

**IN THE COURT OF APPEAL OF  
THE REPUBLIC OF VANUATU**  
(Civil Appellate Jurisdiction)

**CIVIL APPEAL CASE NO. 28 of 2013**

**BETWEEN: LUGANVILLE MUNICIPAL COUNCIL**  
**Appellant**

**AND: GASPARD PALAUD**  
**Respondent**

Coram: Hon. Chief Justice Vincent Lunabek  
Hon. Justice Bruce Robertson  
Hon. Justice John Mansfield  
Hon. Justice Daniel Fatiaki  
Hon. Justice Robert Spear  
Hon. Justice Dudley Aru  
Hon. Justice Mary Sey

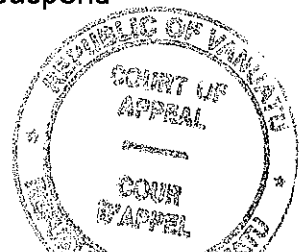
Counsel: Mr. Eric Siba for the Appellant  
Mr. Robin Tom Kapapa for the Respondent

Hearing: 14 November 2013

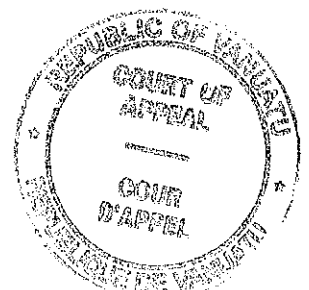
Judgment: 22 November 2013

**JUDGMENT**

1. On 7 October 2009 the Respondent Gaspard Palaud filed a claim against the Appellant Luganville Municipal Council ("the LMC") seeking damages for unjustified dismissal. The claim was registered as Civil Case No. 30 of 2009 Gaspard Paluad v. Luganville Municipality. As no defence was filed by the LMC, Mr. Palaud filed a request for default judgment which was subsequently entered on 10 August 2010.
2. Specific directions were given to each party to file their sworn statements for assessment of damages which was listed for hearing on 27 September 2010 but was never heard. The Attorney General on 12 November 2010 filed an application to set aside the default judgment and an application to suspend enforcement. These applications were not heard either.



3. On 19 April 2013 the LMC, after engaging James Tari & Partners, filed an Application to set aside the default judgment. There appears to have been a mistaken belief that there was judgment entered for Vatu 18, 000, 000 but in fact the default judgment was for liability only. The application to set aside was heard on 26 August 2013 and on 30 August 2013, the Application was dismissed by the Court and costs were ordered against the LMC to be agreed or taxed.
4. LMC now appeals the decision to set aside the costs orders. The grounds raised in support of the appeal in the Amended Notice and Grounds of Appeal are somewhat vague as to what the Appellant complains about and what part of the decision should be set aside. They may be summarized as follows:-
- That it was Mr. Palaud who attempted to seek enforcement of the judgment for a total of VT18, 782, 620. That prompted the LMC to apply to set aside the default judgment and these attempts included the meeting between the parties on 27 March 2012. Mr. Palaud discussed settlement of his claim despite the filing of an application to suspend the Courts orders by the State Law Office which was yet to be heard;
  - Mr. Palaud's legal counsel was not a registered legal practitioner under the Practitioner Act [CAP 119] and could not have acted for Mr Palaud to warrant the cost orders ;
  - The LMC's application to set aside default judgment was made pursuant to Rule 9.5 (2) a) - e) of the Civil Procedure Rules however the Court applied Rule 9.10;
4. Mr. Palaud on the other hand filed a cross-appeal. The grounds raised in support of the cross appeal in summary are:
- The default judgment obtained on 10 August 2010 was for liability alone with damages to be assessed. The sum of VT1, 068, 000 paid to him was not in final settlement;



- There was an out of Court agreement by the parties to settle Mr. Palaud's outstanding claim in the sum of VT4, 528, 000;
- The Court fell into error by not taking into account section 1(4) (b) and section 3(4) of the Limitation Act No. 4 of 1991;
- Following entry of the default judgment in 2010 there were ongoing discussions between the parties to settle Mr. Palaud's claims until 2013.

5. During the course of the hearing of this appeal, the main issue is whether or not the judge was correct in dismissing Civil Case No.30 of 2009.

#### DEFAULT JUDGMENT

6. On the 10 August 2010 when the default judgment was granted , the Court made specific directions with regards to the process for assessing damages in the following terms:-

- "(1) The claimant will file and serve sworn statement in relation to amount of damages within 14 days from the date whereof;
- (2) The defendant will file and serve sworn statements in response within 14 days thereafter;
- (3) The case to be called for hearing on Monday 27 September 2010 at 7.45 am. "

7. These orders were clearly not complied with. The judge noted at paragraph 25 of his decision of 30 August 2013 that Mr. Palaud had done nothing to enforce the default judgment. We are also not satisfied that the orders were complied with on the face of the documents filed. Given the lapse of time of more than two years after Mr Palaud received the sum of VT 1,068,000, the



judge had the discretion to dismiss the matter pursuant to Rule 9.10 (1) (b) and 2 (d) which provides:-

**"9.10 Striking out**

- (1) This rule applies if the claimant does not:
  - (a) .....
  - (b) comply with an order of the court made during a proceeding.
- (2) The court may strike out a proceeding:
  - (a) .....
  - (b) .....
  - (c) .....
  - (d) without notice, if there has been no step taken in the proceeding for 6 months. "

**SETTLEMENT**

- 8. On the question of whether or not there was a settlement the judge found that the matter was settled with the LMC having paid Mr. Palaud a sum of VT 1, 068, 000. Both counsel in this appeal agreed that the LMC had paid Mr. Palaud this amount. The judge was not shown to be in error in deciding that the matter was settled as two years had lapsed since that payment was made and Mr. Palaud had taken no steps to enforce the default judgment.
- 9. Given the unsatisfactory nature of the documentation before the Court, we do not see any reason to interfere with the decision in the Court below. Therefore the appeal is dismissed. Each party is to pay its own costs.

**FOR THE COURT**



**Hon. Chief Justice Vincent Lunabek**

