

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**

(Civil Jurisdiction)

Civil Case No .936 of 2017

BETWEEN: CHASAENG SAEHUE
Claimant

AND: WILSON THOMAS IAUMA
Defendant

Coram: *Justice Oliver A. Saksak*

Counsel: *Garry Blake for the Claimant*
Wilson Iauma, Defendant for himself

Date of Hearing: *29th May 2017*

Date of Judgment: *9th November 2017*

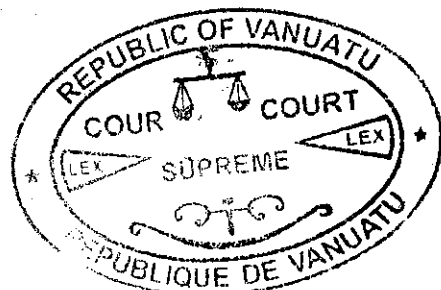
JUDGMENT

Introduction

1. This is a Summary Judgment issued pursuant to Rule 9.6 of the Civil Procedure Rules No. 49 of 2002 (the Rules) and following an application filed by the Claimant on 1st August 2017.
2. The Claimant believes the defendant has no real prospect of defending his claim. The Claimant further says the defendant's defence filed on 5th June 2017 does not disclose any reasonably arguable defence to the Claimant's claim.

Relevant Background Facts

3. In or about June 2016 the Claimant's Manager/ agent Li Sihua retained and engaged the defendant as his solicitor to advise him and to act for him in connection with an application for Vanuatu Citizenship. The defendant agreed and undertook to so advise and to act for the claimants.

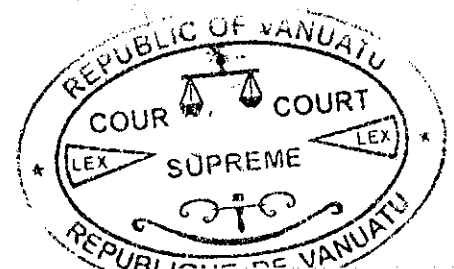


4. During the course of providing advice and acting for the Claimant the defendant advised the claimant that:-

- a) The Claimant could acquire Vanuatu Citizenship immediately,
 - b) The Claimant needed to send US\$ 50.000 to the defendant in connection with the application,
 - c) The process of applying for the passport would take two weeks,
 - d) By acquiring land in Vanuatu the Claimant would become automatically entitled to citizenship, and
 - e) On payment of US\$50.000 to the defendant the application for citizenship would be lodged.
5. Upon the defendant's advices (as above) the Claimant transferred the sum of US \$ 50.000 to the defendant's nominated bank account on 15th July 2016, which money the defendant duly received.
6. The defendant did not apply for citizenship as he advised, however invested the money into the acquisition of property.
7. The Claimant claims for the repayment of US\$50.000.
8. The defendant says the amount is now not refundable.

The Defence

9. The defendant says in his defence among others that-
- a) Li Sihua gave him two names of Maung Sein Myint who wanted assistance with the issue of citizenship and Chasaeng Saehue (Claimant) who wanted to acquire land in Vanuatu.



- b) Maung Sein Myint did not send him any money for citizenship
- c) Li Sihua sent US \$ 50,000 to him for the custom owners of land who are the Kalomtak Family who received the money.
- d) The money is not refundable and that there is no loss, but if there is, it is the Kalomtak Family who are responsible as the beneficiaries of it.

The Issue

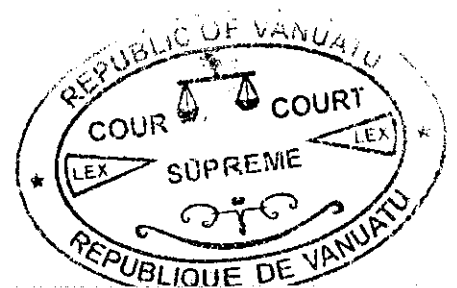
10. The issue is: Whether these are arguable defences on which the defendant has any real prospect of defending?

Discussion and Consideration

11. The Claimant relies on the evidence by sworn statement of Li Sihua filed on 1st August 2017 in support of the application. He states at paragraph 2 that “.... *I initiated contact with the Defendant with a view to obtaining citizenship in Vanuatu for the Claimant....*”.
12. At paragraph 3 he denies giving the name of Maung Sein Myint to the defendant with instructions to assist him obtaining Vanuatu Citizenship. Further he denies giving any instructions to the defendant on behalf of the Claimant in connection to acquiring land in Vanuatu.
13. The witness annexes a letter by the defendant dated 30th May 2016 (page 1) which is addressed to the Claimant Chaseng Saehue referenced:-

