



IN THE SUPREME COURT
HELD IN PORT VILA
REPUBLIC OF VANUATU

CIVIL CASE NO. 59 OF 1995

(Civil Jurisdiction)

BETWEEN: HUDSON and Co of LOLAM
HOUSE, P O BOX 7, Port Vila.

Plaintiff

AND: SUNRISE LIMITED of Port
Vila

Defendant

JUDGMENT OF TAXATION FOR COSTS

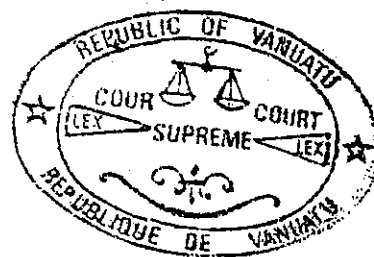
Mr Sugden for the Plaintiff
Mr Maurice Gensburger for the Defendant.

This was a Taxation for Costs in the Civil Case No. 59 of 1995 between Hudson & Co, the above named Plaintiff and Sunrise Limited, the Defendant. On the 13th day of September 1995, Mr Justice Salatiel LENALIA delivered the judgment in this case and made the following orders:

- 1) Judgment entered for the Plaintiff in the sum of Vatu 2, 989, 420.
- 2) Interest calculated at 12% on the above sum from 2 / 6 / 95.
- 3) Cost to be agreed or taxed.
- 4) 3 months to appeal.

Both parties were not agreed to their costs.

*On the 6th October 1995, Mr Sugden on behalf of the Plaintiff filed his Bill of Cots for Taxation pursuant to Order of 13th September 1995 issued by LENALIA J.



On 6 November 1995, both parties appeared before the Chief Registrar in Chambers, sitting as Taxing Officer. Both parties were not in agreement as to the reasonable time rate. Mr Sugden submitted that the costs to be taxed at 20, 000 vatu which is part of a long practice for so many years in Vanuatu. The Defendant disputed that figure and said that he was attending the Honourable Chief Justice in an appeal to review Taxation in a different matter and he said the Chief Justice did not mention or refer to any rules and that the Chief Justice expressed the view that the costs should be taxed at 8, 000 vatu per hour irrespective of the charges.

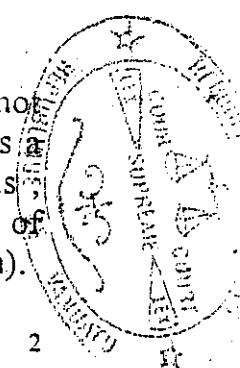
I decided to determine the point of time rate as a preliminary issue in this case. Mr Sugden submitted that the Registrar must take into account the Constitutional guarantee of representation of the litigants. The taxation on party and party basis means what are strictly necessary for the prosecutions of actions by lawyers for successful party. The taxing officer must look at what is realistic to be paid to a solicitor or lawyer in Vanuatu in order to act in Court. He stated also that 8, 000 vatu per hour is not applied in Vanuatu since Independence and that the previous Registrar allowed 20, 000 vatu. He further said that in Vanuatu you cannot get a lawyer to act for you at 8, 000 vatu per hour. If the Defendant should pay anything less than the successful party has to pay it means that the Constitutional right of representation was denied. Thus, he said this Court has to take judicial Notice about the previous bills so that the proper charge on legal basis of party and party will be 20, 000 vatu per hour which is reasonable for lawyers in Vanuatu would work for. He said further that in this case, the action brought before Vanuatu Supreme Court is below 3, 000, 000 Vatu but have some difficult legal issues relating to the question of partnership which changed through the year. It started in 1989 and was concluded in 1995. The ownership of Hudson and Co taken at the beginning as to the correct persons to serve be considered so that in reference of the files concerning this case it warrants 20, 000 vatu.

Mr Gensburger, on behalf of Sunrise Limited stated that nobody contest the point. Mr Gensburger's argument remain the same when he replied to Sugden saying that his Writs was against Hudson and Co but not against Mr Sugden. He maintained that the Honourable Chief Justice said the costs should be taxed at 8, 000 vatu per hour. He said the Chief Justice has some basis and he reserved the right to make an appeal of this decision (if need be).

On the 8th November 1995, I made the following ruling:

- 1) That the amount of Vatu 10, 000 per hour is a reasonable amount of rate for taxation for costs on a party and party basis...

