

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

Civil
Case No. 19/2075 SC/CIVL

BETWEEN: Jacob Mann
First Claimant

AND: Magren Rose David
Second Claimant

AND: Ataban Tula
Third Claimant

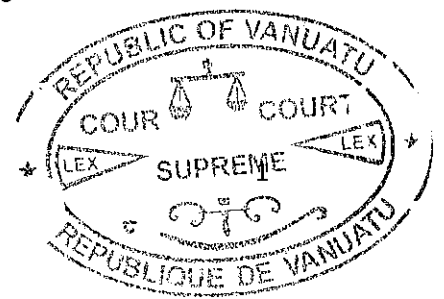
**AND: Hillary Williams and Fabien
Williams**
Defendants

Date of Trial: 18 May 2021
Before: Justice V.M. Trief
In Attendance: Claimants – Mr E. Molbaleh & Mr J. Vohor
Defendants – Mr J. Garae
Date of Decision: 9 August 2021

JUDGMENT

A. Introduction

1. This matter arises from an intra-family dispute.
2. By the Claim, the Claimants Jacob Mann, Magren Rose David and Ataban Tula seek judgment for rent not paid by the Defendants Mr and Mrs Hillary and Fabian Williams or not remitted to them. They also seek general and punitive damages.



B. Background

3. The First Claimant Mr Mann is the registered proprietor of leasehold title no. 03/OI72/006 located at Sarakata area in Luganville, Santo island ('Mr Mann's property').
4. A house was built on Mr Mann's property. Mr Tula used the rents from that house to service his loan from the Westpac Bank. Mr Tula's loan was secured by a mortgage over Mr Mann's property.
5. Mr Tula defaulted on his loan. The Westpac Bank threatened to seize and sell Mr Mann's property.
6. In 1996, Mr and Mrs Williams moved into the house and as agreed, applied Mr Williams' housing allowance directly to Mr Tula's loan.
7. Mr Williams completed repayment of the loan on 19 November 1999.
8. In November 2016, Mr and Mrs Williams vacated the house.
9. In 2017, the First and Second Claimants and Defendants were involved in proceedings in the Magistrates' Court. The proceedings were struck out after the Defendants' lawyer failed to file a Claim.

C. Pleadings

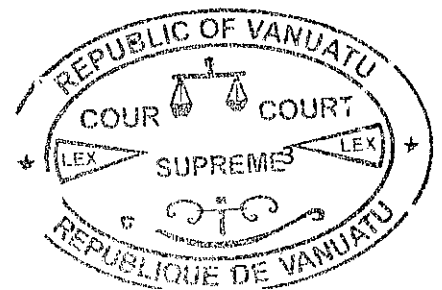
10. The Claimants alleged in the Claim that Mr and Mrs Williams resided in the Third Claimant Mr Tula and wife's house but failed to pay Mr Tula rent from 1999 to 2016. Further, that Mr and Mrs Williams collected rent from other family members also residing in the house, but failed to remit that rent to Mr Tula. The Second Claimant Magren Rose David sought reimbursement of rent that she paid.
11. The Claim was opposed. The Defendants alleged that the house was a family home and did not belong solely to Mr Tula and his wife. Further, that they never collected rents; they collected only contributions to pay power bills, water bills, property tax and land rent. The Defendants also alleged that they left the house clean and free from damage. Finally, the Defendants alleged that the claims for rent from 1999-2013 are statute barred.
12. The issues between the parties are:
 - a) Is the Claimants' claim partially statute barred and if so, from when? **[Issue 1]**
 - b) Was there an agreement that the Defendants pay rent to the Third Claimant Mr Tula? **[Issue 2]**
 - c) Was there an agreement that the Defendants collect rent from the other family members residing in the house? **[Issue 3]**
 - d) Are the Defendants liable to the First Claimant Mr Mann in damages? **[Issue 4]**



