

**BETWEEN:** VANUATU NATIONAL COUNCIL OF  
WOMEN COMMITTEE (INC)  
Appellant

**AND:** MARIANNE BANI  
Respondent

*Date of Hearing:* Tuesday 12<sup>th</sup> April 2016 @ 11:00am

*Date of Judgment:* Friday 15<sup>th</sup> April 2016 @ 4:00pm

*Coram:* *Hon. Chief Justice Vincent Lunabek*  
*Hon Justice John von Doussa*  
*Hon Justice Ronald Young*  
*Hon. Justice Daniel Fatiaki*  
*Hon. Justice Dudley Aru*  
*Hon. Justice Mary Sey*  
*Hon. Justice David Chetwynd*  
*Hon. Justice Paul Geoghegan*

*Counsel:* *Saling Stephens for Appellant*  
*Less Napuati for Respondent*

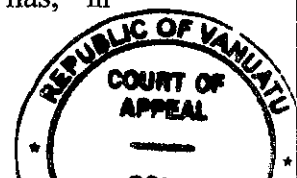
---

**JUDGMENT**

---

**Introduction**

1. In 2014 Ms Bani obtained Judgment for VT 1,050,320 against VNCW. In June 2015 VNCW unsuccessfully applied to the Supreme Court to stay enforcement of that judgment. This appeal challenges that decision. The appellant's case is that it has, in



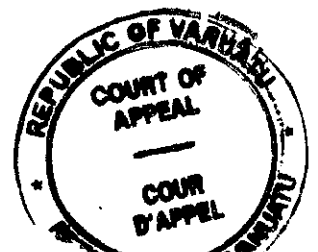
other proceedings before the Supreme Court against Mrs Bani sought damages and it would therefore be wrong to allow Mrs Bani to execute her judgment while that case remains unresolved.

### **Background**

2. After Mrs Bani obtained judgment against VNCW (in Civil Case 208 of 2013) the VNCW unsuccessfully appealed that judgment in May 2015.
3. In June of that year VNCW sought to stay enforcement on the ground that they had filed a Supreme Court claim (Civil Case 132 of 2015) against Mrs Bani seeking damages of over VT10.000.000 which was unresolved.
4. The application for stay was refused. The Judge concluded that the new proceeding could not be the basis for a stay. The Judge said that the new proceeding (132 of 2015) was identical to a counterclaim filed by the VNCW in the earlier proceedings (208 of 2013) which had been dismissed by the Supreme Court Judge in 2014. As the Judge noted VNCW did not appeal the dismissal of the counterclaim.

### **This Appeal**

5. VNCW in their submissions accept the recent proceedings (132 of 2015) were identical to the counterclaim in the earlier proceedings (208 of 2013). Counsel argued however that contrary to the judgment of the Supreme Court in 208 of 2013 (which said the counterclaim was dismissed) the counter claim has withdrawn by Counsel for VNCW during the course of the trial of Civil Case 208 of 2013. This meant, Counsel submitted VNCW was free to bring the counterclaim again as an independent case. VNCW's counterclaim had not been dismissed thus it was entitled to bring new identical proceedings. This it had done in Civil Case 132 of 2015.



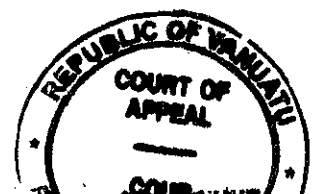
6. Counsel made this same submission to the Supreme Court at the hearing of the stay application. The Judge rejected the submission. He said he had checked the records and could not find any record of a withdrawal. The Judge said even if the proceedings had been withdrawn Mrs Bani was entitled to the fruits of her 2014 judgment.
  
7. The Judge's notes of the trial of Civil Case 208 of 2013 are available. Until the day before trial VNCW had not filed any evidence in support of their counterclaim. A sworn statement of Leias Cullwick, which was said to be evidence in support of the counterclaim, was filed the day before the hearing. The statement was refused to be admitted in evidence by the Judge given its late filing. The case then proceeded before the Judge. Mrs Bani was called to give evidence. There was extensive cross examination of Mrs Bani by Counsel for the VNCW. When counsel for Mrs Bani re-examined her about the counterclaim the Judge's notes record.

