

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

Civil Appeal Case No. 01 of 2014

BETWEEN : VANUATU NATIONAL COUNCIL OF
WOMEN

Appellant

AND: DANIEL YAWHA

Respondent

Coram: Justice Aru

Counsel: Mr. S. Stephens for the Appellant
Mr. D. Yawha in person

RESERVED JUDGMENT

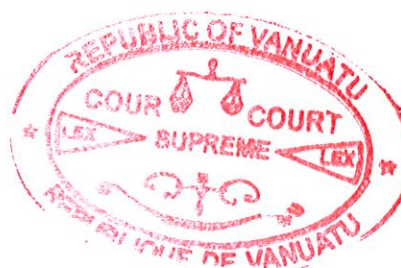
1. The Vanuatu National Council of Women ("the VNCW") appeals the decision of the Magistrate Court of 12 December 2014 in Civil Case No 50 of 2012 where the Court found that the VNCW was liable to pay the Respondent the amount of VT 980,000 with interest at 10% per annum commencing 27 April 2011 and legal costs in the sum of VT 80, 000.
2. The Notice of Appeal outlines three main grounds namely that the Magistrate:-
 - 1) failed to consider and give weight to the evidence and submissions of the Appellant in the Court below;
 - 2) misstated the law at paragraph 2 as to who should be responsible for the payment of the costs claimed; and



3) considered irrelevant materials or matters not before the court.

Background

3. The Respondent's claim in the Court below was for the sum of VT 980,000 being his costs for acting for the Appellant in Civil Case No 211 of 2010 and Civil Case No. 98 of 2011 between the period 27 April 2011 to 26 August 2011.
4. On the 25 and 27 August 2011 the Respondent provided his bills of cost to the Appellant for the attention of Mrs. Jenny Ligo and Mrs. Manina Packette.
5. On 2 September 2011 the Respondent issued a reminder for payment to the Appellant for the attention of Mrs. Jenny Ligo and Mrs. Manina Packette.
6. On 24 October 2011 Mrs. Anita Deroin as the VNCW Vice President and Treasurer wrote to the Respondent stating that the Board was looking for funds to settle the debt.
7. On the 29 February 2012, Mrs. Blandine Boulekone as the new President of the VNCW wrote to the Respondent informing him that the matter has been referred to their Legal Counsel for clarification.
8. On 15 March 2012 the Respondent issued a notice of demand giving 14 days to the Appellant to settle the debt.
9. No payments were made and as a result the claim was filed as Civil Case No 50 of 2012.



Ground1

10. As to the first ground the Appellant submits that the Court failed to give consideration and weight to the evidence of Mrs. Blandine Boulekone, Mrs. Lesline Malsungai and Mrs. Anita Deroin. This submission is rejected on the basis that a Court has to consider all the evidence before arriving at a decision. I am satisfied that the Chief Magistrate has given consideration to the evidence of these witnesses as well as all other evidence filed.

11. First, there is evidence before the Court that the bills of costs were addressed to the Appellant for the attention of Mrs. Ligo and Mrs. Packette as they were at the relevant time the Chief Executive Officer and President of the VNCW respectively. Mrs. Blandine Boulekone was only elected President in 2012. Prior to that she was not even a board member. Secondly, on the evidence before Court, it is clear that at the relevant time, there was an internal conflict within the VNCW as an organization. The Respondent acted for Mrs Manina Packette who at the relevant time was President of the VNCW and Mrs. Lesline Malsungai and Mrs. Anita Deroin who were also Board members of VNCW at the relevant time were supportive of Mrs. Packette.

12. Mrs. Maryanne Bani's evidence is that VNCW should pay the Respondent's costs as it has done so for other lawyers acting for parties in the VNCW internal conflict. The VNCW Board decision on 21 October 2011 as conveyed by Mrs. Anita Deroin, the VNCW Vice President and Treasurer in her letter to the Respondent on 24 October 2011 is that *"the Board is currently working on sourcing funds to enable it to meet your costs of VT 980,000 and will keep you informed of its progress"*. The letter was copied to all Board members.



Ground 2

13. As to the second ground of appeal, the Appellant submits that the court misstated the law as to who should be responsible for costs. That submission is rejected. The Appellant has misunderstood the Orders of 12 December 2014. The Chief Magistrate found that the Appellant was liable for the Respondent's costs and issued orders accordingly. This is consistent with Rule 15.1(2) of the Civil Procedure Rules that the losing party pays the costs of the proceedings.

Ground 3

14. As to ground three the Appellant submits that the court gave weight to irrelevant material not before the court such as the sworn statements of Mrs. Lesline Malsungai and Mrs. Manina Packette sworn in 2012. The evidence before the court was sufficient to support the Court's findings even if the Court was to disregard these two sworn statements.

Conclusion

15. The appeal is therefore dismissed. The Appellant must pay the Respondent's costs on a standard basis to be agreed or taxed by the Master.

DATED at Port Vila this 1st day of April, 2016

BY THE COURT



D. Aru
Judge