I have been requested by Mr Sugden to give reasons for my ruling. I have not much but just to say a few words as to why I think 10, 000 vatu per hour is reasonable amount of rate for the costs to be taxed on party and party basis. The rules of the Supreme Court do not expressly provide for the taxation of costs. Thus one must look at O. 62 r. 12 of the Supreme Court Rules (English).



However, the scales are not relevant to Vanuatu situations; In any event Taxing Officers in Vanuatu have to make decisions on the applications for Bills of Costs to be taxed. Vanuatu is a country where the majority of the population is located in rural areas. (Islands not in Port Vila and Luganville); They could not afford to pay for a lawyer at 20, 000 vatu per hour. Even 10, 000 vatu per hour is too much. People who work in Port Vila or Luganville in great majority are ni-Vanuatu, they could not either afford to pay for a lawyer or solicitor at 20, 000 vatu per hour

As a matter of comparison, reference should be made to Vanuatu Legal Minimum Wages. Section 2 of the Minimum Wages Act CAP 182 (as amended by Order No. 5 of 1995) provides inter alia, that:

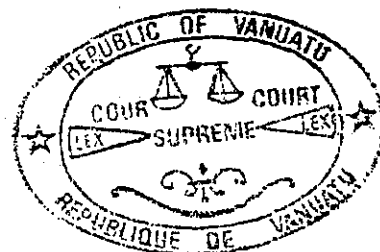
"... every worker as from the date of commencement of this Act ... shall be entitled to receive from his employer for his work a minimum wage of vatu 16, 000 per month calculated on the basis of 22 working days in a month and 8 working hours in a day..."

Thus a worker in Vanuatu would get 16, 000 vatu per month on the basis of 22 working days in a month at 8 working hours in a day.

Assuming that a lawyer would work 8 hours in a day on the basis of 22 working days in a month. He would get 20, 000 vatu per hour x 8 x 22 = 3, 520, 000 vatu per month. Now, if we compare 16, 000 vatu per month for a worker in Vanuatu and 3, 520, 000 vatu per month for a lawyer or solicitor in Vanuatu just for a case as the present one, we can see that figures speak of themselves. It is obvious that considerations have to be made as to the fact that Lawyers Firms employ staff and pay for other charges. In any event, it is my view that 20, 000 vatu per hour is not reasonable . Furthermore, apart from business licences, and the 4% government taxes, Solicitors and/or Lawyers do not pay income taxes.

Thus, I think that 10, 000 vatu is a realistic time rate to be paid to a solicitor for preparation of cases in Court. It is, I think, what is strictly necessary for the prosecutions of actions by Lawyers for successful party in Vanuatu.

Furthermore, it is a common ground that litigants who bring their actions to the Courts are rich litigants. Thus, while it is possible for the rich litigant to retain the services of counsel or attorney of very high profession standing, it is very difficult, if not impossible, for the poor litigant to do so. And here I assume that the counsel or attorney of high professional standing is likely to charge higher fees commensurate to his status. The poor litigant who is not a beneficiary of any legal Aid Scheme will have to retain the services of counsel or attorney within his means and in so far as his very lean purse carries him.



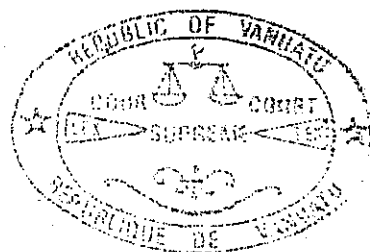
Mr Sugden submitted to the Chief Registrar to take into account the Constitutional guarantee of representation of the litigants so that if the Defendant should pay anything less than the successful party has to pay it means that the Constitutional right of representation was denied.

It has to be remembered also that one fundamental right or freedom of any individual is the right of access to Courts of Law. It is a Constitutional right in most jurisdictions, including Vanuatu. If the cost of litigation is beyond the reach of the ordinary citizen then the Constitutional right of access to Court is denied him, and he is the poor litigant. Although the poor litigant has a genuine grievance in Court, he cannot seek the appropriate legal remedy because he lacks the means and facilities to do so. He is thus denied justice while the rich has all golden wings to fly to justice, the poor has to suffer in silence because of the high litigation cost. That is injustice. That is certainly against the rule of Law both in its conservative and contemporary meaning. Such a situation encourages two types of "justice". The real justice to the rich and "justice" inverted and therefore reversed to the poor. That is injustice.

