

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

Civil
Case No. 23/3139 SC/CIVL

BETWEEN: MANPLES MICRO LENDING SCHEME
Claimant

AND: JACQUE KALORIB
Defendant

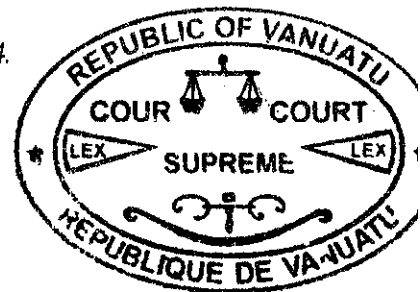
Date of Hearing: 4 April 2025
Before: Hon. Justice M A MacKenzie
Counsel: Claimant – Mr KT Tari
Defendant – Mr A Bal

JUDGMENT

Introduction

1. On 24 June 2021, the Manples Micro Lending Scheme ("the Lending Scheme") and Ms Kalorib entered into a short-term loan agreement.
2. The terms of the agreement were:
 - The amount advanced to Ms Kalorib was VT 50,000.
 - Interest at the rate of 5%. The agreement did not specify how the 5% interest was to be calculated.
 - An administration fee of VT 7,000, which was paid upon signing of the agreement.¹
 - The total repayment amount was VT 68,785, payable in seven fortnightly instalments, first payment to be made on 1 July 2021.

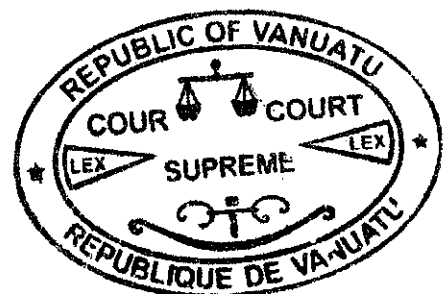
¹ As set out at paragraph 7 of Fredeline Tanarango's sworn statement filed on 16 October 2024.



- Ms Kalorib was to pay 6 equal instalments of VT 10,000 and a final instalment of VT 8,785 on 23 September 2021.
 - There was also a late payment condition whereby *"10% will be charge to every late repayment following the repayment date"*.
3. On behalf of the Lending Scheme, Ms Tanarango explained in her sworn statement that it was the Lending Scheme's policy to lend VT 5,000 to VT 50,000 to its customers with an interest rate of 5% upon refund on a fortnightly basis.
 4. Ms Kalorib did not make the repayments as required under the loan agreement. As such, a 10% late payment penalty was added to the outstanding balance each fortnight up to and including 17 February 2023.
 5. Ms Kalorib did make repayments, which although not made consistently, equate to more than the repayment amount under the loan agreement. In total between 5 July 2021 and 20 April 2023, Mr Kalorib made payments in the sum of VT 132,500.
 6. The Lending Scheme seeks repayment for the outstanding loan and interest in the sum of VT 1,891,415.

Default Judgment

7. The claim was filed on 16 November 2023. The Lending Scheme sought judgment for a fixed sum being, VT 1,891,415 being the principal sum of VT 50,000 and together with the interest accumulated to 28 June 2023.
8. General damages for breach of the agreement resulting in the loss of profits, fixed at VT 500,000 are also sought.
9. Ms Kalorib took no steps in relation to the claim. Accordingly, a request for default judgment was made. On 20 August 2024, default judgment was entered in the claimant's favour, for an amount to be determined. I did not entered judgment for the fixed amount claimed as I required further evidence as to how the 10% default interest rate accrued.