D. Claimants' Evidence

13. Mr Tula deposed in his sworn statement [**"Exhibit C2"**] that he is married to one of Mr Mann's daughters. His wife is Mrs Williams' sister. He stated that he and his father-in-law agreed orally that he build a house on Mr Mann's property. He relied heavily on the rents received from the house to repay his Westpac Bank loan.
14. Mr Tula further deposed that Mr and Mrs Williams began residing in his house on 31 October 1996. Mr Williams was a member of the Vanuatu Mobile Force. Mr Tula and Mr and Mrs Williams agreed that Mr Williams would pay back Mr Tula's loan at VT20,000 per month using Mr Williams' housing allowance paid directly to Westpac Bank as their agreed rent for occupying 2 rooms in the house at VT10,000 each.
15. Mr Tula confirmed that Mr Williams repaid the loan until completion on 19 November 1999. However, he only learnt that in 2017 when he saw a copy of Westpac Bank's letter dated 3 May 2001 confirming completion of the loan attached to a sworn statement in a proceeding between them.
16. Mr Tula deposed that he has not been paid rent owed of VT20,000 from November 1999 till the Defendants moved out of the house in November 2016.
17. Mr Tula evidenced that the Defendants never repaired the house so it is now in very bad condition and when they moved out, they damaged a lot of things and removed things that were part of the house and did not belong to them. Mr Tula attached photographs said to be of his house that was damaged.
18. Finally, Mr Tula evidenced that when the Defendants moved out in November 2016, they left the house without light and water for about a week before we (Mr Tula and others) re-installed the light and water connections.
19. In cross-examination, Mr Tula stated that the land is Mr Mann's property and Mr Mann gave him the right to build a house there. He stated that Mr Williams was the one to collect rent from those living in the house.
20. Mr Mann deposed in his sworn statement [**"Exhibit C3"**] that he is the lessee of leasehold title no. 03/O172/006 at Sarakata, Luganville, Santo. He confirmed that he gave his son-in-law Mr Tula permission to build a house on his property and to use the rents from the house to repay his loan. He stated that the Defendants while living in Mr Tula's house never supported him and his wife when she was still alive nor paid him rent.
21. In cross-examination, Mr Mann denied that Mr and Mrs Williams gave money to him. He stated that his daughter Mrs Williams never helped him. He said that they did not give money to him but paid bills in his name when he had not given them the right to do so. He agreed that if the Defendants had not helped Mr Tula with his loan, that he (Mr Mann) would not be enjoying his property today.

E. Defendants' Evidence



22. Mr Williams deposed in his sworn statement [**“Exhibit D1”**] that the house built on Mr Mann’s property was a family house and not a rent house. Four families lived in the house – of Mr Mann and his wife; a brother in law Martin Frazer; Mr Tula, and Mr and Mrs Williams. Further, that after paying Mr Tula’s loan, he then paid rent to Mr Mann and his wife. He and his wife looked after and supported Mr and Mrs Mann by building their kitchen, paying land rent and municipal tax, and electricity and water bills for over 20 years.
23. Mr Williams deposed in his sworn statement [**“Exhibit D2”**] that that he and his family left Mr Mann’s property after Mrs Mann’s death following which there were allegations of witchcraft and Mr Mann put namele leaves on the door where they lived, at their kitchen clothes line, nakamal and at the small gate to the building.
24. In cross-examination, Mr Williams stated that after he paid Mr Tula’s loan, he paid rent monthly to Mr Mann – his housing allowance from the Government. If Mrs Mann was alive, she would confirm it. He helped Mr Mann out of respect for him but Mr Mann will deny everything – he can say yes today and tomorrow, deny it. Mr Williams stated that if he had known that they would come to Court, he would have documented it.
25. Mrs Williams deposed in her sworn statement [**“Exhibit D4”**] that after repaying Mr Tula’s loan, she and her husband continued to give monies to her father Mr Mann and mother. She attached copies of two receipts for VT15,000 house rent.
26. Mrs Williams deposed in her sworn statement [**“Exhibit D5”**] that she is Mr Mann’s first born child. She stated that it was her husband Mr Williams who proposed having a family house built on Mr Mann’s property. She stated that 4 families contributed to the building of the house. She and her husband and children took good care of Mr and Mrs Mann, making sure they were not sick and had food every day as well as other support to them.
27. In her sworn statement [**“Exhibit D6”**], Mrs Williams deposed that since leaving Mr Mann’s property, she has not visited nor spent time with her father which is very sad for her. She wished that this matter was settled and the fighting within their family stop.
28. Mrs Williams stated in cross-examination that every month she collected a contribution from her sisters residing at the house. It was a contribution, not rent. Her husband’s salary was not enough to pay all the bills so she asked for contributions to help pay the water and electricity bills.

