

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

Civil Case No. 8 of 2013

BETWEEN: DANIEL STONE

Claimant

**AND: SOUTH PACIFIC PERMANENT
DEVELOPMENT CO.LTD**

First Defendant

AND: REPUBLIC OF VANUATU

Second Defendant

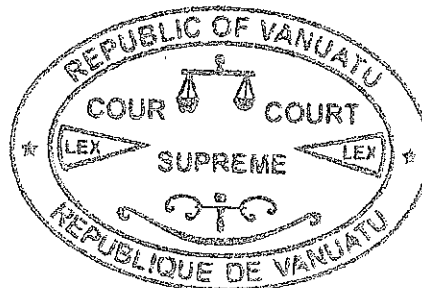
Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Ms Christina Thyna for Claimant- No appearance
Mrs Marisan P Vire for First Defendant
Ms Florence Williams for Second Defendant
No appearance by Third Defendant*

Date: *12th June 2014.*

RULING

1. The State filed an application on 13th May 2014 seeking Orders to Strike out the Claimant's claim. The basis of the application is founded on Rule 9.10 (1) (a) of the Civil Procedure Rules and for failure to comply with Orders dated 12th August 2013.
2. The Second Defendant relies on the evidence by sworn statement of Kepry Sablan dated 13th May 2014 with which he annexes the Orders dated 12th August 2013, the memorandum dated 2nd August 2013, the Order dated 1st October 2013, the Notice of Conference dated 3rd April 2014, and the Minute dated 8th April 2014.
3. I am informed by Counsel these documents were served on Ms Thyna by Daniel Morris on 19th May 2014.
4. Mrs Vire supports the application and the submissions made by Ms Williams. Counsel seeks costs.



5. Ms Williams also seeks costs. Counsel informs the Court that the Claimant did not comply with the Orders at paragraph 1 which, pursuant to the leave granted by the Court, required him to file a further amended claim on the Defendants within 14 days and also that the Claimant failed to pay the costs ordered against him in paragraph 6 at VT5.000 to the State and VT 5.000 to the Third Defendant.
6. Ms Thyna appeared in Court on 12th August 2013 when the Orders were issued. Counsel sought leave to file amended claim on that day. From that date to today's date, no such further amended claim has been filed. It has been some 10 months since. That is a serious failure and/or omission. Ms Thyna has not filed any notice of ceasing to act for the claimant. It has become apparent that the failure or omission to comply with Court Orders are attributed to her as Counsel. As such there will be an Order for costs against Ms Thyna pursuant to Rule 15.26 (2) of the Rules.
7. Accordingly the application is allowed. The Claimant's claims and this proceeding are hereby Struck out in their entirety. The Defendants are entitled to costs as follows:-
 - a) Third Defendant- VT 5.000 as Ordered on 12th August 2013 only. The Claimant will pay this Costs.
 - b) Second Defendant- VT 5.000 as Ordered on 12th August 2013 be paid by the Claimant. They are entitled to their costs of and incidental to this application on the standard basis as agreed or taxed. These will be paid by Counsel, Ms Thyna.
 - c) First Defendant- They are entitled to their costs of an incidental to this action on the standard basis as agreed or taxed by the Court. These will be paid by Counsel, Ms Thyna.
8. Ms Thyna has liberty to apply to be heard in relation to these costs Orders within 48 hours from the date of this Judgment.

DATED at Port Vila this 12th day of June 2014.

BY THE COURT.


OLIVER.A.SAKSAK

Judge

