

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

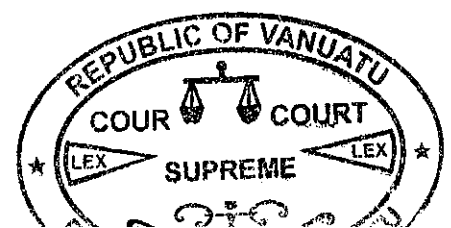
Civil
Case No. 19/2114 SC/Civil

BETWEEN: **South Sea Shipping (Vanuatu)
Limited**
First Applicant
John Brian Tonner
Second Applicant
Main Wharf Management Limited
Third Applicant
Tonner Investments Limited
Fourth Applicant

AND: **Julian Ligo**
First Respondent
Mathew Temar
Second Respondent

Date of Hearing: 9 September 2020
Before: Justice G.A. Andrée Wiltens
Counsel: Ms S. Mahuk for the Applicants
Mr J. Seresere by or for the First Respondent
Date of Decision: 6 October 2020

JUDGMENT

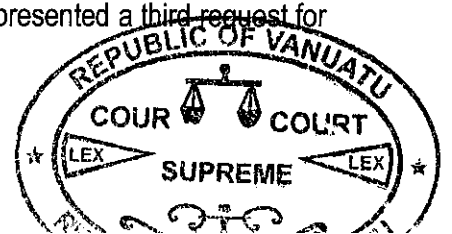


A. Introduction

1. This was initially an application to hold the Respondents in Contempt for communications posted on Facebook and on *Yumi Toktok Stret* ("YTTS").
2. As the matter progressed, it also became an application for Summary Judgment due to lack of any steps being taken by the First Respondent.
3. The case against the Second Respondent has yet to be heard. The Warrant for his Arrest has yet to be executed, although there is no doubt he is aware of its existence.
4. At the conclusion of hearing evidence as to quantum, I reserved my decisions. These are my reasons for the decisions.

B. Background

5. An application for interim restraining orders was dealt with on 11 October 2019 by the issuing of certain orders restraining the respondents from making further Facebooks posts in relation to the applicant. The respondents were to also immediately delete all posts on social media relating to the applicants.
6. Despite the orders being served on the applicants, no steps were made to comply with the requirement to delete previous posts and further posts were made contrary to the Court's orders. Accordingly, on 6 February 2020 the applicants were further cautioned regarding expunging their contempt and the desirability of obtaining legal advice. The Court Minute detailing these matters was served on the applicants.
7. There was again no compliance. Accordingly a Warrant of Arrest was issued in respect of each of the respondents on 14 February 2020. The warrant in respect of Mr Tamar has yet to be executed. The warrant in respect of Mr Ligo was executed in early March 2020. He then appeared before the Court with Mr S. Kalsakau of counsel instructed to act for him.
8. Mr Kalsakau filed two applications – to set aside the Court's order that Mr Ligo was in contempt and to release him from custody. Mr Ligo undertook to take certain steps of compliance with the previous Court orders and he indicated he would detail the evidence he had to justify the defamatory posts in relation to the applicants. He was released without conditions.
9. Mr Kalsakau was to file and serve an application to set aside the Court orders with supporting sworn statement(s) which were to detail the evidence in support of the posts made relating to the applicants, and to file a defence to the substantive Claim which had been filed on 14 August 2019. That was to be done by 30 April 2020. Ms Mahuk had liberty to respond within 28 days. The applications and the trial issues were to be determined on 9, 10 and 11 September 2020.
10. Mr Kalsakau sought further time as he was unable to file within the permitted time. That was granted. Mr Kalsakau was unable to comply with the later timetabling directions and sought yet further time. That was granted. Mr Kalsakau then presented a third request for

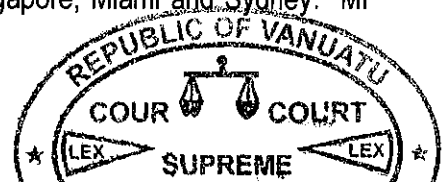


more time. That too was granted and he was directed to file and serve the material by 30 June 2020.

