

BETWEEN: Huhu Gaituvhwa Association Committee
Appellant

AND: Rosemary Leona Spriggs
First Respondents

AND: Richard Leona
Second Respondent

AND: Derek Leona
Third Respondent

Coram: *Hon. Chief Justice Vincent Lunabek*
Hon. Justice John von Doussa
Hon. Justice John William Hansen
Hon. Justice Dudley Aru
Hon. Justice Gus Andrée Wiltens
Hon. Justice Viran Molisa Trief

Counsel: *Mrs. M. G. Nari for the Appellant*
Mr. M. Hurley for the first, second and third Respondents

Date of Hearing: 12th November 2019

Date of Judgment: 15th November 2019

JUDGMENT

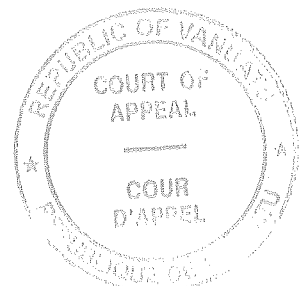
Introduction

1. The parties have been involved in a number of proceedings both before this Court and the Courts below. This is an appeal against the dismissal of a claim for damages by the primary Judge in the Court below.

Background

2. On 28 September 2015, a default judgment was entered against the National Bank of Vanuatu (NBV), Mrs Rosemary Leona Spriggs and Mr Richard Leona and Mr Derek Leona on a number of substantive claims made against them. Paragraph 6 of judgment said:-

"6. Damages and costs be reserved"



3. Aside from the NBV, the other three defendants applied to have the default judgment set aside. That application was subsequently refused. A further application was then made to this Court in **Derek Leona & Ors v Huhu Gaituvhwa Association Committee** [2018] VUCA 3 seeking leave to appeal out of time the refusal to set aside the default judgment. That application was also dismissed.
4. On the 17 July 2018, Huhu Gaituvhwa applied for damages. Following a five day trial, on 10 June 2019 the claim for damages was dismissed in its entirety.

Decision

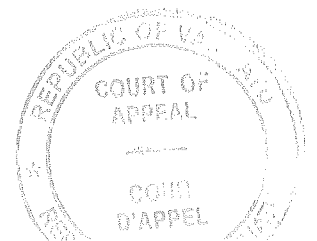
5. In his decision the primary Judge made a number of observations concerning Huhu Gaituvhwa as a charitable association registered under the Charitable Associations Act [CAP 140]. Namely that there was no evidence of a registered Committee as required by the Act; that the constitution of Huhu Gaituvhwa was not complied with in filing the claim; that Mrs Nari appeared to be conflicted in representing the appellant; and finally that the conduct of business by Huhu Gaituvhwa as a charitable organisation was contrary to the Act and its own constitution.
6. For these reasons the primary Judge dismissed the claims for loss of kava under agreements with Alexandre Nguyen and Varin Nils as without foundation. In the same vein he dismissed the claim for cooperative goods for three cooperatives as having no legal basis.
7. The primary Judge also found no basis for claims for unauthorised withdrawals and dismissed those as well. For the remaining claims for investigation, legal costs, costs of Police travel, repair costs and costs of the extraordinary meeting the primary Judge found that these costs were incurred as part of the administrative functions and proper operation of the association. These claims were also dismissed.
8. In conclusion, the primary Judge adopted the submissions of the respondents and found no liability against them. As liability was not established, the primary Judge concluded that there was no basis to assess damages and dismissed the claim in its entirety.

Appeal

9. The appeal is against the findings of the primary Judge referred to above and the fact that the primary Judge accepted the respondents' submissions and relied on them in dismissing the claim.

Discussion

10. Mr Hurley conceded that at trial he did not rely on any of the matters at paragraph 5 above. He does not rely on them in the appeal.



11. The starting point for consideration is what the Court of Appeal said in its decision referred to above, at paragraphs 19 and 20 of its judgment:-

"19. It became apparent during oral argument that the parties have been under a misapprehension that order 6, which reads "damages and costs reserved" was a default judgment under Rule 9.3 for an amount to be determined by the Court through the process of assessment provided in Rule 9.4. We considered this is not the meaning and effect of order 6. Order 6 recognizes that the association in its statement of claim sought an order for damages to be assessed. The order does no more than reserve for later consideration that part of the claim. The merits of that claim are not addressed by order 6. The association's several claims for damages remain to be considered by the Court, both on the question whether the applicants have any legal liability to the association, and if so for what amount.

