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

Constitutional
Case No. 17/3610 SC/CNST

BETWEEN: **WU KIM MING**
Applicant

AND: **THE REPUBLIC OF VANUATU**
Respondent

Date of Hearing:	***10 May 2018***
Date of Judgment Delivery:	***09 March 2021***
Before:	***Hon. Chief Justice, Vincent Lunabek***
Counsel:	***Mr Robert E. Sugden for the Applicant*** ***Mr Sakiusa Kalsakau for the Respondent*** ***Mr Mark J. Hurley for the Interested Party***

RESERVED JUDGMENT

I. Introduction

1. Before the Court is a Constitutional Application filed on 19 December 2017 pursuant to Articles 6 and 53(1) of the Constitution.

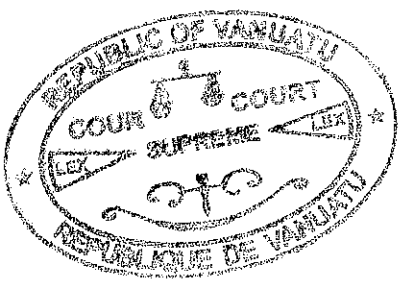
2. The applicant (Ming) is a Ni-Vanuatu living in Luganville where he has lived all his life apart from when he was travelling.

3. The applicant says that the enactment of Section 38A, 38B, 48A and 48B of the Land Leases Act by Land Leases (Amendment) Act No. 35 of 214 and the issue of a Notice Before Forfeiture dated 16 November 2017 to the Applicant in respect of his 03/OI93/016 breached his fundamental rights to "*protection ... from unjust deprivation of property*" guaranteed by Article 5(1)(j) of the Constitution and breached a provision of the Constitution that affected him.

4. Incidentally and as a consequence of the issue of Notice Before Forfeiture and the Applicant's application's before the Valuer-General against the forfeiture, the Applicant filed this Constitutional Application.

II. Amended Remedies Sought

5. The Applicant applied for the following relief (as amended):



(1) A declaration that section 38B of CAP. 163 is contrary to Article 5(1)(j) of the Constitution and therefore invalid and unenforceable;

(2) A declaration that section 38A of [CAP 163] applies only to leases entered into after 27/02/2015;

(3) A declaration that section 48B applies only to leases entered after 30/06/2017;

(4) A declaration that for urban leases entered between 27/02/2015 and 30/06/2017, the version of section 48B introduced into law on 27/02/2015 but since amended, applies;

(5) A declaration that section 48A of the Land Leases Act, applies only to leases that were entered into after 30/06/2017 but that the amendment to section 48A dated 27/02/2017 applies only to leases entered into between 27/02/2015 and 30/06/2017;

(6) An order that the Respondent pay to the Defendant such compensation as may be adjudged due to the Applicant as a result of the issue of the Notice Before Forfeiture dated 16/11/2017 in respect of 03/OI93/016 and any action taken by the Respondent on the basis of the Notice;

(7) Costs of this proceeding.

III. Background

6. I set out the respective positions of the parties as set out in the Application and the Response to it.

A. Application

7. The Applicant (Mr. Ming) is a Ni-Vanuatu living in Luganville.

8. For many years he has carried on a number of businesses successfully although his success has been affected by an illness that he contracted in July 2014.

9. The Applicant (Mr. Ming) has, prior to 27/02/2015 purchased two rural properties and two urban commercial properties, one of which has registered title 03/OI93/016 that was transferred to him by a transfer registered on 21/12/1990 and which is the subject of a mortgage in favour of ANZ Bank (Vanuatu) Ltd. registered on 08/11/1999.

10. For many years, it is said Mr. Ming enjoyed the interests in land given by the leases pursuant to the registration of his transfers' subject only to the obligations upon the lessee contained in the terms of the leases and any interests notified on the Register.

11. It is said that Mr. Ming's interests in his registered leases included:

(a) To be free to develop the land within the leased area if and as agreed between the original lessee and the lessor and set out in the terms of the lease;

(b) To be free from any liability to forfeiture of his lease so long as he complied with the terms of the lease;

(c) To be able to transfer his registered lease for a premium that would be his entirely.

12. By Land Leases (Amendment) Act No. 35 of 2014 that come into the law of Vanuatu on the 27th February, 2015, sections 38A, 38B, 48A and 48B were inserted in the Land Leases Act [Cap 163].

13. These inserted sections altered the obligations of registered proprietors to their lessors by greatly increasing them beyond obligations set out in their leases to the benefit of the lessors and with no provision for compensation to be provided to the registered proprietors.

14. It is particularized that:

(i) Sections 38A and 38B, by their terms, apply to leases already registered on 27/02/2015, require the registered lessees of

(a) Rural agricultural leases;
(b) Rural residential leases of 5,000 square meters or more;
(c) Rural commercial leases;
(d) Urban commercial leases,

to carry out onerous developments on the leased lands and provide for the lessors to be able to forfeit the lease for noncompliance.

(ii) Sections 48A and 48B apply to leases already registered in 27/02/2015 and require:

(a) Any proprietor of an urban registered lease to pay out of the proceeds of a sale of his lease, 5% of the difference between the unimproved market value of his lease when he purchased it and its unimproved market value when he sells it, to the lessor;

(b) Any proprietor of any other lease (i.e. not urban) to pay out of the proceeds of a sale of his lease, 10% of the difference between the unimproved market value of his lease when he purchased it and that value when he sells it, to the lessor (unless the lessor and lessee have entered into other arrangements).

15. These inserted sections, in being made applicable to existing leases amount to retrospective legislation which is beyond the constitutional power of any legislature that is subject to a Constitutional Bill of Rights of which Article 5 is an example.

16. In particular sections 38A, 38B, 48A and 48B remove the property rights of lessees referred to in paragraph 10 above and simply increase the benefits that lessors would otherwise have obtained

pursuant to their existing leases with no compensation and amount, in their application to leases in existence on 27/02/2015, to unjustified deprivation of property within Article 5(1)(j).

17. The terms of registered lease 03/OI93/016 make no requirements for its development and Mr. Ming acquired it in 1990 with the intention of developing it for commercial purposes at a time he considered appropriate.

18. The land within 03/OI93/016 is bare but is well mown and maintained.

19. On 16/11/2017 the Honourable Minister of Lands, pursuant to sections 38A and 38B issued a Notice of Forfeiture to Mr. Ming.

20. Mr. Ming is likely to have his lease forfeited and the ANZ Bank will lose its mortgage and require him to pay the debt that the mortgage secured.

