

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

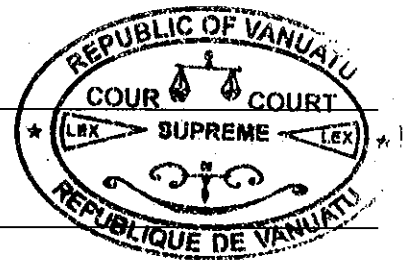
Civil Case No. 119 of 2010

BETWEEN: CHARLES CARLOT
Appellant

AND: LESS NAPUATI
Respondent

Hearing: 6 May, 2013
Before: Justice Robert Spear
Appearances: No appearance for the Appellant (Tom Joe Botleng)
Less John Napuati In person

JUDGMENT



1. Charles Carlot appeals a decision of the Magistrate's Court that set aside a default judgment that had been entered on his claim. That default judgment was for the removal of Less John Napuati from the property in question. Mr Napuati applied for the default judgment to be set aside on the basis that he had filed a defence (although outside time) and that service of the request for default judgment had not been served on him. That application to set aside the default judgment was successful and it is the subject of this appeal.
2. Mr Napuati counterclaimed within that same proceeding which counterclaim eventually resulted in a judgment in favour of Mr Napuati requiring Mr Carlot to transfer title to the leasehold property to Mr Napuati.
3. This matter has drifted for quite some time and that is unfortunate. However, notice of the fixture today for the hearing of the appeal was given to counsel on 10 April 2013. Mr Napuati further explains that he has spoken recently to Mr Botleng and as recently as Saturday 4 May 2013. Mr Botleng informed Mr Napuati that he was still waiting for the payment of his fees from Mr Carlot. Of course, that does not explain why Mr Botleng is not

here for the hearing of his appeal today but without question he received notice of the appeal fixture.

4. Given that there is judgment on the counterclaim requiring the appellant Mr Carlot to transfer title to the property to Mr Napuati, it is difficult to see what substance there could be in an appeal against the decision to set aside a default judgment that purported to require Mr Napuati to leave the property leaving aside any difficulties that might have occurred with service of the request for default judgment.
5. In a formal sense, this appeal is struck out for want of prosecution. However, I should mention that I struggle to understand how the appeal could possibly succeed when there is no appeal against the judgment entered on the counterclaim. Additionally, I question whether the Magistrate's Court had or has jurisdiction to deal with any of the issues relating to this leasehold property but I leave that observation for the parties to ponder.
6. As Mr Napuati is a local practising lawyer, acting for himself in this case, he is entitled to recover only his out-of-pocket expenses as approved by the Registrar. The order as to costs is limited to that extent.

BY THE COURT