A society where justice is miserly apportioned in favour of the rich and against the poor is not built on sound democratic footing. It is a bad system. This should not be encouraged in Vanuatu. It is time now to look seriously at those questions of costs. If I may say so, the situation in Vanuatu is not so different from other developing countries where the contingency fees system is in operation. In most cases, where the amount of damages is large and counsel sees great legal potentials of success, he enters into a contingency fees agreement with the client. In some instances only the summons fees are provided by the client. In some other cases, a token fee is paid awaiting the contingency situation to ripen at the end of the litigation. There are even circumstances where the litigant is so poor that he cannot even afford the summons fees. Some counsel, out of sheer sympathy and a deep conviction of the merits of the claim, pay the summons fees.

English Law does not seem to recognise the contingency fees system on the ground that it is illegal, being based on maintenance and champerty. The Court of Appeal in a majority decision held that contingency fees were unlawful by the law of England on the ground that they were contrary to public policy, and no exception to that rule was recognised. [See Wallersteinier -V- Moir (No. 2) (1975) 1. All E. R 849.]. It is rather unfortunate that the British system is that stringent and rigid. It looks at the position from the point of view of arid legalism and not from the welfare angle. Nevertheless this is only a persuasive authority for Vanuatu. There is great need that changes have to be made by introducing contingency fees system to suit the Vanuatu people's situation.

In this case, the taxation of the costs will be conducted following the party and party basis as requested by Mr Sugden. As I have mentioned in previous Taxation cases, Party and Party basis of Taxation, is, unless some special order is made, the ordinary basis for taxation of costs which a successful litigant has to pay to his opponent. On this basis, there shall be allowed all costs as were



necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed. Maluis V. C. put it in this way:

" Any charges merely for conducting litigation more conveniently, may be called luxuries, and must be paid by the party incurring them".

[See in Smith -V- Buller (1875) C. R. 19 Eq. at p. 475.]

I will deal with item by item of the Bill of Costs and when it is necessary I will consider some of the items together or jointly.

Items 1 & 3.

Mr Sugden said he spent 74 minutes for the drawing of the Writ and the Statement of claim and 8 minutes to finalise engrossed Writ and the Statement of claims so that he spent 82 minutes for Items 1 & 3. I have gone through the Writ which is brief (one page and half) and I think that 82 minutes spent on those are excessive. The reasonable time to be spent on the drawing of the Writ and the short statement of claim in this case bearing no difficult issues is 70 minutes. I will, thus, allow the amount of Vatu corresponding to 70 minutes spent on items 1 & 3 i. e. 11, 667 Vatu.

Items 2 & 13 relating to photocopies.

The total expenses incurred in relation to Items 2 & 13 represent $150 + 2\ 500 = 2\ 650$ Vatu. No receipts have been produced for items 2 & 13. Thus, not justified. The costs will be disallowed.

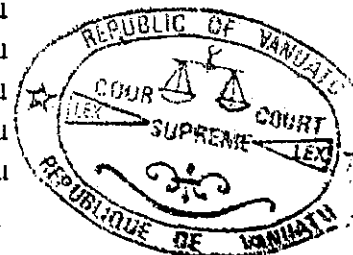
Items 4 - 17- 23- 25- 26- 39 & 44 be considered together as they related to attendance to the Registry by Mr Sugden for filing documents and arranging service.

It has to be understood that the attendance to the Registry for filing documents and arranging for subsequent service are the type of work done by clerical staff of the Law Firms. They should not be done by lawyers and then be charged on the clients. Law Firms registered in Port Vila have clerical staff to do these sorts of work. I do not see any special reason why Mr Sugden's situation would be an exception to other legal Firms in Vanuatu.

The amount in Vatu allowed corresponding to the above respective items will be as follows:

For item 4 the corresponding amount allowed is	500 Vatu
For item 17 the corresponding amount allowed is	2 500 Vatu
For item 23 the corresponding amount allowed is	2 084 Vatu
For item 25 the corresponding amount allowed is	250 Vatu
For item 26 the corresponding amount allowed is	1 667 Vatu
For item 39 the corresponding amount allowed is	2 500 Vatu
For item 44 the corresponding amount allowed is	500 Vatu

10, 001 Vatu



I am therefore, prepared to allow an amount of Vatu 10, 001 for the respective items.