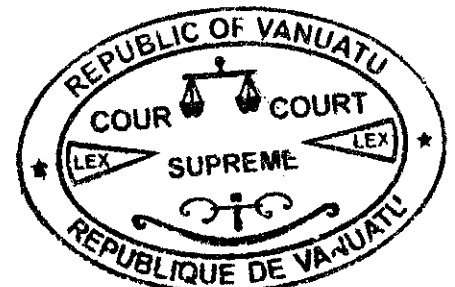


Discussion

10. The issue is whether Manples Micro Lending Scheme is entitled to judgment for the sum claimed?
11. The Lending Scheme seeks judgment for a fixed amount of VT 1,891,415, a significant sum comparative to the original loan principal and interest. The reason for the significant asserted inflation of the debt is that a 10 % penalty was added to the outstanding balance every fortnight, for a period well in excess of the term of the loan. As per the loan agreement and the instalment repayment plan, the loan was for a 12 week period.²
12. Mr Tari submits that Ms Kalorib significantly breached the repayment plan, which consequently generated the 10 % charge to every late repayment (fortnightly), and that quantum should be fixed at the amount sought in the claim.
13. Ms Kalorib, while not taking any formal steps in the proceeding, instructed Mr Bal who made submissions on her behalf at the quantum hearing. Mr Bal submits that it would be manifestly unreasonable for Ms Kalorib to be held liable for the amount of the debt as claimed, because Manples Micro Lending has applied a 10% late penalty interest on the total amount outstanding for a period that exceeded the duration of the loan.
14. The issue of interest rates charged by Micro Lending Schemes has been considered in *Taval v Maleb* [2015] VUSC 21 and *Kali v Ngwele* [2023] VUSC 179.
15. In *Taval v Maleb*, Harrop J said that while the dispute about interest was fundamental, it was not necessary to resolve it to determine the outcome of the claim. There was a fundamental dispute as to what was agreed amount interest - was it to be paid at 10% per annum with an appropriate portion at that being added each payday, or was it 10% of the principal to be added each fortnight. This represented the difference between 10% and 260% simple interest per annum.
16. Harrop J made some observations pertinent to the claim before the Court at paragraphs 47-51:

"47. I further observe that even if i had concluded that in truth the agreement was that there be 10% per day, i would have been very unlikely to uphold an argument from Mr Maleb that the provision should be enforced. That is because in my view the interest charge, amounting to 260% per annum, is usurious, exorbitant and unconscionable. Such a

² Ms Tanarango's sworn statement filed 16 November 2023, FT2 – FT4



rate cannot have reflected the reasonable cost (plus a reasonable profit return) to Mr Maleb of borrowing money to lend on to Mr Taval.

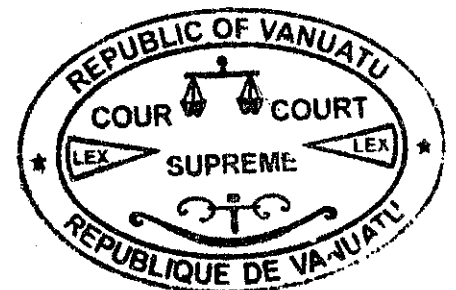
48. I note that the instalments required of Mr Taval by Bred Bank for tis VT 8,000,000 loan (at 9.9% per annum amount only to about VT 35,000 per pay day- and they no doubt include a portion of principal repayment. By contrast Mr Maleb claims VT 87,757 per day- for interest only- in respect of a loan of only VT 877,582.

49. The Court will not enforce an unconscionable contract, especially one reflecting inequality of bargaining power. It may be, as Mr Napuati pointed out, that Mr Taval is a reasonably well-educated teacher. However, he is clearly naive and unworldly in commercial matters. This is evidenced first by his being easily "scammed" b the person from England, then arguably by his failure to ensure that Mr Maleb properly documented the loan agreement and finally by is allowing Mr Maleb, through his brother, to determine how much net income has been received from the rental properties and applied to the debt. Any commercially sensible person would have ensured that someone independent carried out that task, or would have done it himself, as Mr Taval did prior to the borrowing.

50. Mr Taval was in desperate position when he found out he was the victim of the scam and unable to repay the loan within a week as he had expected and intended. That is the context in which he went back to Mr Maleb to reach a further agreement about how the initial advance (or two according to Mr Maleb) was to be repaid. Their bargaining positions at that point were far from equal.

51. In addition, as I observed to the parties at the hearing, this is yet another case which demonstrate the benefits of a properly prepared loan contract and of independent legal advice being obtained by each party before signing. That may seem like an unnecessary cost at the outset, when no dispute is ever seriously contemplated, but experience shows that expenditure on legal advice at the stage may avert a great deal more later on. As the lender, Mr Maleb has to take responsibility for the poor confusing state of the documentation relating to this loan; the contra profentem maxim applies. He also has to bear the consequences of it if he later tries to enforce payment through the Court."

