IN THE COURT OF APPEAL OF THE REPUBLIC OF VANUATU

(Civil Appellate Jurisdiction)

CIVIL APPEAL CASE No. 37 OF 2014

BETWEEN:

RONGO DEKI

Appellant

AND

MOLI PAKORO

Respondent

Coram:

Hon. Chief Justice Vincent Lunabek

Hon. Justice John von Doussa Hon. Justice Ronald Young Hon. Justice Daniel Fatiaki Hon. Justice Stephen Harrop Hon. Justice Dudley Aru Hon. Justice Mary Sey

Counsel:

Mr S Stephens for Appellant

Ms J Tari (PSO) for Respondent

Date of Hearing:

Wednesday 29 April 2015

Date of Judgment:

Friday 8 May 2015

JUDGMENT

- 1. The appellant seeks leave to appeal to this Court from a judgment of the Supreme Court which dismissed an appeal from a decision in the Magistrate's Court. Section 30 (4) of the Judicial Services and Courts Act [Cap 270] dealing with appeals from the Magistrate's Court provides:
 - '(4) The Supreme Court is the final court of appeal for the determination of questions of fact. However, an appeal lies to the Court of Appeal from the Supreme Court on a question of law if the Court of Appeal grants leave."

APPEAL

COUR

2. To found the jurisdiction of the Court of Appeal the applicant for leave must identify the question of law that is appropriate for the consideration of the Court of Appeal. The applicant must identify that question in precise terms and demonstrate how the question arises on the facts of the case and why the determination of that question is necessary for the just resolution of the issues between the parties.

- 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 21st 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. Emotional stress:

Vt 100,000

ii. Loss of business income:

At VT 20,000 per day for 10 days

Vt 200,000

iii. Return transport fare

Tastambae to Santo X 6 trips X 2 person:

Vt 13,200

iv. Lunch at VT 300 per plate X 2 person

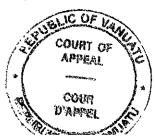
For three days:

Vt 1,800

TOTAL

VT 315,000

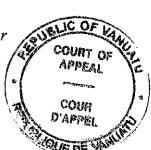
- 6. The Claimant relies on the principle of torts."
- 4. The applicant, through a lawyer, filed a response simply denying liability but never filed a defence. The precise allegations in the claim remained unanswered. The respondent applied for judgment in default of a defence and filed sworn statements 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 15th 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 unfixed 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)	• • •

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.

(6)....."

- 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 8th day of May, 2015

BY THE COURT

COURT OF APPEAL

COURT D'APPEL

Vincent LUNABEK

Chief Justice