11. On 5 August 2020, there had been no compliance by Mr Kalsakau. Ms Mahuk sought compliance. The Court scheduled the hearing of the application for 26 August 2020. In the meantime any documents filed by or on behalf of Mr Ligo were to be accepted on an interim basis – leave was required before any such material was to be formally accepted as evidence in the case.
12. Mr Kalsakau filed a Notice of Ceasing to Act for Mr Ligo on 19 August 2020.
13. On 26 August 2020, in the absence of Mr Ligo and any legal representative on his behalf, the application by Mr Kalsakau to set aside the previous Court orders was dismissed. Costs of VT 50,000 were ordered to be paid by Mr Ligo to the applicants within 21 days.
14. Having found Mr Ligo to be in contempt, the issue of quantum of damages remained to be determined. That issue was scheduled to be heard on 9 September 2020, and the Minute setting that out was personally served on Mr Ligo to afford him the opportunity of appearing. The Minute made it explicit that an adjournment was highly unlikely.
15. The matter was heard on 9 September 2020. Mr Seresere appeared with and for Mr Ligo. Two days before that Mr Ligo had caused to be filed the First Defendant's Defence and a sworn statement by Jean-Caude Emelee in support. On the morning of the hearing, Mr Ligo had caused to be filed a sworn statement by Christopher Emelee.

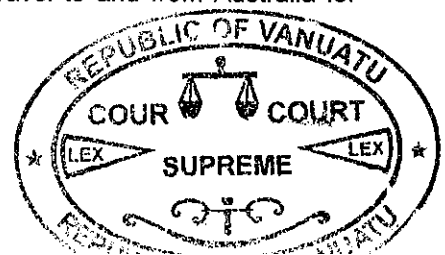
C. Contempt

16. Whether or not Mr Ligo had a viable defence to the Claim was not relevant to the consideration of the contempt application. The determination that Mr Ligo was in contempt had been made on 11 October 2019. It has not been set aside or appealed. That finding stands. The only issue is what is the appropriate consequence for Mr Ligo's un-purged contempt.
17. It was never suggested that anything other than a monetary penalty should be imposed. In this regard Mr Tonner confirmed the matters he had stated in his sworn statement of 3 February 2020, wherein he claimed recompense for approximately A\$ 5,500 incurred on a trip he and a colleague were required to take to Sydney to explain to his Board of Directors the allegations in the posts on social media by Mr Ligo. He had expended considerable time in attempting to negotiate a contract for his employers, which the social media posts undermined completely, leading to the loss of that potential transaction. He quantified that in a monetary fashion as amounting to actual expenditure of approximately VT 3.28 million.
18. Further, there were considerable reputational issues to Mr Tonner's international employers adversely affected by Mr Ligo's posts – in Singapore, Miami and Sydney. Mr



Tonner was still, almost a year after the posts had been made, personally affected by the slurs on his character.

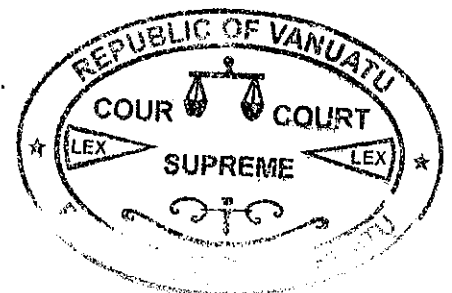
19. Mr Seresere cross-examined Mr Tonner, but in my view made no inroads. He also called Mr Ligo to give evidence. Mr Ligo advised that he and Mr Temar had taken over YTTS in 2011 and commercialised the business to take advantage financially of advertising and promotional income. In cross-examination he conceded he had been properly served but had not complied with the Court's restraining orders. He accepted also he received the Claim – but he had not taken down any of the offending posts, as he maintained he had evidence of the allegations.
20. Mr Ligo claimed that YTTS earned VT 500,000 monthly up until March 2020, when the income shrank drastically due to the downturn of the economy. He advised that YTTS did not adhere to media standards, and did not always check information received prior to publishing – he considered inserting “alleged” cured that difficulty. In this case, he claimed YTTS had checked the information received regarding Mr Tonner and his employers; and as the matter involved public assets he considered important to share the information publicly.
21. Mr Ligo claimed to have the largest Facebook group followers in Vanuatu – of some 2.5 million followers world-wide.
22. Mr Ligo could not dispute Mr Tonner's evidence as to quantum. He maintained the cost to run his enterprise was VT 300,000 per month. His profits were accordingly anywhere between VT 200,000 to VT 500,000 per month – which he shared 50:50 with Mr Temar.
23. In order to determine the appropriate amount Mr Ligo should compensate Mr Tonner I took into account that despite numerous advices and every opportunity, Mr Ligo has not offered a public apology to Mr Tonner or his employers. Neither has Mr Ligo provided any credible evidence to support his derisible contentions about Mr Tonner's alleged actions.
24. The nature of the posts warrants consideration. One post was headed: “Foul play in Tourism Wharf Management Tender”. The piece alleged that there had been foul play by Mr Tonner in relation to his seeking to be granted the tender in relation to managing the Tourism Wharf at Port Vila. A further piece was titled: “Handicraft Markets at Wharf pay 47 million in rent to SSS”. It was alleged that mamas at the Handicraft market had been over-charged and financially disadvantaged by the actions of Mr Tonner and his employers. Lastly, there was published a piece entitled “Tonner Attempted to Bribe MIPU Minister for Tourism Wharf Management”. This article described an attempt by Mr Tonner to bribe a Minister of the Government, supposedly because other attempts to secure the contract had failed. It went on to allege that South Seas Shipping had won the tender as a result of improper processes being followed and had paid for free travel to and from Australia for Government officials in order to secure the tender.



