

BETWEEN: PATRICK ISMAEL
Claimant

AND: ETA RORY
Defendant

AND: GRACIA SHADRACK
Interested Party

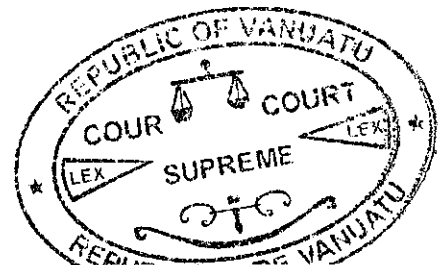
Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Lent Tevi for Claimant*
Mary Grace Nari for Defendant and Interested Party

Date of Hearing: *5th September 2014*
Date of Judgment: *26th November 2014*

JUDGMENT

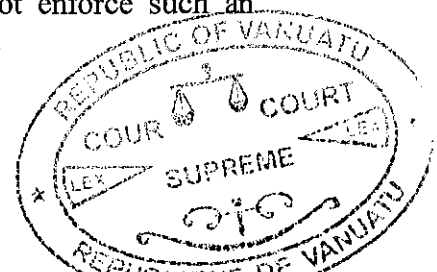
1. The Claimant brought this proceeding against the defendant alleging breach of a Sale and Purchase Agreement (the Agreement) entered into on 3rd July 2013 in relation to the vehicle Reg No.6904, a double-cabin Toyota Hilux. (the vehicle)
2. The vehicle belongs to the defendant and was originally operating on the Island of Malekula. During the course of its operation the vehicle had broken down and needed repairs. It was then necessary to send the vehicle over to Asco Motors in Luganville to cause repairs and to sell off by "trade-in". It appears from the evidence that the defendant delegated this responsibility to her son, Polycap Rory. It appears also from the evidence that the defendant and her son lacked the financial resources to be able to carry out their plans. And so it occurred that Polycap Rory got in touch with the Claimant to seek financial assistance on terms that the defendant would reimburse all costs of transportations and repairs incurred by the Claimant. It appears from the evidence that was the common understanding and consensus reached by the defendant and the Claimant.
3. The Claimant took all necessary steps and the vehicle was shipped to Luganville. It was at this time that all sorts of problems arose. On 3rd July 2013 the Claimant signed the Agreement with the defendant's son Polycap Rory about the sale and purchase of the vehicle and Gaston Rory as third Party. As a result the Claimant paid moneys he alleges were deposits for the purchase of the vehicle. On 26th July 2013 the defendant requested the police in Luganville to confiscate the vehicle and to have it kept in their custody. On 30th August 2013 the Claimant sought the release of the vehicle relying on the Agreement. The Claimant ultimately obtained an Order from the Court pending the determination of the proceeding.



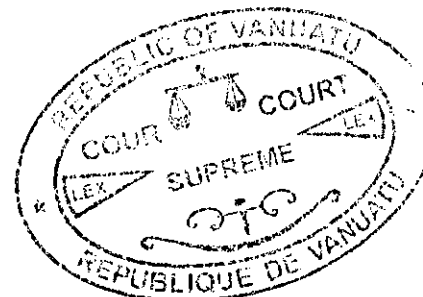
4. During the course of the proceeding the parties endeavored to reach settlement as to the ownership of the vehicle on the condition that the defendant pays the full costs of transportation and repairs incurred by the Claimant. The defendant made an offer of VT 118.350 at that point. The Claimant refused the offer. The Court then intervened by releasing the vehicle back to the defendant upon receipt of payment of the sum of VT 118.350 into Court. That Order was dated 5th September 2014. However the payment of VT 118.350 was only made on 30th October 2014.
5. The Claimant claims-
 - a) Costs of repairs etc—VT 1,230,000
 - b) Damages- VT 100,000
 - c) Interests at 10%, and
 - d) Costs of the proceedings.
6. The defendant denies liability on grounds that-
 - a) She did not sign the Agreement and did not authorize her son to enter into such Agreement with the Claimant,
 - b) Costs of repairs etc were excessive.
7. At trial the Claimant called evidence from six witnesses including himself. There were Erick Bob (Police Officer), Sandy Benson, John Fraser, Williame Ishmael, Wolton Ishmael and Patrick Ishmael. They all confirmed their evidence by sworn statements which were tendered as Exhibits C1, C2, C3, C4, C5, C6, C7 and C8. They were cross-examined by defence Counsel.
8. The Defendant called evidence from the witnesses namely, Barry Hinge, Eta Rory (defendant) and Polycap Rory. They confirmed their sworn statements tendered as Exhibits D1, D2 and D3. They were cross-examined by Mr Tevi.
9. On the basis of those evidence the following issues have been raised for determination-
 - a) Whether the Agreement dated 3 July 2013 is valid and whether it is binding on the Parties?
 - b) Whether the Claimant is entitled to reimbursement of his costs incurred in relation to the vehicle and if so how much?

