

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

Civil
Case No. 19/2601 SC/CIVL

BETWEEN: Tiffany Carroll
Claimant

AND: Benjamin Sands
Defendant

Date of Hearing: 19 August 2021
Before: Justice V.M. Trief
In Attendance: Claimant – Mr G. Blake
Defendant – Ms L. Raikatalau
Date of Decision: 30 August 2021

**DECISION AS TO DEFENDANT'S APPLICATION FOR COSTS IN RESPECT OF THE
CLAIMANT'S 10.05.21 APPLICATION AND NOTICE OF DISCONTINUANCE**

A. Introduction

1. The Claimant Tiffany Carroll filed an Application for disclosure which she subsequently discontinued. The Defendant Benjamin Sands seeks costs in relation to the application. This is my decision as to the costs sought.

B. Background

2. Ms Carroll and Mr Sands are estranged husband and wife.
3. They are involved in proceedings in Australia.
4. By orders of the Federal Circuit Court of Australia dated 27 November 2019 in proceedings between the parties (the 'Australian proceedings'), Ms Carroll was, "restrained from commencing or continuing any proceedings arising out of the marital relationship between herself and the applicant in Vanuatu, being Civil Case 2601 of 2019... save as required to seek recognition and/or enforcement of orders made by this Honourable Court."
5. As a result of the 27 November 2019 orders of the Federal Circuit Court of Australia, consent orders were signed in this matter (Civil Case No. 2601 of 2019) on 6 March 2020 staying the proceeding pending further order of this Court (the 'stay orders').



6. On 10 May 2021, Ms Carroll filed an application to set aside the stay orders and for orders in respect to disclosure due to Mr Sands' failure to comply with orders for disclosure made in the Australian proceedings.
7. The application and supporting sworn statement were filed and served on Mr Sands' counsel on 10 May 2021.
8. On 16 June 2021, the Court issued notice listing the hearing of the application on 5 August 2021.
9. On 15 July 2021, Mr Sands filed an application in the Australian proceedings seeking orders for the discontinuance of Ms Carroll's 10 May 2021 application filed in this matter.
10. Mr Sands' application in the Australian proceedings was heard on 20 July 2021. The Australian Court made orders on 20 July 2021 ordering Ms Carroll to wholly discontinue her application filed on 10 May 2021. In addition, by the same orders, the Court varied its previous orders to read as follows:

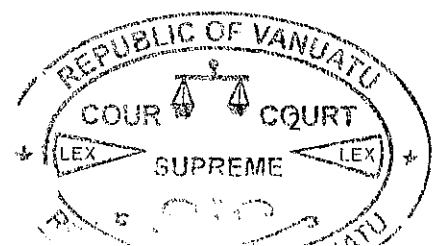
[Ms Carroll] is restrained from commencing or continuing any proceedings arising out of the marital relationship between herself and [Mr Sands] in Vanuatu, being civil case No. 2601 of 2019 ... save as required to seek recognition and/or enforcement of any final orders made by this Honourable Court

(my emphasis)

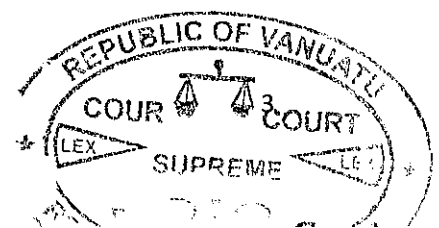
11. On 22 July 2021:
 - a) At 3.15pm, Mr Sands' counsel filed a response to the 10 May 2021 application;
 - b) At 3.37pm, Mr Blake emailed my secretary, copied to Mr Sands' counsel, that the 10 May 2021 application would be discontinued;
 - c) At 4.23pm, Mr Sands' counsel served the response by email; and
 - d) Mr Sands' counsel responded to Mr Blake at 9.29pm on 22 July 2021, "thank you and noted."
12. On 23 July 2021, the formal Notice of Discontinuance of the 10 May 2021 application was filed.
13. On 5 August 2021, Mr Sands filed his Application for Costs in respect of the Claimant's 10 May 2021 Application and 23 July 2021 Notice of Discontinuance. This was strongly opposed.