17. In *Kali v Ngwele*, Mr Ngwele borrowed various sums from a Micro Lending Scheme. He initially borrowed VT 50,000, to be repaid at the rate at VT 10,000 each payday. Interest was charged at 10% and calculated fortnightly from the date of the loan. After Mr Ngwele repaid the principal V 50,000 loan, he borrowed funds totalling to VT 950,000. Interest was calculated fortnightly and added to the outstanding balance for more than a year.



18. Compound interest was discussed by Trief J in *Kali v Ngwele* as follows:

"Discussion

24. Counsel could not refer me to any Vanuatu legislation applicable to the question of whether interest in respect of a loan can be compound interest. I therefore turned to *Halsbury's Laws of England* (4th ed., Butterworths) which, in general terms, summarises English law prior to Vanuatu's Independence in 1980 and therefore the applicable common law. It is stated at para. 153 of *Halsbury's Laws of England* (4th ed., Butterworths), vol. 32 at para. 153 as follows:

153. ***Prohibition of compound interest and interest chargeable on default.*** Any contract for the loan of money by a moneylender is illegal so far as it provides, directly or indirectly, for the payment of compound interest...

25. Bullen & Leake & Jacob's *Precedents of Pleadings* (17th ed., Sweet & Maxwell), vol. 1 at para. 13-03 set out the following:

13-03 ***Interest.*** ...

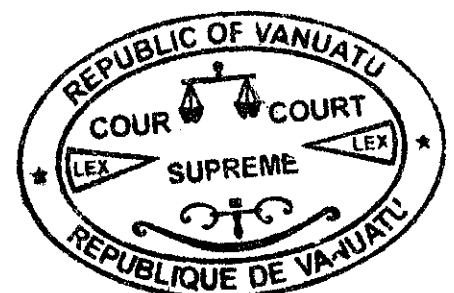
Compound interest is recoverable pursuant to an agreement or by virtue of an established custom binding on the parties, but not otherwise."

19. Trief J said that rate of interest which was effectively compound interest had the effect of inflating the balance owed far beyond and in excess at the principal sum borrowed, to the point that the borrower is faced with repaying a sum that is excessive and extortionate.

20. Trief J further said at paragraph 30:

"..... I consider that that rate is manifestly unjust and unconscionable and the Court cannot condone such interest or which no loss nor genuine commercial reasons have been shown."

21. As a result, the claim for compound interest was dismissed and the interest rate clause in the agreement declared excessive, extortionate, unconscionable and unenforceable.



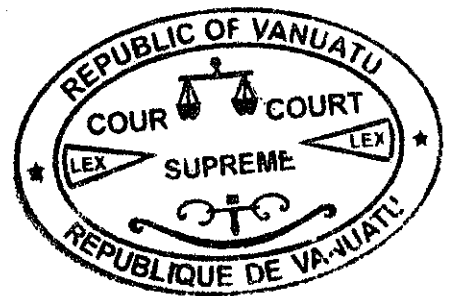
22. In the present case, there are two different interest rates. Firstly, there is the 5% interest rate. The total amount of interest added to the VT 50,000 principal is VT 18,785. That means that interest cannot have been calculated at 5% per annum with an appropriate portion added each fortnightly repayment.
23. Ms Tanarango says that she explained the terms and conditions of the agreement to Ms Kalorib before she signed the agreement.³ However, how the 5% interest was calculated and applied is not set out in the loan agreement itself. It is self-evident that how the interest is charged should form part of the agreement.
24. Ms Tanarango's explanation for the interest calculation is that "5% interest is applied upon refunding the whole money borrowed on a fortnightly basis".⁴ Consistent with Ms Tanarango's evidence, interest can only have been calculated at the rate of 5% of the principal and added each fortnight. It was certainly not calculated at a rate of 5% per annum.
25. Then there is the 10% late payment penalty interest. As evidenced by the repayment schedule annexed to Ms Tanarango's sworn statement filed on 16 November 2023⁵, once the loan repayments were in default, 10% was added to the outstanding balance each fortnight until 17th February 2023. Thus, interest was applied on a compounding basis.
26. I set out the repayment schedule as it shows how that outstanding balance increased to such a significant level:⁶

