

(Civil Jurisdiction)

**BETWEEN: CHARLEY ULAS**

Claimant

**AND: NORTHERN ISLAND STEVEDORING COMPANY  
LIMITED**

First Defendant

**AND: FREDDY NAWALU**

Second Defendant

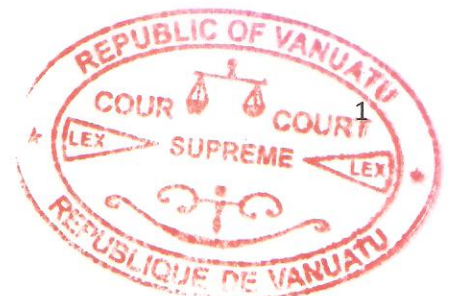
Mr Justice Oliver A. Saksak

Miss Jane Tari for the Claimant  
No appearance by First Defendant  
Second Defendant in person unrepresented

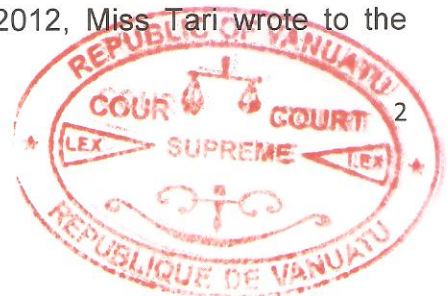
Date of Hearing and Decision: 6<sup>th</sup> September 2012

## DECISION

1. This case was scheduled for trial hearing today by Notice dated 12<sup>th</sup> July 2012.
2. The First Defendant made no appearance personally or by Counsel. In fact after the First Defendant had a successful appeal in about 2010 when the Court of Appeal referred the case back for a retrial, the Court has relisted the matter on 14<sup>th</sup> October 2011 for Conference on 26<sup>th</sup> October 2011. On that date the First Defendant did not appear. The Second Defendant appeared in person. The Court ordered the Second Defendant to file defences and sworn statements within 21 days and for the Claimant to respond within 14 days thereafter. The return date was fixed for 12<sup>th</sup> December 2011 for a pre-trial conference.



3. The Defendants have had service of the Amended Claim and statements since 27<sup>th</sup> October 2011 when Mr Rex Elong effected service on the Second Defendant at Niscol premises. Anyhow, the Defendants made no appearances on 12<sup>th</sup> December 2011. Miss Tari sought a trial date which was fixed for 1<sup>st</sup> February 2012. Directions were issued for payment of Hearing Fees at that conference hearing.
4. On 1<sup>st</sup> February 2012, the First Defendant made no appearance. The Second Defendant appeared in person. Both the Claimant and the Defendants had not paid any trial fees and therefore the hearing was vacated and adjourned to 7<sup>th</sup> March 2012. Further directions were issued that trial fees be paid up within 7 days.
5. On 6<sup>th</sup> March 2012, the Court received a letter by Mr Warsal of Counsel for the First Defendant informing that he had had talks with Miss Tari and that by Consent they had agreed that the hearing on 7<sup>th</sup> March 2012 be vacated because –
  - (a) All parties had not paid trial fees;
  - (b) The Second Defendant had not been served with any pleadings and sworn statements by the Claimant so as to file a defence and reply; and
  - (c) The First Defendant was in the process of filing its sworn statements.
6. The Claimant had indeed paid a portion of his fees of VT10,000 on 27<sup>th</sup> February 2012. On 7<sup>th</sup> March 2012, Miss Tari appeared and informed the Court about Mr Warsal's letter of 6<sup>th</sup> March and sought an adjournment by Consent for the reasons stated under paragraph 5 (a) – (c) above. An adjournment was granted to 2<sup>nd</sup> May 2012. On 29<sup>th</sup> March 2012, the Sheriff served both the First and Second Defendants with copies of the Order of 7<sup>th</sup> March 2012.
7. On 2<sup>nd</sup> May 2012, the Judge attended a Parole Board Meeting in Port Vila and naturally the hearing was vacated. On 29<sup>th</sup> May 2012, Miss Tari wrote to the



Court seeking a relisting of the matter. On 12<sup>th</sup> July 2012, a Notice was issued calling the matter for trial hearing on 6<sup>th</sup> September 2012.

8. Today the Second Defendant appears in person. He has not paid any hearing fees and neither has Niscol. The Claimant has indicated through Counsel he has VT5.000 in cash as the balance of his trial fees.
9. The Court notes that there is no evidence by the First Defendant. The Second Defendant was asked by the Court to comment on the Claimant's claims against him. Although what he said was not under oath, the Court accepts and treated it as his verbal submissions and arguments. The Court recorded what he said in the following manner:-

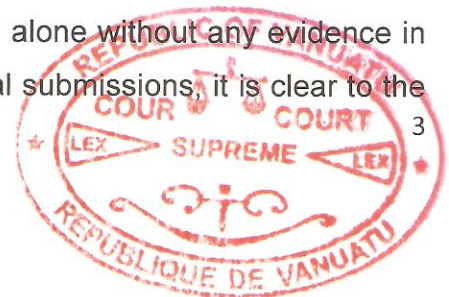
*"I received very clear instructions from Mr Wilson Rotul, the Chairman of Niscol Board. He drove the vehicle to me on a Sunday morning and told me to go to Fanafo and attend to another vehicle which had broken down there. I followed his instructions. I went to Fanafo, and towed the other vehicle back to wharf. He then told me to drive the vehicle home, which was not really roadworthy. On my way home, the accident happened. That is what happened. I made a statement to the Police about it in a criminal case. As to summary judgment, I have no objection."*

10. Miss Tari then sought to admit all the statements deposed to by the Claimants in support his amended claims, under those circumstances.

These are the statements dated –

- (a) 17<sup>th</sup> October 2008 – Exhibit C1.
- (b) 16<sup>th</sup> March 2009 – Exhibit C2.
- (c) 7<sup>th</sup> April 2009 – Exhibit C3; and
- (d) 6<sup>th</sup> September 2009 – Exhibit C4 in support of his application for summary judgment.

Those evidence stand unchallenged by the First Defendant who did file an amended defence on 4<sup>th</sup> February 2009. Standing alone without any evidence in support and in light of the Second Defendant's oral submissions, it is clear to the





Court that the defence of the First Defendant cannot be sustained and is accordingly dismissed.

11. Accordingly, the Court gives summary judgment in favour of the Claimant based on his unchallenged evidence. The Court finds the First Defendant vicariously liable with the Second Defendant. The Court is satisfied the Second Defendant was driving under clear instructions of the then Chairman of Niscol. He drove in the course of his employment despite it being a Sunday. The Second Defendant had performed a duty for and on behalf of Niscol for their benefit. He had clear instructions to drive the vehicle home. The vehicle belongs to Niscol. Under those circumstances all liability must fall on Niscol as the employer of the Second Defendant.

12. Accordingly, the Court enters judgment in favour of Charley Ulas the Claimant against Niscol for the total sum of VT4,037,300 made up as follows:-

- (a) General damages – VT600,000.
- (b) Special damages – VT3,437,000.

13. The Claimant is entitled to 5% interest per annum on the sum of VT4,037,300 beginning on 6<sup>th</sup> September 2012 until the whole sum is paid off in full.

14. Finally, the Claimant is entitled to his costs of and incidental to the proceeding on the standard basis, as agreed or determined by the Court.

**DATED at Luganville this 6<sup>th</sup> day of September 2012.**

**BY THE COURT**

  
**OLIVER A. SAKSAK**

**Judge**

