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

Civil Case No.6 of 2010

BETWEEN: CHIEF SAMUEL AND FAMILY
Claimant

AND: TAEMOLI LULU
First Defendant

AND: BENUEL TABI
Second Defendant

AND: REPUBLIC OF VANUATU
Third Defendant

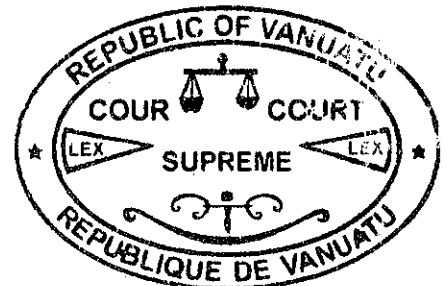
Coram: *Mr Justice Oliver A. Saksak*

Counsel: *Chief Ajuju, agent for the Samuel and Family
Mr Lent Tevi for First Defendant (Taemoli Lulu)
No appearances by Second and Third Defendants.*

Date of Hearing: *27th June 2014*
Date of Judgment: *26th August 2014*

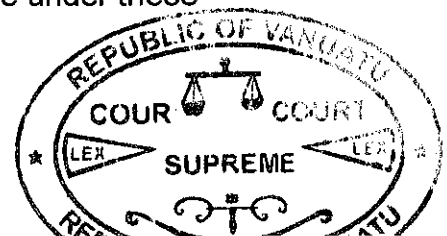
JUDGMENT

1. On 1st June 2010 this Court sealed an Order discontinuing this proceeding against the Defendants. The Court then ordered costs of VT 10.000 in favour of the Third Defendant (State) and costs of and incidental to the action in favour of the First Defendant.
2. Since the Claimant filed their claims on 5th February 2010 the first Defendant did not have any legal representation. He did not file any response and/or defences.
3. On the First Conference date on 5th may 2010 neither the Claimant nor the First Defendant appeared. Only Mr Justin Ngwele appeared for the Second and Third Defendants.
4. After 1st June 2010 it appears Messrs Jack Kilu & Associates prepared a memorandum of costs pursuant to the orders made on 1st June 2010. The amount specified in the memorandum of costs dated 10th August 2010 is VT 174,336.
5. Mr Kilu did not file any Notice of Beginning to Act for the First Defendant. If he did, there is no copy in the Court file.



6. On 3rd September 2012 it appears Messrs Kilu & Associates filed an application for taxation of costs together with the sworn statement in support of Taemoli Lulu. A fee of VT 15.000 was paid on 4th September 2012 and receipted 603815.
7. The Claimants as respondents have not responded to the application. Chief Ajuju appeared only as agent. He had personal service but the family he represented as agent were not served. Verbally Chief Ajuju argued that as the Parties still had their land disputes in the Island Court and in the Magistrate's Court that they did not feel they should be paying any costs.
8. That argument is rejected. If the respondent were unhappy with the Orders of 1st June 2010, they should have appealed, but they have not done so.
9. The Court upholds the Orders of 1st June 2010 and now determines the appropriate costs the First Defendant is entitled to.
10. Mr Kilu itemised the First Defendant's costs in the memorandum dated 10th August 2010 under Item 1-8. Those costs relate to professional services rendered from 9th March 2010 to 1st June 2010. The total costs claimed is the sum of VT 174,336.
11. As indicated in paragraph 5 of this Judgment Mr Kilu has not produced any Notice of Beginning to Act for the First Defendant within the period from 9th March 2010 to 1st June 2010 and thereafter. That being the position the costs claimed for professional services rendered by Mr kilu to the first Defendant for the period claimed are in doubt and accordingly they are disallowed.
12. The Court relies on Rule 18.8 of the Civil Procedure Rule No. 49 of 2002 which states-
 1. "A lawyer who begins to act for a party during a proceeding, or ceases to act for a party must:
 - a) As soon as practicable file a Notice in Form 35, and
 - b) Serve the notice on each party to the proceeding.
 2. The Notice is effective after the last service
 3. Filing the notice does not affect the power of the Court to make an Order for costs against the lawyer personally under these Rules."

(My underlining for emphasis)
13. Rule 18.10 provides for failure to comply with the Rules. It states-
 1. "A failure to comply with these Rules in an irregularity and does not make a proceeding, or a document, step taken or order made in a proceeding, a nullity.
 2. If there has been a failure to comply with the Rules, the Court may:
 - a) Set aside all or part of the proceeding, or
 - b) Set aside a step then in the proceeding, or
 - c) Declare a document or a step taken to be in effectual, or
 - d) Declare a document or a step taken to be effectual, or
 - e) Make another Order that could be made under these Rules, or



f) Make another Order dealing with the proceeding generally that the Court considers appropriate.

3. If a written application is made for an order under this rule, it must set out details of the failure to comply with these Rules.”

(My underlining for emphasis)

14. The duty to file and serve a Notice of Beginning to Act or a Notice of Ceasing to Act by a lawyer is mandatory. When Mr Kilu failed to comply with Rule 18.8, the application for taxation and the sworn statement filed in support thereof by him, that failure was an irregularity. As a result the Court has discretion to take any of those step listed under Rule 18.10 (2). The Court elects to declare that the application for taxation of costs and the statement filed in support thereof are ineffectual pursuant to Rule 18.10 (2) (c).

15. It on this basis that all costs claimed in the sum of VT 174.336 are disallowed.

16. When Mr Tevi appeared for the hearing of the application on 27th June 2014 it appears that he was appearing without compliance with the requirement of Rule 18.8 (1) of the Rules. Counsel had appeared previously on 27th May 2014 and also earlier on 3rd October 2013. For that failure any documents filed by Counsel on behalf of the First Defendant are declared ineffectual.

17. The final conclusion of this Court is that the application for taxation of costs is dismissed. And there be no order as to costs as costs lie where they fall.

DATED at Port Vila this 26th day of August 2014.

BY THE COURT


OLIVER.A.SAKSAK

Judge

