

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

Civil Case No. 64 of 2009

BETWEEN: DANIEL YAWHA
First Claimant/Judgment Creditor

AND: PETER BONG
Second Claimant/ Judgment Creditor

AND: PORT VILA MUNICIPAL COUNCIL
Defendant/Judgment Debtor

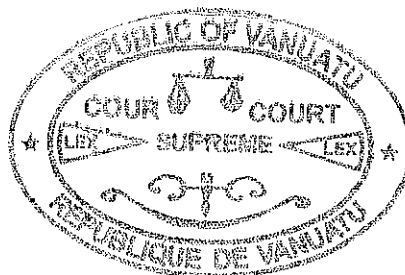
Coram: *Justice D. V. Fatiaki*

Counsels: *Mr. F. T. Laumae for the Claimants*
Mr. I. A. Kalsakau and Mrs. V. Trief for the Defendant

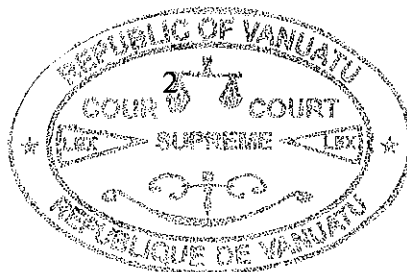
Date of Ruling: 16 April 2014

RULING

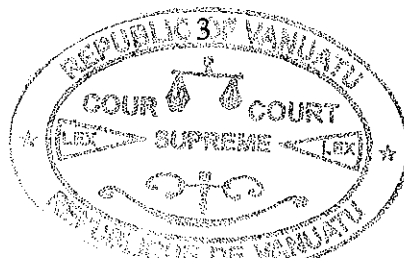
1. This case had its origins in June 2009 and concerns a Sale & Purchase agreement entered between the claimants and the Port Vila Municipal Council (PVMC). The subject matter of the agreement was 14 hectares of land situated at Rentapau and earmarked for a new cemetery to serve the residents of Port Vila. The purchase price for the land was VT107 million.
2. To cut a very long story short the claim was eventually settled by a consent order dated 8 March 2013 and in accordance with terms of a Deed of Settlement entered into by the parties for the greatly reduced sum of VT30 million payable by monthly installments over 3 years. It had a payment commencement date of 15 March 2013 with a final payment due at the end of December 2015.
3. The material terms of the Consent Orders was as follows:
 - "1. The defendant to settle the claimants' claim in this proceeding strictly in accordance with the terms of the Deed dated 8 March 2013 attached hereto.



2. *The proceeding is now discontinued on the basis of the Deed of Settlement."*
4. PVMC defaulted on its very first payment of VT7 million due under the agreed schedule of payments and the claimants immediately sought an enforcement warrant on 4 April 2013 directed to the four (4) commercial banks in Port Vila for the payment of VT30,255,000 from any funds held by the banks in the name of PVMC. The warrant was said to be issued pursuant to **Rule 14.4** of the **Civil Procedure Rules 2002** which empowers the Court to issue an enforcement order for a judgment debt.
5. At the direction of the Court on 8 May 2013 the enforcement warrant was amended in the name of the Sheriff of the Supreme Court and authorized him to attend at the 4 commercial banks and require the banks to transfer PVMC's funds to the claimant's lawyers trust account maintained at Westpac. Alternatively, the Sheriff was directed to seize PVMC moveable properties and land and sell the same to recover the judgment debt.
6. On 16 May 2013 PVMC filed an urgent application to set aside the enforcement warrant on the ground that it was irregularly issued, defective in form and failed to comply with the mandatory requirements of **Rule 14.25**.
7. On 21 May 2013 after considering the application, sworn statements and counsels' submissions, the Court suspended the enforcement warrant pursuant to **Rule 14.10** of the **Civil Procedure Rules** on condition that the parties agree and conclude fresh repayment terms for the judgment debt.
8. Pursuant to the court's orders PVMC submitted an amended payment schedule extending over four (4) years without any monthly installments and commencing on 24 May 2013 with a payment of VT1 million. The offer was rejected by the claimants who required an upfront payment of VT7,533,324 consistent with the payment schedule earlier agreed. The warrant was thereafter suspended.
9. On 29 July 2013 the claimants sought the reactivation of the enforcement warrant again for non-payment of an agreed amount of VT1,799,991 by 15 July.

