

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

Civil Case No. 181 of 2009

BETWEEN: SHEM PETER & FAMILY
 Claimant

 AND: SONG DANIEL
 First Defendant

 AND: THE REPUBLIC OF VANUATU
 Second Defendant

Hearing: Tuesday 9 December 2014 at 2 pm
Before: Justice Stephen Harrop
Judgment : Wednesday 10 December 2014

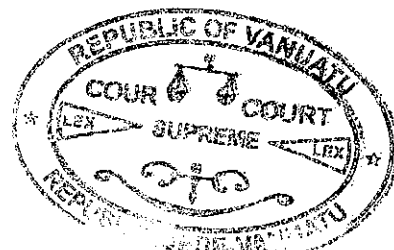
Appearances:

Claimant: George Nakou
1st Defendant: Felix Laumae
2nd Defendant: No appearance (Florence Williams (SLO))

RESERVED JUDGMENT OF JUSTICE SM HARROP

Introduction

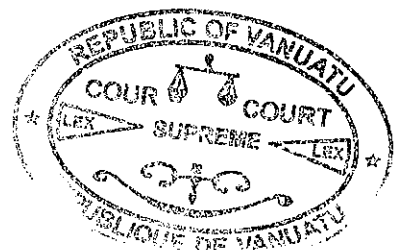
1. On 14 November 2014, Mr Nakou filed a notice of beginning to act for the claimant, Mr Peter and his family. On the same day he filed what is initialled as a "very urgent application for suspending of the consent order of August 13, 2014". Mr Peter filed a sworn statement in support and an undertaking as to damages.
2. I scheduled a conference to discuss the application for 2 pm on Friday 28 November 2014 but inadvertently notice of that conference was not sent to Mr Nakou but rather to Mr Peter's former counsel Mr Daniel. The matter was then allocated a hearing at 2 pm on Tuesday 9 December 2014.



3. In the meantime on 24 November Mr Laumae on behalf of the first defendant filed an application for an enforcement order supported by a sworn statement from Samson Carlo who holds a power of attorney on behalf of the first defendant. He attached to his sworn statement an eviction notice which was dated 6 November although he does not assert or prove service of that notice.
4. At the end of the hearing on 9 December, I indicated I would reserve my judgment on Mr Peter's application though I indicated both at the hearing and in my Minute of 2 December reasons why it seemed to me that the Court had no jurisdiction to deal with the application.

Background

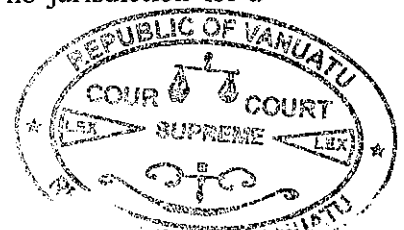
5. This case was set down for trial before me on 13 and 14 August 2014. On 18 July 2014, Mr Daniel on behalf of Mr Peter applied for an adjournment. I sought submissions on the application but later declined it and I gave reasons in my Minute of 8 August 2014.
6. On the morning of the trial, I was handed a consent order signed by Mr Daniel for the claimant, Mr Laumae for the first defendant and Mrs Trief for the second defendant. I duly signed the consent orders that day and the Court issued them duly sealed to the parties. The consent orders were:
 - 1) *The claimants hereby withdraw and discontinue this matter against the first and second defendants.*
 - 2) *The claimants shall vacate and remove their personal belongings and properties from leasehold title number 11/OH31/026 and deliver vacant possession of the land to the first defendant by the end of October 2014.*
 - 3) *The claimant and the first defendants each bear their own costs.*
 - 4) *The claimant to pay the second defendant's costs to agreed, if not, taxed.*



7. The application filed on 14 November seeks orders temporarily suspending that consent order and amending it.
8. In summary, Mr Peter's application says that the consent order's terms were not those which he had discussed with counsel prior to the hearing. He was overseas from 9 until 29 August and he suggests that he was not personally involved in negotiating the settlement but rather one of his elder brothers was.
9. The application is opposed by the first defendant although no notice of opposition has been filed. Instead, the first defendant has filed the abovementioned application for an enforcement order, supported by Mr Carlo's sworn statement. As to that application, at the hearing on 9 December Mr Laumae ultimately agreed that the application for the enforcement order was misconceived and that the consent order made on 13 August ought to be regarded as an enforcement order so that the appropriate next step was an application for an enforcement warrant. He proposes to file this application promptly.

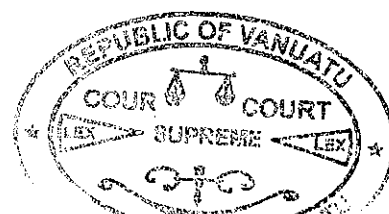
Discussion and Decision

10. I do not consider that I have jurisdiction to consider Mr Peter's application for suspension of the consent order or to amend it.
11. Once the consent order was made, then in my view the Supreme Court became *functus officio* so far as questions of determination of the merits of the case were concerned. The only jurisdiction the Supreme Court has thereafter is as to enforcement of the judgment entered by consent. There is no material difference in my view between the making of the consent orders and the making of orders at the end of a reserved judgment following a defended trial.
12. If any party is dissatisfied with an order of the Supreme Court then the remedy is to appeal to the Court of Appeal. There is no jurisdiction for a



party to ask the Supreme Court for a review or reconsideration of the judgment.

13. Quite apart from that, it is fundamental to the civil justice process that a Supreme Court Judge is able to rely- without inquiry- on the word of counsel and on documents signed by counsel as being cloaked with the authority of appropriate instructions from his or her client.
14. If in truth Mr Daniel signed the consent order without proper instructions then it may well be that Mr Peter has a claim in negligence against him. However, I emphasize that there has been no evidence supplied explaining exactly how Mr Peter's instructions differed from those which Mr Daniel on the face of it had. Nor is there any sworn statement from Mr Daniel explaining how he came to sign a consent order without proper instructions.
15. If there is to be an appeal to the Court of Appeal then leave to appeal will now be required given the passage of time since the order was made and I would have thought detailed sworn statements from both Mr Peter and Mr Daniel would be essential before leave could be granted, never mind before the appeal succeeded. In any event, the prospects of success of an appeal against a consent order must necessarily be problematic.
16. Furthermore Mr Peter must surely have found out about the consent order soon after his return from overseas on 29 August. Despite that nothing was filed until 14 November. There is no explanation from Mr Peter as to the reasons for this delay.
17. A further point is that the consent orders record the unconditional withdrawal and discontinuance of Mr Peter's claims. Even if no Court order had been involved and Mr Daniel had simply filed a notice of discontinuance then rule 9.9 (4) (a) would apply: that says that a claim *may not be revived* after it has been discontinued.
18. Taking all of these matters into account, I dismiss the application made by Mr Peter for suspension and amendment of the consent order.



19. The first defendant is entitled to costs on the application relating to Mr Laumae's appearance at the hearing although I note no document was filed by the first defendant so those costs ought to be limited.

BY THE COURT

