

BETWEEN: Philip Matavusi

Claimant

**AND: Rose Aru as Administratrix of the
Estate of Simeon Aru**

Defendant

Date of Trial: 20 April 2023
Before: Justice V.M. Trief
In Attendance: Claimant – Mr L. Tevi
Defendant – Mr J. Tari
Date of Decision: 28 April 2023

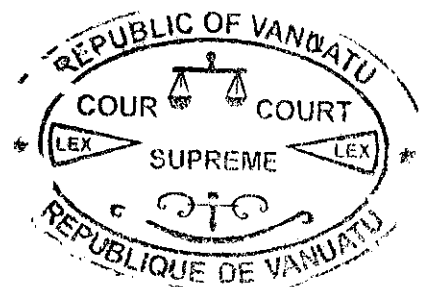
JUDGMENT

A. Introduction

1. The Claimant Philip Matavusi seeks payment for green kava supplied to the late Simeon Aru (his estate is now the Defendant). Mr Matavusi alleges that it was not fully paid for.

B. Background

2. Mr Matavusi is a subsistence farmer from Vojinar area on Santo island. He now lives at Valavalet area, just past Stonehill.
3. Mr Aru traded as SIM A Joinery and Construction and SIM A Shipping Limited, both Santo-based businesses.
4. By the Amended Claim, Mr Matavusi alleged that in 2018, he and Mr Aru agreed that he would supply 1,000 kava crops to Mr Aru in return for land and a house. He then harvested his kava, and it took 11 trucks and 2 lorry trips to deliver it to Mr Aru. He obtained a valuation that the kava was worth VT8 million. Despite follow-up, Mr Aru did not give Mr Matavusi a house and land. In August 2019, Mr Matavusi sent a debt

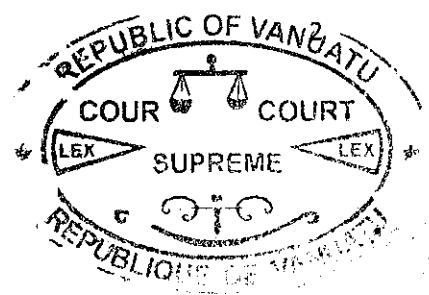


collector who collected VT2 million payment from Mr Aru. Subsequently his lawyer sent a letter of demand. Mr Aru responded that he had paid VT2,183,000 however, Mr Matavusi only received VT2 million. By the Claim, Mr Matavusi is seeking payment of the balance of the value of his kava crops as valued by the Department of Agriculture ('DARD').

5. The Claim is disputed. Rose Aru, Mr Aru's wife and now the administratrix of his estate denied any breach of contract. She alleged that she does not know about any agreement between Mr Matavusi and Mr Aru and what the value of Mr Matavusi's kava crops is. She alleged that it was not a term of the agreement for DARD to assess the value of the kava crops. Further, that the VT2,183,000 payment collected by the debt collector was made in full and final settlement of the matter as can be seen from the debt collector's receipt.

C. Evidence

6. Mr Matavusi and his wife Apima Matavusi gave evidence in support of the Claim. The only witness for the Defendant was Romain Mulonturala.
7. In Mr Matavusi's Sworn statement [**Exhibit C1**], he deposed that he and Mr Aru agreed that he would supply green kava to Mr Aru in return for land and a house. It took 2 weeks without rest to harvest his 1,200 kava plants. Mr Aru paid some of the men who helped harvest the kava. It took 11 truck trips and 2 lorry ("*camion*") trips to transport all the kava. Mr Simeon's employee Zackias Musu was present when the trucks collected the kava. During the second week, Zackias said that the kava that Mr Matavusi had given to Mr Aru was burned up at a house belonging to Mr Aru at Banban area. He said to Zackias that in that case, leave the rest of my kava. But Zackias said to him that the kava had already been delivered to Mr Aru and burned in Mr Aru's hands so Mr Aru would still have to pay him for it. So, they harvested all of Mr Matavusi's 1,200 kava plants.
8. Subsequently, Mr Matavusi went to Mr Aru's office and met Mrs Aru. Mrs Aru said that his kava weighed only 800kg so they would only pay VT2,000,000 for it. He told her that was not possible as he had sent his kava over by 11 truck trips and 2 lorry trips so he could not agree with her.
9. After that, he met Gideon Rocroc who agreed to help him go after payment from Mr Aru. With Mr Rocroc's help, he collected VT2,000,000 cash from Mr Aru and gave VT200,000 to Mr Rocroc for his help. However, he still thought VT2,000,000 was too low so he obtained a DARD valuation dated 11 September 2018 which valued his kava at VT42,200,000 [**Annexure "PM1"**]. He subsequently obtained another DARD valuation dated 23 May 2019 valuing the green kava that he supplied at VT8,000,000 [**Annexure "PM2"**].
10. In cross-examination, Mr Matavusi agreed that the DARD officer did not go to his garden. He agreed that he gave the DARD officer the figures used in his valuation. He agreed that the VT42,000,000 in the first DARD valuation was not part of his agreement with Mr Aru. He said that Mr Aru had failed their agreement which was why he went to the DARD officer. He said that Zackias was the one who came and told him to find

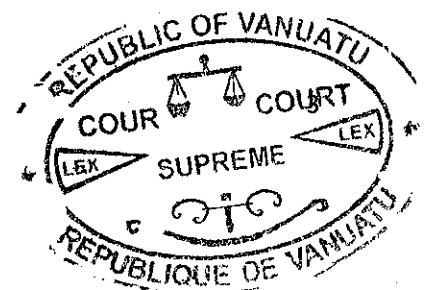


people to help him harvest his kava. He agreed that Zackias told him that VT2,000,000 was too small a payment for his kava.

