

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

Civil
No. 21/2522 SC/CIVL

**BETWEEN: James Bani, Anita Bani, Benton Boe,
Helen Bani, Godrington Tanga,
Hanalyn Bani, Olivet Bani, Jarina Woi,
Robert Aru, Andolyn Aru, Jeffson Tau**

Claimants

AND: Dragos Mihaila

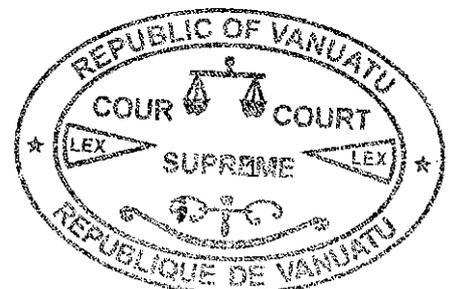
Defendant

Dates of Trial: 22 August 2024, 6 September 2024, 8 October 2024, 9 October 2024 &
14 October 2024
Before: Justice V.M. Trief
In Attendance: Claimants – Mr L. Tevi, via video link from Luganville Court House
Defendant – Mrs B. Emelee
Date of Decision: 15 October 2025

JUDGMENT

A. Introduction

1. The Claimants James Bani, Anita Bani, Benton Boe, Helen Bani, Godrington Tanga, Hanalyn Bani, Olivet Bani, Jarina Woi, Robert Aru, Andolyn Aru and Jeffson Tau are seeking orders for the payment of unpaid wages said to be owed by the Defendant Dragos Mihaila.
2. This is the judgment following trial.

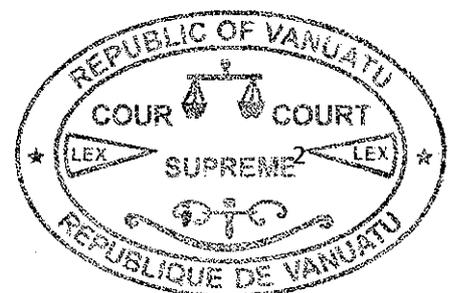


B. Background

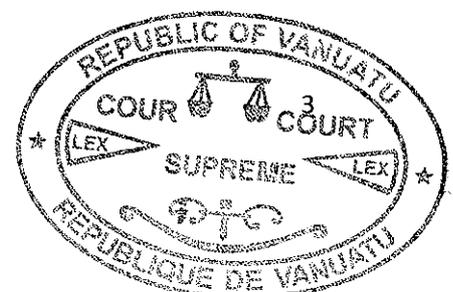
3. In 2017, the Claimants James Bani and his wife Anita Bani relocated from Ambae island to Santo island due to the mass evacuation of Ambae following the volcanic eruptions.
4. On 20 May 2017, Mr James Bani ("tenant") and Mr Dragos Mihaila and his wife Mrs Carmen Mihaila ("owner") entered into a Tenancy Agreement for Mr Bani to live rent-free on Mr and Mrs Mihaila's property at Jubilee Farm on Santo island in exchange for providing security and maintenance on the property (the 'Tenancy Agreement').
5. Mr and Mrs Bani lived on Mr and Mrs Mihaila's property at Jubilee Farm pursuant to the Tenancy Agreement. Mr Bani provided property security and maintenance.
6. Mr Mihaila employed Mr Bani and paid him a wage fortnightly. Mr Bani is disputing the amount of wages.
7. It is also disputed whether or not Mrs Bani was employed and is entitled to unpaid wages.
8. On 11 May 2020, Mr Mihaila gave Mr Bani 30 days' notice of termination of the Tenancy Agreement.
9. On 29 June 2020, the Tenancy Agreement terminated. Mr Bani's employment and Mrs Bani's alleged employment also ended.
10. The rest of the Claimants are alleging that they spent 3 months clearing land and planting kava for Mr Mihaila. They are claiming unpaid wages.
11. Mr Mihaila filed a Defence disputing the Amended Claim. He also filed a Counter Claim against Mr and Mrs Bani.

C. The Pleadings and Issues

12. On 8 November 2022, the Claimants filed the Amended Claim. They are alleging that Mr Mihaila employed the Claimant James Bani under a Tenancy Agreement from 30 May 2017 to 29 June 2020 but failed to pay him the minimum wage. It is alleged he was only paid VT20,000 a month but is entitled to the minimum wage of VT30,000 per month. In addition, they are alleging that Mr Mihaila also employed Mrs Bani from June 2017 to 29 June 2020 and failed to pay her any wages. Finally, that Mr Mihaila employed the rest of the Claimants from February-April 2019 to clear his land at Stone Hill area and plant kava in return for receiving 10% from the sale of kava. They have not received any payment for their work therefore are claiming payment of 3 months' minimum wages.



13. The relief sought includes an order for payment to Mr Bani of the difference between the wages he received and the minimum wage, and for the rest of the Claimants an order for payment of wages at the minimum wage rate. Also sought is an order for VT300,000 damages for pain and suffering, costs and any other Order the Court deems just.
14. On 7 February 2023, the Defendant filed Defence to Amended Claim and Counter Claim. He alleged that he hired Mr Bani only on a part time basis under an oral agreement. He admits he entered into a tenancy agreement with Mr Bani for him (Mr Bani) to exercise some security and maintenance on the property when Mr Mihaila was away. He denied employing the rest of the Claimants, referring to agreements dated 8 January 2019 and 20 May 2019 for the purchase of land and under which Mr Bani had an obligation to provide staff for the agricultural project. He alleged that the claims are subject to s. 20 of the *Employment Act* [CAP. 160] (the 'Act') therefore no proceedings may be instituted for the recovery of remuneration after the expiry of 3 years from the end of the period to which the remuneration relates.
15. Mr Mihaila's Counter Claim is against James and Anita Bani only. He alleged that he and Mr Bani entered into a Tenancy Agreement dated 30 May 2017 under which they lived on No. 7 Jubilee Farm, lease title 04/2632/023 without monetary charge in return for providing security and maintenance on the property. He alleged that the Tenancy Agreement was terminable on 30 days' notice and that on 11 May 2020, he gave Mr Bani 30 days' notice of termination of the agreement. He alleged that Mr Bani stole items from him worth VT27,000, caused VT36,000 damage to his two chainsaws and caused him to lose VT50,000 on a reward paid to obtain information on the theft. He is also claiming VT210,000 damages for purchase of kava plants or alternatively, VT1,400,000 loss being the estimated value of kava plants lost after Mr Bani failed to maintain the kava plants. Finally, he alleged that he and Mr Bani entered into an oral agreement in November 2018 for the purchase of land at Potmas area for a kava project, for which he provided VT500,000 for the payment of the purchase deposit under the written agreement dated 8 January 2019 between Mr Bani and the landowner Jimmy Jack. On 27 April 2020, Mr Bani as Mr Mihaila's agent entered into an additional agreement with the landowners for the purchase of 1 additional hectare for VT100,000. However, that Mr Bani breached the oral agreement by not paying the deposit in full to the landowners therefore not acquiring the land.
16. The relief sought includes the value of the stolen items VT27,000, costs of repairs to chainsaws of VT36,000, the VT50,000 reward paid for information on the theft, VT210,000 monies used without consent, VT1,400,000 loss of estimated market value of the kava plants on maturity and VT600,000 spent on land purchase at the Potmas area for a kava project. Also sought are VT300,000 general damages for stress and anxiety, costs and any other order deemed just.
17. On 17 April 2023, the Claimants filed Defence to Counter Claim. They denied stealing items from Mr Mihaila and denied causing damage to his chainsaws as they were already in bad condition from being used by the Claimants. They denied using money



from the cash box as it was given to Mr Bani to purchase a kava garden from Sakias but after cleaning the kava garden, Sakias subsequently harvested that garden. They also alleged that Mr Bani was only acting as Mr Mihaila's agent in paying VT600,000 to the landowners Jimmy Jack and John Boe for the Potmas land purchase but does not know the land agreements between Mr Mihaila and the landowners.