F. Issue 1: Is the Claimants’ Claim partially statute barred and if so, from when?

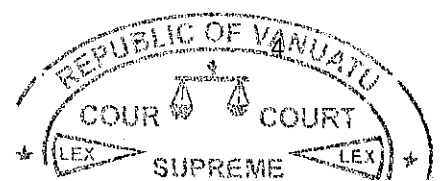
29. Paragraph 3(1)(a) of the *Limitation Act* [CAP. 212] (the ‘Act’) provides:

3. (1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say –

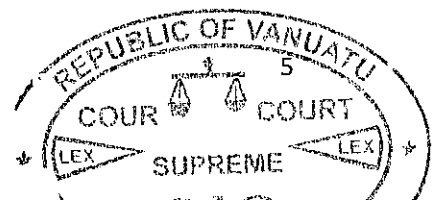
(a) actions founded on simple contract or on tort;

(my emphasis)

30. The Claimants’ Claim was filed on 12 August 2019. It is an action founded on contract.



31. Paragraph 3(1)(a) of the Act provides that the limitation period for claims founded on simple contract is 6 years from the date on which the cause of action accrued.
32. Accordingly, I answer Issue 1 as follows, **“Yes – any aspect of the Claimants’ Claim in relation to rent that was paid over 6 years before the Claim was filed (that is, any rent paid before 12 August 2013) is statute-barred.”**
33. The Second Claimant Magren Rose David by her sworn statement [“**Exhibit C1**”] evidenced that she stopped paying rent to the Defendants in November 2003. Her claim relates to rent paid before 2013 therefore it is statute-barred.
34. The Second Claimant is not entitled to judgment against the Defendants.
35. The Third Claimant Mr Tula’s claim for payment of rent in relation to any rent paid before 12 August 2013 is statute-barred. The Court can only determine his claim in relation to rent paid on or after 12 August 2013.
- G. Issue 2: Was there an agreement that the Defendants pay rent to the Third Claimant Mr Tula?
36. Mr Mann is the legal owner of leasehold title no. 03/OI72/006. By Mr Mann’s evidence, he permitted Mr Tula to build a house on his property and to use the rents from the house to service his loan.
37. There is no evidence that Mr Mann, the legal owner of leasehold title no. 03/OI72/006, agreed that Mr Tula would receive rents from the house after Mr Tula’s loan had been repaid. Indeed, Mr Mann’s evidence is that the Defendants did not pay any rent to him (Mr Mann).
38. Even if there was such an agreement between the Defendants and Mr Tula, the latter did not own the subject land therefore Mr Mann’s consent or agreement was required for payment of rent to Mr Tula. As already stated, there is no evidence of Mr Mann’s agreement that after Mr Tula’s loan had been repaid, that the Defendants pay rent to Mr Tula.
39. In the circumstances, I conclude that the only agreement was that the Defendants repay Mr Tula’s loan from Westpac Bank. However, there was no agreement that the Defendants pay rent to Mr Tula after Mr Tula’s loan had been repaid.
40. Accordingly my answer to Issue 2 is, **“No.”**
41. The Third Claimant is not entitled to judgment against the Defendants.
- H. Issue 3: Was there an agreement that the Defendants collect rent from the other family members residing in the house?
42. Mrs Williams stated in cross-examination that every month she collected a contribution from her sisters residing at the house. It was a contribution, not rent. Her husband’s



salary was not enough to pay all the bills so she asked for contributions to help pay the water and electricity bills.

43. I accepted that Mrs Williams was a witness of truth and accept her evidence.
44. Mr Mann stated in cross-examination that he never gave the Defendants permission to pay the bills in his name. With respect, that does not require permission – Mr Mann should be grateful that the bills were paid on his behalf.
45. Mr Mann asserted that in the time that Mr and Mrs Williams lived on his property, they never helped him or his wife, they never gave money to support them and never gave them food. Mr Mann's assertions fly in the face of Mr and Mrs Williams' support to him from 1996-1999, while living on his property, to repay Mr Tula's loan. By repaying the loan, they prevented the Westpac Bank from seizing and selling the property. Mr Mann would not have the property today otherwise.
46. Mr Mann therefore lacked credibility. Where his evidence differed from Mr and Mrs Williams' evidence, I preferred their evidence.
47. I consider therefore that it is more likely than not that what happened was that after Mr Tula's loan was repaid, Mr and Mrs Williams paid monthly rent to Mr Mann (Mrs Williams adduced 2 house rent receipts into evidence) and otherwise supported Mr and Mrs Mann, including through building a kitchen on the property and paying bills for the property.
48. I also consider that on the evidence, it is more likely than not that what happened was that Mr and Mrs Williams took responsibility for paying bills for Mr Mann's property when they lived there, and as Mr Williams' salary could not cover everything, Mrs Williams asked for and collected a monthly contribution from her sisters residing there.
49. Mr Mann's denials that Mr and Mrs Williams supported him exemplified what Mr Williams evidenced that Mr Mann will deny now the fact of their support whereas if Mrs Mann was still alive, she would confirm it.
50. I also consider it more inherently likely that because Mrs Williams is Mr Mann's first born child, that is why she and her husband supported Mr and Mrs Mann.
51. I accepted that Mr Williams was a witness of truth and accepted his evidence that he supported Mr and Mrs Mann out of his respect for them, his in-laws.
52. That Mr and Mrs Williams were responsible for paying the bills for the property is borne out in Mr Tula's evidence that when Mr and Mrs Williams moved out in November 2016, they left the house without power or water for a week. I consider it more inherently likely that this occurred because Mr and Mrs Williams severed the power and water connections so that they could connect those at their new place of residence, therefore someone else had to arrange new power and water connections to Mr Mann's property.
53. Finally, given their repayment of Mr Tula's loan which was secured by a mortgage over Mr Mann's property, Mr and Mrs Williams knew that Mr Mann was the legal owner of the