“ **RE: APPLICATION FOR CITIZENSHIP** “(Sic)

1. *I refer to my previous letter and advise that the application for citizenship will be lodge (sic) after payment for the land.*



2. *The land that you will buy in Vanuatu will be the main reason for obtaining citizenship.*

3. *You normally acquired (sic) citizenship if you have a business or investment in Vanuatu and I believe that the application for citizenship will take at least two weeks.*

4. *Prior to the application, I advise that you arrange payment for the land and I have already give the invoice which covers all costs.*

5. *For the application for citizenship it costly (sic) 5.000vt .*

6. *Thanking you for entrusting our legal services.*

Respectfully,

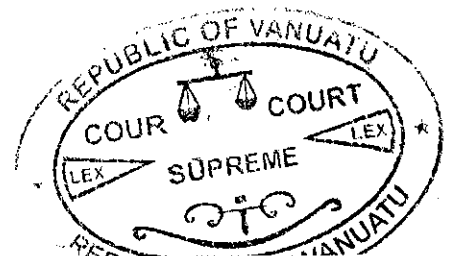
(signed)

IAUMA WILSON THOMAS"

14. Earlier correspondences through emails from 5th August 2016 (page 29), 9th August, 11th and 16th August 2016 (page 28) 24th July 2016 (page 27) and 27th July 2016 (page 26) of Li Sihua's sworn evidence show that the primary purpose of seeking the defendant's assistance was to obtain a passport and citizenship.

15. This appear from the evidence to change along the way when the defendant insisted or pressed Li-Sihua for payments. For instance at 6:18pm on 12th July 2016 (page 23) when Li-Sihua enquired as to how long they could have the passport as they needed it as soon as possible, the defendant replied at 10:35 in the words-

"Yes explain the problem and I will handle it myself here in Vanuatu. I confirm that I can make another passport in Vanuatu no need to worry. Just tell him to make payment as I told you. Once you make the payment I will proceed with all documents. If there are no documents available such as birth certificate and passport I can make and/or create one in Vanuatu. I told you to help but you must do what I told you." Wilson" (my underlining for emphasis)



16. At 3.24 on 13th July 2016 (pp 22-23) the defendant advised Li Sihua as follows-

“ the passport can be made in Vanuatu for only a week but it depends on the payment. If you want the passport to be ready within one day then you need to pay the extra fee. The passport in Vanuatu for it to be quick you pay a total fee of USD 7.000. Normal fees will be USD 800 it takes 2 or 3 weeks to be completed. Wilson”

(Underlining for emphasis)

17. At 4:59 pm Li Sihua sent the email to the defendant says-

“ so how much should I transfer to you today”

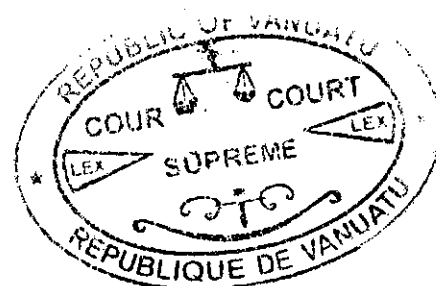
To which the defendant responded on 14th July 2016 at 03.55 say-

“ Li Sihua why are you dount (sic) about this transactions when you have all my proved when you came to Vanuatu recently. You send me 50.000 USD now so I can handle everything and of course the passport will be used anywhere he goes . That is a valid passport. Set (sic) the money over and I will begin the process and within 2 weeks you will receive the passport. I will not extend this dealings any longer or I may cease to act.

Wilson”

18. From the above emails it is clear the money requested was for obtaining a passport. And it is clear the defendant promised the passport would be ready within 2 weeks.

19. I am satisfied on the evidence on the promises and assurances made by the defendant to Li Sihua, the Claimant paid the money being claimed over to the defendant. However the defendant did not secure or obtain the passport he had promised he would. The emails referred to make no mention about payment of land prior to obtaining the passport as advised by the defendant in his early letter of 30th May 2016. The emails sent or exchanged in July 2016 had overridden the letter of 30th May 2016.



Conclusion


20. The defendant therefore does not have any arguable bona fide defences. The Claimant is therefore entitled to obtain swift judgment against the defendant. The Court adopts and applies the case of ANZ Bank (Vanuatu) Limited vs Traverso [2012] VUSC 222.

Result

21. The Court gives judgment in favour of the Claimant against the defendant for the payment for the sum of US \$ 50,000 together with interests at the rate of 5% per annum from July 2016 to the date of judgment. Costs are awarded to the Claimant against the defendant on the standard basis as agreed, if not, taxed by the Master.

DATED at Port Vila this 9th day of November, 2017

BY THE COURT


OLIVER A. SAKSAK
Judge