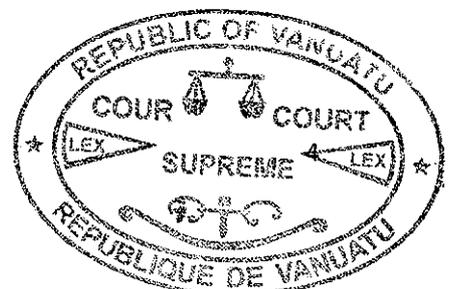
18. I will determine the issues between the parties under the following headings:

- a. **Issue 1:** Mr James Bani's employment claim
- b. **Issue 2:** Mrs Anita Bani's employment claim
- c. **Issue 3:** The other Claimants' employment claims
- d. **Issue 4:** Whether or not the Claimants are entitled to an award of VT300,000 damages for pain and suffering?
- e. **Issue 5:** Whether or not Mr Mihaila is entitled to damages for alleged theft, damage to two chainsaws, and a reward paid for information as to the theft?
- f. **Issue 6:** Whether or not Mr Mihaila is entitled to VT210,000 damages for purchase of kava plants or alternatively, VT1,400,000 loss being the estimated market value of the kava plants on maturity?
- g. **Issue 7:** Whether or not Mr Mihaila is entitled to VT600,000 damages for Potmas land purchase?
- h. **Issue 8:** Whether or not Mr Mihaila is entitled to an award of VT300,000 damages for stress and anxiety?

D. Evidence

19. The Claimants relied on the sworn statements of the following:

- a) James Bani filed on 17 March 2022 [**Exhibit C1**], 17 August 2022 [**Exhibit C2**] and 29 May 2023 [**Exhibit C3**];
- b) Anita Bani filed on 18 March 2022 [**Exhibit C4**], 29 May 2023 [**Exhibit C5**] and 9 August 2023 [**Exhibit C6**]; and
- c) Hanalyn Bani filed 17 March 2022 [**Exhibit C7**] and 29 May 2023 [**Exhibit C8**];
- d) Helen Bani filed on 17 March 2022 [**Exhibit C9**] and 29 May 2023 [**Exhibit C10**];
- e) Robert Aru filed on 17 March 2022 [**Exhibit C11**] and 9 August 2023 [**Exhibit C12**];



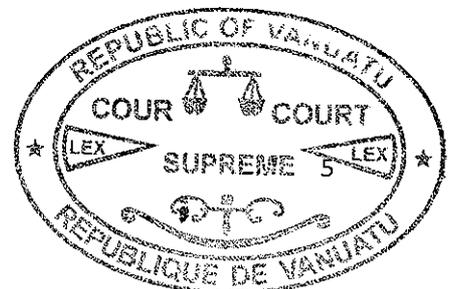
- f) Benton Boe filed on 17 March 2022 [Exhibit C13] and 9 August 2023 [Exhibit C14];
 - g) Andolyn Aru filed on 17 March 2022 [Exhibit C15] and 9 August 2023 [Exhibit C16]; and
 - h) Jarina Woi filed on 9 August 2023 [Exhibit C17].
20. All Claimants' witnesses were cross-examined.
21. Mr Mihaila relied on the sworn statements of the following:
- a) Jimmy Jack filed on 26 June 2023 [Exhibit D1];
 - b) Roman Jetter filed on 31 May 2023 [Exhibit D2];
 - c) Angela Hungai filed on 24 May 2023 [Exhibit D3];
 - d) Carmen I. Mihaila filed on 5 June 2023 [Exhibit D4];
 - e) Esther Tohroua filed on 5 June 2023 [Exhibit D5];
 - f) Chris Hungai filed on 24 May 2023 [Exhibit D6]; and
 - g) Dragos Mihaila filed on 13 April 2023 [Exhibit D7] and 28 July 2023 [Exhibit D8].
22. Only Mr Jack, Mr Hungai and Mr Mihaila were cross-examined.

E. The Law

23. Section 20 of the Act provides as follows:

20. *No proceedings may be instituted by an employee for the recovery of remuneration after the expiry of 3 years from the end of the period to which the remuneration relates.*

24. On 27 August 2012, the *Minimum Wage and Wage Board (Amendment) Order No. 109 of 2012* commenced into force. It provided for the minimum wage of VT170 per hour.
25. On 28 December 2017, the *Minimum Wage and Wage Board (Amendment) Order No. 198 of 2017* commenced into force. It provided for the minimum wage of VT200 per hour.
26. On 5 September 2019, the *Minimum Wage and Wage Board (Amendment) Order No. 116 of 2019* commenced into force. It provided for the minimum wage of VT220 per hour.



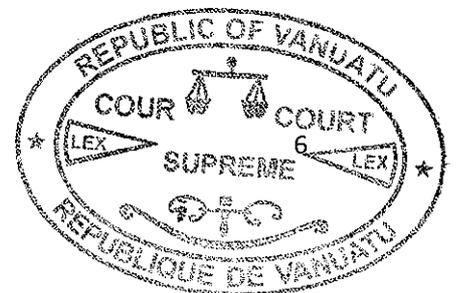
F. **Issue 1: Mr James Bani's employment claim**

27. It is alleged in the Amended Claim that Mr Bani was employed under the Tenancy Agreement dated 30 May 2017 (incorrectly stated as "30 May 2020" in the particulars). It is also alleged that he was paid VT20,000 a month but is entitled to the difference between what he was paid and the minimum wage rate of VT30,000 per month.
28. The defence case is that the parties entered into the Tenancy Agreement but then Mr Mihaila saw that Mr Bani could not support himself so subsequently hired Mr Bani only under an oral agreement on a part-time basis.
29. Mr Mihaila adduced a copy of the Tenancy Agreement into evidence [**Exhibit D7 – Attachment "DM01"**]. It is between the "owner" Dragos and Carmen Mihaila and the "tenant" James Bani. It is stated as follows in the first paragraph of the Tenancy Agreement:

*... The owner is offering a portion of the land and an old house to the tenant to live on, in exchange for property security and maintenance. Some services such water from the storage tanks (via gravity) and limited power are included.
There is no money involved in this agreement.*

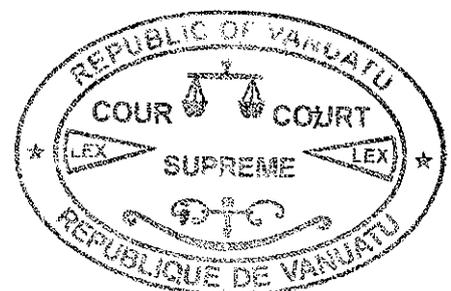
[emphasis added]

30. Mr Bani accepted in cross-examination that he and Mr and Mrs Mihaila entered into the Tenancy Agreement. He stated that he worked full-time. Mr Bani accepted that Mr Mihaila paid him VT15,000 a fortnight and VT30,000 a month.
31. The terms of the Tenancy Agreement are clear that Mr Bani would provide security and maintenance on Mr and Mrs Mihaila's property in exchange for living rent-free in an old house on the property with water and power provided. It is also an express term of the Tenancy Agreement that there was no money involved in that agreement. Accordingly, I find that Mr Bani was not employed by Mr Mihaila under the Tenancy Agreement, as alleged in the Amended Claim.
32. I accept and find that Mr Mihaila employed Mr Bani under an oral agreement in July 2017 and paid him at the minimum wage rate of VT200 per hour and later VT220 per hour [**Exhibit D7 – Attachment "DM02"**]. I also find that Mr Mihaila paid Mr Bani VT30,000 a month.
33. Mr Bani's claim was for the difference between what he was paid and the minimum wage rate said to be VT30,000 per month. Mr Bani accepted that he was paid VT30,000 a month.
34. The Claimants have not proved this aspect of the Amended Claim on the balance of probabilities.

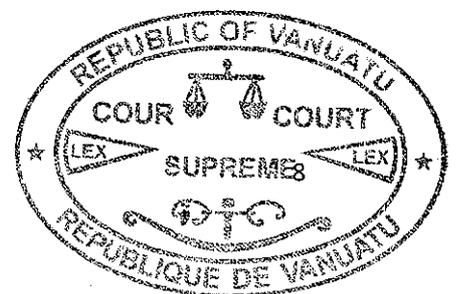


G. **Issue 2: Mrs Anita Bani's employment claim**

35. It is alleged in the Amended Claim that Mr Mihaila also employed Mr Bani's wife Anita Bani from June 2017 to 29 June 2020 and failed to pay her any wages.
36. This is denied. The defence case is that Mr Mihaila did not employ Mrs Bani and when she carried out specific tasks for him, she was paid cash.
37. Mr Bani's evidence was that when he and his wife moved to Mr Mihaila's property at Jubilee Farm, Mr Mihaila told him that his wife must also do work on the property. He stated that she worked from Monday-Saturday on the property [Exhibit C1].
38. Mrs Bani's evidence was that her husband relayed Mr Mihaila's instruction that she must also do work on the property. She stated that she worked on the property but has never been paid [Exhibit C4].
39. It was put to Mrs Bani in cross-examination that in July 2019 and again in November 2019 she did some weeding at Mr Mihaila's kava garden. She was adamant that it was not some weeding – that she weeded every day from Monday to Saturday, that she worked full-time for him. She did not agree that when Mr Mihaila was there and she did some small tasks, that he paid her cash. In re-examination, she stated that she worked as a housekeeper but also cleaned the yard, helped her husband with his tasks, she helped pin the thatch roofing for the verandah, planted flowers, planted kava, and she weeded the kava garden every day.
40. Mrs Bani agreed in cross-examination that for the 3 years that she lived on Mr Mihaila's property, she never complained to Mr Mihaila about not receiving a wage. It was put to her that Mr Mihaila did not know that she was doing work for him when she never complained to him about not being paid. She replied that was because she does not speak English. She said that Mr Mihaila told her husband that she could not be idle – that she must work. However, she worked for him for 3 years and he never paid her. She agreed that because she does not know English, only her husband spoke with Mr Mihaila. She explained in re-examination that she never complained because she did not know how to complain to him and her husband was already getting paid by Mr Mihaila.
41. I understand from Mrs Bani's answer that she did not understand her right to be paid for the work she did on Mr Mihaila's property. I infer that during those 3 years, she accepted that her husband was paid by Mr Mihaila for his work, but she did not know that she also has a right to be paid for the work that she did.
42. Mr Mihaila's evidence was that he did not employ Mrs Bani from 2017 to 2020 as claimed. He stated that he asked Mrs Bani twice to do tasks and he paid her – on 24 July 2019, kava weeding and paid her VT5,000; and on 15 November 2019, kava weeding and he paid her VT5,000 [Exhibit D7].



43. I consider that given the language barrier, that Mr Bani and Mr Mihaila spoke directly with each other in relation to Mrs Bani also doing work on the property, rather than there being direct communication between Mrs Bani and Mr Mihaila. Given the situation in which Mr Bani was employed, it is inherently likely that when Mr and Mrs Bani received Mr Mihaila's instruction that she should also work on the property, they understood it to mean that she should work every day just like her husband.
44. I also take into account that only Mr Bani, and Mr and Mrs Mihaila, were party to the Tenancy Agreement. Therefore, only Mr Bani was obliged to provide security and maintenance on the property. Accordingly, when Mr and Mrs Bani received Mr Mihaila's instruction that she should also work on the property, that would be employment of Mrs Bani independent of the Tenancy Agreement hence she should work every day like her husband, who was himself separately employed under an oral agreement. Therefore, I am satisfied and find that Mrs Bani was employed under an oral agreement agreed on her behalf by her husband Mr Bani with Mr Mihaila.
45. I also accept and find that Mrs Bani worked on the property every day as she related in her evidence.
46. Accordingly, I find that Mrs Bani is entitled to be paid for the work that she did on Mr Mihaila's property. She is entitled to be paid at the minimum wage.
47. Mrs Bani worked for Mr Mihaila from 30 May 2017 to 29 June 2020. However, I accept that s. 20 of the Act applies. Accordingly, Mrs Bani's claim for remuneration which arose earlier than 3 years before the present proceedings were instituted is barred by s. 20 of the Act. The Claim by which this proceeding commenced was filed on 5 August 2021. Accordingly, Mrs Bani's claim for remuneration is only permitted from 5 August 2018 onwards.
48. Mr and Mrs Bani, and Mr and Mrs Mihaila, entered into an agreement dated 20 May 2019 titled, "*Agreement for land allocation and ownership of the 25ha land owned by James Bani at Potmas.*" A term of the agreement was that Mr Bani and his family agreed to support the kava project at land at the Potmas area covered by that agreement by, "*planting and managing the crop.*" Accordingly, I find that Mrs Bani's work planting and weeding Mr Mihaila's kava garden was in accordance with this agreement hence she is not entitled to separate wages from 20 May 2019 onwards.
49. Accordingly, Mrs Bani's claim for unpaid wages succeeds for the period from 5 August 2018 to 20 May 2019, a period of 9 and a half months. In May 2019, the applicable minimum wage rate was VT200 per hour therefore for a 40-hour working week totals VT32,000 a month. Accordingly, Mrs Bani is entitled to **unpaid wages** at VT32,000 per month x 9.5 months = **VT304,000**.



