

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

Civil
Case No. 19/1707 SC/CIVL

BETWEEN: James lawillie Kamasteia
Claimant

AND: Jiuk Jung, Hyang Ran Kim,
Sang Hoon Jung trading as
King Motors Trading
Defendant

Date of Hearing: 7 April 2021
Before: Justice V.M. Trief
In Attendance: Claimant – Mr J.W. Taiva
Defendant – no appearance (in person)
Date of Decision: 27 April 2021

JUDGMENT AS TO QUANTUM OF DAMAGES

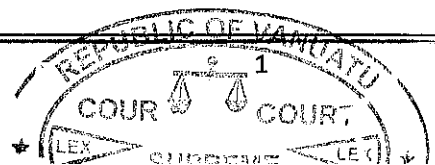
A. Introduction

1. This is a claim for damages for loss of the Claimant James lawillie Kamasteia's bus service business.
2. The Defendant Jiuk Jung, Hyang Ran Kim, Sang Hoon Jung trading as King Motors Trading ('King Motors') has not taken any steps in this matter. Default judgment was entered. The matter then proceeded to hearing as to the assessment of damages.

B. Claim

3. Mr Kamasteia claims:

- a) Damages for loss of business income and opportunity – VT1,970,000;
- b) General damages – To be assessed;



- c) 5% interest per annum;
- d) Costs; and
- e) Any other order the Court deems fit.

4. Mr Taiva abandoned the claim for special damages.

C. Evidence

- 5. In 2016, Mr Kamasteia entered into a loan arrangement with King Motors to purchase a second-hand bus registration number 16453 (the 'bus') for VT2,400,000. Mr Kamasteia does not recall signing a written loan agreement. He evidenced that there was no time limit for the loan. In February 2016, he paid a deposit of VT500,000 and then had to make payment every month until the balance of the purchase price was completed. There was no minimum monthly payment amount.
- 6. Mr Kamasteia used the bus to operate a bus service business. By December 2018, he had paid King Motors VT1,560,000 with the monthly payments ranging from VT20,000-VT100,000. The loan balance was VT840,000. He did not make a payment in November 2016, January, April and May 2017, and in January, May, August and December 2018.
- 7. In 2018, Mr Kamasteia experienced setbacks with the business due to repeated mechanical problems with the bus.
- 8. In December 2018, the bus failed the Public Works Department roadworthiness inspection. Mr Kamasteia took the bus to King Motors for repairs and agreed with King Motors' agent that the bus would be replaced by another bus in better condition.
- 9. In January 2019, King Motors' agent told Mr Kamasteia to deposit VT300,000 to obtain another bus. Mr Kamasteia refused to pay this as he did not have the money to and because he thought it was unfair to pay another deposit when the other bus that was agreed would be provided to him was going to be the replacement for the bus which had roadworthiness defects.
- 10. On 13 April 2019, Mr Kamasteia went to King Motors to check the bus. He was told that the bus had been sold to someone else for VT840,000. He was very upset because they sold the bus without letting him know and without giving him any clear reason as to why they had sold it.
- 11. The bus was Mr Kamasteia's only means of income. He evidenced that despite the setbacks from the mechanical problems with the bus, he worked hard to pay off the loan, until it was sold with him owing VT840,000. He has not operated another bus business as he had spent all his Vanuatu National Provident Fund ('VNPF') entitlements on the deposit for the bus and all his savings on the bus.
- 12. Mr Kamasteia evidenced that he employed several drivers and his arrangement with them was that at the end of every month, the profits were shared equally between the driver's



salary, the loan repayment and his share. The bus was refuelled daily. The maximum paid for fuel in a day was VT3,000 as it would depend on how much was left in the tank at the end of the day and whether or not the driver refuelled then or did so the next day. The bus was used 7 days a week. Mr Kamasteia's daily minimum net profit was VT5,000.

13. Besides the driver's salary, the loan repayment and fuel, Mr Kamasteia's annual running expenses were:

- Shefa Provincial Government Bus Transport Operator business licence VT10,000
- Driver's Permit (VT7,000 including penalty charge) VT2,000
- Third Party insurance cover with VanCare Insurance Limited VT68,513
- Roadworthiness Test VT5,620
- Shefa Port Vila Public Land Transport Association membership fee VT3,000

TOTAL VT89,133

D. Findings

14. I accept that Mr Kamasteia operated a bus service business from 2016 using the bus which he had the use of while paying for it through monthly repayments to King Motors. The bus price was VT2,400,000. He was required to make payment every month until the bus purchase price was completed. There was no minimum monthly payment amount.

15. Mr Kamasteia paid a deposit of VT500,000 and then paid amounts ranging from VT20,000-100,000 in most months. He did not make a payment in November 2016, January, April and May 2017, and in January, May, August and December 2018. I accept that throughout 2018, he experienced setbacks with the business due to repeated mechanical problems with the bus. This is reflected in his failing to make payment in 4 months in 2018 and his payments ranged from VT20,000-VT40,000 whereas previously, he had made generally higher monthly payments. By December 2018, the balance owed was VT840,000.

16. The problems with the bus culminated in the bus failing the Public Works Department roadworthiness inspection in December 2018. Mr Kamasteia took the bus to King Motors for repairs. He did not include bus repairs as a running expense so I infer that King Motors repaired the bus at its own (King Motors') expense.

17. I accept that Mr Kamasteia agreed with King Motors' agent in December 2018 that the bus would be replaced by another bus in better condition. However in January 2019, King Motors' agent told him to pay VT300,000 to get that other bus. Mr Kamasteia could not do so as he had spent all his savings and VNPF entitlements. He thought it was unfair to pay another deposit as he thought the other bus agreed would be provided to him as replacement for the bus which was not roadworthy.

18. When Mr Kamasteia went to check the bus on 13 April 2019, he was told that the bus had been sold to someone else for VT840,000. He was very upset. The bus was his only means of income. He did not have money to set up another bus service business.

19. For Mr Kamasteia to be awarded damages, there must have been an interference by unlawful means with his business. However, I am unable to find that King Motors interfered by unlawful means with Mr Kamasteia's bus service business. At all times, King Motors owned the bus. I sympathise with Mr Kamasteia that King Motors sold the bus without letting him know. However, Mr Kamasteia's failure to make monthly payments to King Motors from December 2018 onwards breached his agreement with King Motors. There was no set minimum amount for the monthly payments so he could have paid just VT5,000 a month. He did not. King Motors was entitled then to treat the contract as terminated by the breach and to sell the bus to someone else.

20. In the circumstances, there was no business interference by unlawful means. There will be no award for damages as claimed.

E. Result and Decision

21. There is no award of damages.

22. There is no order for costs.

**DATED at Port Vila this 27th day of April 2021
BY THE COURT**

UM Trief
.....
Viran Molisa Trief
Judge

