

BETWEEN: John Maseiras

Claimant

AND: John Brian Tonner

First Defendant

AND: South Sea Shipping (Vanuatu) Limited

Second Defendant

AND: Tonner Investment Limited

Third Defendant

AND: Main Wharf Management Limited

Fourth Defendant

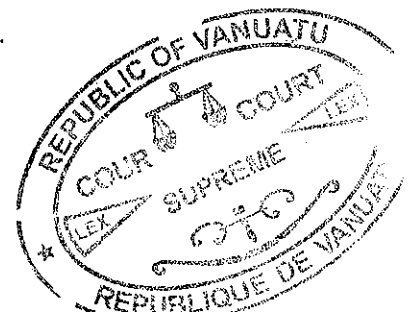
Date of Hearing : 28th September 2020
Date of Decision: 30th September 2020
Before: Justice Oliver.A.Saksak
In Attendance: Ms Stephanie Mahuk for First, Second, Third and Fourth
Defendants (Applicants)
Mr James Tari for the Claimant/ Respondent

DECISION

Introduction

1. By application dated 23rd June 2020 the First, Second, Third and Fourth Defendants seek an order striking out the whole of the Claimant's statement of claim filed on 26th May 2020. They also seek an order for indemnity costs.

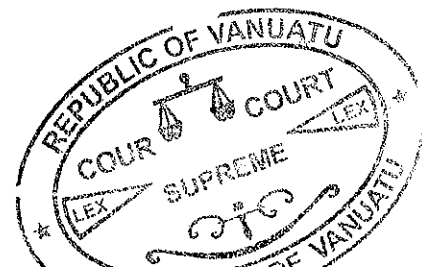
2. The grounds for seeking a strike out order are that-
 - (a) The claim does not disclose any reasonably arguable claim against the named defendants.
 - (b) Service of various Court documents were served on the claimant.



- (c) For 7 months after receiving service the claimant failed to answer the allegations made against him.
 - (d) The claimant suffered the sanctions of the Court due to his own ignorance and/or procrastination.
 - (e) The claimant is estopped by his own conduct and his failure to mitigate costs to himself as well as the risk of sanction for contempt of Court orders.
3. The application was opposed by the claimant who relied on his sworn statement dated 15th July 2020 and his responses filed on 14th July 2020.

The Facts

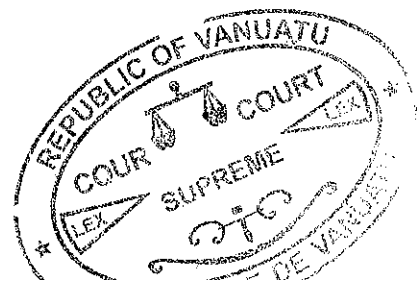
4. The Defendants filed Civil Case No. 19/2114 on 14th August 2019 naming the claimant as the Fourth Defendant and claiming VT 5.000.000 in general damages, VT 5.000.000 as aggravated damages, Interest at 5% and costs.
5. Similar claims are made against Julian Ligo, Mathew Temar, George Borugu and Avio Roberts.
6. It is alleged the defendants jointly and severally own, control, moderate and administer the following online platforms and associated groups/pages for public viewing in Vanuatu and worldwide.
- (a) Facebook Profile "Yumi Toktok Stret."
 - (b) Facebook Group "Yumi Toktok Stret."
 - (c) Facebook Page "Yumi Toktok Stret News" and
 - (d) Website YRS News < www.yumitoktokstret.today>
7. On 22nd July 2019 it is alleged the defendants published an article entitled " School Suspends Student over 500vt Late Fee", levelled against the second claimant.
8. On 2nd August 2019 it is alleged the defendants published on article entitled ' Foul Play in Tourism wharf Management Tender" levelled against all the named claimants in CC 19/2114.



9. On 5th August 2019 it is alleged the defendants published an article entitled " Handicraft Markets at wharf pay 47 million in rent to SSS" levelled against the First and Second Claimants.
10. On 9th August 2019 it is alleged the defendants published an article entitled " Tonner Attempted to Bribe MIPU Minister for Tourism Wharf Management.
11. The Court ordered service of documents on the claimant electronically via email address: john.maseiras @gmail.com.
12. On 6th March 2020 the Court issued orders in CC 19/2114. The Claimant did not comply with the orders.
13. On 12th March 2020 the Court Ordered that the claimant be arrested and put in prison for contempt of Court Orders. He was arrested and imprisoned on the same date.
14. He now alleges he was falsely imprisoned. He alleges his detention was wilful, without consent and unlawful. He alleges he has suffered loss and damages as a result of the defendant's actions.
15. He claims damages (to be assessed), interest and costs.
16. The claimant argues he was not a director or a shareholder of the company at the dates of the alleged publications. And he claims he is wrongly included as a party in CC 19/2114.

Discussion

17. Ms Mahuk submitted the Claimant's claim and proceeding should be struck out on the basis advanced in the grounds set out in the application. The evidence in support of those grounds are available from John Tonner's sworn statements and Mayanne John's sworn statement dated 24th June 2020 respectively.



18. From these evidence I am satisfied the claimant was served with all relevant and appropriate documents but did nothing to respond to or answer the allegations levelled against him. He could have responded or filed a defence to the claim in CC 19/2114 but did not. He could have taken the route taken by Avio Roberts and George Borugu, but did not.
19. I therefore accept Ms Mahuk's submission that the claimant is estopped by his own conduct in filing his claim against the defendants.
20. Further his pleadings at paragraphs 19 and 20 the claimant alleges false and wrongful detention. However from the facts and evidence, it was not the defendants who imprisoned the claimant, rather it was the police at the sanction of the Court.
21. I therefore accept Ms Mahuk's submission that the claim does not disclose any reasonably arguable course of action against the defendants. The claim and proceeding are therefore misconceived and is bound to fail.

The Result

22. The application by the defendants is allowed.
23. The claim and proceeding of the claimant is hereby struck out in its entirety.
24. The Defendants are entitled to their costs on an indemnity basis against the claimant. The costs are to be agreed or taxed by the Master.

DATED at Port Vila this 30th day of September 2020

BY THE COURT

OLIVER.A.SAKSAK

Judge