21. The Applicant, therefore, filed this application seeking for the relief referred to above.

22. The ANZ Bank (Vanuatu) Ltd. as an interested party joined in the Application to protect its interest.

23. The following sworn statements are filed in support of the application:

(1) Sworn statement of Wu Kim Ming filed 19/12/2017;
(2) Sworn statement of Cynthia Garaemwala filed on 25/04/2018;
(3) Sworn statement of Stephanie Mahuk filed 22/05/2018;
(4) Sworn statement of R. S. Sugden filed 18/06/2018.

B. Response to the Application

24. The Respondent's response was filed on 26/03/2018. The Respondents deny that the Applicant is entitled to the remedies sought in the application as the Applicant's concerns are premature and the application is misconceived. They say the court must refuse the application including the relief sought and that they are entitled to costs.

25. It is not disputed that the lease is a commercial lease and was transferred to the Applicant on 21 December 1990 (as transferee).

26. The Respondents contended the following in respect to ground 3 of the application:

(a) It is an implied term of the commercial lease that the proprietor would carry out such development and/or activity in accordance with the lease classification and within reasonable time.

27. As to grounds 4 and 5 of the application, the Respondents contended that:

(a) The terms and conditions of the lease and/or any lease are subject to the Land Leases Act [CAP. 163] (the "Act") and as such are susceptible to variation; and

(b) It is an implied term of the lease and/or all other leases that the terms and conditions of the lease may be altered by an amendment of the Act.

28. As to ground 6 of the Application, the Respondents contended that Parliament enacted the Land Leases (Amendment) Act pursuant to Article 16(1) of the Constitution for the peace, order and good government of Vanuatu which included provisions for the creation and disposition of leases of land, for their registration and for matters connected therewith.

29. It is particularized that on 27 February 2015, the Land Leases (Amendment) Act No. 35 of 2014 came into force by adding sections 38A, 38B, 48A and 48B. They deny the effect the Applicant alleged to their sections of the Amended Act.

30. They recognized the fundamental rights protected under Article 5 of the Constitution and contended that the fundamental rights and freedoms protected under Article 5 are not absolute rights.

31. The respondents say it is wrong to say that Parliament's legislative prerogative are subject to Article 5 when in fact, Article 5 makes it clear that it is subject to the rights and freedoms of others and to the legitimate public interest.

32. They say that Parliament's legislative prerogative is unfettered save as to the Constitution. It does not envisage that a legislation having retrospective effect will in every case be subject to and/or an infringement of Article 5. It is well within Parliament's power to create a retrospective legislation if that was its intention and such legislation must be abundantly clear.

33. They say the following:-

(a) Subsections 38 A(2) of the Amendment Act provided that a proprietor of a rural agricultural or rural residential lease of 5,000 square meters or more or rural commercial lease or urban commercial lease must within 5 years of acquiring it carry out more than 50% of such development related to the description of the lease;

(b) That subsections (3) to (7) then provide the process in which a lessor may forfeit the lease if the lessee fails to carry out the developments within the required time frame set out in subsection (1). It will rely on those subsections for their full term and meaning;

(c) That subsection (8) then states that this provision overrides the provisions, terms or clauses of any lease instrument or other instrument concerning the development of a lease;

(d) That section 38B of the Amendment Act then provides that this section will apply to a lessee who on or before the commencement of this Act, is a proprietor of a registered lease provided under subjection 38A(1);

(e) That subjections 38B (2), (3) and (4) further provides transitional provisions for the development of existing leases including the process of forfeiture. It will rely on that provision for its full terms and effect;

(f) That section 38A and 38B of the Amendment Act are clearly intended by Parliament to have retrospective effect;

(g) Those sections 48A and 48B of the Amendment Act do not amount to retrospective legislation in that there is no clear language in those sections to indicate it to be so. As such, it is highly doubted if there has been a deprivation at all;

(h) That they deny that said sections have infringed Article 5(1)(j) of the Constitution in respect of the Applicant and/or any other persons in that sections 38A and 38B provide a process in which a lessee can "appeal" a forfeiture made there under whilst sections 48A and 48B are not retrospective in effect;

(i) They doubt whether unjust deprivation of property as set out in Article 5(1)(j) requires some form of monetary compensation but that whether the deprivation of property was accorded lawfully and in the public's interest; and

(j) Otherwise they deny each and every allegation contained therein.

34. They say that it is an implied term of lease that the proprietor would carry out such development and activity in accordance with the classification of the lease within a reasonable time.

35. They say that the applicant has not carried out any commercial and/or activity on the leased land since it acquired the lease in 1990.

36. They say that in accordance with subsection 38A and 38B, the Applicant had breached the lease agreement.

37. They say that the said provisions assert a positive duty on the Applicant to aspire to develop his land within the spirit of the Constitution envisaged under Article 7(b), (c) and (g).

38. They say that on 16th November 2017, the Minister of Lands (the "*Minister*") as the lessor of the lease, issued a notice of forfeiture to the Claimant in accordance to sections 38A and 38B of the Amendment Act.

39. Mr. Paul Gambetta, Acting Director, Department of Lands Records, Ministry of Lands and Natural Resources, filed a sworn statement on behalf of the Response to the application on 8 May 2018.

IV. Undisputed Facts

40. On perusal of the sworn statements filed in support of the Application and Response, the facts are not in dispute.

41. The following is the common ground between the parties:-

(a) On 21 December 1990, commercial lease title 03/OI93/016 (the "*lease*") was transferred by Wilson Mackie Trading Ltd (transferor) to Wu Kim Ming (the transferee);

(b) On 27 February 2015, the Land Leases (Amendment) Act No. 35 of 2014 (the "*Amending Act*") came into force;

(c) On 16 November 2017, the Minister of Lands (the "*Minister*") issued a forfeiture notice of the lease to the Applicant;

(d) On 13 December 2017, the Applicant's lawyer filed an application for relief pursuant to section 46 of the Land Leases Act [CAP. 163] (the "*Amended Act*") with the Valuer-General;

(e) On 18 December 2017, the Valuer-General invited the Minister to respond to the Applicant's application for relief;

(f) On 1 February 2018, the Applicant's lawyer paid the fees for his application for relief in the sum of VT17,250;

(g) The lease has not yet been forfeited and remained registered;

(h) However, while the application filed on 13 December 2017 before the Valuer-General pursuant to s.46 of the Land Leases Act is pending and is yet to be heard, the Applicant filed the Constitutional Application before the Supreme Court on 17 December 2017 challenging the constitutional validity of ss.38A, 38B, 48A and 48B of the Land Leases Act by Lease (Amendment) Act No. 35 of 2014 and the issue of Notice Before Forfeiture dated 16 November 2017 to the Applicant in respect of his 03/OI93/016 and claimed that they breached his fundamental rights to "*protection ... from unjust deprivation of property*" guaranteed by Article 5(1)(j) of the Constitution and breached of a provision of the Constitution that affect him.

