

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

Civil Case No. 2336 of 2019

**BETWEEN: BUXOO BIBI NABILAH**

Claimant

**AND: JOHN WILLIAM TIMAKATA**

Defendant

*Claimant in person  
Mrs. Matariki. L for Defendant*

*Date of hearing: 19 February 2021  
Date of judgment: 01 July 2021*

## **JUDGMENT**

### **Claim**

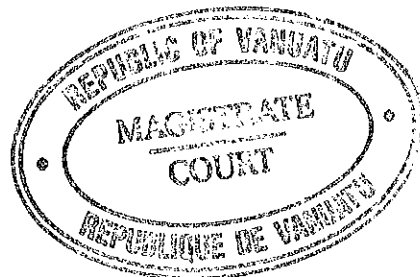
This is a claim for restitution of money and damages for undue pain and anguish.

### **Facts**

On the month October 2018, the Claimant sought legal representation following her arrest by the Vanuatu Police. At the time, the Defendant was on the island of Ambrym. The Claimant alleged she met with the Defendant when he returned from Ambrym and paid him VT 500, 000 to cover her legal fees. Thereafter, the Defendant visited the Claimant while she was incarcerated and at the Police station and provide her legal advices. The Claimant subsequently saw an article in the Daily Post relating to his suspension from practicing which resulted in her claim before the Court. The Claimant lodge a complaint to the law Council and the law Council suspended the Defendant for practice for 12 month including costs.

### **Issues**

- a) Whether or not the agreement is between the Defendant and the Claimant?



- b) Did the Claimant received proper legal representation for her legal fee?
- c) Should the Vanuatu Law Council decision allow the legal fee to be returned to the Claimant?

**Claimant's case**

The Claimant produced two sworn statement dated 18 October 2019 and 02 February 2021.

The two sworn statements confirmed the similar evidence produced to the Law Council which resulted in the decision to suspend the Defendant from practicing law for period of 12 months. The Defendant do not dispute that he was present in meetings, the police station and in prison when she was incarcerated.

**Defendant's case**

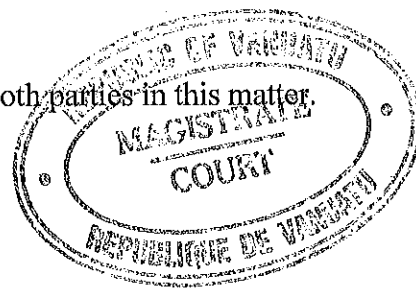
Mrs. Matariki do not dispute the fact that the Defendant was present during meeting and was with her to visit the Claimant when she was at the police station and incarcerated at the Women Correctional Center. She and another legal officer Mr. Rollanson Daniel provided to the Claimant legal documents, legal advice and represents the Claimant in Court. This is not disputed by the Claimant. The Court finds her to be a credible witness and reliable witness.

Sheba Kaurau produced two sworn statement dated 18 March 2020 and 23 April 2020. The two sworn statement was not challenged by the Claimant that she works for Timakata and Associates as a secretary or that legal representation was made by Mrs. Matariki and Mr. Willie from the firm. The Claimant signed an agreement with the firm for legal services. The Court finds her to be a credible and reliable witness.

The Defendant produced a sworn statement dated 22 April 2020. In cross-examination, do not deny that he was present in meetings with the Claimant and her husband including his presence at the police station and at the prison when the Claimant was imprisoned. He disputes giving advice to the Claimant at his office, the police station and at prison and said that Mrs. Matariki was the person giving legal advice at the meetings, producing legal documents to the court and representing the Claimant in court. The Court finds him to be a credible but not a reliable witness.

**Discussion**

The Court had considered the closing submission filed by both parties in this matter.



The claim before the Court is restitution of legal fees. The responses to the issues above are as follows:-

- (a) The answer to issue (a) is negative. Claimant signed an agreement with Timakata and Associates law firm not with the Defendant in person;
- (b) The answer to issue (b) is affirmative. Claimant received proper legal representation from Timakata and Associates;
- (c) The answer to issue (c) is negative. This answer is made in consideration of the bill provided in evidence by the sworn statement of Mrs. Matariki dated 10 February 2021 not disputed by the Claimant. The Court believes that the Claimant had a proper claim before the Court for the Defendant's actions nonetheless she should claim damage and undue pain and anguish by way of tort instead of restitution of legal fee.

**Order**

The Court hereby dismiss the claim in this matter accordingly.

The costs of this proceeding to be taxed or agreed upon.

The Claimant may appeal this decision within 30 days.

DATED at Port Vila, this 01<sup>st</sup> day of July 2021

