

(Civil Jurisdiction)

**BETWEEN: VANUATU COPRA & COCOA EXPORTERS
(VCCE) LIMITED**

Claimant

**AND: VANUATU COCONUT PRODUCTS LTD
(VCPL)**

First Defendant

AND: REPUBLIC OF VANUATU

Second Defendant

Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

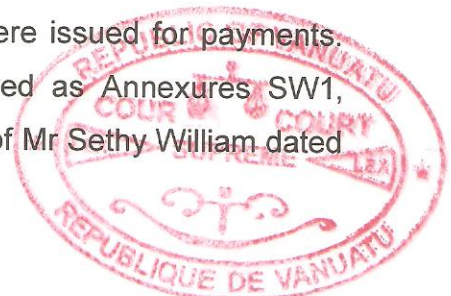
Mr James Tari for the Claimant
Mr Godden Avock for the First and Seconds Defendants

Date of Hearing: 27th April 2011
Date of Judgment: 12th August 2011

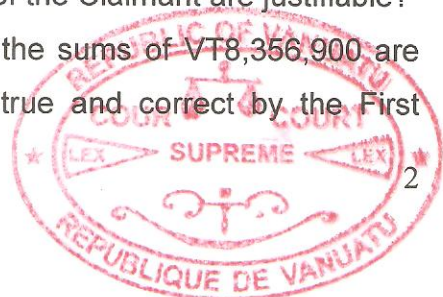
JUDGMENT

1. This claim relates to unpaid Invoices dated –
 - 09/11/2009 - 377 for VT1,113,150
 - 16/11/2009 - 378 for VT2,009,000
 - 24/11/2009 - 379 for VT 827,000
 - 01/12/2009 - 383 for VT1,925,600
 - 01/12/2009 - 384 for VT2,482,150

Total VT8,356,900
2. All the above amounts were certified by the First Defendant as correct figures. Upon those certifications, invoices were issued for payments. These certifications and invoices are annexed as Annexures SW1, SW2, SW3 and SW4 to the sworn statement of Mr Sethy William dated 30th September 2010.



3. The only reason for non-payment of the above invoices is that subsidy funds for subsidy program in 2009 had been depleted. As such, it is the defence case that the Government had no contract with the Claimant to pay these outstanding invoices. Two issues have been raised. The first is whether there existed a contract.
4. From the evidence before the Court, it is clear there is no specific written contract in relation to subsidies paid for the subsidy program beginning 25th May 2009 to December 2009. However, there is also ample evidence to show that the above sums as claimed were certified as correct and invoices were issued for payments. There was written assurance by Mr Gabriel Bani, General Manager of Vanuatu Commodities Marketing Board (the VCMB) dated 7th December 2009 that subsidy refunds from exports up to 4th December 2009 would be withheld until January 2010. He indicated very clearly that when the next subsidy is released in January 2010, settlement of outstanding copra subsidies invoices should be settled before setting subsidy rates for 2010. This letter was sent to all copra buyers and exporters including the Claimant. This letter is annexed as Annexure SW2 to the sworn statement of Mr Sethy William dated 20th August 2010.
5. From those documents, it is clear the Government through VCMB and the First Defendant had committed themselves to refund this Claimant and other buyers and exporters for invoices from September through December 2009. They are therefore bound by their advices and assurances which in the Court's view amount to implied agreement. They cannot now seek to escape from those obligations.
6. The second issue is whether the claims of the Claimant are justifiable? The Court concludes that the claim for the sums of VT8,356,900 are justifiable. These were all certified as true and correct by the First



Defendant. They could not now deny those certifications were not correct by saying that the Claimant had not verified which months copra was purchased. These were matters for determination before certifications was made and not after. Mr Temakon's evidence by sworn statement dated 13th September 2010 (Exhibit D1) lacks credibility and cannot be relied upon.

7. The Claimant has claimed for loss of profit and general damages. The Court is of the view the Claimant is not entitled to these. Instead, the Court will allow interests on the outstanding sum of VT8,356,900 at 5 percent per annum from September 2009 to the date of filing of proceeding which is April 2010.
8. In addition, the Claimant is entitled to their costs of and incidental to this proceeding.
9. The final orders are –
 - (a) There be judgment entered for the Claimant.
 - (b) The Defendants pay to the Claimant the outstanding sums of VT8,356,900.
 - (c) The Defendant will pay interests on VT8,356,900 at 5 percent per annum from September 2009 to April 2010.

DATED at Luganville this 12th day of August 2011.

BY THE COURT


OLIVER A. SAKSAK
Judge