V. Submissions by Counsel

A. Submissions for the Applicant

42. The Applicant's written submissions were dated 21 May 2018. In essence, the Applicant submitted that the introduction into the Land Leases Act on 27 February 2015 of sections 38A and 38B in relation to development of the land within leases and the "lessor's" benefit provisions, sections 48B for urban leases (Amended on 30 June 2017) and, for rural leases, the amended versions of the pre-existing Section 48A (amended again on 30 June 2017) affected all his four (4) leases the Applicant purchased prior to 27 February 2015.

43. The Applicant has two rural properties and two urban commercial properties, one of which has registered title 03/OI93/016 that was transferred to him by a transfer registered on 21 December 1990 and which is the subject of a mortgage in favour of ANZ Bank (Vanuatu) Ltd. registered on 08 November 1999.

44. For many years the Applicant enjoyed the interests in land given by the leases pursuant to the registration of his transfers' subject only to the obligations upon the lease contained in the terms of the leases and any interests notified on the Register.

45. In reliance on the development provisions for urban leases contained in sections 38B and 38A for urban leases, the Applicant has received a Notice Before Forfeiture from the Respondent who is seeking to forfeit the Applicant's urban commercial lease, 03/OI93/016 because the Applicant has not complied with the development requirements introduced on 27 February 2015 by sections 38A and 38B that required him to develop 50% of bare allotment by 27 February 2016.

46. In relation to the lessor's benefit provisions, the Director of Lands Records is demanding that for both urban and rural leases, he will not register any transfer (except to the transferor's family members) unless he has evidence that the lessor's benefit has been paid (to the Government for urban leases and to the civilian lessor for rural leases). The Director is requiring payment in respect of leases that were in existence before 27 February 2015 when the lessor's benefit provisions came into law as compulsory payments.

47. The Applicant's claimed that the Constitution in particular Article 5(1)(j) prevents any of these provisions sections 38A, 38B, 48A and 48B applying to leases that were already in existence on 27 February 2015 (and for the 30 June 2017 amendments to sections 48A and 48B, to leases that came into existence between 27 February 2015 and 30 June 2017).

48. The Applicant seeks remedies pursuant to Article 6(2) of the Constitution and in particular seeks an order that section 38B of the Land Leases Act be struck out and declarations that:

(a) Sections 38A and 48B as it was between 27 February 2015 and 30 June 2017 of the Land Leases Act apply only to leases entered into after 27 February 2015;

(b) Sections 48A as amended on 27 February 2015 applies only to leases entered into between 27 February 2015 and 30 June 2017;

(c) Sections 48A and 48B as amended on 30 June 2017 apply only to leases entered into after 30 June 2017.

49. The submissions of the Applicant are principally based on the certainty of contract – a fundamental principle. It is said wherever humans societies have existed most, if not all, activities within those societies has depended on the members of those societies being able to form agreements (contracts) that can be relied on.

50. Certainty of contract is fundamental to a society's well-being – without it there can be only chaos.

51. In Common Law countries the importance of certainty is reflected by the Court's disapproval of uncertainty in that the Court will strike down contractual provisions that it considers uncertain holding them to be "*void for uncertainty*".

52. In interpreting contractual provisions the Court will have regard to the law, both statutory and Common Law in existence at the time the contract is made. Contracting parties are held to make such agreement as the law existing at the time allows them to make and their contractual rights and obligations are determined by reference to the law existing at that time.

53. Subsequent changes in statutes will not be allowed, in general, to affect rights and obligations already in existence under the principle that "*legislation will not be given retrospective effect*".

54. If statutes could change the obligations of parties to a contract after the contract has been made, certainty of contract would not exist and there would be disorder in society.

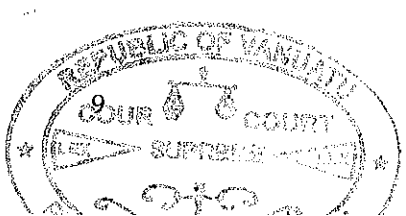
55. Possibly because of the certainty that the law requires of and attaches to contracts, the rights parties obtain pursuant to their contracts are rights in the nature of property, called choses in action.

56. In Vanuatu, Article 5(1)(j) provides for "*Protection for the privacy of the home and other property and from unjust deprivation of property*".

57. Property includes choses in action.

58. It is submitted that, in Vanuatu, the question of whether legislation clearly and unambiguously applies retrospectively to take away established contractual rights has no application.

59. Article 5(1)(j) prevents Parliament from enacting legislation that purports to do so.



60. If Parliament does enact a law that, on its face, would take away property, including contractual rights, the law is prima facie void as offending the Constitution.

61. The only relevant question arises pursuant to section 9(2) of the Interpretation Act. That question is whether the law can be interpreted so as to not offend the Constitution. Section 9(2) of [CPA. 132] states:

> "*Where a provision in an Act conflicts with a provision in the Constitution the Act shall nevertheless be valid to the extent that it is not in conflict with the Constitution*".

62. The Land Leases Act requires a lease for a term greater than 3 years to be registered before it takes effect as an interest in land. In this case, the lease is registered and so the lessee's rights over the leased land given to him by the terms set out in the contract of lease are choses in action and also interests in the land and on both bases "*property*" for the purposes of Article 5(1)(j) of the Constitution.

63. In the circumstances of this case, the question therefore becomes "*can sections 38A, 38B, 48A and 48B of the Land Leases Act be interpreted in such a way that they do not take away established rights or property?*"

64. The Applicant submitted that Section 38B clearly applies to leases already in existence when the section came into law. Its primary objective is to apply to pre-existing leases.

65. Its effect is to insert into all existing lease agreements the terms requiring the lessee to develop 50% of the leased land set out in section 38A(2) and section 38A(8) states:

> "*This provision overrides the provisions, terms or clauses of any lease instrument or other instrument concerning the development of a lease*".

66. So this section changed the lease agreements made between the lessor and lease at a time when the law did not contain sections 38A and 38B and when the two contracting parties could not have known that those sections would become part of the law. If they had known that section 38A and 38B were going to be part of the law, they would undoubtedly have made a different bargain, or, more probably, in view of the onerous development impositions, no bargain at all.

67. It is submitted the Government used its powers and its control of the legislature to put in place laws that would cloak its unjust demands in statute.

