
- (e) *unless the Claimants complete the purchase monies, the Defendant will have no option but to obtain an Application for Specific Performance or Eviction;*

94. The relief sought is damages for loss of business, general damages and costs.
95. Did the Claimants build a permanent house on the property without Mr Bes' consent and/or knowledge? The Claimants' evidence that they had relatives living and gardening on the land, then built and moved into their house in 2019 is uncontradicted. Mr Bes agreed that he visited their house in 2020. However, there is no evidence that Mr Bes has ever given the Claimants notice that they built their house without his consent. He has not commenced any eviction proceedings for living in a house on the land constructed without his consent.
96. Given the passage of time until the filing of the Counter Claim in April 2021 when it seems Mr Bes first raised a complaint of the house being built without his consent, I consider it more likely than not that Mr Bes agreed when the parties entered into the Agreement that they could begin to cultivate and reside on the land, with settlement of the purchase price to occur later. I find that the Claimants built their permanent house on the property with Mr Bes' prior consent and knowledge.



97. There is no evidence of malice on the Claimants' part in their claim that interest was not payable on the sale and purchase of the property. That allegation is not made out.
98. There is no evidence of psychological trauma caused to Mr Bes. That allegation also is not made out. All parties have incurred legal costs in respect of this proceeding. The outcome of the proceeding will determine where costs lie.
99. For the reasons given, the Counter Claim has not been proved on the balance of probabilities. It will be dismissed.

F. Result and Decision

100. Judgment is entered for the Claimants and it is **ordered** as follows:

- a) Declaration that the Claimants have paid the full purchase price for the property 5,000 square metre Lot 1 in subdivision lease title no .12/0923/082 at Teouma Valley on Efate;
- b) Declaration that the Claimants are entitled to the transfer of the lease in respect of Lot 1 in subdivision lease title no .12/0923/082 at Teouma Valley on Efate to them as joint proprietors; and
- c) The Defendant is to provide to the Claimants the signed transfer of the lease, including the necessary certificate(s) under s. 78 of the *Land Leases Act* [CAP. 163], in triplicate **by 4pm on 18 February 2024**.

101. The Counter Claim is **dismissed**.

102. Costs must follow the event. The Defendant is to pay the Claimants' costs of the proceeding as agreed or taxed by the Master. Once set, the costs are to be paid within 28 days.

G. Enforcement

103. This matter is listed for enforcement conference **at 8.30am on 19 February 2024** for the Defendant to inform the Court: (i) that he has complied with the Orders or (ii) to explain how he intends to do so. Proof of service of this judgment and the summons must be filed before then.

**DATED at Port Vila this 18th day of January 2024
BY THE COURT**


Justice Viran Molisa Trief