H. Issue 3: The other Claimants' employment claims

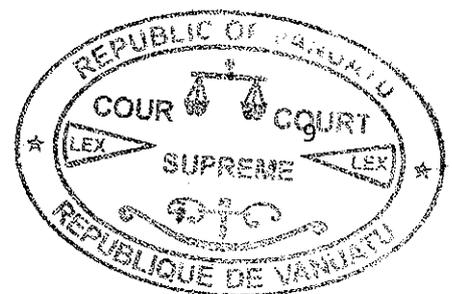
50. It is alleged in the Amended Claim that Mr Mihaila employed the rest of the Claimants from February-April 2019 to clear his land at the Stone Hill area and plant kava. It is alleged that their oral agreement was that they would receive 10% from the sales of kava. They alleged that there was a dispute over the land necessitating that Mr Mihaila make an additional payment for the land, but when they returned to work, their personal belongings had been stolen so they decided to stop working for Mr Mihaila. They are therefore claiming payment of 3 months' pay at the minimum wage.
51. In defence, Mr Mihaila denied employing the rest of the Claimants, referring to agreements dated 8 January 2019 and 20 May 2019 for the purchase of land and under which Mr Bani had an obligation to provide staff for the agricultural project.
52. It is common ground that the two agreements relate to the purchase of land for a kava project at the Potmas area on Santo, which is the same land which the Claimants referred to in the Amended Claim as being located at the Stone Hill area on Santo.
53. The parties to the agreement dated 8 January 2019 were Jimmy Jack ("landowner (seller)") and James Bani ("purchaser"). This agreement was for Mr Bani to purchase 25 hectares of land from Mr Jack located in the Potmas area, 1.5km from the Big Bay Highway Junction, on the southern side of the road to Potmas. The price was VT2,500,000 with VT500,000 payable on the date of the agreement, and the VT2,000,000 balance payable by 8 January 2023 [Exhibit D8 – Attachment "DM12"].
54. The parties to the agreement dated 20 May 2019 titled, "Agreement for land allocation and ownership of the 25ha land owned by James Bani at Potmas" were Mr and Mrs Mihaila and Mr and Mrs Bani. The agreement recorded that Mr Mihaila had already provided the VT500,000 payment for the land, which was paid in January 2019, and that the balance of the purchase price would be funded from the sale of kava plants within the land. It was also recorded that 20 hectares of the land belonged to Mr Mihaila and 5 hectares to Mr Bani and his family.
55. The agreement provided for "Kava Project" as follows:

Kava Project

The kava project is funded by Dragos for the purchasing of kava plants. James and his family are supporting the project by planting and managing the crop. His family is to live on the land and manage the project...

[emphasis added]

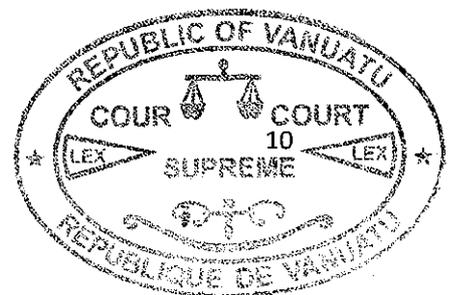
56. Significantly, the only Claimants who were party to one or both agreements were Mr James Bani and Mrs Anita Bani.



57. None of the other Claimants were party to those agreements therefore they are not bound by the agreements.
58. It follows that these agreements do not provide Mr Mihaila a defence to their claims for unpaid wages.
59. Some of the Claimants namely Anita Bani, Robert Aru and Andolyn Aru witnessed the 8 January 2019 agreement. However, they were only witnesses. They were not parties to the agreement. In addition, they do not speak English. Mr Mihaila agreed in cross-examination that he did not explain the contents of the agreement to them – he stated that it was not his job to.
60. The question then is whether each of the rest of the Claimants has proved their claim.
61. I now determine each Claimant's claim.

Benton Boe

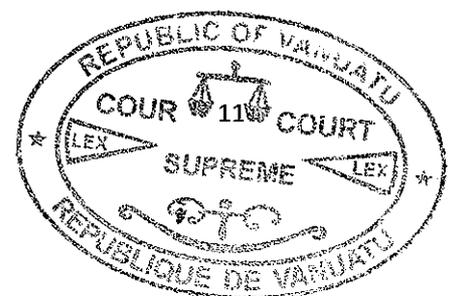
62. Mr Boe's evidence was that he and other Claimants worked for Mr Mihaila for 3 months at the Potmas area. They cleared the bush there and planted 7,000 kava plants but Mr Mihaila has not paid them. They stopped work there after people stole their beddings from their tarpaulin shelter at that land [**Exhibit C13**].
63. In cross-examination, Mr Boe stated that Mr Mihaila asked him and the Claimants to work at the Potmas land. Mr Boe stated that Mr Mihaila spoke with Mr Bani and Mr Bani asked them to go and plant the kava. He said he personally counted that they planted 7,000 kava plants there. He agreed that he did not complain to Mr Mihaila about not being paid. In re-examination, he explained that he never complained to Mr Mihaila but he was not glad in his heart about the hardship they suffered whilst working for Mr Mihaila at the Potmas land and that they were not paid.
64. Mr Mihaila's evidence was that he never employed Mr Boe to work at the Potmas land. He understood from Mr James Bani that he was going to rely on his family members to help with the work and was confident that they would because he, as the head of the family, was asking, but he never got involved in how Mr Bani was going to fulfil his part of the agreement [**Exhibit D7**].
65. As already stated, Mr Boe was not a party to the Potmas land agreements dated 8 January 2019 and 20 May 2019 hence these agreements are no defence to his claim for unpaid wages. I therefore reject Mr Mihaila's evidence that he relied on Mr Bani to arrange with his family members to work on that land but that he never got involved in how Mr Bani was going to fulfil his part of the agreement.



66. I find that Mr Boe worked on the Potmas land for 3 months. This was at Mr Bani's request but for Mr Mihaila's benefit.
67. I find that Mr Boe and the Claimants (not including James and Anita Bani) stopped work on the Potmas land after people stole their beddings from their tarpaulin shelter at that land.
68. Mr Mihaila's evidence was that on 27 April 2020, Mr Bani as Mr Mihaila's agent entered into an additional agreement for the landowners for the purchase of 1 additional hectare for VT100,000 [**Exhibit D8 – Attachment "DM14"**]. The timing of this agreement is consistent with the Claimants' case that there was a dispute over the land necessitating that Mr Mihaila make an additional payment for the land, but when they returned to work, their personal belongings had been stolen so they decided to stop working for Mr Mihaila.
69. I also find that Mr Boe is entitled to be paid wages for his work. This should be at the minimum wage.
70. In April 2019, the applicable minimum wage rate was VT200 per hour therefore for a 40-hour working week totals VT32,000 a month.
71. Accordingly, Mr Benton Boe's claim for **unpaid wages** succeeds for the period from February-April 2019 and he is entitled to be paid VT32,000 per month x 3 months = **VT96,000**.