68. The law were unjust, unjustly depriving the lessees of the benefits that their lease agreements gave them.

69. It is submitted the enactment of Section 38B was an abuse of the legislative power that Article 5(1)(j) was put in place to prevent.

70. Section 38A can, therefore, be interpreted as applying only to leases coming into existence after 27 February 2017 and should not be struck out.

71. As to section 48A on rural leases the Applicant has two rural leases that he purchased prior to 27 February 2015.

72. Section 48A came into existence on 27 December 2006 and section 48A(i) provided (and still provides):

    (i) *"This section applies only to leases of rural land"* (see Act No. 11 of 2004).

73. Section 48A (2) did not; at that time (ie. 27 December 2006) compel the lessee of a rural lease to pay any money to the lessor for the exercise of his right given by section 60(i) of [Cap 163] to "transfer his registered lease ... to any person, with or without consideration".

74. Section 48A(2) was amended on 10 September 2007 by Act No. 5 of 2007 but the amendment still did not compel the lessee to pay money to the lessor if he transferred his rural lease.

75. On 27 February 2015 section 48A (2) was again amended and the new provision compelled a lessee of a rural lease to pay a sum of money to the lessor if he transferred his lease. The sum was to be paid whether the transfer was for consideration or no consideration and was calculated by reference to the unimproved market value of the land.

76. On 30 June 2017 section 48A(2) was amended again to increase the amount that the lessee had to pay to the lessor if he sold his rural lease:

    (i) Before 27 February 2015 the lessee of a rural lease could transfer his lease without paying a fee to his lessor as a right of his lease (see section 60(i) of [Cap 163]);

    (ii) After 27 February 2015 (if as the Director of Land Records maintains, section 48A applies to lease already in existence on that date) the lessee of the same lease had to pay a fee to transfer his lease whether he obtained a premium or not;

    (iii) The amendment to section 48A of 27 February 2015 altered the terms or rural leases so that the lessees lost and the lessors gained;

    (iv) In particular, the lessees lost their chose in action – their right to transfer their lease without paying a fee to the lessor;

    (v) It seems fairly clear that the legislative changes put in place that changes the lease agreements that the lessors have made with their lessees so that the lessor receive more for giving the lease than he had agreed to receive and forces the lessee to give more than he had agreed to give and also takes away the right of the lessee to choose whether or not he will enter the lease

agreement (because he had already entered it if section 48A applies to leases existing on 27 February 2015);

(vi) This works a huge injustice to lessees and does substantial damage to the sanctity and certainly of contracts and hence to Vanuatu's society;

(vii) If the amendment of 27 February 2015 to section 48A applies to leases already in existence on 27 February 2015 (which, on the face of the legislation, it could) it amounts to unjustified deprivation of property of the lessees for Article 5(1)(j) of the Constitution;

(viii) The qualifying words of Article 5 do not apply to this amendment even more obviously than they do not apply to sections 38A, 38B of [Cap 163] (see submissions above).

77. For the same reasons as above, it is submitted that the amendments introduced to section 48A on 30 June 2017 are caught by Article 5(1)(j) if they are sought to be applied to leases already in existence on that date.

78. As to section 48B on urban leases the Applicant has two urban leases one of which, 03/OI93/016 has been considered in relation to the development and amendments.

79. The Applicant submitted that the current version of section 48B was enacted on 30 June 2017, and like section 48A, compels the registered lessee to pay a sum of money to the lessor if he transfers the lease. The sum is not calculated by reference to any profit that the lessee might make on resale and is payable even if there is no consideration for the transfer. The section simply compels the lessee to pay what amounts to a fee to the lessor for exercising the power given to him by section 60(i) of [Cap 163] to transfer the lease.

80. The Applicant also submitted that for leases already in existence on 30 June 2017, if section 48B applies to them as, on its face it could (which is how the Director Lands interprets it), it changes the leases agreement to gratuitously benefit the lessor at the expense of the lessee and removes the lessee's right to choose whether to enter the less favourable lease or not. Exactly the same criticism apply to section 48B if it applies to pre-existing leases as are set out in relation to section 48A for pre-existing rural leases above in paragraph 2 (above).

81. It is further submitted that section 48B, if interpreted as applying to leases already in existence on 30 June 2017, breaches the rights of the lessees under Art 5(1)(j) of the Constitution.

82. So, therefore, Section 48B of [Cap 163] can, however, be interpreted as applying only to leases entered into after section 48B came into law on 30 June 2017 and section 9(2) of the Interpretation Act requires that it be so interpreted.

83. It is finally submitted that the Applicant sought to preserve his position by applying for relief against forfeiture under the provisions of the Land Leases Act and by doing so caused him loss including the fee required by the Valuer – General and the legal costs estimated in the sum of VT384,592.

B. Submissions for the Respondents

84. The Respondents provided their written submissions on 29 May 2018 setting out legal principles as set out by the Courts.

85. They submitted that sections 48A and 48B of the Land Leases (Amendment) Act cannot be said to be retrospective. They have to apply.

86. They have issues with sections 38A and 38B of the Land Leases (Amendment) Act.

87. In the oral presentations of their submissions, the Respondents submitted that section 38B is clearly implied that Parliament intended to give a retrospective effect to that provision.

88. They, also, submitted that section 38A should be read and applied to leases coming into force after the Amendment on 27 February 2015.

89. They conceded that the Applicant had vesting rights through his leases. It could not be said that the Applicant has no vested rights when he signed the lease agreements.

90. They conceded also that on the face of section 38B it has retrospective effect. The Applicant's vested right in contract through (leases) are caught under Article 5(1)(j) of the Constitution. These rights have been infringed by the same provision.

91. They also conceded on the effect of sections 48A and 48B of the Land Leases (Amendment) Act.

92. However, they disagreed with some of the remedies sought in the Constitutional Application (and in particular, an order to strike out the offending provision of section 38B and a mandatory order against the Director of Lands Records not to issue Forfeiture Notice) but they agreed that the balance of the remedies sought should be made.

C. Reply Submissions for the applicant

93. Counsel for the Applicant agreed that the order sought in the Application initially concerning section 38B being struck out, be instead a declaration of invalidity. He had also agreed not to seek the mandatory order contained in the amended prayer of relief.

D. The position of the Interested Party

94. Mr. Hurley, on behalf of the Interested Party, supported the submissions made on behalf of the Applicant.

VI. Discussions

95. The facts of this case are undisputed. I consider the concessions made by the Respondent's Counsel on the remedies sought by Mr Sugden on behalf of the Applicant in their amended versions during the oral submissions.

