

BETWEEN: GASPARD PALAUD

Claimant

**AND: LUGANVILLE
MUNICIPALITY**

Defendant

Coram: *Mr. Justice Oliver A. Saksak*

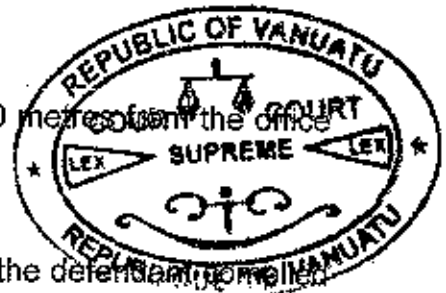
Counsel: *Mr. Wilson Iauva for the Claimant
Mr. Eric Csiba for the Defendant*

Date of Hearing: 26th August 2013

Date of Decision: 30th August 2013

DECISION

1. This is a reserved decision.
2. In October 2008, the defendant (LMC) as Claimant filed an urgent application seeking the following orders against Gaspard Molipalud (the Claimant) that:-
 - (a) The defendant (claimant) be restrained from exercising or attempting to exercise any power or control over LMC in his capacity as Town Clerk or from making any representation that he had such power and control.
 - (b) The defendant to peacefully deliver up to LMC, their lawyer or the police keys to offices, books, vehicle, stamps and other items belonging to LMC in his possession and custody.
 - (c) The defendant be restrained from threatening, assaulting or abusing the applicant and staff members of LMC.
 - (d) The defendant be restrained from coming within 10 metres of the office of LMC.
 - (e) The Police in Luganville be ordered to ensure that the defendant complies with all orders.



(f) Costs be in the cause.

3. At the hearing of the application, Mr. Felix Laumae acted as Counsel for LMC and Mr. Saling Stephens acted as Counsel for the Claimant.

4. The application was heard on 31st October and also on 3rd November 2008. Judgment was published and handed down on 3rd November 2008. The Court found that –

(a) The Claimant's appointment was valid and LMC had no arguable case.

(b) As Town Clerk at the time the Claimant had not been lawfully dismissed.

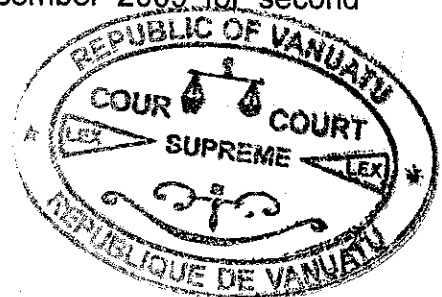
The application by LMC was therefore dismissed and costs were reserved.

5. The applicant did not appeal that judgment. The Claimant therefore filed Civil Case No. 30 of 2009 on 7th October 2009 claiming damages for breach of contract, housing allowances, outstanding leave, gratuity, severance, three months notice, hardship and financial suffering and 6 times multiplier. The total claim was VT4,950,000 excluding the 6 times multiplier.

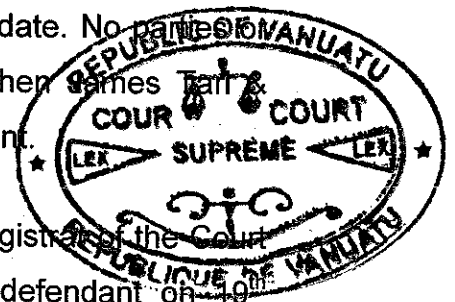
6. The claim was served on Mr. Andrew Ala of LMC by Leisande Robertson on 16th October 2009 at 0740 a.m. Mrs. Robertson deposed a statement as to service on 19th October 2009.

7. A response was filed on 29th October 2009 indicating that all claims were disputed. It appears Ronald Warsal & Co. Lawyers filed the response because they refiled on 10th November 2009.

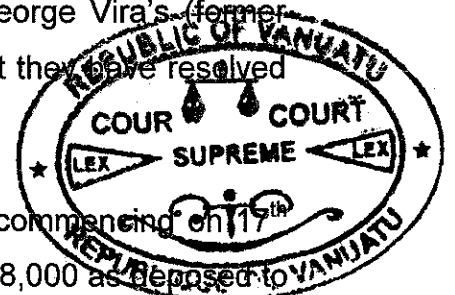
8. On 10th November 2009 when the matter was called for conference, Mr. Stephens was present for the Claimant and Mr. John Less Napuati was present for LMC. The Court issued clear directions requiring the defendant to file and serve their defence, counter-claims and sworn statements within 21 days and for the claimant to file and serve responses within 14 days thereafter. The matter was returnable on 16th December 2009 for second conference but nothing transpired on that date.



