

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

**Civil
Case No. 20/272 SC/CIVL**

BETWEEN: Alexandros Gouras

Claimant

AND: Naca Limited

First Defendant

AND: Nicolas Atherinos

Second Defendant

AND: Astrolabe Limited

Third Defendant

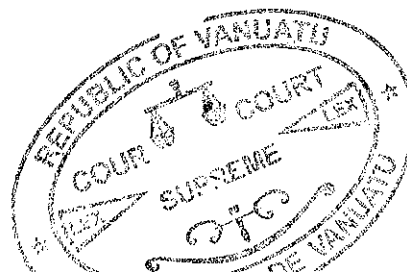
AND: Kalpokor Kalsakau

Fourth Defendant

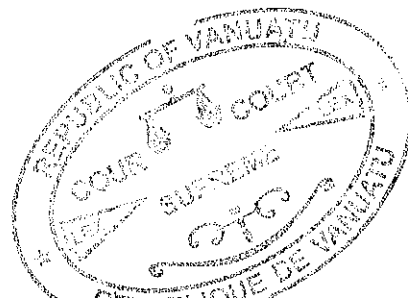
Date of Hearing: 31st day of August, 2020 at 2:00 PM
Date of Decision 2nd September 2020
Before: Justice Oliver Saksak
In Attendance: Mr John Malcolm for the Claimant
Mr Mark Hurley for Second Defendant
Mr Paul Jerry Boe for First, Third and Fourth Defendants

DECISION

1. The applications by the Defendants to strike out the claimant's claim and proceeding are allowed.
2. The claimant filed his claims on 12th February 2020.
3. Dr. Athanasios Gouras, the claimant's father filed 2 sworn statements in support of his son's claims on 3rd July 2020 and on 19th August 2020. The Claimant himself did not and has not filed any evidence so far.

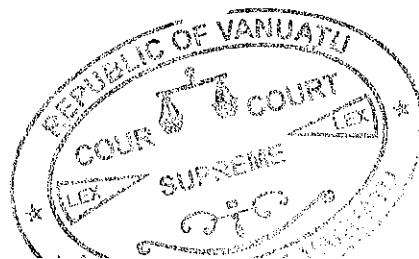


4. The claimant filed an Amended Claim on 19th August 2020 without leave of the Court.
5. Mr Boe filed defences for the First, Third and Fourth defendants on 11th May 2020 denying the claims in paragraphs 2, 5, 7, 9, 10, 11, 12, 13, 14, 15,16 and 17 of the claimant's claims and allegations.
6. Mr Hurley filed a defence on 3rd June 2020. As to paragraph 1 of the claim the second defendant says Naca Limited was an Intentional Company Limited by guarantee established under the International Companies Act [CAP.222] and was deregistered on 20th April 2020.
7. He denied paragraphs 2, 5, 6, 7, 9, 10, 11, 16 and 17. He does not plead to paragraph 12, 13 and 14 of the claimant's claim.
8. Pursuant to those defences, Mr Boe filed applications to strike out the whole claim of the claimant on 19th June 2020. The applications are supported by the sworn statements of Daniel Agius and Kalpokor Kalsakau also filed on 19th June 2020.
9. Mr Hurley filed an application to strike out the claim as against the Second Defendant on 17th June 2020. The application is supported by the sworn statement of Nicolas Atherinos filed on the same date.
10. Mr Boe filed written submissions on 17th July 2020 and 27th August 2020.
11. Mr Hurley filed written submissions on 4th August 2020.
12. Mr Malcolm filed written submissions in opposition to the strike out applications on 19th August 2020.
13. I heard counsel orally on their submissions in relation to the applications on 31st August 2020.