96. I set out the relevant provisions of sections 38A, 38B, 48A and 48B with respect to their commencing dates being: 27 December 2006, 10 September 2007, 27 February 2015 and 30 June 2017 in order to have an overview and understanding of the nature and extent of the challenge in question in this case.

97. The Land Leases (Amendment) Act No. 11 of 2004 which came into force on 27 December 2006 provides:

> *"6. After section 48*
>
> *Insert*
>
> *"48A Payment for sale of a rural lease*
>
> *(1) This section applies only to leases of rural land*
>
> *(2) If a proprietor of a registered lease sells a lease, the lessee must pay not more than 18% of the amount the lease was sold for to the lessor unless the lessor and lessee have entered into other arrangements".*

98. The Land Leases (Amendment) Act No. 5 of 2007 which came into force on 10 September 2007 provides:

> *"5 Subsection 48A (2)*
>
> *"(2) If a proprietor of a registered lease sells that lease, the proprietor must pay to the lessor, not more than 10% of the difference in amount between the unimproved market value of the land at the time it was purchased and the unimproved market value of the land at the time of the present sale, unless the lessor and lessee have entered into arrangements".*

99. The Land Leases Act (Amendment) Act No. 35 of 2014 which came into force on 27 February 2015 provides:

> ***"9 After section 38***
>
> *Insert*
>
> ***"38A Development requirement for certain leases***
>
> *(1) The proprietor of:*
>
> *(a) a rural agricultural lease; or*
> *(b) a rural residential lease of 5,000 square meters or more; or*
> *(c) a rural commercial lease; or*
> *(d) an urban commercial lease,*
>
> *for a proposed development purpose must, within 5 years of acquiring the lease, carry out such development related to the description of the lease.*
>
> *(2) In addition to subsection (1) and to avoid doubt, if a lease is a:*
>
> *(a) rural agricultural lease, the lessee must carry out the development related to agricultural purposes on that lease on more than 50% of the total land area of that lease; or*
>
> *(b) rural residential lease, the lessee must carry out the development related to residential purposes on that lease on more than 50% of the total land area of that lease; or*
>
> *(c) rural commercial lease, the lessee must carry out the development related to rural commercial purposes on that lease on more than 50% of the total land area of that lease; or*
>
> *(d) urban commercial lease, the lessee must carry out the development related to urban commercial purposes on that lease on more than 50% of the total land area of that lease.*
>
> *(3) If a lessee fails to comply with subsection (1), the lessor is to forfeit the lease unless the lessee can prove to the satisfaction of the Valuer-General that for some unforeseen circumstances, it is not possible to carry out the development related to the description of the lease.*
>
> *(4) If the lessor is satisfied that it is not possible for a lessee to carry out the development related to the description of the lease, he or she may extend the period referred to in subsection (1) for up to 3 years.*
>
> *(5) If a person is not satisfied with a decision of the lessor under this section, he or she may appeal to the Valuer-General for relief.*
>
> *(6) The Valuer-General may grant or refuse relief, as the Valuer-General having regard to the proceedings and the conduct of the parties and the circumstances of the case, thinks fit, and, if he or she grants relief, may grant it on such terms as he or she thinks fit.*

(7) Sections 43 to 46 apply in relation to forfeiture under this section.

(8) This provision overrides the provisions, terms or clauses of any lease instrument or other instrument concerning the development of a lease.

38B Transitional provisions for existing leases to be developed

(1) This section applies to a lessee who on or before the commencement of this Act, is a proprietor of a registered lease provided under subsection 38A (1).

(2) A lessee who has acquired the lease for a period of:

(a) 10 years or more prior to the commencement of this Act, must within 1 year from the commencement of this Act, carry out such development related to the description of the lease as set out in subsection 38A (2); or

(b) 5 years to less than 10 years prior to the commencement of this Act, must within up to 3 years from the commencement of this Act, carry out such development related to the description of the lease as set out in subsection 38A(2).

(3) If a lessee fails to comply with paragraph (2)(a) or (b), the lessor is to forfeit the lease.

(4) Sections 43 to 46 apply in relation to a forfeiture under this section."

10 Subsection 48A (2)

Delete ", not more than"

11 At the end of section 48A

Add

"(3) If the proprietor of a registered lease sells a lease that is created by a subdivision, the proprietor must pay to the lessor, 5% of the unimproved market value of the land at the time of the sale, unless the lessor and lessee have entered into other arrangements."

12 After section 48A

Insert

"48B Payment for transfer of urban lease

(1) This section applies only to the transfer of an urban lease.

(2) If a proprietor of an urban lease transfers that lease, the proprietor must pay to the lessor 5% of the difference in amount between the unimproved market value of the land at the time it was purchased and the unimproved market value of the land at the time of the present sale.

100. The Land Leases (Amendment) Act No. 2 of 2017 which came into force on 30 June 2017 provides:

> *5.* ***Subsections 48A(2)***
>
> *Repeal the subsection, substitute*
>
> *"(2) Subject to subsection (2A), if a proprietor of a registered lease sells that lease, the proprietor must pay to the lessor 10% of the difference in amount between:*
>
> *(a) the unimproved market value of the land at the time it was purchased or the purchase price at the time it was purchased, whichever is lower; and*
>
> *(b) the unimproved market value of the land at the time of the present sale or the sale price at the time of present sale, whichever is higher.*
>
> *(2A) Subsection (2) does not apply where the lessor and lessee have entered into other arrangements."*
>
> *6.* ***Subsection 48A(3)***
>
> *After "unimproved market value of the land at the time of the sale" insert "or the sale price of the land at the time of sale, whichever is higher,"*
>
> *7.* ***Subsection 48B(2)***
>
> *Repeal the subsection, substitute*
>
> *"(2) If a proprietor of an urban lease transfers that lease, the proprietor must pay to the lessor 5% of the difference in amount between:*
>
> *(a) the unimproved market value of the land at the time it was purchased or the purchase price at the time it was purchased, whichever is lower; and*
>
> *(b) the unimproved market value of the land at the time of the present sale or the sale price at the time of present sale, whichever is higher.*
>
> *(3) Subject to subsection (4), subsection (2) does not apply where the lessor and lessee have entered into other arrangements.*
>
> *(4) The Minister must obtain the prior approval of the Council of Ministers before entering into any other arrangements under subsection (3)."*

101. I now specifically peruse the provisions of sections 38A, 38B, 48A and 48B of Land Leases (Amendments) Act of 2014 and 2017 under consideration in this case, in light of the factual circumstances arising under the leases agreement contracts at the dates they were executed and under which law in force at that time, permitting the lessee to undertake certain course of development when he or she assessed appropriate within the term of the leases which are part of the contractual rights and obligations and the effects of these vested rights in a lessee (like Mr Ming in this case) and or with a lessor, the intention of the legislative enactments of these Land Leases (Amendments) Act of 2014 and 2017 and their very effects vis-a-vis the fundamental rights enshrined and guaranteed or

protected under the Constitution of this country as its Supreme Law in its Article 5 (relevantly, in this case, Article 5 (1) (j).

