

**IN THE COURT OF APPEAL OF  
THE REPUBLIC OF VANUATU**  
*(Civil Appellate Jurisdiction)*

**CIVIL APPEAL CASE NO. 15/26 COA/CIVA**

**BETWEEN: MARTIN MAHE**  
*Appellant*

**AND: BILL STEPHEN**  
*Respondent*

**Coram:** *Hon. Chief Justice Vincent Lunabek  
Hon Justice John von Doussa  
Hon Justice Ronald Young  
Hon Justice Daniel Fatiaki  
Hon Justice Dudley Aru  
Hon Justice Mary Sey  
Hon Justice David Chetwynd  
Hon Justice Paul Geoghegan*

**Counsel:** *Mr. Colin B. Leo for the Appellant  
Mr. Silas C. Hakwa for the Respondent*

**Date of Hearing:** *6<sup>th</sup> April 2016 at 2.00 pm*

**Date of Judgment:** *15<sup>th</sup> April 2016 at 4.00 pm*

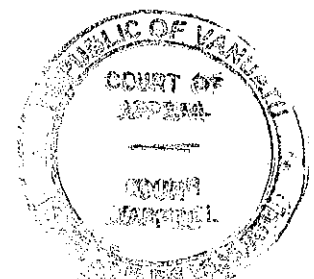
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**JUDGMENT**

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**Introduction**

1. This is an appeal against the Judgment of the Supreme Court issued on 27 July 2015 in Civil Case No.29 of 2011 (Bill Stephen v Martin Mahe). The claim was for VT8,157,000 being moneys had and received and retained by Mr Mahe. Judgment was entered for that amount in favour of Mr. Stephen with interest at the rate of 5% per annum from 1 June 2010 to date of judgment.



2. The Appellant in his Notice of Appeal says that he was entitled to the money he received and the Judge in the Supreme Court was wrong to make the orders he did.

### **Background facts**

3. On 8 November 2009, a family meeting took place at Chapius, Luganville, Santo between the late Salathiel Stephen Dule (SSD), members of his family (FSSD) and Mr Mahe (the defendant). There was a verbal agreement reached between SSD acting in his own right and on behalf of FSSD and the defendant whereby the parties agreed that the defendant would perform and carry out certain tasks in relation to **NASULNUN** and **ARTACHA** custom land (South Santo Cattle Project) for and on behalf of FSSD.
4. On 1 December 2009, the defendant prepared a power of attorney dated 1 December 2009 (first power of attorney). The document was signed by SSD and witnessed by Barthelemy Ngwele.
5. On 31 May 2010, the defendant signed a Deed of Release with the Government for the sum of VT9,864,517 being annual rents in relation to Nasulnun land for and on behalf of FSSD. On 2 June 2010, the defendant uplifted the payment of VT9,864,517 from the Government under the Deed of Release. Thereafter on 4 June 2010, the defendant transferred VT4,000,000 into the bank account of SSD and retained the balance of VT5,864,517. SSD died on 6 June 2010.
6. Following the death of SSD, the claimant, together with his six siblings, gave the defendant a second power of attorney dated 15 June 2010 in relation to **NASULNUN** and **ARTACHA** custom land. The power of attorney was quite specific as to what Mr. Mahe could do.
7. On 2 December 2010, Mr. Stephen (the Respondent) wrote a letter to the defendant giving him formal notice that the second power of attorney had been revoked. Despite that notice, on 6 December 2010, the defendant uplifted from the Government the sum of VT2,292,483 being annual rents for leases of part of Nasulnun Land.



## Grounds of Appeal

8. The Appellant filed 5 grounds of appeal: First, that His Lordship erred in fact and in law in failing to accept the best evidence adduced by the Appellant that he had paid his former Solicitor VT3,600,000 for legal work undertaken in relation to Nasulnumn land. Secondly, His Lordship erred in fact and in law in failing to consider that when the Appellant transferred VT4million to the Respondent's father on 4 June 2010, there was no complaint or any query raised by the Respondent's father or the Respondent. Indeed the Respondent and his family met on 5 June 2010 and made a second power of attorney in favour of the Appellant. Thirdly, that upon the death of the Respondent's father, the Respondent had no standing to claim any proceeds of Nasulnun customary land and Artacha customary land given the fact that only the Respondent's father was declared the custom owner of the two lands. Fourthly, that His Lordship erred in fact and in law in failing to consider that the Appellant had made payments of VT550,000 towards the Respondent's father's funeral expenses and other related expenses and manifestly failed to deduct same from the total amount claimed. Fifthly, that the Respondent's Claim did not seek specific declarations as to the legality of the first and second power of attorney and that His Lordship erred in making declarations on matters which are not subject to legal remedies sought under the claim.

