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

Civil Appeal Case No. 28 of 2015

BETWEEN: SHEFA PROVINCIAL COUNCIL
Appellant

AND: MOSES APET ARIASIA
Respondent

Coram:	***Hon. Justice John von Doussa*** ***Hon. Justice Oliver Saksak*** ***Hon. Justice Daniel Fatiaki*** ***Hon. Justice Stephen Harrop*** ***Hon. Justice Dudley Aru*** ***Hon. Justice David Chetwynd***
Counsel:	*Mr. J. Tari for the Appellant* *Mr. W. Daniel for the Respondent*
Date of Hearing:	*11 November 2015*
Date of Judgment:	*20 November 2015*

JUDGMENT

1. The appellant appeals against the judgment entered against it in the Supreme Court for VT2,085,013. This sum comprised VT1,097,375 damages for breach of the terms of a settlement agreement reached between the parties on 12 August 2003 and VT987,638 interest calculated from the filing the claim on 21st June 2006 until judgment on 5th August 2015.

2. The principal ground of appeal is that the settlement agreement is invalid as there has been no resolution of the appellant endorsing the purported settlement agreement. A subsidiary ground of appeal is that the Supreme Court erred in "*penalising*" the appellant by adding interest to the assessed damages from the date of filing of the claim.

3. The background of these proceedings is not in dispute. On 3rd April 1998 the respondent entered into a contract with the appellant to build and renovate the appellant's main office and council chamber. Work under the contract commenced but a dispute arose over the use of materials supplied by the appellant. Substantial delay occurred, work by the respondent ceased, and another company ultimately completed the contract works. The respondent instructed lawyers, and formulated a substantial claim for damages for breach of the 3rd April 1998 contract, and for delay allegedly caused by the appellant. In all the claim exceeded VT23 million. At the invitation of the appellant the respondent and his lawyer attended a meeting at the appellant's council

chambers on 12th August 2003. The appellant was represented at that meeting by the President of the Council and members of the Development Committee of the appellant. It was agreed between those present that the respondent's damages claim would be settled on terms that the appellant pay the respondent VT1,017,375 plus interest thereon at 10%. In addition the settlement agreement provided that the respondent would build four houses for the appellant in 2004.

4. The appellant did not pay the agreed sum of VT1,017,375, and the respondent was prevented from constructing four houses by the appellant, for reasons which were not explored at trial and are not presently material. The present claim was then instituted claiming the balance of the agreed settlement sum, and damages for breach of the term of the agreement under which the respondent was to construct four houses.

5. The respondent's claim in the Supreme Court proceeded slowly, in part due to the courthouse fire. The hearing of the claim occurred in April 2011 followed by written submissions filed by the parties. In 2015 the Supreme Court called for additional evidence from the respondent as to the loss of profits suffered by the respondent through being prevented from building the four houses. The parties filed additional sworn statements on that topic, and then the court delivered judgment. Damages for the respondent's potential profits from the construction of the four houses were assessed at VT80,000. This sum was added to the unpaid settlement moneys to give the judgment sum of VT1,097,375.

6. The principal ground of appeal now advanced by the appellant is an extraordinary one. It is based on Section 12 of the Decentralisation Act [CAP. 230]. That section is in Part 3 of the Act which is headed "*Composition, Name and Duties of Local Government Councils*" Section 12 provides:

"12. Voting and quorum

(1) All decisions shall be determined by a majority of the votes of the elected members present. Each elected member present shall have the right to cast only one vote.

(2) The quorum required for meetings of the Council shall be more than half of the total number of elected members.

(3) In case of a tie vote, the Chairman shall have a casting vote".

7. Section 12 is concerned with the conduct of meetings of local government councils. It is not a section intended to govern the day to day administration and management of the affairs of a council. It would an impossible restriction upon a council's activities that a full meeting of council was required to vote on every financial transaction undertaken by the council no matter what the nature of that transaction. On the argument advanced by the appellant the purchase of a simple item of stationery would require a formal resolution by a majority of the

votes of the elected members of council present at a formally called meeting. Plainly this is not the intention of Section 12.

8. Recognising that the efficient management of a local government council requires a system for the authorisation of decisions necessary in the day to day running of its undertaking the Act provides for the enactment of by-laws (Section 9), standing orders (Section 10) and the setting up of a committee to be responsible for matters including for any general specific purpose which in the opinion of the local government council would be better regulated and managed by a committee (Section 11). In this case the appellant had established a Development Committee. The evidence does not disclose the extent or limits on the authority of that committee to deal with matters of the kind under discussion at the meeting on 12th August 2003. However the evidence is plain that the parties attended that meeting on the assumption that the Development Committee had authority to settle the respondent's claim on behalf of the appellant. As we have noted, the respondent and his lawyer attended the meeting at the invitation of the appellant. Members of the Development Committee were present at the meeting. Moreover, under the terms of the Contract Rules imposed on the respondent by the original contract entered into on 3rd April 1998, in the event of a dispute between the parties, the parties were directed to pursue settlement through discussion and agreement. On the evidence there is no reason to doubt that the Development Committee had authority to settle the respondent's claim.

9. The assertion now made that the settlement agreement is invalid because it was not approved by a majority of votes of the elected members of the appellant Council was not pleaded in the defence. It should have been if it was to be raised at trial.

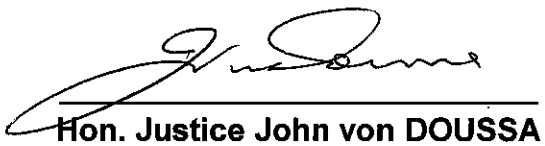
10. In our opinion the submission that the settlement agreement was invalid is totally misconceived and without any element of merit.

11. The appellant's subsidiary argument that it has been penalised by award of interest from the date when the claim was filed is equally without substance. The argument fails to understand the purpose of an award of interest. Such an award is intended to reflect the fact that during the period for which interest is awarded, the appellant has had the use of the money, and the respondent has been deprived of the use and benefit of the judgment sum. In no sense is the award a penalty. In the present case the respondent was in reality kept out of the benefit of his entitlement to the money payable under the settlement from the date of the settlement. In that respect the appellant is fortunate that interest on that part of the judgment did not backdate to 12 August 2003.

12. In our opinion this appeal is without merit. The appeal is dismissed with costs against the appellant. The respondent's costs if not agreed are to be taxed on the standard basis.

DATED at Port Vila, this 20th day of November, 2015

BY THE COURT



Hon. Justice John von DOUSSA