102. The present case is concerned with a registered lease of land. A lease is a contract between the lessor and the lessee and any subsequent transferees of the lease.

103. It is common ground that the Land Leases Act requires a lease for a term greater than 3 years to be registered before it takes effect as an interest in land. In this case, the lease is registered and so the lessee's rights over the leased land given to him by the terms set out in the contract of lease are choses in action and also interests in land. They are on both bases "*property*" for the purposes of Article 5(1)(j) of the Constitution.

104. In the circumstances of this case, I accept Mr Sugden's submissions that the right and proper question therefore becomes: - *"can sections 38A, 38B, 48A and 48B of the Land Leases Act be interpreted in such a way that they do not take away established rights of property?"* This question is raised on the basic constitutional principle and understanding that subject to the Constitution, Parliament has plenary powers to make laws (Article 16 (1)) and in the absence of the referral checks and balance by the President of the Republic before those amendments were assented to and promulgated (Article 16 (4)) in the law making process, they had come into force and applied, thus, the question asked. (See **Virelala v Ombudsman [1997] VUSC 35**; **President of the Republic of Vanuatu v Attorney-General [1998] VUSC 18** and others.

105. It is common ground that section 38B clearly applies to leases already in existence when the section came into law. Its primary objective is to apply to pre-existing leases. Its effects is to insert into all existing leases agreements the terms requiring the lessee to develop 50% of the leased land set out in section 38A(2). It is noted that section 38A (8) states: "*This provision overrides the provisions, terms on clauses of any lease instrument or other instrument concerning the development of lease*".

106. I agree and accept the Applicant's submissions that it is clear this section (38B) changed the lease agreements made between the lessor and the lessee at a time when the law did not contain sections 38A and 38B and when the two contracting parties could not have known that those sections would become part of the law. If they had known that sections 38A and 38B were going to be part of the law, they would undoubtedly have made a different bargain or, more probably in view of the onerous development impositions, no bargain at all.

107. The Applicant's lease (03/OI93/016) came into existence in 1989 and the Applicant became the lessee by transfer at the end of 1990. The title was first registered to Copravi Ltd as part of a 5 lots subdivision on 27 June 1989. On 27 June 1989, by sections 14 of the Land Leases Act [CAP. 163], the registration vested in Copravi Limited "*... the leasehold interest described in the lease together with all implied and expressed agreements, liabilities and incidents of the lease*". The rights vested in Copravi included, by section 60 of [Cap 163]:

"(a) to ... transfer his registered lease ... to any person, with or without consideration ...". Subsequently, all of the rights that had vested in Copravi Ltd were transferred to Ming (Applicant) on 21 December 1990. At that time section 38 of [Cap 163] stated (as it still does):

"Every lease shall specify:

(a) The purpose and use for which the land is leased; and
(b) The development conditions; if any".

108. It is also common ground that in 1989, the Government as lessor entered into this lease in which it agreed with Copravi Limited that the lessee for the time being did not have to develop the land until it decided, of its own free will, to do so. This was because the lease contains no terms requiring the lessee to develop it (as section 38 of the Land Leases Act [Cap. 163] allowed).

109. It seems that by 2014, the Government became dissatisfied with the lease agreements that it had freely entered, including the Applicant Ming's and it decided that it wanted the land within its leases to be developed to the extent of 50% by the lessees. The Government decided to do this by the Land Leases (Amendment) Act of 2014 (ss. 38A and 38B).

110. Whatever the motives of the amendments, whether rightly or wrongly, I agree and accept the submissions made by Mr Sugden on behalf of the Applicant that the laws are unjustly depriving the lessees of the benefits that their leases agreements gave them. The enactment of section 38B was contrary to Article 5(1)(j) of the Constitution as such it must be declared invalid and unenforceable.

111. Section 38A can be saved, and therefore, by operation of section 9(2) of the Interpretation Act, it has to be interpreted as applying only to leases coming into existence after 27 February 2015. To that effect, the parties entering leases after that time, know (or are taken to know) about the law in existence at the time they make their agreements and they can therefore form their lease agreements taking into account section 38A.

112. The basic rational for this is that, subject to the Constitution, an enactment of Parliament (law or Act of Parliament) is made for the present and the future situations. If Parliament intended clearly for a provision of an Act or a law to apply to the past situations occurring before the promulgation of the said law, it is still subject to the Constitution, as in the present case.

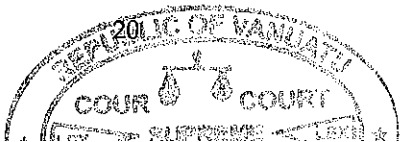
113. It is noted that the Respondents' response and written submissions made a suggestion to the effect that the qualifications to the fundamental rights that are set out in the opening words of Article 5 (1)(j) somehow make these legislative provisions legitimate. It is also noted that there was no attempt made to show how this could be so by Counsel of the Respondents apart from referring the Court to case law having different factual circumstances.

114. Article 5 of the Constitution provides:

> "**5. *Fundamental rights and freedoms of the individual***
>
> *(1)* ***The Republic of Vanuatu recognises, that****, subject to any restrictions imposed by law on non-citizens,* ***all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination*** *on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex* ***but subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health –***
>
> *a) life;*
> *b) liberty;*
> *c) security of the person;*
> *d) protection of the law;*
> *e) freedom from inhuman treatment and forced labour;*
> *f) freedom of conscience and worship;*
> *g) freedom of expression;*
> *h) freedom of assembly and association;*
> *i) freedom of movement;*
>
> *j)* ***protection for*** *the privacy of the home and* ***other property and from unjust deprivation of property;***
>
> *k) equal treatment under the law or administrative action, except that no law shall be inconsistent with this sub-paragraph insofar as it makes provision for the special benefit, welfare, protection or advancement of females, children and young persons, members of under-privileged groups or inhabitants of less developed areas.*
>
> ***[Emphases and underlines are my own].***

115. In this case, I accept Mr Sugden's submissions that section 38B cannot be seen as being within any of these qualifying words of Article 5(1) of the Constitution. Section 38B and the parts of section 38A it incorporates apply retrospectively to override bargains that deal with land. "*The rights and freedoms of others*" depend on the law and the certainty of the law. The legitimate public interests in defence and health are not in any way relevant in this case. But the legitimate public interest in safety, public order and welfare demands that there be certainty of law, especially in relation to land dealings. I note and agree that this country has seen such violence over disagreements about entitlements to land on many occasions. Thus, the "*legitimate public interest*" and the "*rights and freedoms of others*" (the qualifying words of Article 5) required **the removal of section38B** and support the Applicant's (Mr Ming) to have recourse to Article 5(1)(j), rather than prevent it.

