

BETWEEN: DINH VAN THAN
Appellant

AND: ETIENE ROBERT
Respondent

Coram: *Hon. Chief Justice Vincent Lunabek
Hon. Justice John Hansen
Hon. Justice Dudley Aru
Hon. Justice Viran Molisa Trief*

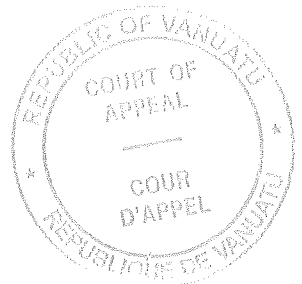
Counsel: *Mr. Robin Kapapa for the Appellant
Mr. Junior Garae for the Respondent*

Date of Hearing: 6th November 2019

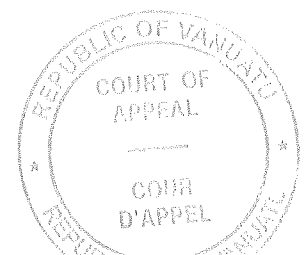
Date of Judgment: 15th November 2019

JUDGMENT OF COURT

1. This appeal was filed on 26 August 2019 against a judgment of the Supreme Court dated 26 July 2019, wherein the primary Judge issued a default judgment in the following:-
 1. The Defendant pay the Claimant as follows:
 - a) VT1, 072, 848 as overtime payment;
 - b) VT8, 000 court fee
 - c) VT50, 000 court costs
 - d) Total – VT1, 130, 848
2. Initially, the claim in these proceedings were issued by the Respondent against one Serge Laloyer, the Manager of Dinh G. Shipping Santo ("the Business").



3. The Business was run under that name but it was not a company set up as a corporate body under the Companies Act No. 25 of 2012.
4. During the hearing of this appeal, Counsel for the Respondent conceded that upon searching the records of the registration of companies, it was discovered that "Dinh G. Shipping, Santo" was a business name. The registration was renewed back in 2006 and expired in September 2007. It was not incorporated as a corporate body.
5. On 7th July 2017, upon application, the default judgment dated 10th May 2016 against the Manager of the Business was set aside on the basis that it was made against "the wrong person" (defendant).
6. The Judge further granted leave to the Respondent to file and serve a further Amended claim naming "Dinh G. Shipping" "Limited" as defendant.
7. The learned Judge also directed that the Respondent shall serve the Amended claim on the registered office of the company.
8. As a result and consequently, the Amended claim and court documents including the Notices of conferences and hearing were served on the Manager of the Business at Luganville, Santo. The learned Judge and Counsel for the Respondent treated the said business name "Dinh G. Shipping" as a corporate body and they rely on the corporate body rules to effect the service of the Amended claim and other court related documents. The right and proper defendant is the owner of the above business "Dihn G. Shipping".
9. We consider the learned Judge erred in his orders directing the Respondent to serve the amended claim at the office of "Dinh G. Shipping."
10. Rules 5.2 and 5.3 of the Civil Procedure Rules require that the claim and response form must be served on the defendant personally within 3 months of the date on which the claim was filed. This was not the case here.
11. In the present case, the Amended claim and other court documents including hearing notices were served on Serge Laloyer, the Manager of the Business. The service of the claim was not personally served on the proper and right



defendant as the owner of the business. The Manager of the Business is an employee of that business but not its owner.

12. In a corporate situation, its director, or its secretary and members of the Board of directors of the company could be served with the claim against the company. This is not the case for a business registered under a business name. The service of the Amended claim effected on the Manager of the Business was bad in law. As the service of the claim and related court documents were materially defective, the default judgment of the Supreme Court dated 26 July 2019 cannot stand.
13. In these circumstances, we make the following orders:
 1. The appeal is allowed.
 2. The judgment of the Supreme Court dated 26 July 2019 under appeal, is set aside.
 3. This case is remitted back to the Supreme Court for re-management and trial.
 4. Since the amount claimed is a small amount, parties are encouraged to settle the matter between them before it evaporates into legal and other wasted costs.
 5. The costs of this appeal are in the cause.

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

BY THE COURT



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Vincent Lunabek
Chief Justice