Helen Bani

72. Helen Bani's evidence was that at Mr Mihaila's request, she and other Claimants worked for Mr Mihaila for 3 months at the Potmas area. They cleared the bush there and planted 7,000 kava plants but Mr Mihaila has not paid them [**Exhibit C9**]. She said that Mr Mihaila spoke to them at his kitchen to go and work at the Potmas land and he would give them a hectare of land. She said that what has happened to the land is not her business but she wants to be paid for the work that she agreed to do for him [**Exhibit C10**].
73. In cross-examination, Ms Bani agreed that she cleared the land and planted kava at the Potmas land. She stated that Mr Mihaila asked her to clear the land and plant kava there. She stated that he spoke in English and she answered in Bislama. She agreed that she did not put in her sworn statement that Mr Mihaila said that he would pay them, but she had said that he would give them land.
74. Mr Mihaila's evidence was that he never employed Helen Bani to work at the Potmas land. He understood from Mr James Bani that he was going to rely on his family members to help with the work and was confident that they would because he, as the



head of the family, was asking, but that he never got involved in how Mr Bani was going to fulfil his part of the agreement [Exhibit D7].

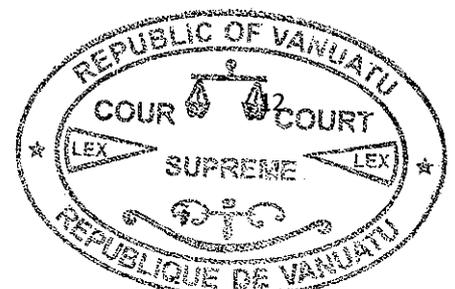
75. As already stated, Ms Helen Bani was not a party to the Potmas land agreements dated 8 January 2019 and 20 May 2019 hence these agreements are no defence to her claim for unpaid wages. I therefore reject Mr Mihaila's evidence that he relied on Mr Bani to arrange with his family members to work on that land but that he never got involved in how Mr Bani was going to fulfil his part of the agreement.
76. I find that following Mr Mihaila's request, that Ms Helen Bani worked on the Potmas land for 3 months clearing the land and planting kava. I also find that Mr Mihaila has benefitted from Ms Bani's work therefore she is entitled to be paid wages for her work. This should be at the minimum wage.
77. In April 2019, the applicable minimum wage rate was VT200 per hour therefore for a 40-hour working week totals VT32,000 a month.
78. Accordingly, Ms Helen Bani's claim for **unpaid wages** succeeds for the period from February-April 2019 and she is entitled to be paid VT32,000 per month x 3 months = **VT96,000**.

Godrington Tanga

79. Mr Tanga has not filed any evidence. He has not proved his claim on the balance of probabilities.

Hanalyn Bani

80. Hanalyn Bani's evidence was that at Mr Mihaila's request, she and other Claimants worked for Mr Mihaila for 3 months at the Potmas area. They cleared the bush there and planted 7,000 kava plants but Mr Mihaila has not paid them [Exhibit C7]. She said that Mr Mihaila asked them to go and work at the Potmas land and he would give them a hectare of land. She said that after they worked for 3 months, Mr Mihaila did not pay them nor has he given them the land that he promised to. She said that Mr Mihaila used James Bani to negotiate for the land, but the land belongs to Mr Mihaila. She said that because she has worked for 3 months for Mr Mihaila, she wants to be paid for the work that she has done for him [Exhibit C8].
81. The Potmas land agreements were put to Ms Bani in cross-examination. This was largely unhelpful.
82. Mr Mihaila's evidence was that he never employed Hanalyn Bani to work at the Potmas land. He understood from Mr James Bani that he was going to rely on his family



members to help with the work and was confident that they would because he, as the head of the family, was asking, but that he never got involved in how Mr Bani was going to fulfil his part of the agreement [**Exhibit D7**].

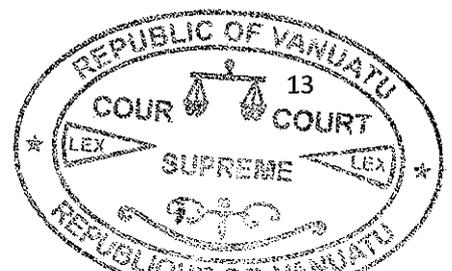
83. As already stated, Ms Hanalyn Bani was not a party to the Potmas land agreements dated 8 January 2019 and 20 May 2019 hence these agreements are no defence to her claim for unpaid wages. I therefore reject Mr Mihaila's evidence that he relied on Mr Bani to arrange with his family members to work on that land but that he never got involved in how Mr Bani was going to fulfil his part of the agreement.
84. I find that following Mr Mihaila's request, that Ms Hanalyn Bani worked on the Potmas land for 3 months clearing the land and planting kava. I also find that Mr Mihaila has benefitted from Ms Bani's work therefore she is entitled to be paid wages for her work. This should be at the minimum wage.
85. In April 2019, the applicable minimum wage rate was VT200 per hour therefore for a 40-hour working week totals VT32,000 a month.
86. Accordingly, Ms Hanalyn Bani's claim for **unpaid wages** succeeds for the period from February-April 2019 and she is entitled to be paid VT32,000 per month x 3 months = **VT96,000**.

Olivet Bani

87. Ms Olivet Bani has not filed any evidence. She has not proved her claim on the balance of probabilities.

Jarina Woi

88. Ms Woi's evidence was that she worked for Mr Mihaila for 3 months at the Potmas area, before she began working at the Black Pearl Resort in January 2018. She stated that like the other Claimants, they worked for Mr Mihaila to clear the bush there and plant kava but Mr Mihaila has not paid them [**Exhibit C17**].
89. In cross-examination, Ms Woi agreed that she started working at the Black Pearl Resort in January 2018. She also agreed that she said in her sworn statement that she worked for Mr Mihaila before she began working at the Black Pearl Resort. It was put to her that it is alleged in the Amended Claim that she worked for Mr Mihaila from February-April 2019. She replied that she worked for Mr Mihaila first then later began working at the Black Pearl Resort.
90. Roman Jetter's evidence was that he is a co-owner of the Black Pearl Resort and employed Ms Woi at the Black Pearl Resort from January 2018 to November 2020 on a



regular basis as a kitchen aide. She lived in Luganville over this period; he knows this because it was his habit to pick up workers from town every day and he picked her up from town [Exhibit D2]. Mr Jetter's evidence was not challenged by cross-examination.