116. It has to be said from the outset that the use of the expression ***"removal of section 38B"****, in the present case,* must only mean that the Supreme Court shall make **a declaration of constitutional invalidity and therefore of unenforceability of s.38B (a promulgated provision of an Act),** as section 38 B is found to be contrary to Article 5(1)(j) of the Constitution. The power of the Supreme Court, as the Constitutional Court, goes to the extent of a declaration of invalidity and unenforceability



of the said provision of the Act as in the current case (but it does not go to striking out or removal of offending words of an Act of Parliament). (See **Sope v Attorney General [1988] Van. L. R. Vol.1, 1980 – 1988; Virelala v Ombudsman [1997] VUSC 35** (The direction in Virelala to remove offending words may no longer be followed today); **President of the Republic of Vanuatu v Attorney General [1998] VUSC 18; Tari v Natapei [2001] VUCA 18; Timakata v Attorney General [1992] VUSC 9 and** on appeal in **Attorney-General v Timakata [1993] Van.L.R.Vol.2, 1989-1994, (CA 1/93, 15/10/1993)**; **Bohn v Republic of Vanuatu [2013] VUSC 42, Constitutional Case 1 of 2013 (5 April 2013); Kilman v Attorney-General [1997]SC 3 and others).**

117. I doubted whether the expression "***striking out***" or "***removal of***" offending words of a promulgated provision of an Act of Parliament, which is found to be contrary to a provision of the Constitution, as was initially suggested in the present Constitutional remedies sought in this case, was constitutionally and validly proper, having regard to the separation of the powers principle set in the Constitution.

118. I may not say much on this at this point apart from making the following observation. The expression "***striking out***" or "***removal of***" (offending words) may appropriately be used against the provision of a Bill (Proposed Enactment) of Parliament challenged through the Presidential Referral under Article 16 (4) of the Constitution, which is found to be inconsistent with Article 5 or another provision of the Constitution. This is because, if a provision of a proposed law (bill) is inconsistent with a provision of the Constitution, Article 16 (4) of the Constitution provides that the proposed provision of the law shall not be promulgated. As a consequence, the Supreme Court, acting under Article 16(4), may advise the President to assent to the remainder of the Bill after **excising** the offending words. (See **President Timakata v Attorney General [1992] VUSC 9** and on appeal in **Attorney-General v Timakata [1993] Van. L. R. Vol. 2, 1989-1994, (CA 1/93, 15/10/1993)** on this point).

119. I need to subtract a little from the main focus of the constitutional challenge in this case. I must point out that in **Attorney General v Timakata [1993] Van. L. R. Vol.2, 1989-1994**, the Court of Appeal (on page 685 at paragraph 9) stated:

> *"It is a question whether, if a provision in a Bill is inconsistent with the Constitution, the Supreme Court, acting under article 16(4), may advise the President to assent to the remainder of the Bill after **exercising** the offending words".*

120. I read and interpret the word **"*exercising*"** the offending words to mean **"*excising.*"** This interpretation is based on the whole judgment of the Court of Appeal which was materially consistent with the facts and legal findings of the Supreme Court judgment from which the appeal was made. The case, among other matters, was about the challenge of the constitutional validity of some proposed laws including the proposed provision of The Business Licence (Amendment) Bill of 1992 ("*The Licensing Bill*") (s.8 (A)(2)). Section 8(A)(2) of the said Bill provided: -

> *"The Minister may not give any reasons for the refusal or revocation referred to in sub-section 1 and such refusal or revocation shall not be challenged in any Court in any proceedings whatever."*

121. The Supreme Court found that it was inconsistent with Article 5(1)(d) of the Constitution and directed: *"That the whole of section 8(A)(2) be removed... that subject to the removal of those offending passages, his Excellency the President can, if he so wishes, sign the... Bill..."* The then Chief Justice D'Imecourt *"... invited His Excellency the President to do so."*

122. The Court of Appeal, **in Attorney-General v Timakata [1993] Van. L. R. Vol.2, (1989-1994**), agreed with Chief Justice D'Imecourt' decision that section 8A (2) of the Licensing Bill is in conflict with the Constitution, hold that the learned Chief Justice was correct in deciding that the whole of section 8A (2) of the Licensing Bill was inconsistent with the Constitution. The Court explained the extent and effect of Article 16(4) of the Constitution when a provision of a Bill is found to be inconsistent with a provision of the Constitution and what the Supreme Court might do was to: *"advise the President to assent to the remainder of the Bill after **exercising** the offending words."*

123. My interpretation of the word **"*exercising*" in the Court of Appeal judgment referred to above,** must only mean **"*excising*"** the offending words of the said Bill and it is a reasonable one, as any other interpretation would have rendered the word **"*exercising*"** the offending words of the said law, in the Court of Appeal judgment, not only meaningless but factually and legally superfluous and inconsistent with the Supreme Court orders and directions which were upheld on appeal by the Court of Appeal on this point. It was from that decision that the Court of Appeal made the statement where the word "*exercising*" the offending words, was used.

124. It follows that the Supreme Court can ***"strike out"*** or ***"remove" by excising*** the offending words of a proposed law (Bill) which are found to be inconsistent with a provision of the Constitution before the said provision of the Bill under the constitutional challenge, be promulgated. This shows the difference and the extent of the constitutional jurisdiction of the Supreme Court under Article 16 (4) of the Constitution as compared with a declaration of invalidity and, thus, unenforceability of a promulgated provision of an Act of Parliament, found after the act of promulgation to offend against a provision of the Constitution. The Supreme Court, in the latter situation, cannot remove the offending words of an Act of Parliament. The Supreme Court can only declare the provision of the Act, invalid as contrary to the Constitution, and as such, unenforceable.

125. That is the difference and an important one indeed constitutionally speaking that has to be understood but not to be confused.

126. As to section 48A relating to rural leases – I accept also the submissions that, if the amendment of 27 February 2015 to section 48A applies to leases already in existence on 27 February 2015 (which, on the face of the legislation, it could), it amounts to unjustified deprivation of property of the lessees because of Article 5(1)(j) of the Constitution.