## Discussion

9. As to the claim in the **first ground**, we are satisfied there was no real evidence before the Court that Mr. Timakata provided relevant legal services. The Appellant's lawyer did not submit proper accounts or any bill of costs for the work said to be done. Mr Mahe produced a receipt from Mr Timakata saying he had received the sum of VT3,600,000. The receipt said it was issued for "5 days' work" which allegedly took place more than 2 years earlier in 2010. The Appellant chose not to call any evidence, including Mr. Timakata, to show that he had done legal work relating to the land claims worth VT3,600,000. The Judge was correct not to accept the receipt as evidence that Mr Mahe had paid Mr Timakata for the legal work as claimed. We reject this ground of appeal.



10. As to the **second ground**, it is clear that when the distribution of the VT4 million was made there was no complaint from SSD himself because he was dying but there were complaints from other family members. The money came in on 4 June 2010, SSD died on 6 June 2010 and the second power of attorney was signed on 15 June 2010. However, whether SSD or the family did or did not complain does not affect the fact that the money was not the Appellant's to distribute as he chose.
11. While the Appellant may have had the authority as attorney to uplift the sums of VT5,864,517 and VT2,292,483 for and on behalf of SSD and FSSD he had no authority to disburse the money as he chose. He had no authority to retain part of the money for himself. His authority was to get on with the land dealings. Therefore the Judge was right in holding that Mr. Mahe was accountable to reimburse the amount he had disbursed. We reject this ground of appeal.
12. The Appellant's argument in respect of the **third ground** is misconceived. The money could be uplifted from the Minister as it was due and payable to SSD as the custom owner or to his successors if he died. The Appellant was not entitled to the money. Either SSD or his estate was entitled to the rents from the past. We reject this ground of appeal.
13. The **fourth ground**, the Appellant should be given credit for reasonable expenses he had incurred. Having put this to both counsel in the course of the hearing, they agreed in principle that it would be appropriate to give credit to the Appellant for reasonable expenses relating to the following items:

1. Airfares x 2 @VT33,000 each	= VT66,000
2. Legal fees for Mr. Napuati	= VT300,000
3. Legal fees for Mr. Timakata	= VT100,000
4. Funeral expenses	= VT200,000
5. Payment to Mr. Barthelemy Ngwele	= VT600,000
6. Payment to family members	= <u>VT250,000</u>
	<u><b>VT1,516,000</b></u>

Considering the Appellant probably incurred various other out of pocket expenses, we consider he should be allowed a credit of **VT2,000,000**.



14. As to the **fifth ground** the legality or otherwise of the first and second power of attorney it is not relevant to our judgment. In any event the orders made by the Supreme Court do not include declarations about the power of attorney and there is no need to discuss this ground further.

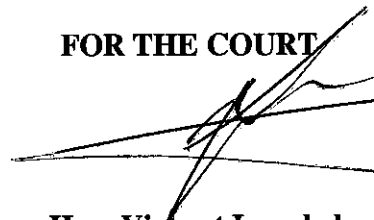
**Conclusion**

15. The appeal is allowed to give credit for the amount of **VT2,000,000** to the Appellant. This has the result that the judgment against Mr. Mahe in favour of Mr. Stephen in the Supreme Court is reduced from VT8,157,000 to VT6,157,000. Otherwise the terms of the Supreme Court orders are unchanged.

While the Appellant has in part succeeded his success was limited. There will be no order as to the costs of this appeal.

**DATED at Port Vila this 15th day of April 2016.**

**FOR THE COURT**



**Hon. Vincent Lunabek  
Chief Justice.**

