

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

Civil
Case No. 22/2604 SC/CIVL

BETWEEN: Smith Wuwut Koro
Claimant

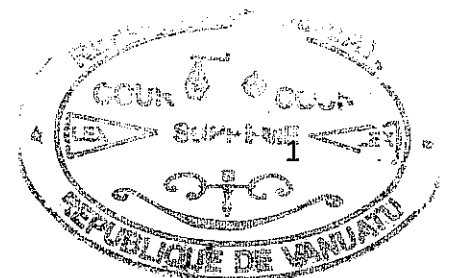
AND: Police Service Commission
First Defendant

AND: Republic of Vanuatu
Second Defendant

Date: 19 July 2024
Before: Justice V.M. Trief
Counsel: Claimant – in person, koro_smith@yahoo.com.au
Defendants – Mr J. Wells

**DECISION AS TO DEFENDANTS' APPLICATION TO STRIKE OUT THE PROCEEDING
AND CLAIMANT'S APPLICATION TO SET ASIDE THE 2ND DEFENDANT'S STRIKE OUT
APPLICATION AND SUPPORTIVE SWORN STATEMENT**

1. The Defendants are to serve today's Orders via email and file proof of service by 4pm on 26 July 2024.
2. The pleadings are:
 - a) Claim filed on 20 September 2022;
 - b) Defence filed on 24 March 2023; and
 - c) Claimant's Reply to Second Defendant's Defence filed on 14 April 2023.
3. On 26 April 2024, the Defendants filed Application to Strike out the Proceeding (the 'Defendants' Application') and on 29 April 2024, the Sworn statement of Lola Mariki



in support. At the pre-trial conference on 22 May 2024, the Claimant Mr Smith Wuwut Koro confirmed receiving both of these.

4. On 15 May 2024, the Claimant filed Sworn statement in support of the Claim and Application to Set aside the 2nd Defendant's Strike out Application filed on 26 April 2024 and the Supportive Sworn Statement filed on 29 April 2024 (the 'Claimant's Application'). He confirmed at the 22 May 2024 conference that his Application filed on 15 May 2024 contained his submissions in response to the Defendants' Application filed on 26 April 2024.
5. On 11 July 2024, the Defendants filed Submissions in response to the Claimant's Application.
6. I now determine both Applications.
7. By the Application filed on 26 April 2024, the Defendants seek an order striking out the proceeding in its entirety, costs and any other order deemed just. The grounds of the Application are that Mr Koro had not complied with the Court's Orders to file and serve sworn statements and has not paid the VT25,000 costs ordered on 31 May 2023 despite reminders by the Court and Defendants' counsel.
8. In response, Mr Koro filed on 15 May 2024 his Application to Set Aside the Defendants' Application. This is misconceived. The Defendants' Application and the sworn statement in support of that application are not decisions of the Court which are amenable to be set aside. All that was required from Mr Koro were his submissions in response to the Defendants' Application. Accordingly, the Claimant's Application filed on 15 May 2024 is **declined and dismissed**.
9. Costs shall follow the event. The Defendants incurred costs from the Claimant's Application – their perusal of the Application, obtaining of instructions and filing on 11 July 2024 of submissions in response. Accordingly, the Claimant is to pay the Defendants' costs of the Claimant's Application fixed summarily at VT30,000 **by 4pm on 26 August 2024**.
10. I turn now to the Defendants' Application.
11. As set out above, on 15 May 2024, Mr Koro filed his Sworn statement in support of the Claim. That addresses the first ground of the Defendants' Application.
12. The other ground is that Mr Koro has not complied with the Court's Orders to pay the costs ordered on 31 May 2023. He confirmed at the conference on 22 May 2024 that the Claimant's Application filed on 15 May 2024 contained his submissions in response to the Defendants' Application. However, despite being 15 pages long (and



containing numerous references to English cases which do not apply), the Claimant does not address his failure to pay the costs ordered by the Court over a year ago.

13. As I explained to Mr Koro at the conference on 22 May 2024 and recorded in my Minute and Orders dated 22 May 2024, the State has cited 2 rules from the *Civil Procedure Rules* (rules 9.10(1)(b) and 18.11(4)(d)) in relation to the failure to pay costs, in support of its application that the proceeding be struck out for his failure to comply with the Court's Orders. I then reminded Mr Koro that when the Court makes an Order, it needs to be complied with. I informed him that he had time then to remedy his non-compliance with the Court's Orders otherwise the Court would decide the Applications after 4pm on 5 June 2024 as set out in that Minute and Orders.
14. By the Defendants' submissions filed on 11 July 2024, Defendants' counsel confirmed that the Claimant has not yet paid the VT25,000 costs ordered on 31 May 2023. This is despite the Court expressly reminding Mr Koro on 22 May 2024 and explaining to him that a Court Order must be complied with.
15. Today, the Court has made a further costs order against Mr Koro, of VT30,000 to be paid by 4pm on 26 August 2024.
16. Given that Mr Koro has finally filed a sworn statement in support of the Claim, I decline to strike out the proceeding today on the basis that he has not complied with the costs order made against him on 31 May 2023.
17. However, Mr Koro is put on notice that he must pay the VT25,000 costs ordered on 31 May 2023 and the VT30,000 costs ordered today **by 4pm on 26 August 2024**, or will be required to show cause why the proceeding should not be struck out for non-compliance with the Court's Orders.
18. The Defendants' Application is stood down for now.
19. The Defendants are to file and serve Memorandum **by 4pm on 2 September 2024** as to whether or not the total costs of VT55,000 has been paid.
20. As previously ordered, Trial at **9am on 12 March 2025** at Dumbea Courtroom.

**DATED at Port Vila this 17th day of July 2024
BY THE COURT**

.....
Justice Viran Molisa Trier

