

(Civil Jurisdiction)

BETWEEN: TIMOTHY WASS

Claimant

AND: FRANCOIS TARI

First Defendant

AND: GIDEON CHARLIE

Second Defendant

AND: JOHN KNOX

Third Defendant

AND: DIRECTOR OF LANDS DEPARTMENT

Fourth Defendant

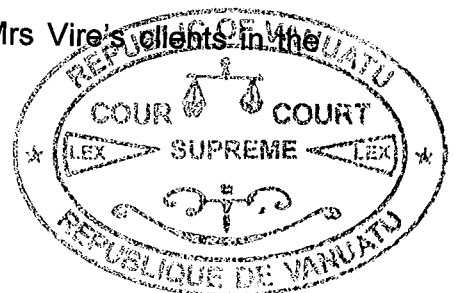


Mr Justice Oliver A. Saksak
Mrs Anita Vinabit - Clerk

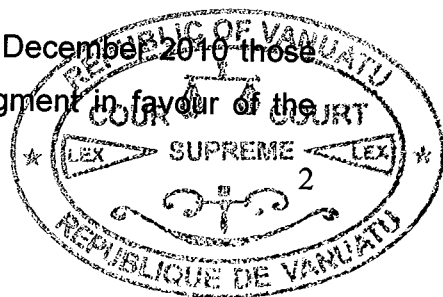
Mr Saling Stephens for Claimant/Respondent
Mrs Marisan Vire for Applicants/Defendants 1, 2 & 3
Mr Frederick Gilu for 4th Defendant/Applicant

DECISION

1. On 16th July 2010 the Court of Appeal granted costs orders in favour of the Applicants herein being costs of the appeal and costs in the Court below (this Court).
2. Subsequent to these Orders, applications for taxation were made to the Master and in December 2010 the Master made two determinations. The first was in favour of the State for the sum of VT174.992. The second award was made to Mrs Vire's clients in the sum of VT1.255.800.



3. The applicants filed application on 16th March 2011 for enforcement order against the respondent. All they seek is for the Court to allocate a date for an enforcement conference. They rely on Rule 14.3 and 14.5.
4. Mr Stephens objects to the applications on the following grounds –
 - (a) That the State Law Office has not filed proper application.
 - (b) Rule 14.3 and 14.5 does not give the applicants any legal basis for their applications.
5. Mr Stephens in turn refers to an application by his client seeking orders to stay enforcement of money orders on the basis that he has a constitutional application still pending before the Court.
6. The Constitutional application is a separate proceeding and as such, it cannot be used as a ground to stay payment of costs that the Court of Appeal has clearly awarded in favour of the applicants. Civil Case No. 27 of 2010 is a completed matter and the only outstanding issue is costs. These have been determined and the final costs have been awarded. The applicants are entitled to the fruit of their judgment. Under these circumstances the Court dismisses the respondents' application for stay.
7. As regards application by the applicants, it is the view of the Court that the applicants are entitled to their orders under Rule 14.3 and 14.5 of the Civil Procedure Rules.
8. When the Master made determinations on 20th December 2010 those determinations became part of the Court's judgment in favour of the



applicants. Those determinations did not go to the extend of enforcement.

9. As such, the only manner in which the applicants can progress the matter to enforcement is to proceed by way of Rule 14.3.
10. No application is really necessary for the Court to fix a date when a judgment is delivered in the presence of the judgment debtor. But here much time have gone by so that although it is not technically required by the Rules the applicants did file appropriate application.
11. For these reasons the Court accepts the application of Mrs Vire's clients and the application by State Law Office despite it being verbal. Substance must take precedence over forms.
12. Therefore pursuant to Rule 14.3 and 14.5 the Court fixes an enforcement conference for Thursday 11th August 2011 at 0830 hours. An appropriate summons as in Form 24 must be prepared by Mrs Vire and filed with the Court within 2 days from today's date.
13. The respondent must pay the applicant's costs of these applications allowed on the standard basis as agreed or determined by the Court.

DATED at Luganville this 15th day of June 2011.

BY THE COURT


OLIVER A. SAKSAK
Judge