³ See paragraph 7 of her sworn statement filed on 16th October 2024

⁴ See paragraph 8, sworn statement filed on 16th October 2023

⁵ Annexure FT 3

⁶ Annexure FT3 to Ms Tanarango's sworn statement filed on 16 November 2023





MANPLES MICRO LENDING SCHEME

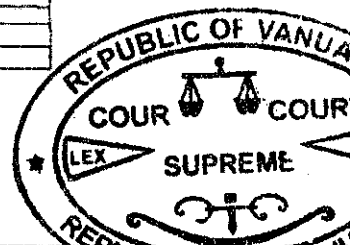
Box 564, Bladinier Estate - South Estate, Shefa Province, Tel: 7535876/5420194, Email: Manplesmils@gmail.com

Lending Manager: Brenda Giovanni Tantiango

Statement #: 6
Date: June 28, 2023
Customer: 10:

Statement To: Kalonib Jacky
Brid Bank Ltd
Tel 29111
Part V61

| Date | Type of payment | Description | Debit | Credit | Balance |
|----------|-----------------|--------------------------|--------|--------|---------|
| 24.06.21 | Chq Bred 173 | Total Advance & Interest | 68785 | | 68785 |
| 05.07.21 | | 1st Payment | | 10000 | 58785 |
| 15.07.21 | | Late payment penalty 10% | 5879 | | 64664 |
| 28.07.21 | | Late payment penalty 10% | 6466 | | 71130 |
| 13.08.21 | | Late payment penalty 10% | 7113 | | 78243 |
| 26.08.21 | | Late payment penalty 10% | 7824 | | 86067 |
| 09.09.21 | | Late payment penalty 10% | 8607 | | 94874 |
| 23.09.21 | | Late payment penalty 10% | 9487 | | 104161 |
| 07.10.21 | | Late payment penalty 10% | 10414 | | 114555 |
| 21.10.21 | | Late payment penalty 10% | 11455 | | 126011 |
| 04.11.21 | | Late payment penalty 10% | 12601 | | 138612 |
| 18.11.21 | | Late payment penalty 10% | 13861 | | 152473 |
| 03.12.21 | | Late payment penalty 10% | 15247 | | 167720 |
| 17.12.21 | | Late payment penalty 10% | 16772 | | 184492 |
| 31.12.21 | | Late payment penalty 10% | 18449 | | 202941 |
| 14.01.22 | | Late payment penalty 10% | 20294 | | 223235 |
| 28.01.22 | | Late payment penalty 10% | 22324 | | 245559 |
| 11.02.22 | | Payment | | 5000 | 240559 |
| 25.02.22 | | Late payment penalty 10% | 24055 | | 254615 |
| 11.03.22 | | Late payment penalty 10% | 25462 | | 281077 |
| 25.03.22 | | Late payment penalty 10% | 28108 | | 320185 |
| 08.04.22 | | Late payment penalty 10% | 32019 | | 352204 |
| 22.04.22 | | Payment | | 5000 | 347204 |
| 06.05.22 | | Payment | | 10000 | 337204 |
| 20.05.22 | | Late payment penalty 10% | 33720 | | 370924 |
| 03.06.22 | | Payment | | 15000 | 355924 |
| 17.06.22 | | Late payment penalty 10% | 35592 | | 391516 |
| 01.07.22 | | Late payment penalty 10% | 39152 | | 430668 |
| 29.07.22 | | Late payment penalty 10% | 43067 | | 473735 |
| 12.07.22 | | Late payment penalty 10% | 47374 | | 521109 |
| 28.07.22 | | Late payment penalty 10% | 52111 | | 573220 |
| 09.08.22 | | Late payment penalty 10% | 57322 | | 630542 |
| 23.08.22 | | Late payment penalty 10% | 63054 | | 693596 |
| 07.10.22 | | Late payment penalty 10% | 69360 | | 762956 |
| 21.10.22 | | Late payment penalty 10% | 76295 | | 839251 |
| 04.11.22 | | Late payment penalty 10% | 83925 | | 923177 |
| 18.11.22 | | Late payment penalty 10% | 92318 | | 1015495 |
| 02.12.22 | | Late payment penalty 10% | 101550 | | 1117045 |
| 16.12.22 | | Late payment penalty 10% | 111705 | | 1228750 |
| 30.12.22 | | Late payment penalty 10% | 122875 | | 1351625 |
| 13.01.23 | | Late payment penalty 10% | 135163 | | 1486788 |
| 27.01.23 | | Late payment penalty 10% | 148679 | | 1635467 |
| 03.02.23 | | Late payment penalty 10% | 163547 | | 1799014 |
| 17.02.23 | | Late payment penalty 10% | 179901 | | 1978915 |
| 24.02.23 | | Transfer payment | | 50000 | 1928915 |
| 23.03.23 | | Transfer payment | | 12500 | 1916415 |
| 20.04.23 | | Transfer payment | | 12500 | 1903915 |
| 20.04.23 | | Transfer payment | | 12500 | 1891415 |