C. Discussion

14. Is Mr Sands entitled to costs in relation to Ms Carroll's 10 May 2021 application?



15. Ms Carroll filed her 10 May 2021 application out of frustration with Mr Sands' failure to comply with disclosure in the Australian Court. Therefore in an effort to seek enforcement of the disclosure ordered there, she filed her application in this matter.
16. Ms Carroll filed her 10 May 2021 application in accordance with the Australian Court's dated 27 November 2019 permitting Ms Carroll to continue Vanuatu proceedings (in this matter) "to seek recognition and/or enforcement of orders made by [that] Court."
17. It was only in its 20 July 2021 orders that the Australian Court made clear that it is its final orders that Ms Carroll is not restrained from commencing or continuing proceedings in Vanuatu (in this matter) to seek recognition and/or enforcement of.
18. Accordingly, Mr Sands is entitled to his costs in respect of the 10 May 2021 application and 23 July 2021 Notice of Discontinuance on a standard basis.
19. I now turn to the question of quantum.
20. Ms Raikatalau submitted that following receipt of Ms Carroll's 10 May 2021 application, extensive work was carried out to clarify their client's position in relation that application including liaising with Mr Sands' Australian lawyers. The itemised bill of costs relied on was attached to Melissa Charley's sworn statement filed on 5 August 2021 (the 'itemised bill'), totalling VT203,723 for the period 11 May 2021 to 4 August 2021. Ms Raikatalau submitted that formal responses were scheduled closer to the hearing date (5 August 2021) therefore the response and supporting sworn statement were filed on 22 July 2021.
21. Between 11 May 2021 and 18 May 2021, 2.8 hours of time are claimed for reading the 10 May 2021 application, checking the file and emailing the client. I agree with Mr Blake's submission that that is excessive. **I allow 10 units** instead of the 28 units claimed.
22. Between 19 May 2021 and 25 May 2021, a further 1.75 hours are claimed for reading emails from the Australian lawyer and looking at documentation. Mr Blake made the valid point that the Australian lawyer is not the client so this was duplicitous. **I allow 5 units** instead of the 17.5 units claimed.
23. **I allow the 2 units** claimed for emailing the client on 5 June 2021.
24. The response to Ms Carroll's 10 May 2021 application filed at 3.15pm on 22 July 2021 was filed notwithstanding the Australian Court's Orders dated 20 July 2021 which required discontinuance of the 10 May 2021 application by 4pm on 22 July 2021. Having been in communication with the Australian lawyers, Mr Sands' counsel must have been aware of the hearing of Mr Sands' application in the Australian proceedings and on 20 July 2021.
25. Even with scheduling filing of a formal response closer to the hearing date (5 August 2021), the response to the 10 May 2021 application was filed 2 days after orders were obtained in the Australian Court for the discontinuance of the application. In those circumstances, I agree with Mr Blake's submission that costs were unnecessarily incurred by the Defendant and that the response was filed for no other purpose than to support a subsequent claim for costs.



26. I also note that the description in the itemised bill of work done from 20.07.21 to 22.07.21 was in relation to an Application to strike out. Ultimately and no doubt due to Mr Sands having already obtained the 20 July 2021 orders from the Australian Court, no Application to strike out was filed but simply a response to the 10 May 2021 application seeking its dismissal with costs.
27. Finally, the itemised bill already included 12 units for work on 07.06.21 for work that included the preparation of an application to strike out and considering if the application was allowed by consent orders.
28. In the circumstances, for the period 7 June 2021 to 22 July 2021, **I allow 10 units** instead of the 27.5 units claimed.
29. The Notice of Discontinuance was not served on Mr Sands' counsel's office: para. 7 of the Defendant's application for costs. Accordingly, **I allow the 3 units** claimed for 21.23 08/21 [sic] in relation to being advised of and perusing the order from the Australian Court and discontinuing the application.
30. **I allow the 10 units** claimed for preparing the application for costs and supporting sworn statement.

Total units allowed

31. I have allowed 40 units being for 4 hours at VT20,000 per hour, therefore VT80,000 for lawyer's time.
32. Added to this is VT1,150 for disbursements and VAT 15% (15% x 81,150) VT12,173 therefore Mr Sands' total costs are assessed in the amount of VT93,323.

D. Result and Decision

33. The Defendant's Application for Costs in respect of the Claimant's 10.05.21 Application and 23.07/21 Notice of Discontinuance is **granted** as follows:
 - a) The Defendant is entitled to his costs in respect of the 10 May 2021 application and 23 July 2021 Notice of Discontinuance on a standard basis; and
 - b) Those costs are assessed in the amount of VT93,323.
34. The Claimant is to pay the Defendant costs of VT93,323 **by 4pm on 15 October 2021**.

**DATED at Port Vila this 30th day of August 2021
BY THE COURT**

VM Trier
Justice Viran Molisa Trier