property. Any rent was payable to Mr Mann. There is also no evidence that Mr Mann agreed that the Defendants collect rent on his behalf.

54. For the reasons given, my answer to **Issue 3** is, "**No.**"

I. Issue 4: Are the Defendants liable to the First Claimant Mr Mann in damages?

55. The Defendants alleged that they left the house clean and free from damage.

56. Mr Tula evidenced that the Defendants never repaired the house so it is now in very bad condition and when they moved out, they damaged a lot of things and removed things that were part of the house and did not belong to them. No detail was given of what things were damaged nor what things were removed from the house.

57. Mr Tula attached photographs said to be of his house that was damaged. However, none of the photographs are date or time-stamped. I must assume then the photographs were taken in 2019 to support the present Claim. However, the Defendants had moved out of Mr Mann's property in November 2016. They cannot be held responsible for damage for which the only evidence are photographs taken 3 years later.

58. Accordingly, the Claimants have failed to prove on the balance of probabilities that the Defendants damaged the house and the Defendants cannot be held liable to Mr Mann in damages.

59. My answer to **Issue 4** is, "**No.**"

J. Result and Decision

60. In conclusion, I answer the issues as follows:

a) Issue 1: Is the Claimants' claim partially statute barred and if so, from when? "**Yes – any aspect of the Claimants' Claim in relation to rent that was paid over 6 years before the Claim was filed (that is, any rent paid before 12 August 2013) is statute-barred.**"

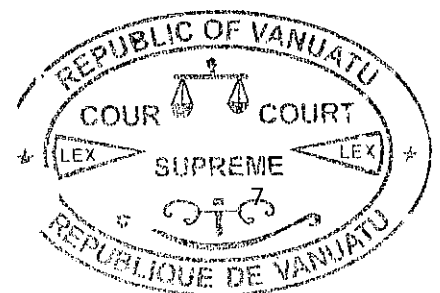
b) Issue 2: Was there an agreement that the Defendants pay rent to the Third Claimant Mr Tula? "**No.**"

c) Issue 3: Was there an agreement that the Defendants collect rent from the other family members residing in the house? "**No.**"

d) Issue 4: Are the Defendants liable to the First Claimant Mr Mann in damages? "**No.**"

61. For the reasons given, the Claimants have failed to prove the Claim on the balance of probabilities. None of the Claimants are entitled to judgment against the Defendants.

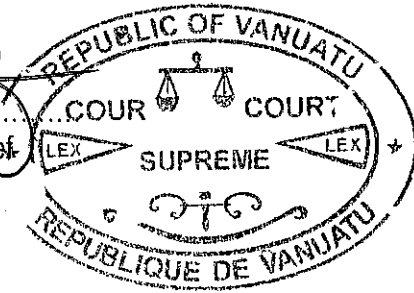
62. The Claim is dismissed.



63. The Claimants are to pay the Defendants' costs as agreed or taxed by the Master. Once set, the costs are to be paid within 28 days.

**DATED at Port Vila this 9th day of August 2021
BY THE COURT**

UMTnef
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Justice Viran Molisa Tref



The seal of the Supreme Court of the Republic of Vanuatu is circular. It features a central emblem with a scale of justice and a sword. The text 'REPUBLIC OF VANUATU' is written along the top inner edge, and 'REPUBLIQUE DE VANUATU' along the bottom inner edge. In the center, the words 'COURT' and 'COURT' are positioned on either side of the scale, and 'SUPREME' is written below it. Two small triangles containing the word 'LEX' are also present.