91. Angela Hungai's evidence was that she managed the Black Peart Resort and confirms that Ms Woi worked regularly at the resort restaurant as a kitchen hand from January 2018 to mid-2020. Ms Woi lived in Luganville over this period [Exhibit D3]. Ms Hungai's evidence was not challenged by cross-examination.
92. I find that by her own evidence, Ms Woi began working at the Black Peart Resort in January 2018. Both Mr Jetter and Ms Hungai confirmed her working at the resort starting in January 2018 to mid or late 2020. That time frame is inconsistent with the claim for unpaid wages for the period February-April 2019. Accordingly, I find that Ms Woi has not proved her claim on the balance of probabilities.

Robert Aru

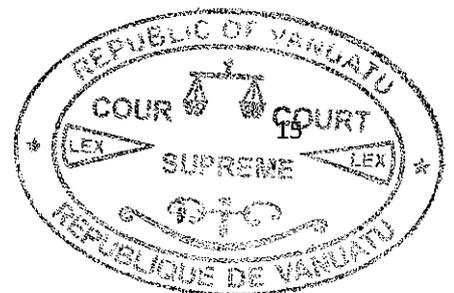
93. Robert Aru's evidence was that at Mr Mihaila's request, he and other Claimants worked for Mr Mihaila for 3 months at the Potmas area. They cleared the bush there and planted 7,000 kava plants but Mr Mihaila has not paid them [Exhibit C11].
94. In cross-examination, Mr Aru agreed that he cleared the land and planted kava at the Potmas land. He stated that Mr Mihaila asked them to clear the land and plant kava there. He stated that Mr Mihaila and he answered in Bislama. He agreed that he planted 7,000 kava plants and that he counted them. He stated that he did not know about the Potmas land agreements with Mr James Bani. There was no re-examination.
95. Mr Mihaila's evidence was that he never employed Robert Aru to work at the Potmas land. He understood from Mr James Bani that he was going to rely on his family members to help with the work and was confident that they would because he, as the head of the family, was asking, but that he never got involved in how Mr Bani was going to fulfil his part of the agreement [Exhibit D7].
96. As already stated, Mr Aru was not a party to the Potmas land agreements dated 8 January 2019 and 20 May 2019 hence these agreements are no defence to his claim for unpaid wages. I therefore reject Mr Mihaila's evidence that he relied on Mr Bani to arrange with his family members to work on that land but that he never got involved in how Mr Bani was going to fulfil his part of the agreement.
97. I find that following Mr Mihaila's request, that Mr Aru worked on the Potmas land for 3 months clearing the land and planting kava. I also find that Mr Mihaila has benefitted from Mr Aru's work therefore he is entitled to be paid wages for his work. This should be at the minimum wage.



98. In April 2019, the applicable minimum wage rate was VT200 per hour therefore for a 40-hour working week totals VT32,000 a month.
99. Accordingly, Mr Robert Aru's claim for **unpaid wages** succeeds for the period from February-April 2019 and he is entitled to be paid VT32,000 per month x 3 months = **VT96,000**.

Andolyn Aru

100. Andolyn Aru's evidence was that at Mr Mihaila's request, she and other Claimants worked for Mr Mihaila for 3 months at the Potmas area. They cleared the bush there and planted 7,000 kava plants but Mr Mihaila has not paid them [**Exhibit C15**].
101. In cross-examination, Mrs Aru stated that Mr Mihaila spoke English and she answered in Bislama. She agreed that they planted 7,000 kava plants as they had to count the number of plants to inform Mr Mihaila. She said that Mr Mihaila himself told them to work on the Potmas land. She said that Mr James Bani translated her words into English for Mr Mihaila. In re-examination, she stated that she answered, "No" to Mr Bani and his family managing the kava plants as Mr Mihaila himself made an agreement with them to go and work on the Potmas land.
102. Mr Mihaila's evidence was that he never employed Andolyn Aru to work at the Potmas land. He understood from Mr James Bani that he was going to rely on his family members to help with the work and was confident that they would because he, as the head of the family, was asking, but that he never got involved in how Mr Bani was going to fulfil his part of the agreement [**Exhibit D7**].
103. As already stated, Mrs Aru was not a party to the Potmas land agreements dated 8 January 2019 and 20 May 2019 hence these agreements are no defence to her claim for unpaid wages. I therefore reject Mr Mihaila's evidence that he relied on Mr Bani to arrange with his family members to work on that land but that he never got involved in how Mr Bani was going to fulfil his part of the agreement.
104. I find that following Mr Mihaila's request, that Mrs Aru worked on the Potmas land for 3 months clearing the land and planting kava. I also find that Mr Mihaila has benefitted from Mrs Aru's work therefore she is entitled to be paid wages for her work. This should be at the minimum wage.
105. In April 2019, the applicable minimum wage rate was VT200 per hour therefore for a 40-hour working week totals VT32,000 a month.
106. Accordingly, Mrs Andolyn Aru's claim for **unpaid wages** succeeds for the period from February-April 2019 and she is entitled to be paid VT32,000 per month x 3 months = **VT96,000**.



Jeffson Tau

107. Mr Tau has not filed any evidence. He has not proved his claim on the balance of probabilities.

I. Issue 4: Whether or not the Claimants are entitled to an award of VT300,000 damages for pain and suffering?

108. There is no cause of action pleaded which could sound in an award of damages for pain and suffering.

109. Accordingly, the Claimants are **not** entitled to damages for pain and suffering.

J. Issue 5: Whether or not Mr Mihaila is entitled to damages for alleged theft, damage to two chainsaws, and a reward paid for information as to the theft?

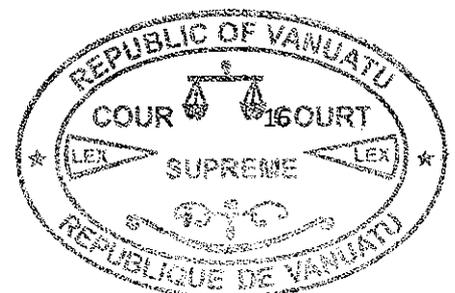
110. It is alleged in the Counter Claim that Mr Bani stole items from him worth VT27,000, caused VT36,000 damage to his two chainsaws and caused him to lose VT50,000 on a reward paid to obtain information on the theft.

111. Mr Mihaila's evidence was that Mr Bani stole the following items from him: two chainsaws, a bush concrete toilet, chain bar oil, chainsaw earmuffs, a small hammer and a bush knife, in total valued VT20,249. He also paid a VT50,000 reward to gain information about the theft. He stated that he had reported the thefts to the Police and the matter was with the Prosecution [**Exhibit D8 – Attachments “DM4”-“DM6” and “DM9”**].

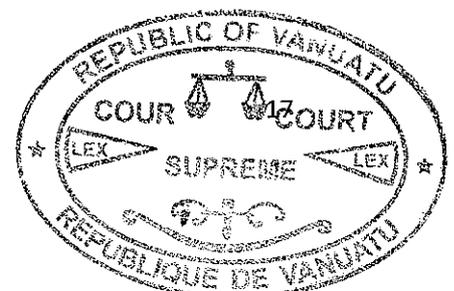
112. It was admitted in the Defence to the Counter Claim that Mr Bani held onto two chainsaws belonging to Mr Mihaila because he had asked Mr Mihaila to pay his and Mrs Bani's Vanuatu National Provident Fund ('VNPF') contributions. It was also alleged that the chainsaws were already in bad condition.

