



3. In the present case the litigation between the parties has a long history. In 2008, the respondent carried on a public transport business. On 21<sup>st</sup> January 2008, the respondent filed a claim in the Magistrate's Court alleging that as a result of threats made by the applicant to damage the respondent's vehicle, the respondent had to cease carrying on business for ten days, that he incurred expenses, and suffered emotional stress in consequence of the threat. The relevant pleading filed by the respondent made the following claim:

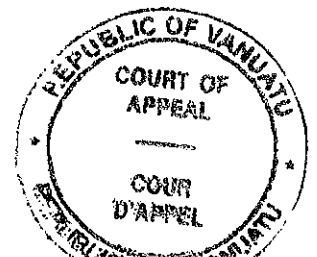
"5. *In consequence of the Defendant's actions, the Claimant suffered loss and damages.*

*PARTICULARS*

i.	<i>Emotional stress:</i>	<i>Vt 100,000</i>
ii.	<i>Loss of business income:</i> <i>At VT 20,000 per day for 10 days</i>	<i>Vt 200,000</i>
iii.	<i>Return transport fare</i> <i>Tastambae to Santo X 6 trips X 2 person:</i>	<i>Vt 13,200</i>
iv.	<i>Lunch at VT 300 per plate X 2 person</i> <i>For three days:</i>	<i><u>Vt 1,800</u></i>
	<b><i>TOTAL</i></b>	<b><i><u>VT 315,000</u></i></b>

6. *The Claimant relies on the principle of torts."*

4. The applicant, through a lawyer, filed a response simply denying liability but never filed a defence. The precise allegations in the claim remained unanswered. The respondent applied for judgment in default of a defence and filed sworn statements that canvassed the circumstances of the threat and deposed to the losses suffered by him. The respondent exhibited various receipts for expenses incurred and records of revenue received in the operation of his business. On 15<sup>th</sup> May 2008, a Magistrate entered a default judgment for a total of Vt 358,500 made up as to Vt 100,000 for emotional distress, Vt 200,000 for 10 days loss of business earnings and Vt 58,500 for expenses.



5. After non-compliance with two enforcement orders and an unsuccessful application to set aside the default judgment, the applicant applied to the Magistrate's Court for leave to appeal out of time. The application was refused on 23 August 2013.

6. The applicant then appealed to the Supreme Court against the refusal of the Magistrate to grant leave to appeal. The Supreme Court dismissed the application. In the reasons for judgment delivered by the Supreme Court, the merits of the proposed grounds of appeal were considered. Those grounds included an allegation that the default judgment was issued without hearing evidence as to the quantum of the respondent's losses. The Supreme Court considered there was no merit in the proposed grounds of appeal. The applicant now seeks leave to appeal to this Court.

7. The submissions in support of the application to this Court identify as the question of law necessary to found the jurisdiction of this Court as:

*"(1) Whether or not a claimant in the magistrates' (sic) court claim is capable of requesting and obtaining a default judgment for an unfixd amount, under rule 9.2 (1) of the rules?"*

*(2) Can the court in the exercise of its discretion grant a default judgment in a claim for general damages under rule 9.3 of the rules?"*

8. The Civil Procedure Rules No. 49 of 2002, rule 9.3 provides:

***"Default - claim for damages***

**9.3** (1) *This Rule applies if the claim was for an amount of damages to be decided by the court.*

(2) *After the claimant has filed a proof of service, the claimant may file a request for judgment against the defendant for an amount to be determined by the court. The request must be in Form 13.*

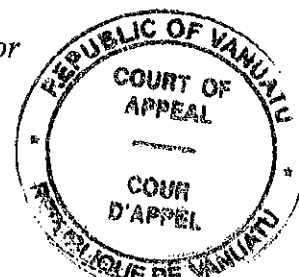
(3) *In the Magistrates Court the request may be made orally.*

(4) *The court may:*

(a) *give judgment for the claimant for an amount to be determined; and*

(b) *either:*

(i) *determine the amount of damages; or*



(ii) *if there is not enough information before the court to do this, fix a date for a conference or hearing to determine the amount of damages.*

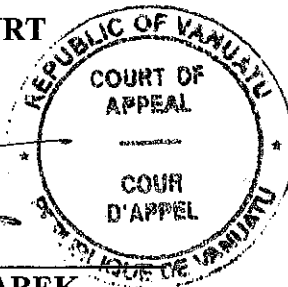
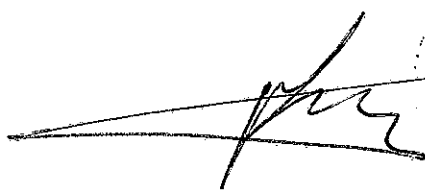
(5).....

(6).....”

9. The applicant initially sought to argue that the respondent’s claim had been treated by the Magistrate’s Court as a claim for a fixed amount, but after discussion with the Court, the applicant’s counsel accepted that the respondent’s claim was one for damages, and that the provisions of rule 9.3 apply. It is clear that the Magistrate’s Court so treated the case and on the basis of the sworn statements filed by the respondent assessed the amount claimed as reasonable. As the Supreme Court noted, the assessment of quantum made by the Magistrate’s Court was open on the information filed by the respondent. That information had not been challenged by the applicant in the Magistrate’s Court.
10. The complaint made to this Court by the applicant is not that rule 9.3 was misapplied or misunderstood, but that the amounts awarded on the different heads of damage in the Magistrate’s Court were excessive and not sufficiently supported by the sworn statements. That complaint does not concern the construction or application of rule 9.3. It is a complaint about findings of fact as to the extent of the respondent’s damages.
11. There is no question of law raised by the proposed appeal. The application for leave to appeal to this Court is therefore refused. The applicant is ordered to pay the respondent’s costs at a standard rate.

**DATED at Port-Vila this 8<sup>th</sup> day of May, 2015**

**BY THE COURT**



**Vincent LUNABEK  
Chief Justice**