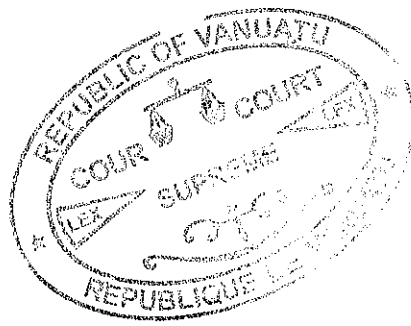


Discussion

14. I discuss first the issue of jurisdiction and whether this Court has jurisdiction to strike out the claimant's claims as being frivolous, vexatious and an abuse of process?
15. It is common ground and Mr Malcom has conceded the Court has inherent jurisdiction to do so. Sections 28 (1)(b) and 65 (1) of the Judicial Services and Courts Act No. 54 of 2000 and Rules 1.2 and 1.7 of the Civil Procedure Rules No. 49 of 2002 give the Court such jurisdiction. The case law reinforcing this is **Iririki Island Holdings v Ascension** [2007] VUCA 13: CAC 35/2007.
16. What is the appropriate test where a statement of claim is alleged to be frivolous, vexatious and an abuse of process? It is where the claimant's case is so clearly untenable that it cannot possibly succeed on the available evidence before the Court.
17. While Mr Malcolm stressed the importance of disputed issues, Mr Hurley and Mr Boe raised the issue of deficient pleadings as the basis for seeking to strike out the claimant's claim.
18. Taking a few instances: first paragraph 1 of the claim states that NACA Limited is a company duly incorporated. From the evidence of the defendants this is not correct. NACA Limited has been deregistered as of 20th April 2020 therefore the Company no longer exists. Therefore from the beginning this pleading is bad.
19. Second, paragraph 2 states that Nicolas Atherinos is the Director of NACA Limited. From the evidence of Mr Atherinos, this is not correct and the pleading is bad also.
20. Third, paragraph 5 states in early 2013 the claimant lent moneys to Dominique Dinh. Again from the evidence this is incorrect and this pleading is bad from the start.




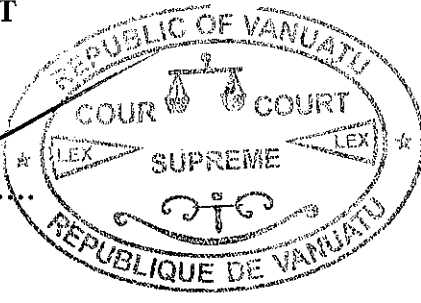
21. Those are just three examples but throughout the whole pleading there are defects. It explains why the claimant filed an amended claim on 19th August 2020. However that was done without the required leave of the Court in accordance with Rule 4.11. That amendment therefore is improper and is disallowed by the Court.
22. I am therefore persuaded by the submissions of Mr Hurley and Mr Boe to accept that before we even think about issues, we need to first think about the pleadings in light of the available evidence. I accept that the pleadings in their current status are bad from the start. The claimant has not deposed to any evidence. He had relied on his father's evidence but in my view that is not enough.
23. The cases referred to by Mr Malcolm such as **Iririki Island Holdings v Ascension** and **Ebbage v Ebbage** [2001] VUCA 7 do not assist the claimant in terms of his pleadings.
24. I therefore allow the applications by the defendants. Accordingly I order that the whole claim and proceeding of the claim be hereby struck out.
25. Mr Hurley sought costs on an indemnity basis pursuant to his letter dated 26th August 2020 to the claimant's lawyers. There was no response to the letter resulting in the eventual hearing of these applications. Mr Malcolm conceded costs on an indemnity basis.
26. I therefore order indemnity costs in favour of the second defendant only against the claimant. As against the remaining defendants, costs is awarded in their favour on the standard basis as agreed or taxed by the Master.



DATED at Port Vila this 2nd day of September, 2020.

BY THE COURT


.....
Oliver Saksak
Judge



The seal of the Supreme Court of Vanuatu is circular. The outer ring contains the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom. Inside the ring, the words "COUR" and "COURT" are positioned on either side of a central scale of justice. Below the scales, the word "SUPREME" is written. On the left and right sides of the seal, the word "LEX" is written within decorative flourishes. At the bottom of the seal, there is a decorative scrollwork element.