9. On 17th December 2009, the claimant filed a request for default judgment on liability. The application was returnable for hearing initially on 24th May 2010 but nothing transpired on that date and a further notice was issued on 2nd August 2010 listing the request for hearing on 10th August 2010.
10. On 10th August 2010 Mr. Stephens pressed the Court to enter default judgment as no defence had been filed pursuant to Court Orders of 10th November 2009. No Counsel was present for LMC on that date. There had been clear proof of service by Leisande Robertson. Default Judgment as to liability was entered with directions that –
- (a) The Claimant to file statements as to damages within 14 days; and
 - (b) The Defendant to file responses within 14 days thereafter.
- A hearing date was to be allocated and notified and costs were made to be in the cause. The returnable date was 27th September 2010.
11. On 27th September 2010, the Claimant was present in person. There was no appearance by the Defendant. The Court noted that the Attorney General had filed a Notice of Beginning to Act for the defendant with a request for 14 days adjournment. The request was granted and the matter was returnable for 9th November 2010. Mr. Stephens wrote on 2nd November 2010 to seek an adjournment because he had other Court commitments in Port Vila. The matter was adjourned.
12. The Attorney General filed an application to set aside default judgment on 12th November 2010 together with the sworn statement of Justin Ngwele in support. In addition, an application for suspension of enforcement was also filed on 12th November 2010.
13. The last time the Court sat was 27th September 2010. The applications by the Attorney General have never been heard by the Court to date. No parties or counsel took any further steps until 26th August 2013 when James Tari & Partners filed an application to set aside the default judgment.
14. On 12th April 2013, James Tari & Partners wrote to the Registrar of the Court indicating that they had received instructions from the defendant on 10th March 2013 to act and defend the action. They attached a draft application among others.



15. On 14th April 2013, Counsel filed sworn statement from Marinette Melterovo, Helsi Nalau, Josiane Tabiaga and Cherol Ala in support of the application.
16. On 7th June 2013, Mr. Kapapa filed a Notice of beginning to act for the Claimant and filed a response to the application on the same date.
17. On 17th June 2013, Mr. Csiba filed a notice of beginning to act for the defendants. Finally on 26th August 2013 Mr. Csiba filed the reasons for seeking to set aside default judgment.
18. From 27th September 2010 until 12th April 2013 this matter was left idle for some 2 years and 2 months. The Claimant did not take any active part. There is no record of Mr. Stephens filing a notice of ceasing to act. There are no records of notices of ceasing to act by Ronald Warsal Lawyers, the Attorney General or Trans-Melanesian Lawyers.
19. The Court has no record of any defences filed by any lawyers representing the defendant. Mr. Warsal did file a response on 29th October 2009.
20. The first issue now is whether the defendant was properly represented from the date of filing of the claimant's claims? The answer must be in the affirmative. And they have had three reputable law firms of Ronald Warsal Lawyers, the State Law Office and Trans-Melanesian Lawyers as defence counsel. To take them more than 2 years to file sworn statements which they could easily have done in October 2009 is unacceptable and intolerable. To make matters worse, the statements were filed without any defences and/or counter-claims.
21. The reality about this case is that the persons in authority at the time did not wish to proceed against the defendant (now claimant) in Civil Case No. 42 of 2008.
22. John Timothy's statement dated 9th March 2010 and George Vira's (former mayor) statement of 24th February 2010 show clearly that they have resolved the matter.
23. That explains why LMC took steps to pay the claimant commencing on 17th February 2010 until 18th June 2010 the amount of VT1,068,000 as opposed to

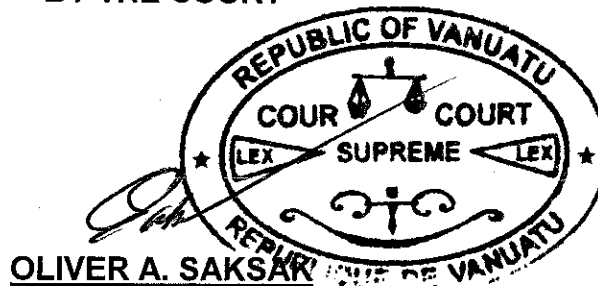


by Josiane Tabiaga and the claimant himself (see statement of 2 November 2010).

24. The second issue is whether the default judgment should be set aside? The answer is in the negative. The application is therefore dismissed.
25. As far as the Court is concerned the matter is settled. The Claimant has been paid VT1,068,000. From the date of filing of an application by the Attorney General in November 2010 the Claimant did little or nothing at all to pursue the balance of his claims against LMC. His last payment was made on 18th June 2010. Since 18th June 2010 to 14th April 2013 the Claimant did nothing to enforce his default judgment. That was a period of 2 years and 4 months.
26. On the other hand LMC has not filed any defence or counter-claims to set-off the claimant's claims.
27. Under those circumstances, there is no need to re-open the case. It would put the parties to unnecessary legal costs and time for what has already been settled. The matter is best left where it falls. Civil Case No. 30 of 2009 is now hereby dismissed pursuant to the Court's powers under Rule 9.10(1) and (2)(b) and (d) of the Civil Procedure Rules No. 49 of 2002 with no order as to costs.
28. But concerning the defendant's application, it has put the Claimant to extra cost and time. He is therefore entitled to his costs of and incidental to the application on the standard basis as agreed, or be determined by the Court.

DATED at Luganville this 30th day of August 2013.

BY THE COURT



Judge