25. These posts were in the public domain from July/August 2019 until 20 March 2020. The Court order to remove the posts was served on Mr Ligo on 16 October 2019. Accordingly Mr Ligo was in contempt for something in the order of 5 months.
26. Regard should also be had to the fact that Mr Ligo must be able to pay the amount settled on; as well as the fact that he was incarcerated for 4 days prior to being released.
27. Mr Ligo is ordered to expunge his contempt and compensate Mr Tonner in the sum of VT 250,000. That is to be paid within 28 days.

D. Claim

28. As earlier stated, the Claim was filed on 14 August 2019. Mr Ligo was served with the Claim and other documents on 16 August 2019. Under the Civil Procedure Rules, Mr Ligo was to file a response within 14 days and a Defence within a further 14 days. The Defence was actually filed with the Court on 7 September 2020 – 51 weeks late!
29. In the meantime, an application for judgment by default had been filed by Ms Mahuk on 16 October 2019. This had been held in abeyance while the other aspects of the case were traversed. Ms Mahuk sought to press her application on 9 September 2020, submitting that the Defence filed was significantly out of time as well as contrary to the Court's numerous timetabling directions not complied with and the direction of 5 August 2020 to the effect that leave was required before any documents would be accepted by the Court.
30. There was no application for leave. Further the only explanation for the delay involved came from Mr Ligo, who primarily sought to justify doing nothing as he believed the information he was disseminating was genuine and correct, and who additionally sought to put the blame for delay and non-compliance with Court directions at the feet of Mr Kalsakau.
31. In the circumstances, I declined to accept the Defence and the sworn statements in support. I noted that those statements did not in any event justify YTTS publishing the defamatory posts complained of.
32. I have detailed above the evidence in relation to damages received from Mr Tonner and Mr Ligo. I use that to set the appropriate amount of damages. The Claim sought VT 5 million in respect of both damages and aggravated damages for the 4 posts complained of – a total of VT 40 million. Mr Tonner did not press for damages in respect of the post relating to his child's schooling. I took from his evidence that he was no longer pursuing that aspect. Ms Mahuk conceded that the Claim was extravagant – relying on the authority of *Moli v Heston* [2001] VUCA 3.
33. The other factor that must be taken into account is the ability to pay.



34. I assess the amount appropriate as damages to the applicants is VT 9 million. However, there is no realistic means by which Mr Ligo could afford to pay that. Further, he is liable to pay damages on a 50:50 basis with his partner.

E. Result


35. In respect of the contempt issue Mr Ligo is to pay VT 250,000 to the applicants within 28 days.

36. In respect of the Claim, I grant judgment by default against Mr Ligo solely in the sum of VT 2.25 million. I make no order as to when he is to pay that as I do not foresee a lump sum being forthcoming. Interest is payable on that sum from the date of the Claim at the rate of 5% per annum until completely paid.

37. Mr Ligo is to also pay towards the costs of the applicants the sum of VT 200,000. This is to be paid within 21 days.

38. This decision is to be served on Mr Ligo so that he can attend Court at 8am on 23 October 2020 to explain how it is he intends to make the payment of the damages sum awarded.

**Dated at Port Vila this 6th day of October 2020
BY THE COURT**


Justice G.A. Andrée Wiltens