Discussions

10. Dealing first with the Agreement, from the evidence it is apparent that the Agreement dated 3rd July 2014 was signed by the Claimant, Polycap Rory and Gaston Rory. It is not an agreement between the claimant and the defendant. The Agreement did not reflect the initial intention of the defendant which were that the claimant was to assist in meeting costs of repairs and transportation costs of shipping the Vehicle from Malekula to Santo for “trade- in” at the Asco Motors, and that the defendant was to reimburse those costs to the Claimant.
11. For those reasons, and despite what the other witnesses said in their evidence about the Agreement, the Court must conclude that the Agreement was void from the beginning on the basis of illegality. Therefore the Court cannot enforce such an Agreement. The first issues are therefore answered in the negative.



12. The second issue concerns the costs of repairs, transportation and others incurred by the Claimant in relation to the vehicle. The defendant has conceded that there existed this understanding and arrangement between herself and the Claimant. The only issue is how much she has to reimburse the Claimant for. This position was clearly shown by her offer to pay VT 118.350 on 5th September 2014 at the end of the trial hearing.
13. In her written submissions the defendant has calculated the expenses which she confirms to be in the sum of VT 127.350. She has also indicated that the outstanding costs of the MV Hula will be the responsibility of herself and the interested party and should be excluded. She further objects to reimbursing the sum of VT 312.000 the Claimant claims as loss of business for 26 days during which the vehicle was in Police custody. Further she objects to the costs for Parts Plus South Pacific in the sum of VT 171.748 and to VT 7.000 claimed for number plates and to VT 35.000 repair costs to Benson General Repairs.
14. The Court accepts that the following costs claimed should be rejected-
- a) VT 312.000- the Claimant did not produce any evidence to show he had a valid licence to do business with the vehicle.
 - b) VT 171.748- these were expenses for vehicle LN 1664 WD.
 - c) VT 7.000- Being for Number plates.
15. From the Claimants own evidence in his sworn statement filed on 25th February 2014 (Exhibit C8) the Claimant annexes copies of receipts and invoices from which the Court has calculated the correct costs for which he is to be reimbursed by the defendant as follows-
- a) Cash transfer of VT 60.000 through National Bank on 21/6/013
 - b) First Intalment payment of VT 35.000 to MV Hula on 24/6/2014
 - c) VT 3600 payment to Asco Motors on 24/9/2013
 - d) VT 950 paid to Santo Spare Centre on 3/8/2013
 - e) VT 2000 paid for fuel filter on 4/9/013
 - f) VT 900 paid on 6/8/013
 - g) VT 1.100 paid on 4/9/013 for 4 parking lights.
 - h) VT800 paid to Lerouik Henry for Petrol on 16/8/013
 - i) VT 30.000 and VT 5.000 made to Benson General Repairs on 4/7/2013 and 5/7/2013. These are receipts not invoices.
 - j) VT 32.000 paid to Polycap Rory on 28/7/2013
 - k) VT 5.000 paid to a debt collector on 5/5/2013
 - l) VT 5.00 paid to Polycap Rory on 26/6/2013
 - m) VT 4.000 paid to Polcap Rory on 30/6/2013 on Receipts 61 and 62
 - n) VT 10.000 paid to Asco Motors on 23/5/2014
- | | |
|-------------------------------------|--------------------------|
| TOTAL | <u>VT 202.850</u> |
| Less already paid into Court | <u>VT 118.350</u> |
| Balance | <u>VT 84.500</u> |



16. In his written submissions the Claimant has abandoned his claims as to ownership of the vehicle and seeks only the reimbursement of his expenses.
17. For the reasons given, the Court grants Judgment in favor of the Claimant for the reimbursements of his expenses in relation to the defendant's vehicle. From the evidence and annexures available before the Court, the proper amounts to be reimbursed by the defendant is in total **VT 202.850**. However the defendant has already paid into Court the sum of **VT 118.350**. The balance she has to reimburse is **VT 84.500**. The Chief Registrar is required to release the sum of **VT 118.350** to the Claimant as soon as possible.
18. The Claimant's claim for interests is rejected. There is no evidence he borrowed moneys to make the payments he made. And the Claimant is not entitled to any damages.
19. As to the costs the Court rejects the defendant's submission that there should be no order as to costs because an offer had been made. This matter could have been settled earlier had the defendant done her part of the verbal undertaking or understanding reached between them. Only when it did not occur that the Claimant took steps to lay claims to the vehicle in order to secure the payment of his costs and expenses. That being so, the Claimant is entitled to his costs of the proceeding on the standard basis as agreed or taxed.
20. It is necessary that the Court clarifies that costs remaining to the MV Hula in or about **VT 40.000** shall be the responsibility of the defendant and the interested party to this proceeding. Further if there be any other outstanding repair costs in relation to the defendants vehicle that has not been paid or settled, those costs should now be the responsibility of the defendant and the interested party, not the Claimant.
21. That is the Judgment of the Court.

DATED at Luganville, this 26th day of November 2014.

BY THE COURT


OLIVER A. SAKSAK

Judge

