

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

Civil Case No. 45 of 2007

**BETWEEN: KENWAY WILLIAM & DON WILLIAM
representing Ezra William**

Claimant

AND: AHC (VANUATU) LIMITED

First Defendant

AND: DIRECTOR OF LAND RECORDS

Second Defendant

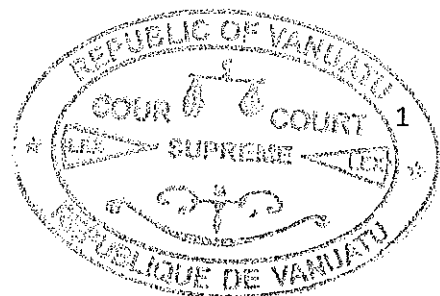
Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Mr. Saling Stephens for Claimant/Applicant
Mr. John Malcolm for First Defendant
Ms. Christine Lahua for Second Defendant*

Date: *24th October 2013*

JUDGMENT

1. This judgment publishes the reasons for the decisions and orders issued orally on 15th October 2013.
2. On 30th September 2013 the Court convened to hear an application filed by Mr. Malcolm on behalf of the first defendant seeking orders that the claimants be committed for contempt of Court. Mr. Malcolm was present for the First Defendant and Ms. Florence William was present for the Second Defendant. Mr. Stephens was not in Court but his clients the Claimants attended in persons. They informed the Court that Mr. Stephens could not attend that day because of other Court commitments he had in Vila.



3. The Court allowed the adjournment and fixed the returnable date for 14th October 2013 and issued the following orders –

- (a) That the Claimants and their families remove themselves for Leasehold 04/2621/030 within 7 days,
- (b) Within the same 7 days the Claimants to provide confirmation by a registered surveyor that they had removed themselves from leasehold 04/2621/030.
- (c) The Police were authorized to arrest the Claimants and / or the families and relatives who threatened, assaulted or caused any damage to the properties of the First Defendant.
- (d) Costs were made in the cause.

4. On 14th October when the matter was called neither Mr Stephens nor his clients were present. Mr. Malcolm and Ms. Lahua were present in Court on that date.

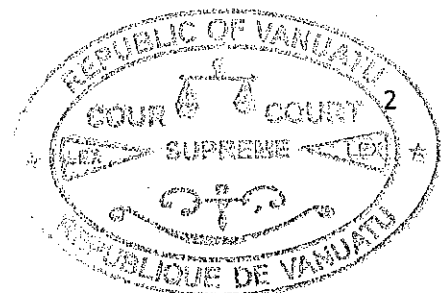
5. Mr. Malcolm then sought costs thrown away at VT70,000 but would accept say VT47,000. Mrs. Lahua sought costs at VT5.000

6. The Court allowed wasted costs to Mr. Malcolm at VT47,000 and to Ms. Lahua at VT20,000, a total of VT67,000 and awarded these against Counsel Mr Stephens. The Court adjourned the trial to 15 October 2013.

7. On 15 October 2013 Mr. Stephens appeared and objected to the costs orders made personally against him and objected further to costs awarded to the State at VT20,000. Counsel then made submissions in support of his application to have the orders of 30 September 2013 vacated. The Court heard submissions in response by Mr .Malcolm and Ms. Lahua.

8. The Court decided that -

- (a) The application by Mr. Stephens to set aside orders of 30 September be refused and dismissed.



(b) The Orders of 14th October in relation to wasted costs be varied by reducing the VT20,000 allowed to the State down to VT5,000.

(c) The amount of VT47,000 in favour of the first defendant was maintained but not against Mr. Stephens personally but against his clients.

(d) The result was that the total amount of costs previously fixed at VT67,000 was reduced to VT52,000.

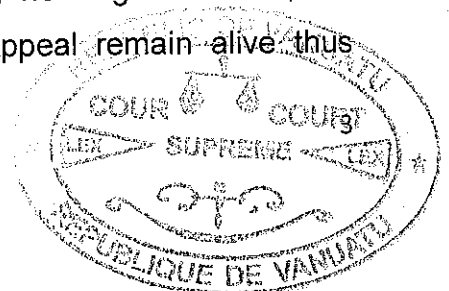
(e) The orders of 30th September 2013 were extended by 7 days.