*“ Stephen- Counter-claim is withdrawn*

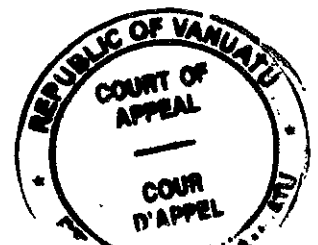
*Court – Records that Counter-claim is withdrawn”.*

### **Discussion**

8. Where Counsel considers a judgment does not reflect the orders made during trial the appropriate course is to apply to the Judge to recall the judgment. If the Judge is convinced by the application he or she may recall and reissue the Judgment with the correction. VNCW has never adopted this course nor has it ever challenged by appeal the judgment in Civil Case 208 of 2013 dismissing the counterclaim. However even if Counsel for VNCW did seek to withdraw the counterclaim mid- trial in Civil Case 208 of 2013 we consider it would be an abuse of process to allow VNCW to now bring new proceedings identical to the counterclaim in the circumstances of this case.



9. The principle of law that a party to a proceeding must bring all of its case before the Court at one time and that the Court will not permit one dispute to be reopened is well established. (See **Financière du Vanuatu Ltd .v. Morin 2008 VUCA 4 and the cases referred to in the judgment**).
10. The trial of the claim and counterclaim was commenced before the Supreme Court in September 2014. As we have noted there was an objection, granted, to the admissibility of a late sworn statement from VNCW. The trial then commenced with, an opening, the primary witness was called, and cross examined. It was only when Mrs Bani was giving evidence about the counterclaim in re-examination that VNCW's counsel decided to withdraw the counterclaim.
11. We are satisfied that VNCW had the chance to bring all of its case before the Court at the hearing of the claim and counterclaim in Civil Case 208 of 2013. As this Court said in **Financière du Vanuatu Ltd**.
- “the Court will not permit the same parties to open the same dispute by raising a further matter which might have been brought forward at the time the issue was first raised”.*
12. It would be an abuse of process to allow VNCW to have another attempt to prove its counterclaim in separate proceedings (132 of 2015).
13. In **Johnson.v.Gore Wood and Co** [2000] UKHL 65, (2001) 1 AllER 481 at 489 the House of Lords reviewed the requirement of abuse of process in these circumstances.



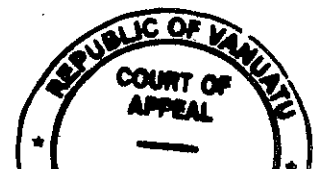
14. The Judges note the underlying public interest in finality of litigation and the importance of a party not being "*twice vexed in the same manner*". They said an abuse of process could arise if the claim or defence should have been raised in the earlier proceedings. Further if the claim involved a degree of harassment of a party this would ordinarily point to an abuse of process.

15. Here, as we have said, the claim was in fact raised and partially heard in the earlier proceedings. Further there is an element of harassment of Mrs Bani in these proceedings. The claim and counterclaim were filed in 2013, heard and determined in 2014 and the appeal dealt with in 2015. Then after the proceedings in Civil Case 208 of 2013 were exhausted VNCW attempted to resurrect the counterclaim many months after the original judgment and attempted to prevent Mrs Bani enjoying the fruits of her judgment. We consider this is a form of unjust harassment of Mrs Bani also justifying the conclusion there is an abuse of process.

16. Given this conclusion there are no valid grounds upon which VNCW could properly obtain a stay of execution of the judgment in Civil Case 208.2013.

17. We therefore agree with the conclusion of the Supreme Court Judge on the stay application.

18. Finally during oral submissions on this appeal we discovered that on 1<sup>st</sup> April 2016 an application by Mrs Bani in Civil Proceeding 132 of 2015 to strike out the claim was granted by the Master. Thus when we heard this appeal there were no live proceedings by VNCW seeking damages against Mrs Bani. In those circumstances



VNCW could not maintain they had current proceedings against Mrs Bani as they submitted.

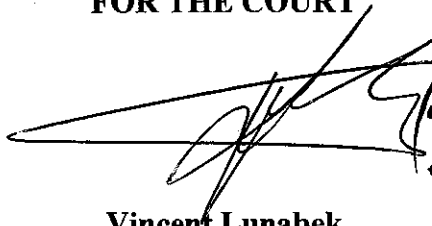
**Result**

19. The appeal is dismissed. In his judgment of July 2015 dismissing the stay application the Judge said the application was frivolous and vexatious.

20. We consider indemnity costs in the circumstances are appropriate. Counsel for Mrs Bani sought costs of VT 50,000. We consider that sum is an appropriate award and order costs of VT 50,000.

**DATED at Port Vila this 15<sup>th</sup> day of April 2016**

**FOR THE COURT**



**Vincent Lunabek**

**Chief Justice**