113. Mr Bani's evidence was that he thought that if Mr Mihaila did not pay their VNPF contributions, then the chainsaws would be compensation for the unpaid contributions [**Exhibit C3, paras 42 and 43**].

114. In cross-examination, Mr Bani stated that he did not take the chainsaws after his employment ceased. He took them whilst he was still working because he had asked Mr Mihaila to pay his VNPF contributions. He said that he did not take any of the other items alleged but only the two chainsaws, which the Police took from him. He said the chainsaws were a little damaged because he had used them in the rain.



115. I find that Mr Bani held onto two chainsaws belonging to Mr Mihaila but these have been returned to Mr Mihaila. Further, that the allegations of theft have been reported to the Police and the Prosecution. As the criminal matter has not been determined, I do not make any finding against Mr Bani of theft of the two chainsaws.
116. Mr Bani admitted that he used the chainsaws in the rain therefore they were damaged however I find that this occurred in the course of his employment with Mr Mihaila, not after he ceased employment with Mr Mihaila. I do not make any finding against Mr Bani for the alleged damage to the two chainsaws.
117. For the same reasons, I do not make any finding that Mr Bani is liable for the VT50,000 reward paid for information about the thefts.
118. There is no evidence from anyone that they saw Mr Bani steal the items alleged. Mr Bani denied stealing those items. I do not make any finding against Mr Bani of theft of the other items alleged.
119. This aspect of the Counter Claim has not been proved on the balance of probabilities.
- K. Issue 6: Whether or not Mr Mihaila is entitled to VT210,000 damages for purchase of kava plants or alternatively, VT1,400,000 loss being the estimated market value of the kava plants on maturity?
120. By the Counter Claim, Mr Mihaila is claiming VT210,000 damages for purchase of kava plants from a local farmer Sachias from Fanafo village or alternatively, VT1,400,000 loss being the estimated value of kava plants lost after Mr Bani failed to maintain the kava plants.
121. Mr and Mrs Bani's defence case is that Mr Bani used the VT210,000 cash to purchase the kava plants from Sakias, that he cleaned the kava garden but then Sakias harvested the kava.
122. Mr Mihaila's evidence was that in early March 2019, Mr Bani used VT210,000 from the cash box to purchase 400 kava plants that were 2.5 to 3 years old from farmer Sachias from Fanafo village. He stated that he only endorsed the purchase on the basis that the plants would mature by the end of 2020 and he would get the full proceeds of VT1,400,000 from the sale of the plants. He stated that Mr Bani told him the terms of the oral agreement with Sachias, and that Sachias told him that he harvested the plants after Mr Bani breached the agreement [**Exhibit D8**].
123. Mr Bani's evidence in cross-examination was that he and Sachias had an oral agreement, that he (Mr Bani) weeded the kava garden 3 times but then he was surprised to find that Sachias had harvested the kava plants. He stated that Sachias breached their oral agreement by harvesting the kava. He also stated that he asked Mr Mihaila on the phone before he took the money to purchase the kava plants from Sachias. He said

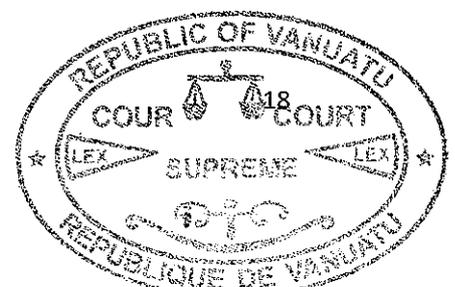


that Sachias gave him VT50,000 from the kava sales proceeds but he did not give that to Mr Mihaila.

124. It is common ground that Sachias harvested the kava plants. It follows that any claim for proceeds from the sales of the kava plants should be made against Sachias.
125. There is also no evidence that Sachias' kava sales proceeds totalled VT1,400,000.
126. For the foregoing reasons, I decline to find Mr Bani liable in the sum of VT1,400,000 being the estimated market value of the kava plants on maturity.
127. As for reimbursement of the VT210,000 cash used to pay for the kava plants or a damages award in that amount, it would not be fair to determine that against Mr Bani when Sachias has not been joined as a party to the present proceeding. Mr Mihaila is alleging that Sachias harvested the kava plants after Mr Bani breached their oral agreement by not cleaning the kava garden. Mr Mihaila's evidence in **Exhibit D8** about what Sachias told him is hearsay as Sachias has not filed a sworn statement in the present proceeding. Mr Bani stated that he cleaned the kava garden so Sachias breached their oral agreement. A court can only determine whether Sachias or Mr Bani is telling the truth after hearing from both of them. As Sachias has not been joined as a party to the present proceeding, I decline to make an order against Mr Bani for VT210,000 damages for the purchase of kava plants from Sachias.

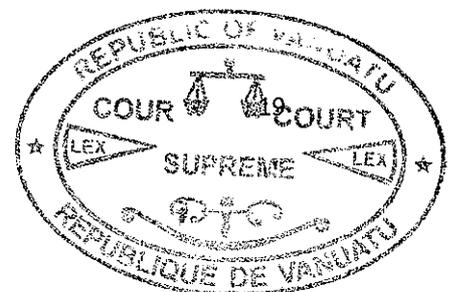
L. **Issue 7: Whether or not Mr Mihaila is entitled to VT600,000 damages for Potmas land purchase?**

128. It is alleged in the Counter Claim that in November 2018, Mr Mihaila and Mr Bani entered into an oral agreement for the purchase of land at Potmas area for a kava project, for which Mr Mihaila provided VT500,000 for the payment of the purchase deposit under the written agreement dated 8 January 2019 between Mr Bani and the landowner Jimmy Jack. He also alleged that on 27 April 2020, Mr Bani as Mr Mihaila's agent entered into an additional agreement with the landowners for the purchase of an additional hectare for VT100,000. However, that Mr Bani breached the oral agreement by not paying the deposit in full to the landowners therefore not acquiring the land. Therefore, he is seeking VT600,000 damages for the Potmas land purchase.
129. In defence, Mr and Mrs Bani alleged that Mr Bani was acting as Mr Mihaila's agent and paid VT500,000 to the landowner Jimmy Jack and VT100,000 to the landowner John Boe and that the Claimants cleared the land and planted kava for Mr Mihaila but after their employment was terminated, do not know about Mr Mihaila and the landowners' land agreements.
130. Mr Mihaila's evidence was that in early in November 2018, Mr Mihaila and Mr Bani entered into an oral agreement for the purchase of land at Potmas area for a kava project. Then on 20 May 2019, they amended and put into writing their agreement



[**Exhibit D7 – Attachment “DM05”**]. He stated that on 8 January 2019, Mr Bani as his agent entered into a sale and purchase agreement with the landowner Jimmy Jack for the land for which he provided VT500,000 for the purchase price [**Exhibit D8 – Attachment “DM12”**]. He stated that in July 2020, Jimmy Jack told him that Mr Bani had only paid him VT250,000 for the land therefore refused to hand over the land due to Mr Bani’s breach of the sale and purchase agreement [**Exhibit D8**, para. 32]. He stated that on 27 April 2020, Mr Bani as his and Mrs Mihaila’s agent entered into an Additional Agreement with the landowners Jimmy Jack and John Boe for the purchase of 1 additional hectare for VT100,000 [**Exhibit D8 – Attachment “DM14”**]. However, in late 2020, Mr Boe informed him that Mr Bani had only paid him VT50,000 and Jimmy Jack said he was never aware of this additional agreement [**Exhibit D8**, paras 34 and 35].