127. I accept further the submissions that the qualifying words of Article 5 do not apply to this amendment even more obviously than they do not apply to sections 38A and 38B of Cap 163. For the same reasons

as stated above, the amendments introduced to section 48A on 30 June 2017 are caught by Article 5(1)(j) if they are sought to be applied to leases already in existence on that date.

128. So, both versions of section 48A of [Cap 163] are capable of being interpreted as applying only to leases entered into after –

(i) 27 February 2015 for the amendment of that date; and
(ii) 30 June 2017 for the amendment of that date.

129. Therefore, they have to be interpreted and applied to the extent of their validity pursuant to section 9(2) of the Interpretation Act.

130. As to Section 48B – relating to urban leases – I accept the submissions that, if interpreted as applying to leases already in existence on 30/06/2017, section 48B breaches the rights of the lessees under Article 5(1)(j) of the Constitution. Section 48B of [Cap 163] can, however, be interpreted as applying only to leases entered into after section 48B came into law on 30/06/2017 and so it has to be interpreted to the extent of its validity pursuant to section 9(2) of the Interpretation Act [Cap 132]).

131. As to previous version of section 48B – coming into law on 27/02/2015 relating to leases coming into existence between 27/02/2015 and 30/06/2017 I accept, the submissions made to the following effect that :-

(a) Section 48B first came into existence on 27/02/2015 and was amended on 30/06/2017. Both versions of section 48B are exactly the same apart from only one difference. That difference is that the 30/06/2017 version provides that for the fee for transfer to at least double the fee required by the earlier version.

(b) If the 27/02/2015 version still existed, for the same reasons as set out above, section 48B would have been in breach of the leases – rights under Article 5(1)(j) of the Constitution of it was interpreted as applying to leases already in existence on 27/02/2015, not, however, for leases coming into existence after 27/02/2015.

(c) Therefore leases coming into existence after 27/02/2015 would be caught by section 48B in its 27/02/2015 version so that leases would validly be required to pay the lower transfer fee set out in the 27/02/2015 version so that leases would validly be required to pay the lower transfer fee set out in the 27/02/2015 version of section 48B but the 30/06/2017 version, with the higher transfer fee could not apply without breaching the lessees' rights under Article 5(1)(j) of the 48B as that section existed from 27/02/2015 until 30/06/2017.

132. The final consideration is about the compensation sought by Mr Ming. Mr Ming sought to preserve his position by applying for Relief against Forfeiture under the provisions of Land leases Act [Cap 163] and by doing so caused him loss including the fee required by the Valuer-General and the legal costs. It is submitted the Applicant should be compensated for these expenses to which he should not have

been put through. An amount of VT348,592 is claimed. This amount is for the expenses due to the issue of Notice Before Forfeiture and related expenses as detailed in annexure D to the sworn statement of Cynthia L. Garaemwala. These expenses are now claimed in this Constitutional Application.

133. I think it is wrong to claim for those expenses occurring before the Valuer-General under the Land Leases Act in this Constitutional Court, and, in this Application as a matter of principle. The Applicant was successful in this Constitutional Application. Declaration of invalidity was made as section 38B is contrary to the Constitution (Article 5(1)(j) and thus, unenforceable. Other declarations of partial invalidity were also made (sections 38A, 48A and 48B). The Applicant may have been entitled to the refund of his fee and disbursements before the Valuer-General (of Vatu 25,250) as he will be successfully applying for relief against Forfeiture as a result of the judgment of the Court in this constitutional case. But the expenses incurred and sought to be compensated for, were incurred at a time when the Act in [Cap 163] (as amended) was in force and applied. The Director of Lands Records applied those laws as the law required of him as part of his duties at the time as a consequence. The expenses sought were not compensatory type to be considered by the Constitutional Court in this Constitutional Application including legal costs of Counsel (of Vatu 323,342) related to [Cap 163] proceedings before the Valuer-General. I therefore decline to make a compensation order as sought in the Application.

134. Based on the forgoing reasons, the Court makes the following Declarations and Orders:-

DECLARATIONS AND ORDERS

(a) A declaration that section 38B of the Land Leases Act [Cap 163] is contrary to Article 5(1)(j) of the Constitution and therefore invalid and unenforceable, is granted;

(b) A declaration that section 38A of the Land Leases Act [Cap 163] applies only to leases entered into after 27/02/2015, is granted;

(c) A declaration that section 48A applies only to leases entered after 30/06/2017, is granted;

(d) A declaration that for urban leases entered between 27/02/2015 and 30/06/2017, the version of section 48B introduced into law on 27/02/2015 but since amended, applied, is granted ;

(e) A declaration that section 48A of the Land Leases Act, applied only to leases that were entered into after 30/06/2017 but that the amendment to section 48A dated 27/02/2017 applies only to leases entered into between 27/02/2015 and 30/06/2017, is granted;

(f) An order that the Respondents pay to the Applicant a compensatory amount of Vatu 348,592 due to the Applicant as a result of issue of the Notice Before Forfeiture dated 16/11/2017 in respect of Lease 03/OI93/016 and any action taken by the Respondents on the basis of the Notice, is refused;

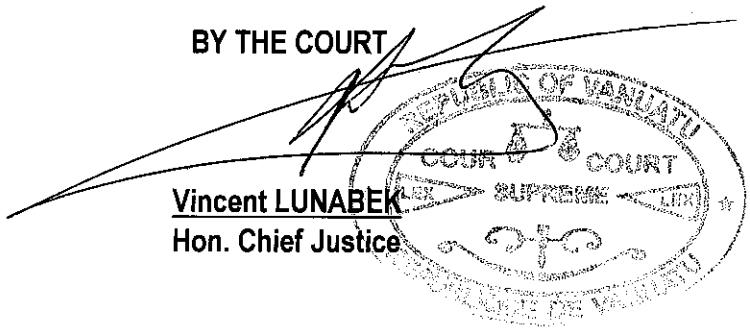
(g) The Applicant is entitled to costs against the Respondents on the standard basis. Such costs are assessed at VT150,000;

(h) The costs of VT150,000 shall be paid by the Respondents to the Applicant within 21 days from the date of this judgment.

(i) A conference review is set on 29th March 2021 at 8.30am to check whether the amount of Vatu 150,000 costs is paid as ordered or whether the Respondents can inform the Court as to when and how they propose to pay the said amount of VT150,000 to the Applicant.

DATED at Port Vila this 09th day of March 2021.

BY THE COURT



Vincent LUNABEK
Hon. Chief Justice