27. I accept that a compound interest rate can be applied to a loan. See for example *BW Herbert Ltd v Herbert* [2020] NZHC 2717. The Court was satisfied⁷ that the due and proper interest rate was 10 percent compounding annually. (Emphasis added).
28. In *Wilaci Pty Ltd v Torchlight Fund No 1 LP (In receivership)* [2017] NZCA 152, the New Zealand Court of Appeal considered whether a late payment fee was a penalty and therefore unenforceable. Wilaci loaned Torchlight \$37 million with a fixed interest of \$320,000, payable sixty days after drawdown. If the loan was not repaid on the due date, a late payment fee of \$500,000 per week was to be paid. Torchlight defaulted by not making principal and interest payments on the due date giving rise to a default event.
29. The Court of Appeal considered at length the development of the penalties doctrine in the United Kingdom and Australia, and applied the principles contained in *Cavendish Square Holding BV v Makdessi* [2025] UKSC and *Paciocco v Australia and New Zealand Banking Group Ltd* [2016] HCA 28.⁸
30. An important factor considered by the Court of Appeal was whether the provision in question is a secondary obligation disproportionate to any legitimate interest of the innocent party:

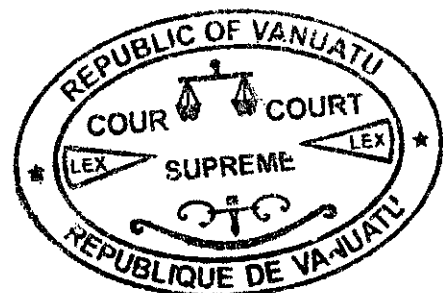
"[81] Secondly, Cavendish reinstates the pre-Dunlop focus on whether the substituted obligation is unconscionable or extravagant (said usually to amount to the same thing). The test proposed by Lords Neuberger and Sumption (with whom Lords Carnwath and Clark agreed) was:

[W]hether the impugned provision is a secondary obligation which imposes a detriment on the contract-breaker out of all proportion to any legitimate interest of the innocent party in the enforcement of the primary obligation.

Lord Mance was of similar opinion in inquiring first as to what legitimate business interests are served and protected by the clause and then whether the provision made by the clause impugned is "extravagant, exorbitant or unconscionable". Not dissimilar formulations appear in the judgments of Lords Hodge and Toulson. As Lord Hodge put it, "the criterion of exorbitance or unconscionableness should prevent the enforcement of only egregious contractual provisions". (Footnotes omitted)

⁷ At paragraph [58]

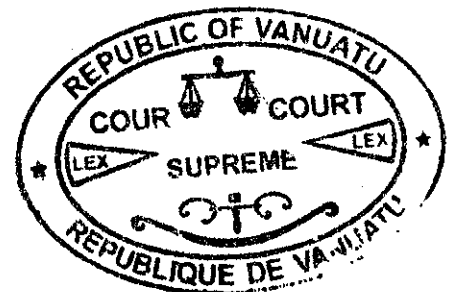
⁸ At paragraphs [68]-[89]



