

IN THE MAGISTRATES' COURT
OF THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil Case 19 of 2014.

BETWEEN: VANUATU SOCIETY SAINT DE PAUL
Claimant

AND: ARISTIDE MELTCOIN
Defendant

Coram: FSam(Magistrate)

Appearances:

Mr Eric Molbaleh for the Claimant

Mr Edmond Toka for the Defendant

DECISION ON WRITTEN SUBMISSION ON APPLICATION TO STRIKE OUT
CLAIM

1. This is a claim for outstanding unpaid rent against the Defendant, in the sum of 270,000 Vatu, and general damages in the sum of 200,000 Vatu and punitive damages in the sum of 200,000 Vatu, and Defendant to be evicted from Claimant's property.

2. The facts are that the claimant is a registered charitable association, with its headquarter, situated at Anabrou, where two concrete buildings are situated. One building being the Claimant's main office, the other being occupied by the Defendant, and his family since 20th November 2011. The Defendant was to occupy the claimant's building purposely to operate a shop of his own and pay monthly rent of VT 10,000 to the Claimant, however, Defendant never operated a shop but instead brought his belongings and family to said premises of claimant where he occupies till today.

3. The statement of claim was filed on 17th February 2014. On 20th August, 2014, an application to strike out the claim ensued by Defendant, seeking orders that the claim be struck out in its entirety as being an abuse of process.

4. I consider the written submissions from both counsel before I deal with the Application to strike out claim.

5. The defendant through his counsel applied for this matter to be struck out on following Grounds:

a. First, on principle of *res judicata*, whereby same claim have been decided upon on an earlier matter, that is, Civil Case 155 of 2013, which had been amended as directed by presiding Magistrate then, and discontinued as per Discontinue Order issued by Court on 4th April 2014, and therefore Claimant is estopped from pursuing this claim further.



b. Second, on rule of Discontinuance, Rule 9.9(4) (a) of Civil Procedure Rules 2002, Where Claimant cannot revive the claim if claimant has discontinued the claim.

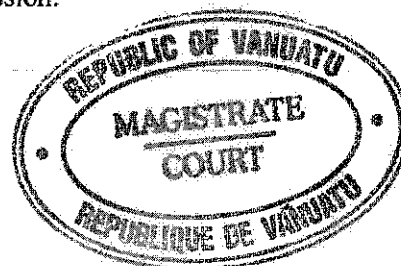
c. Third, on principle of Waiver where opportunity was given to Claimant in earlier CC 155 of 2013, to amend and re-file their claim to consider the full facts and raise all necessary issues once and for all. However, the Claimant did not do otherwise, and decided to amend the claim to exclude outstanding rent payments in Amended claim CC 155/13, in which case, after being discontinued as per Discontinue Order dated 4/04/14, Claimant decided to bring in new claim again, Civil Case 19/14 wherein issue of outstanding rent payments was raised with other reliefs that were already sought in CC 155/13. *Calo v Malsungai* case was used as precedent whereby Defence submit that Claimant had the opportunity given him to consider full facts or documents of its claim, whereby he can use said facts or documents to his advantage, and where failure to bring all necessary documents or facts into proceeding, results in same being waived against him. They submit that Claimant had opportunity to raise breach of contract in its amended CC 155/13 claim, regarding rent payments, therefore, in raising it now in CC 19/14, constituted a waiver, thus denying himself of the right to such claim, and argue breach of contract and consequential remedies it now seeks.

6. Further on Defence's submission regarding eviction of Defendant from Claimant's house, the Claimant had in earlier claim CC 155/13 made an urgent application on 14 February 2014 to vary order of 20 December 2013 in completely removing Order 1 – that is, "the Claimants and their Solicitor remove forthwith the lock they hanged on the Defendant's house door and allow the defendant and his family to return to their house, and live there until this case is determined.".... However, this matter was then discontinued and dismissed before the court had the chance to consider claimant's application. Again Defence submit that principle of waiver in *Calo v Malsungai* operate against Claimant, and Claimant estopped from pursuing this matter further.

7. The main issue is whether principle of res judicata applies in the interest of Defendant in this matter.

8. The claimant's submission is: That he agrees with Defence counsel that same matter has been resolved. However, that Defendant's submission was misconceived and objects to Application to Strike out claim on following grounds:

1. That CC 155/13 was amended not on their own accord, but as per Court's direction dated 4/11/13.
2. He discontinued CC 155/13 only so they can proceed with CC19/14, from which case Defence raises issues in his submission.



