

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

Civil Case No. 46 of 2014

BETWEEN: JEAN JACQUES & JEAN YVES GALINIE
Claimants

AND: JOELLE GALINIE
First Defendant

**AND: BOULANGERIE MILO LA PARISIENNE
LIMITED**

Second Defendant

Coram: *Mr. Justice Oliver A. Saksak*

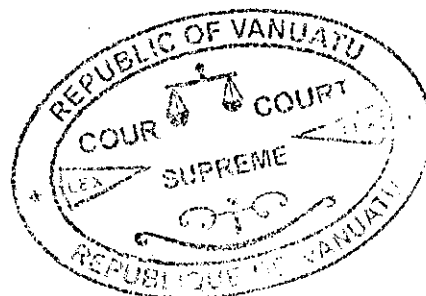
Counsel: *Justin Ngwele of Indigene Lawyers for the Claimants
Felix Laumae of Trans- Melanesian Lawyers for the Defendants*

Date of Hearing: *7th August 2014*
Date of Decision: *26th September 2014*

JUDGMENT

Introduction And Background Facts

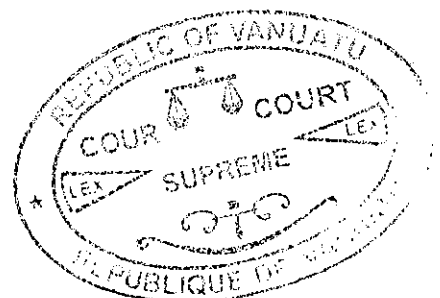
1. The Claimants are brothers. The First Defendant is their elder sister. They are the surviving siblings of the late Emile Galinie and Jessie Galinie. The late Emile Galinie incorporated a Company known as Boulangerie Milo La Parisienne Limited, the Second Defendant herein (the Company). The Company had a total of 1.220 shares. The late Emile Galinie held 910 shares and his wife late Jessie Galinie held 310 shares. Both were shareholders of the Company until Jessie Galinie passed away and her shares were transferred to her husband.
2. The late Emile Galinie became the sole shareholder. In his life- time he signed a declaration of trust in which he held 600 shares under trust for the benefit of his three children namely the two brothers (as Claimants) and their sister, (first defendant). The other 620 shares the deceased held in his own right.
3. After the passing of late Emile Galinie on 9th June 2010, the first defendant applied for letters of administration of the estate of her father. The Court granted her letters of administration on 4th December 2013.



4. The Claimants were employed by the Second Defendant and were paid monthly salaries of VT 200,000 until 31st January 2014 when their salaries were stopped by the First Defendant. Further the Second Defendant removed the keys to the bakery and the cash box from the Claimants pursuant to the letters of administration. The First Defendant further took steps to prevent the Claimants from entering the premises of the Second Defendant.
5. On 16th January 2014 Counsel for the Defendants wrote to Barrett & Partners advising them to file relevant document with the Company registry to reflect the grant of administration to her in respect of the shares and director of the Second Defendant.

Claims And Reliefs

6. The Claimants claim that-
 - a) They are employed by the Second Defendant and are entitled to their monthly salaries.
 - b) They are joint shareholders of the Second Defendant by reason of their interests in the shares owned by their late father Emile Galinie.
7. The Claimants seek the following reliefs-
 - a) A declaration that they are entitled to have interests in the shares owned by the late Emile Galinie in the Second Defendant Company.
 - b) An Order that the Company secretary being Barrett & Partners assign and/ or distribute the shares of late Emile Galinie equally between the shareholders being the two claimants and their sister, First Defendant.
 - c) An Order that the First Defendant return the keys to the La Parisienne Bakery and its cash box to the Claimants.
 - d) An Order that the Claimants are entitled to receive their monthly wages from the Second Defendant Company.
 - e) Costs of the proceedings, and
 - f) Any other Orders the Court deems fit.



The Defence and Counter-Claim

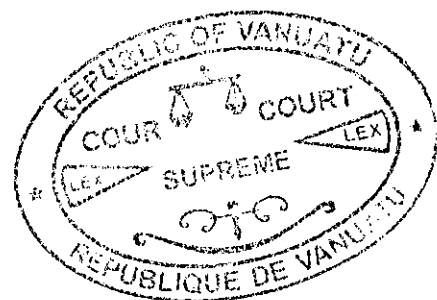
8. The Defendants filed an initial defence on 8th April 2014. They filed an amended defence and Counter-Claim on 4th June 2014 pursuant to leave being sought and granted by the Court on 30th April 2014. Basically the Defendants deny that-
 - a) The Claimants are shareholders and directors of the Second Defendant Company.
 - b) They are employed by the Company.
 - c) The letter dated 16th January 2014 did not imply any intent on her part to transfer the shares owned by her late father, Emile Galinie to her own benefits.