31. In this case, the loan agreement did not contain a provision of a fixed sum for late payment, but rather a condition that 10 percent would be charged to every late repayment. However, the additional interest payment only arose if there was a default in the repayment terms, so in that sense is a secondary obligation, and so the principles applied in *Wilaci v Torchlight* are helpful in assessing the enforceability of the provision relating to late payment.
32. The first matter to note is that the loan agreement itself sets out that for late payment 10 percent would be added to every late repayment. The wording of the condition is "10% will be charge to every late repayment following the repayment date." But as can be seen from the loan balance schedule, the late payment penalty of 10 percent was applied to the total balance outstanding, not the amount of the repayment. So, the default interest rate was compound interest. The actual amount of the loan taking into account the compound 10 percent interest rate is VT 1,955,130 ⁹.
33. It is notable that a factor contributing to the significantly increased outstanding loan balance is that 10 percent interest continued to be applied to the outstanding balance well beyond the term of the loan.
34. There is also an inequality of bargaining power. There is no evidence that Ms Tangarango advised Ms Kalorib to obtain independent advice, or that Ms Kalorib sought legal advice. Also, the terms of the loan agreement themselves are not clear as to how the Lending Scheme was to charge interest, particularly the late payment penalty of 10 percent.
35. Further, there is a lack of evidence that the compound interest represented the loss suffered by the Lending Scheme.¹⁰ In her sworn statement filed on 16th October 2024, Ms Tanarango deposed that the delay in repaying the loan caused the scheme serious loss. There was the loss in making extra profit from monies it should have collected from the refund by Ms Kalorib, and the lost opportunity to lend out the VT 50,000 to another customer, the stress to her, and the need to spend her own monies on transport, emailing and telephoning Ms Kalorib to make the repayment. Finally, Ms Tanarango needed to engage the services of a lawyer to assist her. These costs and the asserted loss of profits have not been quantified, but I cannot see they would amount to the amount claimed. The compounding interest cannot have reflected the reasonable cost and reasonable profit return of lending VT 50,000 to Ms Kalorib. Ms Kalorib repaid, albeit late, the principal sum of VT 50,000 and interest of VT 82,500, as the total amount repaid to the Lending Scheme was VT132,500. Even if the Lending Scheme quantified its loss, which in my view it has not done, the fact remains that Ms Kalorib paid penalty interest, as an additional amount of VT 63,715

⁹ As the claim of VT1,891, 415 takes into account the payments made by Ms Kalorib in reduction of the loan balance.

¹⁰ As discussed in *Kali v Ngwele*.



was paid. That in itself is a significant sum, which is more than 100 percent of the VT 50,000 advanced to Ms Kalorib.


36. Compound interest resulting in an accrued debt to the Lending Scheme of VT 1,891,415 is excessive and unconscionable when the principal sum was VT 50,000. It is so grossly disproportionate so as to compel the inference that the substituted obligation is really "*punitive*". There are no good commercially valid reasons given by the Lending Scheme to warrant a compound interest rate which results in such a disproportionate sum outstanding. The manner in which the 10 percent late penalty interest is calculated goes beyond an ordinary commercially appropriate increased default interest rate.¹¹ It was certainly not calculated annually. Therefore, I consider that the compound 10 percent late repayment interest is extortionate and unenforceable.
37. By virtue of the amount paid by Ms Kalorib to the Lending Scheme, she has paid penalty interest arising from her default of more than 100 percent of the principal sum, which is more than sufficient to meet any losses and to deter default.
38. I decline to make any award of damages, as there is a lack of evidence quantifying loss of profits.

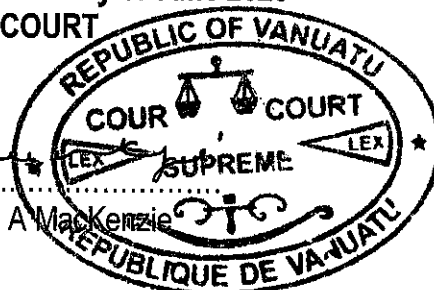
Result

39. Accordingly, for the reasons set out above, quantum is assessed to be nil.
40. I decline to make any award of damages.
41. Costs as agreed or taxed. Any costs award in favour of the Defendant should be modest due to Mr Bal's limited involvement in the proceeding.

DATED at Port Vila this 4th day of June 2025

BY THE COURT


Hon. Justice M A MacKenzie



¹¹ I note that in *Wilaci v Torchlight* at [97], the Court of Appeal said that an ordinary increased default rate would not be a penalty.