

BETWEEN: VICTOR RON
Claimant

AND: COMMISSIONER OF POLICE
Defendant

Coram: *Mr. Justice Oliver A. Saksak*

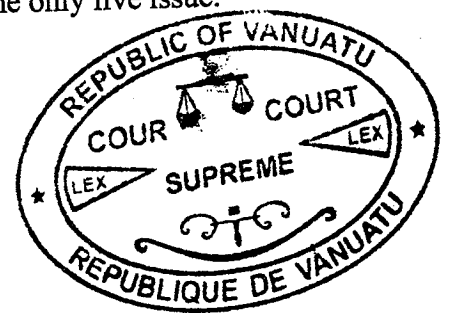
Counsel: *Saling Stephens for Claimant*
Viran M. Trief, Solicitor General for Defendant

Date: *22nd May 2014*
23rd November 2015

JUDGMENT

Introduction and Background

1. This is a long standing matter which has been completed except for a purported counter-claim by the Claimant against Ms Marisan Pierre (as she then was.) Ms Pierre was at that time the Administrator of Mountain View Treasures Scheme, in her position then as the Financial Services Commissioner.
2. Over time as the case progressed even to the Court of Appeal in 2004 there have been changes made the most significant change was made in November 2009 when the claimant by Consent Orders of even date consented formally to the removal of Ms Pierre as Administrator and was substituted by the " *Vanuatu Financial Services Commission*".
3. On 22nd May 2014 the Court issued further orders substituting the Vanuatu Police Force Credit Union in place of the Vanuatu Financial Services Commission. This further change occurred pursuant to an application by the Vanuatu Financial Services Commission (the VFSC) to which Mr Stephen representing the claimant conceded and consented to the orders being made upon the VFSC agreeing to pay VT 100.000 in costs and leaving the purported counter-claim as the only live issue.



4. The Court then directed that the claimant file written submissions within 14 days and gave liberty to the defendant to file responses within a further 14 days.

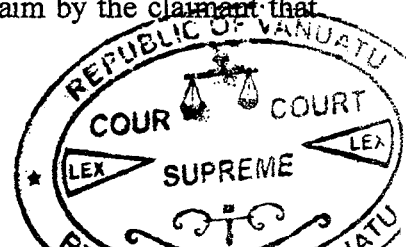
Discussions

5. On 19th June 2014 the claimant filed his legal synopsis in person. He filed supplementary legal submission on 1st July 2014. And the defendant filed response submissions on 8th July 2014.
6. In his legal synopsis the claimant refers to "Civil Case No. 20 of 2004, contempt of Court RE COUNTER CLAIM". Amongst others the claimant refers to paragraph 42 of Ms Pierre's report in which she wrote-

"SGT VICTOR RON is a very senior police officer of the law and is also quiet aware of the terms of the Court Order himself..."

The claimant claimed that as a result of that statement he suffered "loss and has spent quite a big amount of money to pay lawyer's fees and also lawyers hours, Court fee and counter-claim fees (Lawyers hours by VT 20.000 per hour)". He claimed for criminal defamation pursuant to section 120 of the Penal Code Act Cap.135.

7. Mr Stephens filed the Claimant's legal submissions dated 1st July 2014. Counsel acknowledged that contempt proceedings were completed except for the counter-claim which remained alive and that it should be heard and determined by the Court.
8. Mrs Trief for the defendant argued and submitted that the claimant had no counter-claims that were made in accordance with the Civil Procedures Rules. Counsel submitted that at best the claimant had a cross-application or an interlocutory application and not a counter-claim as he was not the defendant in the proceeding. Further it is submitted by Counsel that in light of the Consent Orders of 12th November 2009 no such counter-claim (so-called) could remain alive against Ms Pierre. Finally Counsel submitted that the Court should not allow any abuse of its process and urged the Court to issue judgment to the effect that there is no remaining counter-claim before the Court.
9. There is only one issue: whether or not there is a counter-claim by the claimant that needs to be heard and decided by the Court.



10. On 5th April 2005 the claimant filed a defence and a counter-claim alleging malicious prosecution against him and claiming damages for harm to his reputation in the sum of VT 1.000.000.

On 11th April 2005 the claimant filed a statement of defence and an amended counter-claim as the claimant claiming general damages in the sum of VT 1.500.000 and exemplary damages in the sum of VT 1.500.000, a total of VT 3.000.000.

11. Conclusions

11.1. First the claimant's counter-claim was an abuse of process. He was the claimant and was responding to the Commissioner of Police's application at the time. The proper course of action was to have filed a separate proceeding. This proceeding does not name Ms Pierre as a Party.

11.2. Second, the claimant failed to prosecute his purported counter-claim within the time allowed by the rules.

11.3. Third on 12th November 2009 the claimant consented to the removal of Ms Pierre as the Administrator of the Scheme. As such Ms Pierre was no longer a party to the case and in effect, the purported counter-claim became extinguished and it became extinct.

12. I accept and agree with Mrs Trief's submissions in their entirety. There is no counter claim alive before this Court. This matter is now at an end. There will be no order as to costs.

DATED at Port Vila this 23rd day of November

BY THE COURT

OLIVER.A.SAKSAK

Judge