9. The First Defendant admits that she removed keys to the Bakery and the cash box from the Claimants and prevented them from entering the premises and has stopped by their salaries because:
 - a) She had authority for doing so as administratrix of her deceased father's estate.
 - b) The Claimants were endeavouring to control the operation of the Bakery without lawful authority and in doing so they have caused a run-down of the Company.

 - c) They have misused funds of the Company and have failed to maintain equipment of the Bakery since 25th June 2010 to 31st January 2014 and that they have failed to maintain proper Value Added Tax records,

 - d) The Claimants have interfered with employees of the Company.
 - e) The Claimants are not employees of the Second Defendant yet they paid themselves fat monthly salaries the last of which were made on 31st January 2014 to Jean Jacque Galinie at VT 205.930 and on 6th February 2014 to Jean Yves Galinie at VT 207.000.

10. For those counter-allegations the First Defendant counter-claims for the following sums and for Orders-
 - a) VT 8.760.000 from Jean Jacque Galinie,
 - b) VT 8.760.000 from Jean Yves Galinie
 - c) That the appointment of the Claimants as director of and signatories to the Second Defendant's Bank Accounts dated 25th June 2010 is contrary to the Companies Act and Articles of Association of the Second Defendant.
 - d) That the Claimants provide financial report of the Second Defendant for the period from 25th June 2010 to 6th February 2014.
 - e) The Claimant refund the Second Defendant the total sum of VT 17.520.000, and
 - f) Costs.



The Evidence

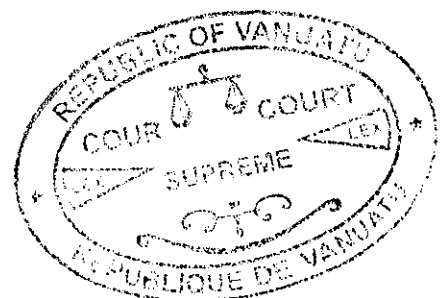
11. The Claimants relied on their evidence by sworn statements dated 14th March 2014 tendered as Exhibits C2 and C5 and of 30th June 2014 tendered as Exhibits C3 and C6 and of 28th July 2014 tendered as Exhibit C4. The Claimants called independent evidence from Lindsay Barrett whose sworn statement dated 30th June 2014 was tendered into evidence as Exhibit C1.
12. The Defendants relied on the evidence of the First Defendant filed on 9th June 2014 and further evidence filed on 6th August 2014 in support of their defences and counter-claims. These were tendered as Exhibits D1 and D2.

Burden of Proof

13. The Claimants have the onus of proof in relation to their claims and the First Defendant has the onus of proof in respect of her counter-claims. The balance required is on the balance of probabilities.

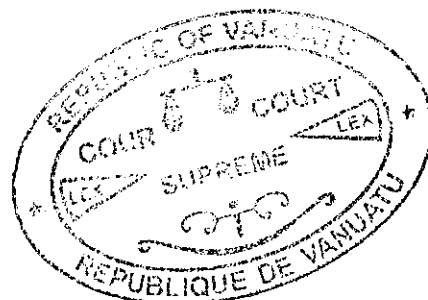
The Issues

14. The issues raised for consideration and determination are-
 - a) Whether the Claimants are directors and shareholders of the Second Defendant Company?
 - b) Whether the Claimants are entitled to have interests in the shares owned by the late Emile Galinie in the Second Defendant Company, and whether they are all equally entitled to those shares?
 - c) Whether the Claimants are employed of the Second Defendant Company?
 - d) Whether the First Defendant are entitled to the reliefs sought under her counter-claims?



Discussions

- 15.1 On the first issue of whether the Claimants are directors and shareholders of the Second Defendant Company the evidence of Jean Yves Galinie (Exhibit C3) discloses the Annual Return of the Company marked “ E”. Item 6 thereof provides the particulars of directors to be Jean Jacques Galinie, Jean Yves Galinie and Joelle Nangard Galinie. That annual return is dated 15th January 2014 and was signed by the First Defendant as director and Credit Facilities Ltd as the Company secretary. The Annual Return was certified by the First Defendant and secretary on the same date. Further the director and secretary issued a declaration on 15th January 2014 declaring the Claimants and the First Defendant as Directors.
- 15.2 In cross-examination Jean Yves Galinie and Mr Barnett readily admitted this was a mistake. That was a sensible concession. The two brothers as Claimants could not maintain their contention that they are directors of the Company, because if they were, they were expected to counter-sign the Annual Report, the Certificate and the Declaration dated 15th January 2014 respectively with their sister Joelle Nangard Galinie.
That being the position the Court accepts the Defendant’s submissions that the two Claimants are not directors of the company. They are however only beneficial owners which is an undisputed fact.
- 15.3 The Second limb of this issue is whether the Claimants are shareholders of the company. The evidence of Lindsay Barrett (Exhibit C1) disclose share certificates of 910 shares initially held by the late Emile Galinie and of 310 shares held by the late Jessie Galinie Marked “ A” dated 21st January 2003. The late Jessie Galinie’s shares were transferred back to Emile Galinie on 7th February 2007. The Share Transfer Certificate is marked “C”. The late Emile Galinie transferred 1 share to Global Nominees Limited by share transfer dated 28th September 2007. There are no Share Certificates showing any shares held by the two Claimants. And there are no Transfer Certificates showing that their shares of 200 held in trust have been transferred. Mr Barrett discloses a Declaration of Trust marked “ B” showing that the 600 shares of the company are held in trust for the two Claimants and their sister, first defendant at 200 shares each.
- 15.4 For the foregoing findings and reasons the Court is satisfied the two Claimants are neither directors nor shareholders in the Second Defendant Company. The first issue therefore is answered in the negative.