20. The nature of the claims for damages made in the Supreme Court is not such that an overall judgment on liability could be entered for damages to be assessed at a later date. The complains made by the association are that numerous individual transactions have occurred each of which has led to particular financial losses. Consideration of the alleged justification for each transaction would be closely tied up with the particular financial loss said to have followed. Each transaction will have to be separately considered as the trial of the claims proceeds. Hopefully however, the parties would before trial agree, or at least identify in a schedule, each transaction in question, the monetary consequence of the transaction, and the applicants' explanation and asserted justification for the outlay which followed. Of necessity this will be a time consuming and painstaking exercise. The parties would be well advised to confer over how best to move forward to resolve the damages claim before more is spent on lawyers and Court fees than the alleged claims justify."

(emphasis added)

12. The rules for pleading a claim for damages are quite specific. Rule 4.10 provides:-

"4.10 Damages

(1) If damages are claimed in a claim or counterclaim, the claim or counterclaim must also state the nature and amount of the damages claimed, including special and exemplary damages.

(2) If general damages are claimed, the following particulars must be included:

(a) the nature of the loss or damage suffered; and

(b) the exact circumstances in which the loss or damage was suffered; and

(c) the basis on which the amount claimed has been worked out or estimated.

(3) In addition, the statement of the case must include any matter about the assessment of damages that, if not included, may take the other party by surprise."

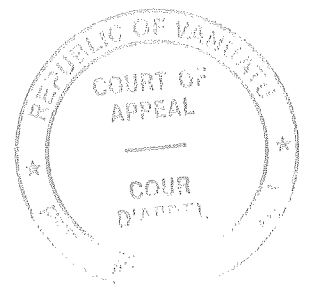
13. Given the manner in which the claim was pleaded, the Court of Appeal at paragraph 20 was helpful in setting out what was required to be done before the trial and even suggested that it



may be worthwhile resolving the damages issue before costs escalate. That did not eventuate and the appellants filed their application for damages which simply claimed:-

- a) Unauthorised expenditures – VT 33,186,720
- b) Unauthorised withdrawals - VT 20,062,882
- c) Loss of cooperative goods - VT 10,500,000
- d) Loss of joint venture agreement (kava) - VT 168,750,000
- e) Loss of agreement (Varin Nils) – VT 36,150,000
- f) Investigators costs – VT 221,000
- g) Legal costs – VT 3,472,850
- h) Costs of police travelling – VT 50,000
- i) Costs of repairs – VT 79,090
- j) Repairs to head office – VT 568,820

14. These several items total VT 273, 304, 934. Items c) to j) are matters which were not pleaded in the claim therefore could not possibly succeed.
15. Second, there cannot be an assessment without first establishing liability: whether the respondents are liable for the damages claimed.
16. The evidence led by the respondents in the Court below established firstly that the office keys for the Lolong offices of Huhu Gaituvhwa were removed from Mr Derek Leona by the custom land owner and Mr Leona no longer had those keys with him as at the date of trial. Second, the evidence showed that Mrs Rosemary Leona Spriggs was validly appointed in 2014 to be employed as Managing Director of Huhu Gaituvhwa pursuant to a resolution of the association. There was no response filed to her sworn statement and her sworn evidence remained unchallenged as she was not cross examined at trial.
17. Despite the advice of the Court of Appeal the appellant has failed to particularise the damages claimed. Mrs Nari submitted this Court should only deal in this appeal with the primary Judge's failure to hear and consider the evidence adduced by the appellant. That is not correct. This Court needs to be satisfied any such evidence would have established the damages claimed.
18. As noted there remains a total failure to particularise. This is compounded by the fact that most of the losses claimed occurred after Mrs Spriggs was dismissed during a period when the Nari group was in charge and running the business affairs of the appellant. This is clearly established by the evidence of Mrs Spriggs and the business documents exhibited to her sworn statement. No losses have been particularised or proven.
19. Mrs Spriggs' evidence alone is enough to show that the respondents cannot be held liable for the damages claimed.
20. In our opinion the claim in the Supreme Court was correctly.

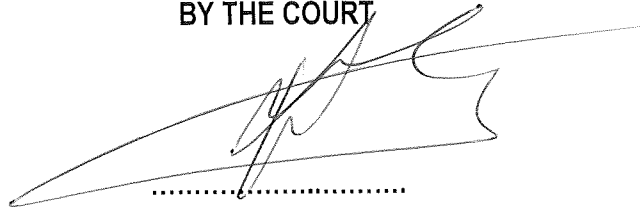


Result

21. On that basis the appeal is dismissed. The respondents are entitled to costs of the appeal on a standard basis to be agreed or taxed.

DATED at Port Vila this 15th day of November, 2019

BY THE COURT



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Hon. Vincent Lunabek
Chief Justice