3. Reliefs sought in CC 19/14 does not include outstanding land rent, therefore separate claim.

9. Claimant counsel submitted that Discontinue Order dated 4th April 2014, was issued after filed CC 19/14, therefore, submit that Claim was probably instituted, and separate from CC 155/13, in respect of outstanding rent payments. Two claims are thus separate and res judicata cannot apply in this case.

10. Claimant therefore submits, rule 9.9 (4)(a) also not applicable. And also submits that issue of waiver not applicable in current case.

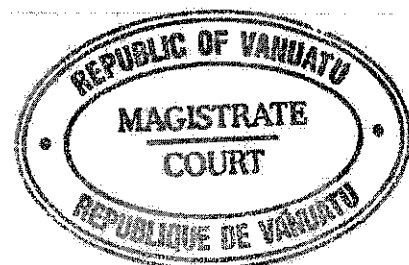
11. Defence counsel further submits that Order 4/11/13 of CC 155/13 directed that Claimant files a new claim, not to file new proceedings, which claimant did otherwise in this case. Direction given was for claimant to amend its claim to make it clearer, and not as a separate claim as raised by claimant counsel.

12. Defence Counsel has assisted the Court with some helpful case laws and on issue of res judicata and waiver.

Crown Estate Commissioners v Dorset Country Council [1990] All ER 19 Miller J at p. 23 – describes doctrine of res-judicata as following:

"Res judicata is a special form of estoppel. it gives effect to the policy of law that the parties to a judicial decision should not afterwards be allowed to re-litigate the same question even though the decision may be wrong. If it is wrong, it must be challenged by way of an appeal or not at all.the parties are bound by decision, and neither re-litigate the same cause of action [cause of action estoppel] nor reopen any issue which was an essential part of the decision[issue estoppel]."

Halsbury's Laws of England also summaries principle of estoppel as: *"...A party is precluded from contending the contrary of any precise point which, having once been distinctly put in issue has been solemnly and with certainty determined against him. Even if the object of the first and second actions are different, the finding on a matter which came directly in issue in the first action, provided it is embodied in a judicial decision that is final, is conclusive in a second action, between the same parties and their privies. This principle applies whether the point involved in the earlier decision, is an error of fact or law, or one of mixed fact and law. The conditions for the application of the doctrine have been stated as being that (1) the same question was decided in both parties to the proceeding; (2) the judicial decision said to create the estoppels was final; (3) the parties to the judicial decision ...were the same persons as the proceedings in which the estoppel is raised..." To be distinguished however, is the rule that where a plaintiff, having two inconsistent claims, elects to abandon one and pursues the other, he cannot afterwards choose to return to the former and sue on it."*



13. Again, Defence further submit that Principle of res judicata applies against the Claimant because he did not raise all issues in first proceeding, CC 155/13 and the extended principle of res judicata applied in **Henderson v Henderson** applies in this case, where as the principle was restated in **Barrow v Bankside Agency Ltd** [1996] 1 WLR 257 at p. 260:

"It requires the parties, when a matter becomes the subject of litigation between them in a court of competent jurisdiction to bring their whole case before the court so that all aspects of it may be finally decided (subject of course to any appeal), once and for all. In the absence of special circumstances, the parties cannot return to court to advance arguments, claims or defences which they could have put forward for decision on the first occasion, but failed to raise.It is a rule of public policy based on desirability, in the general interest as well as that of the parties themselves, that litigation should not drag on forever and that a defendant should not be oppressed by successive suits when one would do. That is the abuse at which the rule is directed."

14. Whether or not Claimant acted as per direction of presiding magistrate then, to amend and separate their claim as they did, and despite Discontinue order filed after claim raised in CC 19/14, and whether or not separate reliefs were sought in earlier claim of CC155/13 as to present case, it is in my view, not relevant to counter argue principle of res judicata that is evidently laid out with relevant case laws as put forward by Defence counsel. Also, even if outstanding rent payments were not raised in amended CC 155/13 claim, it is still an essential issue involving both parties (who are same parties again in CC 19/14), that should have been dealt with once and for all in earlier proceeding. And I accept Defence's submission in that, the remedy of financial loss suffered by claimant as a result of Defendant's non-payment of rent, is, as defence counsel puts it, summarised as "breach of contract" and this issue could have been dealt with once and for all, in earlier claim CC 155/13, but had not been done so otherwise. Therefore, in considering and applying principle of res judicata, the claimant is estopped from arguing non-payment of rent [breach of contract] and consequential remedies it sought in this current proceeding.

15. It is my view then that the principle of res judicata applies in this case, with the following directions:

1. That the Application to Strike out Claim is thus granted.
2. That cost of this proceeding are awarded against the Claimant at an amount to be agreed upon by Parties or taxed.

Dated at Port Vila this 30th day of April 2015.

BY THE COURT