16.1 The Second issue raised by the Claimants is whether they are entitled to have their shares held in trust for them by their late father in the Company to be distributed equally to them. The evidence by Lindsay Barrett and Jean Yves Galinie reveal a Declaration of Trust made by the late Emile Galinie on 20th January 2003 by which he declared that he held 600 shares in the company in trust for the two Claimants and their sister, first defendant. They have equal shares of 200 each. This Declaration was lodged for stamp duty on 20th January 2003. This document or instruction records that the beneficial owners of the company are the two Claimants and their sister, the first Defendant.

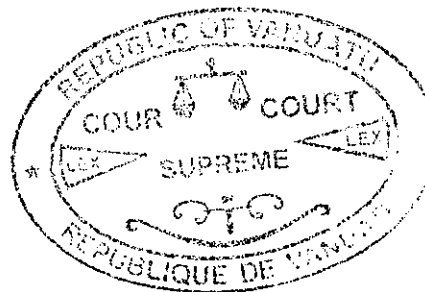
16.2 Clause 3 of the Declaration states-

“All privileges and rights attaching to the shares will be exercised only as directed by the beneficial owner or in the absence of directions in such manners as the company shall consider consistent with the trust herein declared”. (My underlining for emphasis).

16.3 Under the clause, it is clear the two claimants are entitled to have their shares transferred to them equally. This issue is therefore answered in the affirmative. The first Defendant as administratrix is required by section 84 of the Companies Act to effect or instruct that the transfers are made accordingly.

17 The Third issue of whether the two Claimants are employees of the Second Defendant Company, the defendants do not take issue with their status. The Defendants however take issue with the amount of salaries of VT 170.000 per months from June 2010 increasing to VT 200.000 per month from June 2013 to 31st January 2014. The evidence of the Claimants as confirmed by evidence of the first defendant in cross-examination was that (a) they all agreed to the amounts (b) they were all paid the same salaries and (c) they were all signatories to the account of the company. All these were done on the understanding (albeit mistakenly) but in good faith that (a) they were all directors and (b) shareholders. That being the case there should be little or no room for the first defendant to complain and take issues with the amounts of salaries and the claim to have those moneys refunded.

18 The fourth issue of whether the First defendant is entitled to the reliefs sought in her counter-claims the answer is in the negative. The first Defendant's evidence discloses a resolution dated 25th June 2010 (Exhibit D3) by which she as director appointed her brothers (the claimants) to be joint signatories to the bank account of the Company. That resolution did not appoint the Claimants as directors but simply as co-signatories. She made the resolution on advice which she believed to be sound and lawful. She acted in good faith. Therefore she cannot now complain that transactions carried out for the purposes of the day to day operations of the Company's business and affairs were unlawful because their two brothers signed or counter-signed cheques or withdrawals of moneys from the Company's Account. If there had been some losses of funds of the Company, the First Defendant must accept that she contributed to those losses having signed the resolution as Director of the Company. To a certain extent some of those withdrawals were to her benefit, for instance the salaries she received.



Conclusions

- 19 For reasons given, the Court concludes that the Defendants are unsuccessful in their counter-claims and all the reliefs sought are hereby declined. The counter-claims are dismissed.
- 20 The Claimants are partly successful in their claims and Judgment is entered in their favour for the following reliefs-
- a) **A declaration that the Claimants are entitled to have interests in the shares in the company owned by their father, the late Emile Galinie.**
 - b) **And Order that the First Defendant as administratrix of late Emile Galinie's Estate be required to forthwith assign, transfer and/or distribute the shares of the deceased equally between the three of them in accordance with the Declaration of Trust dated 20th January 2003 and pursuant to section 84 of the Companies Act (Cap.191).**
- 21 The following reliefs sought are declined-
- a) **An Order that the Defendants return the keys to La Parisienne Bakery and its cash box to the Claimants, and**
 - b) **And Order that the Claimants are entitled to receive their monthly wages from February 2014 because they have been terminated and have not worked during that period.**
 - c) **Costs of the proceedings.**
22. **Under the circumstances all parties have benefitted from the outcome of this proceeding, therefore costs must lie where they fall.**

**DATED at Port Vila this 26th day of September 2014.
BY THE COURT**


OLIVER A. SAKSAK
Judge

