

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
HELD AT LAKATORO, MALEKULA

CIVIL CASE NO. 3 OF 1999

(CIVIL JURISDICTION)

BETWEEN: OBED SAMUEL

Plaintiff

AND: JEFFREY LUNABEK

1st Defendant

AND: PUBLIC WORKS
DEPARTMENT

2nd Defendant

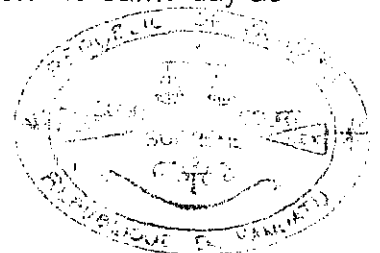
Date of hearing: 13th June, 2001, 9.00am

Coram: Before Mr Justice Oliver A. Saksak
Ms Wendy Wenamay - Clerk

The Plaintiff appears in person
The first Defendant appears in person
The second Defendant makes no appearance

JUDGMENT

By way of back-ground, the case was first listed for a conference on 16th November 2000. Both parties were present except the Second Defendant. The Court issued Directions that a copy of the Writ of Summons be served on the Second Defendant within 7 days. The Second Defendant was to file a defence within 14 days, and that there be discovery and inspection within a further 14 days thereafter. The case was adjourned to 23rd March, 2001. Hearing on that date was vacated. By Notice issued on 31st May, 2001 all parties except the Second Defendant were notified that the case was listed for hearing today. It appears to me that the Second Defendant are not aware of today's hearing. The Plaintiff has indicated that he complied with Direction Orders on the same day as



they were issued. No appearance has been filed and no defence has been forthcoming. Public Works Department are clearly a Party to this proceedings and it is important that they be given an opportunity to appear and be heard. The First Defendant has filed his defence. He seeks leave to be heard in relation to his defence that the Plaintiff's claim is time-barred. Such leave is granted.

Mr Lunabek provides written submissions which he reads out to the Court. He submits that the Plaintiff's claim is time-barred since it was filed on 6th May 1996. He refers the Court to Section 3 of the Limitations Act No. 4 of 1991 stating the period to be three years. He refers the Court to Section 15 of the Act which provides for extension of time and the procedures to be followed and submits that as there has been no application for an extension of time, that it is time-barred. He refers the Court to the Case of Taiwia -vs- Robson Edward. He submits that the Plaintiff has had knowledge since 10th April 1992 during the criminal proceedings and that he could not rely on Section 15 of the Act. He submits that this claim should be struck out. In the alternative, in the event that the Court finds against him, that he seeks adjournment to find a legal representative. Further that the Public Works Department be joined as the third party to the proceedings.

The Plaintiff submits only that his claim is not outside the time limit imposed by law.

The Court finds that the Public Works Department have always been a party to this proceedings. They are the Second Defendant. They were served on 9th April 1993. Further the Court finds that it is not correct that the Plaintiff filed his claim on 6th of May, 1996. Record shows that the Plaintiff paid a fee of VT8.000 receipted 600499 on 2nd March, 1993 which in the view of the Court must be deemed to be the filing date. The date of the accident in which the Plaintiff sustained injuries for which he is claiming damages was 20th April 1990. The three year period would expire on 20th April 1993. The Plaintiff filed his Writ of Summons with his statement of claim on 2nd March, 1993. In my view he was clearly within the time period stated in the Act. Therefore Section 15 is of no relevance and the Taiwia's case is also of no relevance.

It follows therefore that the Defendant's application that the Plaintiff's claim be struck out must be dismissed and I so rule.


I now adjourn the case to the next sitting of the Court here at Lakatoro. The First Defendant has expressed his desire to be legally represented and this adjournment is necessary to allow him to find his legal representative. The Plaintiff is encouraged to instruct the Public Solicitor as it appears that his Writ was prepared by them. The Second Defendant must instruct the State Law



Office to act on their behalf by filing both an Appearance and a Defence as soon as possible but no later than 31st July, 2001. All parties will be formally notified of the date of hearing of this matter.

DATED at Lakatoro this 13th day of June, 2001

BY THE COURT


.....
OLIVER A. SAKSAK
Judge

