

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

Civil Case No. 1122 of 2024

BETWEEN: DAMASE ALGUET

Claimant

Claimant's Lawyer:

Mr. Rollanson Willie of Rollanson Willie
Lawyers
Luganville, Santo
Republic of Vanuatu

AND: PHILIP ANDIKAR

Defendant

Defendant's Lawyer:

Ms. Barbara Taleo of PSO Lawyers
Luganville, Santo

DECISION

A. Introduction

1. Ms. Barbara Taleo filed an application on behalf of the defendant seeking for a struck out order pursuant to Rule 9.10 (2) of the CPR on the ground amongst others that the claim is statute barred by section 3(1) of the Limitation Act.
2. Both counsels agreed that the court will determine the issue on the papers they have each filed.

B. Background

3. The claimant filed proceeding against the defendant on 11 April 2024.
4. The cause of action disclosed showed the claimant entered into a verbal agreement in 2018 whereby the claimant offered the defendant monies in sum of VT 170,000 on the defendant's request and that the defendant would make monthly repayments with interest until the amount borrowed and interest are repaid in full.
5. The defendant upon receiving the money from the claimant failed to advance any payment to the claimant as verbally agreed.

C. Defence

6. The counsel for the claimant in his response to the strike out application maintained that the claim is not barred by statute as section 3 (1) of the Limitation Act simply states that any action for simple contract cannot be brought after the expiration of 6 years and that the period from 2018 to 2024 is within 6 years.

D. Issues

Whether the claimant is barred by statute to bring an action for breach of contract against the defendant?

E. Law

7. Section 3- *Limitation of actions of contract and tort in certain actions*

(1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say-

(a) Action founded on simple contract or a tort;

(b)

(c)

(d) (my underlining)

Striking out (Civil Procedure Rule)

9.10 (1) This rule applies if the claimant does not:

(a) take the steps in a proceeding that are required by these Rules to ensure the proceeding continues; or

(b) comply with an order of the court made during a proceeding.

(2)

- (3) *If no steps have been taken in a proceeding for 3 months, the court may:*
- (a) *Give the claimant notice to appear on the date in the notice to show cause why the proceeding should not be struck out; and*
 - (b) *If the claimant does not appear, or does not show cause, strike out the proceeding.*

F. Discussion

8. Neither of the parties failed to confirm the exact date in 2018 when they executed the oral agreement.
9. The claimant stated in his claim it was on 2018. However, the letter written to defendant by counsel for the claimant stated the transaction occurred towards end of year 2018.
10. We are now in the third quarter of the year and without the exact date in 2018, we are unable to determine whether or not 6 years had lapsed thus preventing the claimant from pursuing this action.
11. It appears also in the defendant's application to strike out that his application was made in pursuant to rule 9.10 of the CPR.
12. The rule 9.10 only deals with failure on the part of the claimant to take steps to progress his or her claim.
13. It appears that the defendant's application is misconceived as an application for a strike out on the grounds that the claim is statute barred cannot be dealt with under the provision of Rule 9.10.

G. Order

- a) Without clarity as to the exact date of 2018 when the parties executed the oral agreement, the Court hereby orders that the claimant's action is filed within 6 years.
- b) The claimant has liberty to file an application for summary judgment, as the defendant appeared to agree with the claim.
- c) Cost for the claimant in amount of VT 15,000.

Dated at Luganville, this 27th day of August 2024

BY THE COURT



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MOSES PETER
Senior Magistrate

