

BETWEEN: ASSET MANAGEMENT UNIT
Claimant

AND: KANASI MALERE
Defendant

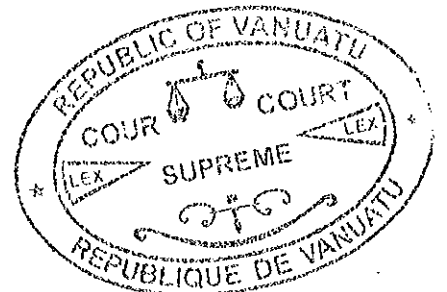
Coram: Mr. Justice Oliver A. Saksak

Counsel: No appearance by Claimant
Saling Stephens for the Defendant

Date: 10th February 2015

DECISION

1. By Order issued dated 11th December 2014 this matter is fixed for trial hearing today.
2. By the same order the claimant was required to pay VT 20,000 as wasted costs outstanding from the order of 19th August 2014 and to file and serve a response to the sworn statement of the defendant within 14 days.
3. The claimant failed to comply with those orders and today they are not in attendance. Their Counsel Mr Laumae filed a notice of ceasing to act on 23rd October 2014. And AMU no longer exists.
4. Under those circumstances Mr Stephens invites the Court to dismiss the case pursuant to Rule 12.9 (2) of the Civil Procedure Rules with costs.
5. The reason the defendant as appellant won on her appeal was due to non-service of the notice of demand. The defendant maintains she has not yet been served with any notice of demand.
6. The claimant maintained that a notice of demand was served on the defendant's lawyer on 11th April 2011 and subsequently on her daughter at Air Vanuatu Offices. These were not adequate or sufficient service required by clause 3 of the Mortgage Agreement.



7. Since April 2011 to the date of trial the claimant has done little or nothing to remedy the defect in their service, and it has been more than 3 years since. Making matters worse the defendant claims that AMU no longer exists as an entity and there has been no response to that claim despite the Court directing so on 11th December 2014.
8. What all these really boils down to is that the claimant has failed to prosecute their claims.
9. I therefore accept Mr Stephen's application for a dismissal under Rule 12.9 (2) (b) of the Rules.
10. Accordingly I Order that-
 1. This proceeding be dismissed for want of prosecution.
 2. The claimant will pay the defendant's costs of and incidental to the proceeding, inclusive of the VT 20.000 wasted costs outstanding since 19th August 2014. The costs allowed are on standard basis as agreed or be taxed by the Court.

DATED at Port Vila this 10th day of February 2015.

BY THE COURT


OLIVER A. SAKSAK

Judge