Items 5- 18- 20- 24- 27- 29- 32- 34- 40 & 43 concerning expenses incurred as to travel to Court by Mr Sugden.

Mr Sugden claims for each time he travel to Court an amount of 200 vatu. It is my view that this is excessive due to the fact as I have stated earlier, he comes also to the Court for filing when his clerical staff could do so. Thus, I will reduce by half of the amount claimed for each travel to Court: $200 : 2 = 100$ vatu. He will then be allowed $100 \times 10 = 1\ 000$ vatu for his expenses relating to his travel to Court concerning this case.

Items 6 & 7 Postage - Service of Writ & Consider and arrange service.

Mr Sugden claimed 420 vatu for Postage of the Service of Writ. He will be allowed that sum. He previously claimed also that he spent 23 minutes for item 7 (consider and arrange service). During the Hearing he admitted that it is excessive and claimed only for 10 minutes spent on item 7. I am prepared to allow him the vatu corresponding to 10 minutes spent in respect of item 7 that is 3, 833 vatu. So the total for items 6 & 7 is in vatu $470 + 3\ 833 = 4\ 303$ vatu allowed.

Item 8- Attend Defendant & his request for copy Bill.

Mr Sugden claims he spent 10 minutes for the above item. I will allow him 10 minutes which corresponds in vatu 1667.

Item 9- Peruse and Consider Defendant's letter.

Mr Sugden be allowed 10 minutes at 1 667 vatu as he claimed for this item.

Item 10- Attend pleadings and Consider Default Procedure (23 minutes)

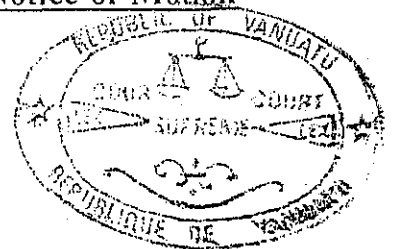
He will be allowed that time spent on that item at 3 833 vatu.

Item 11- Research.

Cairns "Civil Procedure Counterclaim set off. Consider Defence (147 minutes). He will be allowed 147 minutes as he claimed corresponding to 23, 500 vatu.

Item 12 & 14- Consider Judgement on admission drawn Notice of Motion (35 minutes). Finalised engrossed Notice (3 minutes).

He will be allowed 35 minutes not 38 minutes at vatu 5 833.



Item 15 & 16- Consider necessity for & form of Amendments to Writ & Consider Summons (90 minutes). Settle Notice & Amended Writ (8 minutes).

Mr Sugden claimed he spent 98 minutes on Items 15 & 16. However, Mr Gensburger said the necessity for the Writ to be amended and subsequent amendment of the statement of claim resulted from a wrong move of Mr Sugden when he listed himself as Plaintiff in this case which was wrong. So that subsequently the Plaintiff's name was changed by order of the Judge Salatiel to Hudson and Co.

As to the two items concerned, Mr Sugden admitted that it is true he applied to amend the Writ and Statement of Claim in order to take into account the changing of the name of the Plaintiff as requested by the Defendant. And he further, emphasised that if the matter is for costs, there should have an order reserving costs to be paid for the Plaintiff. On 17 August 1995, Lenalia J. made no order as to costs. Thus, Sugden said the successful party gets the costs for the application. I do not quite agree with what Mr Sugden said in relation to items 15 & 16. The Amendments of the Writs and statements of claims were made before the trial and leave is readily granted (see Order made by Justice Lenalia referred above). However, although, Lenalia J. made no order as to costs, I think, the costs should be borne by the party amending. The corresponding costs as to items 15 & 16 are disallowed.

Item 19- Attend hearing of Summons (45 minutes).

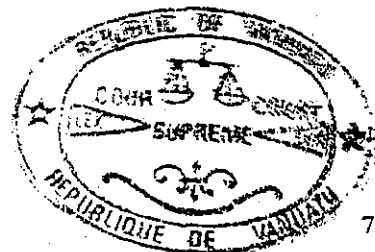
I will allow this 45 minutes at Vatu 7, 500.