11. In re-examination, Mr Matavusi stated that he thought VT2,000,000 was just too small for all the kava he supplied which took 11 trucks and 2 lorry trips to transport. He sent Gideon Rocroc to see Mr Aru about his kava after waiting in vain for Mr Aru to give him land and a house.
12. Mrs Matavusi deposed in her Sworn statement [**Exhibit C2**] that she and her children helped her husband to harvest his kava. The kava was not small because it took 11 trucks and 2 lorries to transport the kava. In cross-examination, she stated that she was at the garden when the 11 trucks and 2 lorries collected the kava.
13. Mr Mulonturala adduced into evidence a copy of Mr Aru's letter dated 5 April 2019 responding to Mr Tevi's letter of demand [**Exhibit D1**].
14. In his Sworn statement [**Exhibit D2**], Mr Mulonturala deposed that Mrs Aru had authorized him to give evidence. He said that only 731 kg dry kava was produced from Mr Matavusi's kava and on 14 August 2018, Mr Matavusi accompanied by debt collector Gideon Rocroc agreed to VT2,183,000 payment for the 731 kg dry kava. He adduced into evidence as "**Annexure RM2**" copies of Mr Matavusi's invoice for 731 kg dry kava, the BSP cash cheque for VT2,183,000 and Mr Rocroc's hand-written note confirming that Mr Matavusi had received VT2,183,000 as 'final payment' for his kava.
15. In cross-examination, he stated that Mr Aru asked him to help him respond to Mr Tevi's letter of demand. He agreed that he was not present when Mr Matavusi and Mr Aru made their agreement. He could not say if in 2018-2019, green kava sold for VT1,000 per kilogram. In re-examination, he stated that he could not say what the price for green kava was.

D. Discussion

16. In a claim for breach of contract, the claimant must establish that the parties had a contract, what the terms of the agreement were and that the contract was breached.
17. In Mr Matavusi's evidence, his agreement with Mr Aru was that he would supply green kava in return for land and a house. However, when Mr Aru did not provide this to him he asked Mr Aru for payment in cash. He received VT2,000,000 cash but considered afterwards that this was too low for the quantity of kava that he had supplied which took 11 trucks and 2 lorry trips to transport from his garden. In his evidence, he harvested 1,200 kava plants.
18. I consider therefore that Mr Matavusi and Mr Aru had an agreement for Mr Matavusi to provide green kava to Mr Aru, which was later varied so that in return, Mr Aru would pay for the kava supplied.
19. Mrs Matavusi also gave evidence that it took 11 truck and 2 lorry trips to transport her husband's kava from the garden.



20. However, there is no evidence that Mr Aru received all the green kava transported by the 11 trucks and 2 lorry trips. Some of the kava may have been diverted elsewhere and never reached Mr Aru. Zackias Musu was not called to give evidence to confirm how much kava was harvested by Mr Matavusi nor where the trucks and lorries delivered the kava to. It is clear that Mrs Aru worked in Mr Aru's office at the time. She was not called to give evidence about how much kava was received and what, if any, the business records showed.
 21. Mr Matavusi gave evidence about being told in the second week of harvesting his kava that some of the kava that he had supplied had burned at a house belonging to Mr Aru at Banban. Mr Musu could have been called to give evidence about this, but he was not. Similarly, Mrs Aru could have been called to give evidence about this but was not.
 22. Mr Matavusi conceded that the officer who made the DARD valuations did so based only on the figures that Mr Matavusi gave him, but that officer never visited his garden or saw his plants. Accordingly, the valuations are not credible evidence and do not assist Mr Matavusi to prove how much kava he supplied or what his kava was worth.
 23. In his own evidence, Mr Matavusi and Mr and Mrs Aru disagreed immediately after he harvested his kava about the quantity of green kava supplied. In Mr Matavusi's evidence, Mrs Aru told him that his kava only weighed 800 kg. Mrs Aru could have been called to give evidence about this but was not.
 24. In the circumstances, on the evidence, I cannot make a finding as to how much kava was supplied and received by Mr Aru. I also cannot make any finding about the value of the kava.
 25. As to the payment made, Mr Rocroc could have been called to give evidence about whether or not it was made in full and final settlement of the matter. However, he was not.
 26. For the reasons given, Mr Matavusi has failed to prove the Claim on the balance of probabilities.
- E. Result and Decision
27. The Claim is **dismissed**.
 28. The Claimant is to pay the Defendant's costs as agreed or taxed by the Master. Once set, the costs are to be paid within 28 days.

**DATED at Port Vila this 28th day of April 2023
BY THE COURT**

VM Trief
Justice Viran Molisa Trief

