

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

**Civil
Case No. 21/642 SC/CIVL**

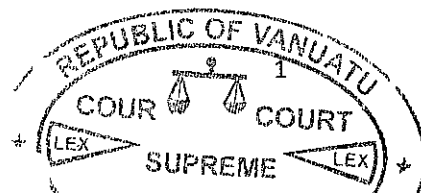
BETWEEN: Paul Hocten
Claimant

AND: Mr Jinming Wang
Defendant

Date: 5 November 2021
Before: Justice V.M. Trief
Counsel: Claimant – Mr L. Malantugun
Defendant – Ms S.S. Mahuk

DECISION AS TO APPLICATION SEEKING LEAVE TO APPEAL

1. By Judgment dated 24 September 2021, I struck out the Claim for failure to disclose a cause of action. The Claim did not contain a pleading that there was a written contract between the parties for the sale and purchase of real property bearing lease title no. 11/OB22/025. Further, Mr Malantugun conceded in his submissions that there was no signed contract between the parties for such sale and purchase.
2. By Application filed on 15 October 2021 and supporting Sworn statement of Paul Hocten filed on the same day, the Claimant sought leave to appeal the strike-out of the Claim.
3. This is opposed. The Defendant filed Objection to the Application on 3 November 2021.
4. This is my decision, made on the papers, as to the Application.
5. An order striking out a proceeding is interlocutory in nature therefore leave is required to appeal: *Miller v National Bank of Vanuatu* [2006] VUCA 1.
6. The Court must be satisfied that the decision below is attended with sufficient doubt to justify the grant of leave and that a substantial injustice would be done if it remains un-reversed: *Snoopys Stationary and Office Supplies Ltd v Minister of Education* [2009] VUSC 2 at p. 6 per Hon. Chief Justice Lunabek.



7. Ms Mahuk cited the judgment of the Court of Appeal in *Nutley v Kim* [2003] VUCA 29 at p. 7:

We are in no doubt that of the two competing claims the appellant's is the better and stronger and must prevail over the first respondent's unwritten oral agreement which is rendered unenforceable in terms of Section 40 of the Law of Property Act 1925 (UK) which we are satisfied has application as part of the laws of Vanuatu. The section reads:

"No action may be brought upon any contract for the sale or other disposition of land or any interest in land, unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some other person thereunto by him lawfully authorized."

(my emphasis)

8. I accept Ms Mahuk's submission that *Nutley v Kim* applies so that given the parties' competing claims, in the absence of a written agreement to support the Claimant's claim for repayment of deposit for the sale and purchase of the leasehold property, the Claim fails.
9. In the circumstances, I am not persuaded that my judgment dated 24 September 2021 is attended with sufficient doubt to justify the grant of leave nor that a substantial injustice would be done if it remains un-reversed.
10. For the reasons given, the Application seeking Leave to Appeal is **refused**.
11. The Defendant is entitled to the costs of the Application against the Claimant, summarily assessed at VT20,000, to be paid **by 4pm on 3 December 2021**.

**DATED at Port Vila this 5th day of November 2021
BY THE COURT**

VM Trief
Justice Viran Molisa Trief