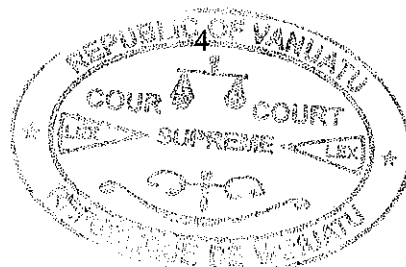


10. At the court's direction the claimants filed a fresh application for an enforcement warrant on 27 August 2013 and an enforcement warrant was issued on 1 October 2013.
11. On 10 October 2013 PVMC again sought the urgent suspension of the new enforcement warrant. On 18 October 2013 the warrant was suspended upon the parties agreeing to an amended repayment schedule of four (4) liquidated amounts and a balance amount payable by monthly installments to commence on 15 April 2014.
12. By notice dated 25 October 2013 the Attorney General's chambers began to act for PVMC. On 27 November 2013 State counsel applied for an order striking out the enforcement warrant as an abuse of court process. The main basis for the submission is that the original claim was discontinued and settled on terms and the enforcement warrant constituted an impermissible revival of the discontinued claim. The warrant was suspended pending determination of the strike out application.
13. Whilst the strike out application was pending on 24 December 2013 the court refused another urgent application by PVMC to suspend the enforcement warrant and directed that four (4) vehicles that had been seized by the Sheriff under the warrant should remain in the Sheriff's custody. The urgent application was brought by counsel R. Warsal who had previously acted for PVMC and who had earlier filed a ceasing to act notice before the Attorney General commenced acting for PVMC.
14. On 10 January 2014 the Attorney General applied to set aside the court's order of 24 December 2013 with a view to obtaining the release of PVMC's seized vehicles which included the Lord Mayor's official vehicle.
15. On 28 January 2014 the court's order of 24 December 2013 was summarily set aside for non-disclosure of material facts, including, the fact that counsel who had filed the urgent application to suspend the enforcement warrant was not the counsel on record for PVMC and the fact that there was a subsisting order of the court dated 27 November 2013 suspending the enforcement warrant until the State's strike out application was determined and which had not been brought to the court's attention.
16. So much then for the background, I now return to the State's pending application to strike out the existing enforcement warrant which was issued on 1st October 2013 and which expired on 31 December 2013.



17. Given the expiry of the enforcement warrant the application to set it aside would appear otiose, however, in deference to counsel's submissions and mindful that the claimants' judgment debt has still not been fully satisfied, I provide brief reasons for rejecting the application.
18. In essence the State's application is that the court's order of 8 March 2013 was not a judgment in so far as the original claim was discontinued and nothing remained of the claim to enable the court to issue an enforcement warrant.
19. Alternatively, counsel submits that **Clause 5** of the Deed of Settlement is a contractual bar to the enforcement proceedings issued by the claimants. That clause reads:


"This Deed may be pleaded by the parties as a bar to any actions, suits, claims, demands or legal proceedings instituted by the other party in respect of any matter referred to in this Deed except for the proceedings instituted for breach of the Deed."
20. The claimants' submission is equally straight forward. By the court's orders of 8 March 2013 the Deed of Settlement became a court order and constituted a judgment debt enforceable under Part 14 of the Civil Procedure Rules 2002.
21. I agree with the claimants' submissions. The court's order of 8 March 2013 was a consent judgment for a liquidated sum which included a discontinuance of the claim and an enforceable agreement about the payment of the judgment debt. In my view the enforcement proceedings were not a revival of the discontinued claim but a consequential proceeding that flowed directly from the terms of settlement and expressly excluded from the operation of **Clause 5**.
22. In seeking to enforce the agreement entered into by the parties, the claimants were not reviving their original claim as suggested but enforcing the terms of the agreed judgment debt. In other words the agreed payment terms incorporated in the judgment debt obviated the need for a fresh claim for breach of the Deed of Settlement and enabled the judgment debtor to directly seek an enforcement warrant for any failure or non-compliance by the judgment debtor with the agreed payment terms.



23. In my view there was no need for the claimants to issue fresh proceedings for breach of the agreed terms of payment of the judgment debt as suggested in the State's submissions before taking enforcement proceedings.
24. The application to strike out the enforcement warrant is accordingly dismissed with costs to be taxed if not agreed.

DATED at Port Vila, this 16th day of April, 2014.

BY THE COURT


D. V. FATIAKI
Judge.