131. Jimmy Jack’s evidence was that Mr Bani paid only VT250,000 of the purchase price, not the whole VT500,000. He attached a receipt for land payment of 25 hectares at Potmas of VT500,000 but said that he (Mr Jack) never signed that receipt [**Exhibit D1 – Attachment “JJ1”**].
132. In cross-examination, Mr Jack stated that he made an error – that Mr Bani only paid him VT150,000, not VT250,000. The sale and purchase agreement with Mr Bani dated 8 January 2019 [**Exhibit D8 – Attachment “DM12”**] was put to him. He denied signing it. There was no re-examination.
133. Mr Bani’s evidence was that Mr Mihaila used him (Mr Bani) as a middleman for the Potmas land agreements because he did not want the landowners to know the identity of the person purchasing the land. He said that Mr Mihaila used him to go and purchase the Potmas land on the promise that he would give Mr Bani 5 hectares but when he terminated Mr Bani’s employment, he also revoked the promise about giving land [**Exhibit C3**, paras 33 and 34].
134. In cross-examination, Mr Bani stated that he paid VT500,000 to Mr Jack – that he gave half the money and then the rest in small amounts until completed. As for the receipt attached to Mr Jack’s sworn statement, he said that Mr Jack did not give him a receipt at the time he made the land purchase payments to him. He denied that Mr Jack received just VT250,000, not VT500,000. In re-examination, Mr Bani stated that the receipt for VT500,000 was written by Mr Mihaila who gave it to him to take to Jimmy Jack, who signed it.
135. I do not accept Mr Jack’s evidence as credible and reliable. His sworn statement was made under oath that he was paid only VT250,000 of the land purchase price. In the witness box, he did not correct his sworn statement. Then in cross-examination, he stated that the amount was incorrect – that he had only received VT150,000. The latter was not put to Mr Bani. The only documentary evidence of payments made is the receipt for VT500,000 attached to Mr Jack’s sworn statement. The signature on the receipt looks similar to Mr Jack’s signature in his sworn statement. Mr Bani’s evidence is that Mr Jack



signed that receipt. Given the inconsistencies in Mr Jack's evidence, I do not believe his evidence that he did not sign that receipt. I cannot rely on Mr Jack's evidence therefore reject it.

136. I find that payment was made to Mr Jack of the VT500,000 land purchase price. Accordingly, I decline to make an order against Mr Bani for VT500,000 damages for the land purchase price.
137. As for the additional agreement for purchase of an additional hectare for VT100,000, Mr Bani's evidence was that he paid that money to the landowners. I have rejected Mr Jack's evidence as not credible and unreliable. There is no evidence from Mr Boe. Mr Mihaela gave evidence as to what Mr Boe told him but that is hearsay hence I have no regard to that evidence.
138. For the reasons given, I also decline to make an order against Mr Bani for VT100,000 damages for the additional land payment.
139. It is accepted that when Mr Mihaila terminated Mr Bani's employment, he also terminated his agreement with Mr Bani for the Potmas land as set out in their oral agreement and the written agreement dated 20 May 2019. Having chosen to bring the agreements to an end, Mr Mihaila is left with a situation that he has engineered in choosing to use Mr Bani as a middleman to conceal that he (Mr Mihaila) was the person purchasing the Potmas land. It was not explained why Mr Mihaila did not want his identity as the purchaser revealed but he chose to conduct himself in this way and to take the risk that he did on the Potmas land kava project venture.

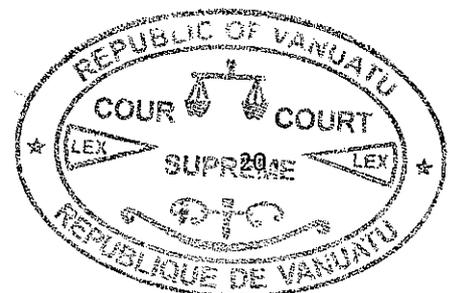
M. Issue 8: Whether or not Mr Mihaila is entitled to an award of VT300,000 damages for stress and anxiety?

140. There is no cause of action pleaded which could sound in an award of damages for stress and anxiety.
141. Accordingly, Mr Mihaila is **not** entitled to damages for stress and anxiety.

N. Result and Decision

142. Judgment is **entered** for the Claimants and it is ordered that the Defendant is to pay to the following Claimants as follows:

- a) Anita Bani – VT304,000;
- b) Benton Boe – VT96,000;
- c) Helen Bani – VT96,000;
- d) Hanalyn Bani – VT96,000;



e) Robert Aru – VT96,000; and

f) Andolyn Aru – VT96,000 (total of VT784,000, being the 'judgment sum').

143. The Defendant is to pay interest of 5% per annum on the judgment sum until fully paid.

144. The Counter Claim is **dismissed**.

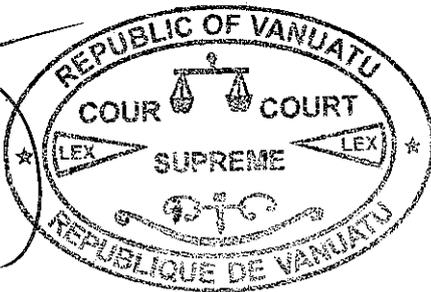
145. Costs must follow the event. The Defendant is to pay the Claimants' costs of the proceeding as agreed or taxed by the Master. Once set, the costs are to be paid within 28 days.

O. Enforcement

146. Pursuant to rule 14.37(1) of the *Civil Procedure Rules*, this matter is listed for Conference **at 1pm on 21 November 2025**, including by video link to the Luganville Court House, to ensure the judgment has been executed or for the Defendant to explain how it is intended to comply with the Court's Orders. For that purpose, this judgment must be personally served on the Defendant and proof of service filed.

**DATED at Port Vila this 15th day of October, 2025
BY THE COURT**


Justice Viran Molisa Trief

The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The text "REPUBLIC OF VANUATU" is written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, "COUR" is on the left and "COURT" is on the right, flanking the scale. Below the scale, the word "SUPREME" is written. On either side of "SUPREME", the word "LEX" is written inside a small triangle. There are small stars on the far left and far right of the seal.