Item 21- Consider & Draw Amended reply resulting from amendment of Statement of Claim (69 minutes).

Mr Sugden claimed for the costs of Item 21. When I read the Judgment of Lenalia J. delivered on the 13th day of September 1995, he said:

" One of the reasons for that application was that the Defendant had failed to file any amended defence in answer to the amended Writ of Summons and Amended Statement of Claim ... the Defendant filed a Defence and Counterclaim on 21st Day of July 1995 but following granting of the application on the 17 / 08 / 95, the Defendant did not file any amended defence."

Thus, if the Defendant did not file any amended defence, how Mr Sugden could consider & Draw Amended Reply as he claimed in Item 21. He could do so only by considering the Amended Defence, this was not the case here. This is speculations and I am not prepared to allow costs for speculations.



Items 22 & 28- Consider and prepare for hearing of Motion for Judgment (46 minutes). Research & Preparation for hearing of Motion for Judgement (107 minutes).

The total time spent for the preparation for the hearing of Motion for Judgement and research is 153 minutes. 2/3 of the time he spent on items 22 & 28 that is 102 minutes corresponding to vatu 17 000.

Item 30- Attend Defendant (5 minutes) corresponding to 833 vatu.

He will also be allowed that sum of vatu 833.

Item 31- Preparation for and attend Court for hearing of application (277 minutes) corresponding to Vatu 46, 167.

Mr Sugden will indeed be allowed that sum of vatu 46 167.

Item 35 - 36 & 37 - Draw Bill for Taxation & its finalisation which took a total of 117 minutes spent on them.

They correspond to vatu 19, 499. I will allow that sum.

Item 38- Attend Court for Judgment (6 minutes).

I will allow 1000 vatu corresponding to the time spent for that item.

Item 41- Pre taxation Conference.

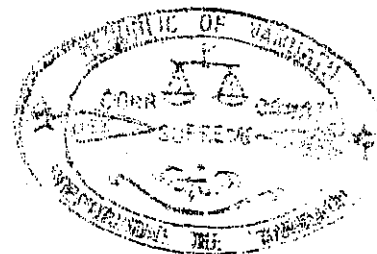
Mr Sugden said he wrote a letter to the Defendant for that purpose and spent 22 minutes. He will be allowed 10 minutes which corresponds to 3, 667 vatu.

Item 42- Attend Court on Taxation.

He claimed he spent 248 minutes. He will be allowed 2/3 of the time he spent which is in vatu 27,499.

Further Disbursements: the following will be allowed.

Item 45-	Fax	200 vatu
Item 46	Stationary	1 810 vatu
Item 47	Fee on Writ of Summons	6 000 vatu
Item 48	Fee on Summons	5 000 vatu
Item 49	Fee on Motions	6 000 vatu
Item 50	Fee on filing Bill	2 000 vatu
Item 51	Phone Calls	800 vatu
Item 52	Postage	295 vatu
Item 53	Government Tax 4% on Total Costs	8 350 vatu
	Total Disbursement	30 455 vatu



SUMMARY OF THE BILL OF COSTS ALLOWED:

Items 1 & 3	11, 667 vatu
Items 4- 17- 23- 25- 26- 39 & 44	10, 001 vatu
Items 5- 18- 20- 24- 27- 29- 32- 34- 40& 43	1, 000 vatu
Items 6 & 7	4, 303 vatu
Items 8	834 vatu
Item 9	1, 667 vatu
Item 10	3, 833 vatu
Item 11	23, 500 vatu
Item 12 & 14	5, 833 vatu
Item 19	7, 500 vatu
Item 22 & 28	17, 000 vatu
Item 30	833 vatu
Item 31	46, 167 vatu
Item 35- 36 & 37	19, 499 vatu
Item 38	1, 000 vatu
Item 41	3,667 vatu
Item 42	27, 499 vatu
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Plus Disbursements (from item 45 to 53)	186, 636 vatu 30 455 vatu
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General Total Costs allowed	217 091 vatu

Thus, the defendant shall pay to the Plaintiff the total costs of vatu 217 091 within 5 days upon notification of this judgment.

DATED AT PORT VILA this 4th Day of January 1996


LUNABEK VINCENT
Chief Registrar/Taxing Officer.