9. The gist of Mr. Stephens arguments and submissions was that Civil Case No. 45 of 2007 (the current proceeding) is no longer alive and therefore Counsel submitted there was no claim or basis on which this application for contempt could stand. Counsel relied on the case of Deamer v. Unelco [1992] VUSC 6. In the alternative Mr. Stephens submitted the First Defendant should file a new claim. He sought costs at VT150,000.

10. And in relation to the costs awarded to the State Counsel argued that it was not necessary. He referred to the orders of 30 September when Mr. Malcolm informed the Court that the application for contempt did not require the presence of the State Law Office.

10.1 Mr. Malcolm responded by acknowledging a typing error as pointed out by Mr. Stephens in relation to leasehold title No. 04/2621/002 which is incorrect. This title belongs to the Claimants. The correct title No. is 04/2621/030. The Court acknowledged this error and corrected it accordingly by deleting Leasehold Title 04/2621/002 from the order.

10.2 Secondly Mr. Malcolm referred to Orders of the Supreme Court and of the Court of Appeal which remain alive and which the Claimants have persistently refused to comply since 31st October 2008 to date. Counsel argued that regardless that this proceeding may no longer be alive, the Orders of both this Court and the Court of Appeal remain alive thus



making the application for contempt of Court necessary. The Court agreed with Mr. Malcolm's submissions. The Court of Appeal made this very clear at page 11 of their judgment in Civil Appeal Case No. 8 of 2008.

10.3. In relation to Deamer v. Unelco despite that no claim has been filed, that does not abrogate the applicants' case. He submitted the applicant could always file a new claim at a later stage.

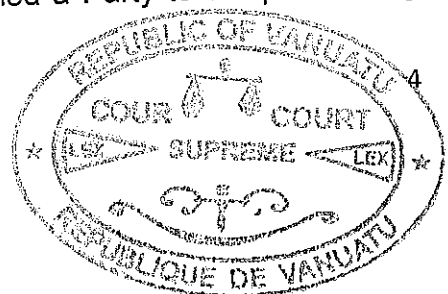
11. I considered Mr. Stephen's submission that as this proceeding has been struck out therefore there is no longer any live issues as absurd and untenable. The very live issue is Counsel's clients not abiding by or complying with the Court's Orders to put matters to finality. Deamer's case was decided on the old rules in the Blue Book. These have now been replaced by the Civil Procedure Rules No. 49 of 2002. Rule 7.7 of the rules allows interlocutory applications to be made by a party at any stage:

- (a) (i) before a proceeding has started; or
- (ii) during a proceeding; or
- (iii) after a proceeding has been dealt with".

I therefore rejected Mr. Stephen's submissions on that point. Indeed Deamer's case is not applicable as it concerned on interlocutory application. A contempt application is not an interlocutory matter.

12. In relation to costs, I accepted that costs of VT47,000 should not have to be paid by Mr. Stephens personally but by his clients. It is their persistent and blatant disregard for the orders of the Courts that this matter has not reached finality. It is for this reason the Court removed liability from Mr. Stephens but maintained it against the Claimants.

13. And in regards to costs being reduced to the State, Ms. Lahua's presence on 30 September was with leave of the Court. There was no order excluding Ms. Lahua. The Second Defendant has always remained a Party to the proceeding




and they are entitled to be present at any time when the Court meets for any matters concerning the case. As appearance was only for a short time the wasted costs of VT5.000 was appropriate and not VT20.000 as previously ordered.

14. In the orders issued on 15th October 2013 at paragraph 4 the Court has given directives to the First Defendant to file a new claim if the Claimants do not comply with the extended orders of 30th September within 7 days, and to re-file their application for contempt. In light of the Court's ruling in paragraphs 10.2 and 11 of this judgment, it appears such a course is not necessary. But the choice is entirely on Mr. Malcolm and his clients to make.

15. The Orders dated 15th October 2013 are hereby reaffirmed.

DATED at Luganville, this 24th day of October 2013.

BY THE COURT


OLIVER A. SAKSAK

Judge

